

# COMMONS AND RIGHTS OF WAY COMMITTEE

**MINUTES** of a meeting of the Commons and Rights of Way Committee held on Tuesday 10 December 2019 at the Cabinet Suite - Shire Hall, Gloucester.

**PRESENT:**

Cllr Phil Awford (Chair)	Cllr Loraine Patrick
Cllr Dr John Cordwell (Vice-Chair)	Cllr John Payne
Cllr Graham Morgan	Cllr Brian Robinson

**Officers:** Karen Pearman, Asset Data Team Leader (Highways Records)  
Jaci Harris, Asset Data Officer (PROW Definitive Map)  
Andrew Houldey, Asset Data Officer (PROW Definitive)  
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

**Apologies:** Cllr Carole Allaway Martin and Cllr Simon Wheeler

## 19. MINUTES

Resolved

That the minutes of the previous meeting held on 4 October be approved and signed as a correct record.

## 20. DECLARATIONS OF INTEREST

20.1 At this juncture, Cllr John Cordwell referred to the first application under consideration concerning additional lengths of public footpath at Bownance Woods; he reported that this was in the parish of Stinchcombe and in his electoral division of Wooton-under-Edge. He pointed out that the application was made in 2006 and therefore before his division of Wotton-under-Edge was expanded to include the parish of Stinchcombe. Cllr Cordwell explained that Mr and Mrs Pridmore had visited him back in 2015 to discuss all of the contactable users of the route withdrawing their support for the application. He confirmed that he had not discussed his views on the application with Mr and Mrs Pridmore and consequently he had no interest to declare.

20.2 Cllr Lorraine Patrick also referred to the application concerning the additional lengths of public footpath across Bownance Woods in the parish of Stinchcombe. She explained that she had previously kept horses on land close to the paths. Janet Smith, Specialist Adviser, advised Cllr Patrick that this was deemed to be non-prejudicial and she could therefore participate in the proceedings.

**21. MEMBERS QUESTIONS ON APPLICATION(S)**

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

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

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

**23. APPLICATION FOR A MODIFICATION ORDER FOR ADDITIONAL LENGTHS OF PUBLIC FOOTPATH AT BOWNACE WOODS, STINCHCOMBE PARISH, GLOUCESTERSHIRE**

- 23.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a power-point presentation, which included photographs of the claimed routes 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.)*
- 23.2 The Committee was informed that an application for a Definitive Map Modification Order (DMMO) was made by Mrs M Larroucau on 15 June 2007. The Committee noted the route of the two claimed footpaths marked A-B & C-D, on the plan attached at Appendix JH2 to the report.
- 23.3 The Asset Data Officer informed the Committee that Land Registry records confirmed that Mr P S Pridmore had owned the land over which the majority of the claimed paths ran since September 2011. Molyneux Engineering owned the land between the years 1983 and 2004 when it was sold to Mr & Mrs Gatt, who owned the land until its re-possession in 2010 and sale in 2011 to Mr & Mrs Pridmore. The Committee noted that there were two small areas of land affected by this application which were in the ownership of the Stinchcombe Hill Recreation Ground Trust.
- 23.4 The Asset Data Officer explained that photos taken on 21 June 2007 by an officer whilst inspecting the claimed paths showed barbed wire strung across the path and notices saying 'KEEP OUT'. Under Section 31 of the Highways Act, this constituted a challenge by the landowner to the public's use of the paths and would give a retrospective 20-year qualifying period of 1987-2007.
- 23.5 The Committee was informed that there was no substantive documentary evidence to support this application, and the claimed paths were not put forward by Stinchcombe Parish Council for consideration at any stage in the compilation of the definitive maps of 1953.
- 23.6 The Committee was informed that a total of 15 Public Path Evidence Forms (PPEFs) completed by 15 individual members of the public had been completed in support of the application.

