

# COMMONS AND RIGHTS OF WAY COMMITTEE

**MINUTES** of a meeting of the Commons and Rights of Way Committee held on Tuesday 4 October 2022 at the Cabinet Suite - Shire Hall, Gloucester.

**PRESENT:**

Cllr Beki Hoyland	Cllr Vernon Smith
Cllr Mark Mackenzie-Charrington	Cllr Robert Vines
Cllr Graham Morgan (Vice Chair)	Cllr Susan Williams
Cllr Roberts Vines	

**Substitutes:** Cllr David Brown

**Officers:** Phil Cameron, Traffic Manager  
Clare Bonser, Lawyer  
Jaci Harris, Asset Data Officer (PROW Definitive Map)  
Joanne Bolton, Democratic Services Adviser

**Apologies:** Cllr Phil Awford (Chair), Cllr Alex Hegenbarth, and Cllr Dr David Willingham

## **15. ELECTION OF CHAIR**

15.1 Jo Bolton, Democratic Services Adviser, informed the Committee that Cllr Phil Awford, was unfortunately not able to attend this meeting. He had however confirmed that he would like to continue on as the Chair of the Committee. She explained that he could be proposed and seconded for Chair in his absence and ultimately the Committee could agree to elect him as Chair.

15.2 On calling for nominations for the Chair for the ensuing civic year, Cllr Phil Awford was duly proposed and seconded. There being no other nominations, the Committee,

**Resolved**

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

## **16. ELECTION OF VICE CHAIR**

16.1 On calling for nominations for the Vice Chair for the ensuing civic year, Cllr Graham Morgan was duly proposed and seconded. There being no other nominations, the Committee,

**Resolved**

**That Cllr Graham Morgan be elected Vice Chair for the ensuing civic year.**

16.2 In the absence of the Chair the Vice Chair presided over this meeting.

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

## **17. MINUTES**

### **Resolved**

**That the minutes of the previous meeting held on 16 May 2022 be approved as a correct record.**

## **18. DECLARATIONS OF INTEREST**

No declarations of interest were made.

## **19. PUBLIC QUESTIONS ON APPLICATION(S)**

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

## **20. MEMBER QUESTIONS ON APPLICATION(S)**

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

## **21. 573/11/36.5(1) APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A PUBLIC BRIDLEWAY AND PUBLIC FOOTPATH AT GUNHOUSE LANE, BRIMSCOMBE AND THRUPP PARISH**

- 21.1 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.)*
- 21.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) to add a public bridleway and public footpath at Gunhouse Lane, Brimscombe and Thrupp Parish. On the Plan attached at Appendix JH2 to the report, the claimed bridleway was shown as a continuous black line with cross bars at intervals between points A-D-B-C (main route) and the claimed footpath was shown as a broken black line between points D-E (spur route).
- 21.3 The Asset Data Officer informed the Committee that both routes were inspected on 25 May 2022. The main route commenced at point A on the Plan at its junction with the A419 public highway (known as London Road). On highway land near point A, there was an aluminium sign stating 'Gunhouse Lane Private Road' and a 20 mile an hour speed limit sign. The section of 'main' route between points A-D-B had a good tarmac surface, was without limitation and had a width of approx. 3m. A further similar sign stating 'Private Road-No Parking' was located at point D, where the 'spur' route commenced at its junction with the main route, in addition, a "Walking Man" directional arrow was fixed to a metal post pointing along the spur route. A third handmade 'Private Road' sign was located just beyond the boundary of The Elms Coach House. The 'spur' route extended to the point marked E on the Plan at its junction with Public Footpath ZST57. The section of route between points B-C crossed a small coppice. Although unenclosed, there was a width of approx. 1.5m between trees, it was unsurfaced and terminated at a wall which had

been constructed to incorporate a 1.4m gap, on which the remains of old hanging plate fixings for a gate were found. The gap was wide enough for a horse and rider to proceed through.