- 23.7 The Asset Data Officer drew members' attention to a letter that she had received from Mr Pridmore attached at Appendix JH4.1 to the report. In the letter Mr Pridmore stated that "the previous owner had taken out a deposition in 2006 to stop people using his property", and "that the previous owner's extreme actions in aggressively confronting trespassers had led to an application for the footpath being filed in 2007".
- 23.8 The Asset Data Officer confirmed that Mr Gatt had deposited a Section 31(6) map and statement on 27 June 2006. However, at no time during the period covered by the deposit was a statutory declaration executed and therefore the deposit could not be relied upon to rebut a claim of presumed or inferred dedication.
- 23.9 The Committee was informed that Mr Pridmore, upon receiving notification of the application, had spoken to the applicant to set out his concerns about the proposed right of way. Consequently, Ms Larroucau withdrew her application on 15 October 2015 and 10 more of the PPEFs were also later withdrawn. The Committee was informed that contact with the remaining 4 individuals had not been possible.
- 23.10 The Asset Data Officer explained that following an investigation of the remaining evidence and a consultation of user groups and statutory consultees, a report was submitted to the Internal Officers Panel on 30 October 2015, to consider whether there was sufficient evidence for Gloucestershire County Council (GCC) as the Surveying Authority, to process the application as a GCC instigated application.
- 23.11 The remaining evidence was considered insufficient to take the application forward and it was therefore abandoned as a 'live' application on 2 November 2015. However, following a recent review of applications considered by the Internal Officer's Panel, it was agreed that the application, due to its reliance on user evidence, should be submitted for determination by the Commons and Rights of Way Committee.
- 23.12 The Asset Data Officer advised members that the application must be determined on whether the user evidence supplied by the remaining 4 individuals, dating back to 1947 on foot, was sufficient to raise a claim of deemed dedication or inferred dedication at common law.
- 23.13 The Committee noted the summary of the 4 remaining PPEFs and a bar chart of the claimed use attached to the report at Appendix JH7 and JH8. All 4 of the individuals claimed to have used the path for part or all of the qualifying period (1987- 2007), and of those, 3 claimed use of this path across the whole 20-year period. All 4 users claimed weekly or frequent use of the paths whilst use of the routes was noted as being for the purpose of dog walking and recreation. The Asset Data Officer confirmed that there was no evidence of use of the path by force, secrecy or permission prior to the date of challenge in 2007.
- 23.14 The Committee was informed that when considering the sufficiency of the user evidence for the qualifying period in *R. v. SSETR (ex p. Dorset)* [1999] the judge considered that, although the evidence within five user evidence forms was truthful,

it was insufficient to satisfy the statutory test. Applying this ruling therefore, it followed that the user evidence in association with this application would also fail.

- 23.15 In response to a question, the Asset Data Office explained that Section 31(6) of the Highways Act 1980 prescribed a mechanism by which a landowner may provide by way of depositing statements, maps and declarations with the appropriate Authority, sufficient evidence to negate an intention to dedicate ways over a landowner's land as highway for the purpose of defeating deemed dedication of such highways. She emphasised that this was a two-stage process, the applicant would need to first submit a map and statement and then as a separate event (i.e. not at the same time), but no more than 20 years later, the applicant would need to submit a statutory declaration.
- 23.16 Applicants were expected to submit their declaration shortly after submitting their statement (i.e. a few days apart) to ensure that their interests from a legal perspective were adequately covered. She clarified that Mr Gatt by not submitting a statutory declaration, had therefore not completed the second stage in this process. As a consequence, the deposit could not be relied upon to rebut a claim of presumed or inferred dedication. She added that Mr Pridmore could provide a statutory declaration as part of that process which would then abate the application and protect his land from new rights of way being imposed.
- 23.17 The Asset Data Officer concluded her presentation by explaining that there was no substantive documentary evidence in support of the application. Further, on the balance of probability, the user evidence submitted with the application was considered insufficient under statute to raise a presumption of dedication in accordance with the provisions of the 1980 Act. It was similarly considered to be insufficient to infer dedication at common law. Her recommendation therefore was that no Order be made to add the claimed ways to the Definitive Map, due to insufficient evidence.
- 23.18 A member referred to the photographs of the claimed paths and raised the point that they appeared to have been kept in a very good condition. The Asset Data Officer explained that it could be presumed that more people were using the path on a more frequent basis than the evidence submitted in support of the application implied, and that efforts were being made by them to keep the paths in a good condition. The Committee was advised that whilst 15 PPEFs had originally been received in support of the application, the application could only be determined on the evidence of the remaining 4 PPEFs.
- 23.19 Having considered all of the information before it, the Committee

Resolved

That no Order be made to add the ways claimed between points A-B and C-D to the legal record of public rights of way due to insufficient evidence.

**24. APPLICATION FOR A MODIFICATION ORDER TO ADD A LENGTH OF PUBLIC FOOTPATH LINKING EAST END ROAD & LONDON ROAD, CHARLTON KINGS, GLOUCESTERSHIRE**

- 24.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a power-point presentation, which included photographs of the claimed routes 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.)*
- 24.2 The Committee was informed that an application for a Definitive Map Modification Order (DMMO) was made by Mrs Pamela Harford on 22 April 2008. The Committee noted the route of the claimed footpath marked A-B on the plan (produced before the development had commenced) attached at Appendix JH2 to the report.
- 24.3 The Asset Data Officer explained that the application was assigned a 'medium' priority rating and therefore the investigation only started in 2017. It quickly became evident that the site over which the claimed path crossed had been developed and the path was no longer available, either on its claimed route, or any other within the site. Mrs Harford was informed of this turn of events and she then subsequently decided to withdraw her application.
- 24.4 The investigation revealed that the land over which the claimed path crossed had been developed under planning permission 09/01515. The Committee noted the map at Appendix JH3 to the report which showed the effect of the development. The Committee acknowledged that no provision was found to have been made for the claimed path.
- 24.5 In response to a question, the Asset Data Officer explained that the Surveying Authority is required to maintain a database of applications for changes to the legal record of public rights of way. Since 2018, searches carried out during the conveyancing process of a property purchase include mandatory questions with regard to public rights of way and undetermined claims, as recorded on the database, for the legal record to be modified. Prior to 2018 such information would only be provided if specifically requested by the conveyancer. It follows therefore that there could be many, as yet, unknown potential claims for paths which could potentially affect someone's land but are unknown to the Surveying Authority because they have not been made the subject of an application. Janet Smith, Specialist Adviser, explained that there was no legal requirement for a Planning Authority to refuse planning permission due to an unresolved claim for a public right of way on the land subject to the planning application. Since 2018, a developer would be made aware of any claims affecting the land in question so that he could consider the possibility of facilitating the claimed path, thereby adding the claimed path to the legal record and resolving the application by an alternative legal provision. This would be undertaken however at the developer's risk because until the application was investigated and officially determined, there was always the chance that the application would be rejected. Officers advised the Committee that

in regards to this case there was no provision for the path within the development and no alternative route of where the path could be diverted to.