- 21.4 The Asset Data Officer reported that in May 2022, letters of consultations were sent to all landowners who were directly affected by the application, and to properties which were adjacent to the claimed routes, all of which had private easements to drive motor vehicles along Gunhouse Lane and had a responsibility to contribute to its maintenance. Consultations were also sought of our statutory consultees.
- 21.5 The Asset Data Officer drew members' attention to the summary of the user evidence at JH15. She reported that a total of 45 Public Path Evidence Forms (PPEFs) completed by 46 individual members of the public were submitted in support of this application in 2020. The user evidence for the claimed routes was substantial and long running. It indicated extensive, public enjoyment of the routes for a period of up to 53 years dating back to 1967. Use of the route was described as being for access to 'The Heavens', for travelling to work, shopping, dog walking and recreation. Witnesses claimed to have used the main route by foot, on horseback, and by bicycle and the spur route on foot only. There was an element of overlap due to some individuals using a combination of modes of transport
- 21.6 The Asset Data Officer referred to the sign 'Trespassers will be Prosecuted' that had been attached to the gate onto Thrupp Lane at point C. She explained that Section 31(3) of the Highways Act 1980 provided that where the owner of land had erected in such manner as to be visible to persons using the way, a notice inconsistent with the dedication of a way as a highway, this was sufficient evidence to negative the intention to dedicate the way as a highway. The consultation responses indicated that the sign had been in situ from the 1970s until approx. 2007 when it was removed after falling into disrepair. This notice was aimed at all members of the public and would therefore be capable of rebutting the claimed use of the main route leading up to 2007. The Committee noted that the sign and gate had not been replaced by the landowner.
- 21.7 The Committee was informed that the 20-year retrospective timeframe from the date of application (2020) to the date that the 'Trespassers will be Prosecuted' notice was last in situ (2007), meant that there was only 13 years of user evidence to analyse. Where an application failed the test for statutory dedication under Section 31 of the Highways Act 1980, consideration could be given to looking at whether rights may have been dedicated at common law. No minimum period of time for the use was required and, in some cases, relatively short periods had been accepted to infer that there was an intention to dedicate at common law. Consequently, the report would therefore consider the user evidence at common law over the 13-year period 2020 (application) - 2007 (no trespassing sign). A total of 44 members of the public claimed use of the main and spur routes, as of right (without force, secrecy, or permission), for part or all of the 13 years under consideration and all 44 had indicated the routes claimed by the applicants.
- 21.8 The Asset Data Officer referred to the 'Private Road' signs that were installed along Gunhouse Lane (section A-D-B) and explained that it seemed that these were

considered by individuals to be directed at those with motor vehicles because 44 members of the public submitted statements of their use on foot, on horseback and by bicycle over this time. As a result, the signs were insufficient to rebut lesser rights than vehicular rights. The consultation responses showed that this use was observed by householders living adjacent to the Lane. Most of the said householders were apparently happy with the use, only one couple reported being unhappy.