- 24.6 The Committee was informed that no substantive documentary evidence had been found regarding the status of the claimed route. The path was not shown on documents drawn up under a statutory process in the public domain, nor was it put forward by the Parish or Borough Council for consideration at any stage in the compilation of the definitive maps of 1953.
- 24.7 The Committee noted that Ordnance Survey maps showed the physical representation of a path leading to the rear of the Duke of York pub from East End Road. Features were shown across the path at the junction with East End Road, behind the pub and at the junction with London Road until the 1970 published map when the path was shown without barriers thus freely connecting East End Road and London Road. The claimed way was annotated F.P on the 1955 published map. The Committee acknowledged that in accordance with the Ordnance Survey map's disclaimer, the representation of a path was not evidence of a public right of way.
- 24.8 The Asset Data Officer explained that the applicant, who had signed her PPEF on 22 April 2008, noted that "the path was not obstructed until last week". Although not clarified, it would not be unreasonable to infer that this was caused by the start of construction. For the purposes of Section 31 of the Highways Act 1980 therefore, the year that the public's use of the path was challenged was taken to be April 2008 and this would give a retrospective 20-year qualifying period of 1988 to 2008.
- 24.9 The Committee was informed that a total of 10 PPEFs were originally submitted by 11 individuals (including the applicant) in support of the application. The applicant withdrew her application on 12 April 2017 after being appraised of the development of the site. A further 5 individuals, who supported the application and were still living at the addresses supplied on their PPEFs, did not respond to the letters sent to them on 27 September 2017, appraising them of the development and advising them that their PPEFs would be discarded at the end of October unless they advised Gloucestershire County Council, as the Surveying Authority, that they wanted their evidence to be retained.
- 24.10 This left 4 PPEFs submitted by 5 individuals. A report was submitted to the Internal Officers Panel on 24 November 2017 to consider whether the Surveying Authority could abandon the application. The Panel agreed that the application should be resolved as "abandoned due to insufficiency of evidence".
- 24.11 The Committee noted that following a recent review of applications considered by the Internal Officer's Panel, it was agreed that the application, due to its reliance on user evidence, should be submitted for determination by the Commons and Rights of Way Committee.
- 24.12 The Asset Data Officer explained that a total of 4 Public Path Evidence Forms (PPEFS) completed by 5 individual members of the public dating back to 1968 on foot, could be analysed in support of the application. The Committee noted the

summary of the PPEFs and a bar chart of use attached at Appendix JH5 and JH6 to the report. All 5 individuals claimed to have used the path across the whole 20-year qualifying period of 1988- 2008.

- 24.13 The Asset Data Officer confirmed that there was no evidence of use of the path by force, or secrecy during the 20-year qualifying period. With regard to use by permission, there were two separate distinctions to consider:- user which was by acquiescence of the owner was 'as of right' (without permission) and thus would meet the statutory test; and user which was by licence or permission of the owner was not 'as of right' and would thus preclude a claim of presumed or inferred dedication.
- 24.14 The Asset Data Officer explained that the land crossed by the claimed footpath was owned by the brewery. As a result, the use of the route for the purpose of gaining access to this facility would be regarded as taking place by licence or invitation (by permission) rather than 'as of right'.
- 24.15 The Committee was informed that an iron plate was affixed to the wall of The Duke of York pub referring to the Rights of Way Act 1932. This plate or sign was likely to have been similar to the examples attached as appendix JH7 to the report.
- 24.16 Under Section 31 of the Highways Act, certain notices erected by landowners had legal status in relation to claims for public rights of way. The signs were considered to be overt acts on the part of the landowner such as to show the public at large that they had no intention to dedicate. The Committee was informed that the plate or sign, whilst fixed to the wall of the Duke of York, constituted evidence of the landowner's lack of intention to dedicate the path as a public highway and would have been sufficient to preclude any statutory claim of presumed dedication, or inferred dedication, at common law.
- 24.17 The Committee was informed that the plate allegedly remained in place until the brewery extended the pub into the adjoining house in 1980. The removal of the plate resulted in the public being unaware of the landowner's lack of intention to dedicate the path. The subsequent use of the claimed path from this point, aside from visiting the pub itself, as noted on the 4 PPEFs submitted by 5 named individuals, for accessing the shops and post office over the qualifying period 1988 - 2008, became use by acquiescence, thus 'as of right' (without permission) allowing the claim for the presumption of dedication to be made.
- 24.18 In conclusion the Asset Data Officer explained that by applying the case law concerning R. v. SSETR (ex p. Dorset) [1999], the user evidence in association with the application would be deemed insufficient to satisfy the statutory test or to infer dedication at common law. Her recommendation therefore was that no Order be made to add the public footpath to the legal record of public rights of way due to insufficient evidence.
- 24.19 Having considered all of the information before it, the Committee

Resolved

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

That no Order be made to add the claimed footpath to the legal record of public rights of way due to insufficient evidence.

**25. 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.

**26. 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.

**CHAIR**

Meeting concluded at 11.31 am