- 21.9 The Asset Data Officer made reference to the consultation response from the late Mr Orchard in 2020 following receipt of the notice of application and advised members that his response suggested that he had acquiesced in the use. She added that Mr Orchard had objected to the application on the basis of feasibility and safety of the bridleway. Representatives for the Executors of Mr Orchard's Estate subsequently claimed that use by horse-riding was given by express permission, which appeared to contradict Mr Orchard's concerns; the Pony Club had also denied receiving permission. The Executors had indicated that the use of the route on foot was generally accepted and tolerated and in effect treated as a permissive footpath. Members of the Committee were advised that although the Executors considered the pedestrian use of the path to be permissive, the statements made by the public demonstrated that it was not received as such.
- 21.10 In response to a question, the Asset Data Officer clarified that Land Registry records had confirmed that the householders along the main route A-D-B-C had private easements to drive motor vehicles along it; however, this did not include the spur route D-E.
- 21.11 In response to a question, the Committee was informed that the sign erected by the landowner 'Trespassers will be Prosecuted', showed a clear statement by the landowner of his lack of intention to dedicate the way as a highway during the period that it was in place. Consequently, the period of time that the sign was in place could not be considered as part of the analysis of the user evidence, even though people were using the routes during that time. Under Section 31(3) of the Highways Act 1980, the sign was considered as being inconsistent with an intention to dedicate. However, as the landowner did not replace the sign once it was removed after falling into disrepair, use of the route after that time then continued by acquiescence of the landowner, therefore the 13 years up until the date of the application in 2020 could be considered as part of the analysis of the user evidence.
- 21.12 The Asset Data Officer emphasised that there were differences in the effects of the signs along the routes, she explained that the 'Private Road' signs could be interpreted as not allowing vehicles to use the route, but allowing pedestrian, equestrian and/ or cycle use. In response to a question, she clarified that the "Walking Man" directional arrow was fixed to a metal post at point D and pointed along the spur route, most likely for walkers to connect with the Public Footpath ZST57; she had not been able to establish how long the arrow had been in place.
- 21.13 The Committee was informed that the documentary evidence associated with the application indicated that the section of the route A-D-B was part of an historic

public carriage road for which there was no evidence of a stopping up order. Following the principle '*Once a Highway, always a Highway*', if the way was shown to have carried highway rights at any time in the past, the public's rights would still exist today (unless there was evidence of formal closure). Simple disuse of a right of way did not mean that the right no longer existed, just that the right was not being exercised.

- 21.14 The Asset Data Officer drew the Committee's attention to the 1820 Plan of the Tithings of Upper Lypiatt, Lower Lypiatt and Steanbridge, explaining that whilst the remit of the map was not to clarify or set out the status of a highway, the map showed the main claimed route in its entirety: A-D-B-C, un-numbered and with the same colouring as Thrupp Lane and the London Road. The spur route D-E was also shown in a similar manner to the main route for a short distance. A barrier was shown near point D which appeared to designate a change of surface. The Plan therefore provided some indication as to the status of the paths, as they were shown in a similar manner as the roads that were considered to be publicly maintainable highways today.
- 21.15 The Asset Data Officer reported that she had contacted the representatives of the Executors of the late Mr Orchard's Estate, to ask if they could help in the search for evidence of a stopping up order, which may have been included in the legal documents relating to the property. The presumption was, having not heard back from them, that no evidence of the stopping up order had been found. Essentially, if there was no evidence to show that public carriageway rights were stopped up then this would have the effect of making all of the claimed user evidence, all of the representations and objections in regard to the lesser claimed rights along the section A-D-B, irrelevant, because consideration would then need to be given to a higher right – a public carriage road.
- 21.16 The Asset Data Officer drew the Committee's attention to Appendix JH4, the Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing. She reported that the map showed the hamlet of 'Bow Bridge' and the roads, known today as Bowbridge Lane, Thrupp Lane and Claypitts Lane. The London Road was yet to be constructed. The section of main route between points A-D-B was shown in a similar manner as the previously mentioned roads. It was shown as part of a through route starting at the junction of Bowbridge Lane and Butterow Hill and extending to Thrupp and Brimscombe.
- 21.17 The Asset Data Officer referred to the 1813 Plan and Book of Reference for the proposed new road, at Appendix JH5, and explained that the Plan showed the proposed route of the turnpike (London) road (marked in red). The section of main route A-D-B formed part of section No.6 and showed the claimed route to be part of a through route, through Thrupp and down to Brimscombe. The explanation stated, '*the old road from Brimscombe to Bowbridge*'. The length of this old road was recorded as being 1 mile, 2 furlongs and 32 yards. This road was identified as plot no.34 which the accompanying Book of Reference described as: '*old Road from Bowbridge to Stroud*' for which there was no assigned landowner. Section B-C of the main route and the spur route D-E were not shown.

- 21.18 The Asset Data officer referred to the Stroud & Chalford Roads Act 1814 and explained that by an Act of Parliament in 1814, new roads were created in Stroud, including the London Road. Further, this Act gave the trustees the additional power *“And whereas it will also be of public utility if powers are granted to improve, widen, and keep in good repair the present Carriage Road leading from Bowbridge aforesaid, through the village of Thrupp to Brimscombe aforesaid....”*. This description applied to the section of the claimed main route A-D-B, known as Gunhouse Lane, as shown in the Plan and Book of Reference and would suggest that it pre-dated this Act. The Act granted trustees the statutory power to divert the road from Hermitage Bottom to Cirencester and stop up the previous route. However, there was no mention of the carriage road from Bowbridge to Thrupp & Brimscombe being similarly stopped up.
- 21.19 The Asset Data Officer informed the Committee that she had discovered through the British History Online, (A History of the County of Gloucester: Volume 11, Bisley and Longtree Hundreds), extracts, referencing Gunhouse Lane or ‘the old road’ connecting Bowbridge to Thrupp and Brimscombe. She read out the relevant extracts and explained that they appeared to show that the old road from Bowbridge Lane running through from Thrupp and Chalford had been in existence for a few hundred years and that it was the only road prior to the construction of the London Road.
- 21.20 The Asset Data Officer informed the Committee that she had discovered a report of the Commissioners for inquiring into the state of the roads in England and Wales - 1840. The document included information on the maintenance of roads in Gloucestershire, one of which was the ‘old road’ A-D-B, subject to the report. She referred to the report from George Wathen, Painswick, Lower Grange, Gloucester, Stroud and Chalford, which included an old road from Bow-bridge, through the Thrupp to Brimscombe, being about 1 mile, 2 furlongs and 32 yards, which had never been repaired by the trustees. She explained that this description of the length accorded with the description of the old road noted in the 1813 Plan and Book of Reference; and further details in the report suggested that the old road was maintainable at public expense.
- 21.21 A member pointed out that it appeared that in the 1813 Plan and Book of Reference for the proposed new road, at Appendix JH5, the length of the old road was recorded as being 1 mile, 2 furlongs and 132 yards, not 32 yards. The Asset Data Officer acknowledged that the reference in her report to 32 yards was an error. She emphasised however, that as part of the Commissioners report which referenced the road, it had detailed the Act of Parliament 1814 that had created the London Road, and also referred to the maintenance of the ‘old road’ through Thrupp; consequently, this could be taken as evidence that reference was being made to the old road (the section of the main claimed route A-D-B) and not a different road.
- 21.22 The Asset Data Officer drew the Committee’s attention to the valuation, maps and copy Will of Francis Chambers (1789 – 1850) at Appendix JH10. She reported that the copy Will, signed on 2 September 1846, directed that his trustees, executors, or administrators carry out a careful and accurate survey and valuation of the Thrupp Estate. The valuation, dated 1 January 1881, listed all of the parcels of land within

the Thrupp Estate, using the same plot numbers as used on the Tithe Map. Neither the main claimed route nor the spur were included. The valuation was accompanied by a draft Plan on tracing paper and a coloured Plan. The Plan showed the whole of the main route A-B-D-C, in the same manner as the highways known today as Bowbridge Lane, Thrupp Lane and the London Road. It was shown as an un-numbered, enclosed route, excluded from the adjacent plots of land with no barriers along it. The fact that the main route was unnumbered and omitted from the valuation suggested that it did not form part of Francis Chamber's estate. She also reported that a separate parcel of land numbered 820 was recorded and described as 'road'. The corresponding Plan identified the road known today as Public Footpath ZST50.

- 21.23 The Asset Data Officer referred to the Historical Survey of Tanglewood, 49 Thrupp Lane, Stroud, by Ian Mackintosh & Nigel Paterson - October 2004. The property, Tanglewood, was located adjacent to the section of main route B-C. The report provided a history of the property and included a statement to the effect that Gunhouse Lane was closed and sold to Mr Chambers, owner of the estate. The article was allegedly placed in the Gloucester Journal on 15 May 1834, which was a Thursday. However, this weekly newspaper was published on Saturday (from July 1, 1826). Copies of the Gloucester Journal newspapers for the month of May 1834 were inspected at the Heritage Hub but the article was not found. Notice of stopping up or diversion orders were lodged with the Court of Quarter Sessions at this point. The Quarter Sessions Order Books covering 1828-1836 were also inspected. No record of a closure or stopping order affecting Gunhouse Lane (the main route A-D-B) was found.
- 21.24 The Asset Data Officer informed the Committee that the section of the main route B-C, was no longer a through route being that it did not connect from Gunhouse Lane to Thrupp Lane, due to the renovations of Tanglewood which consisted of a large extension to the side of the property across what would have been the old road. She advised the Committee that there did appear to be conflicting evidence as to whether there was a stopping up order in existence; however, she had been unable to find any evidence of one.
- 21.25 The Asset Data Officer summarised the historic documentary evidence and reported that it suggested that dedication of the section of main route A-D-B, had arisen at common law, and that it pointed towards the historic reputation of the route as a public carriage road, known as Gunhouse Lane, apparently, the only road prior to the construction of the London Road in 1814, connecting Bowbridge to Thrupp and Brimscombe. The carriage road was specifically referenced in an Act of Parliament, for the construction of the London Road. It was shown on the Plan and listed in the Book of Reference prepared in advance of this Act. The Turnpike Commissioner's report noted that the carriage road had always been repaired by the 'parish of Stroud or by individuals', thus providing evidence that it was maintained at public expense. The valuation directed to be carried out as part of the Will belonging to the owner of the Thrupp Estate, excluded the main route of Gunhouse Lane, even though another road within the estate was numbered and listed as part of the estate. The old road had been consistently shown in a manner similar to other known roads in the area - coloured, un-numbered, with no barriers

preventing access to the existing highway network until the start of the 1900s when the path seemingly became less well used and ultimately became a cul-de-sac. She reiterated however that there was conflicting evidence, in the form of an article in the Gloucester Journal which claimed that Gunhouse Lane was closed and sold to the adjacent landowner in 1834. However, even this supported the fact that it was originally a public carriage road.

- 21.26 The Asset Data Officer advised the Committee that the physical representation of both the remaining section of the main claimed route B-C and the claimed spur route D-E, could be dated back to 1820. There was less documentary evidence with regard to those sections, but the user evidence, considered at common law over the timeframe 2007-2020 suggested that use of the spur path D-E would support a claim of inferred dedication of a footpath and the section of main route, not part of the old public carriage road B-C would support a claim of inferred dedication as a restricted byway.
- 21.27 The Asset Data Officer advised members that in her view it was submitted that the section of main route A-D-B was deemed to have carried historic public carriage road rights. In the absence of evidence to show that those carriage rights were stopped up, the legal maxim of 'Once a Highway, always a Highway', must be applied. Consideration must then be given to the implications of the Natural Environment and Rural Communities Act 2006 (NERC). By virtue of s67(1) NERC the use of Mechanically Propelled Vehicles was no longer permitted. The s67(2) exemptions were considered and none of them were considered to apply. On that basis, the section of main route A-D-B should be preserved as a restricted byway, thus better reflecting its historic origin.
- 21.28 The Asset Data Officer concluded her presentation by advising the Committee that in her view it was submitted that the sections of route must now be protected by being recognised on the Definitive Map.

21.29 Having considered all of the information before it, the Committee:

**Resolved**

- **That no order be made to add a bridleway between the points A-D-B-C to the legal record of public rights of way.**
- **That an order be made to add a restricted byway between the points A-D-B-C.**
- **That an order be made to add a footpath between the points D-E.**

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

- 22.1 One public question had been received on the matters which were within the powers and duties of the Committee. A copy of the question and answer had been circulated and uploaded to the Council's website.
- 22.2 The Committee noted the question and answer.



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

**23. 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.

**CHAIR**

Meeting concluded at 11.10 am