

# COMMONS AND RIGHTS OF WAY COMMITTEE

**MINUTES** of a meeting of the Commons and Rights of Way Committee held on Tuesday 28 March 2023 at the Cabinet Suite - Shire Hall, Gloucester.

## **PRESENT:**

Cllr Beki Hoyland  
Cllr Graham Morgan (Vice Chair)

Cllr Robert Vines  
Cllr Susan Williams

Present remotely: Cllr Dr David Willingham Cllr Vernon Smith

Apologies: Cllr Alex Hegenbarth, Cllr Mark Mackenzie-Charrington

Cllr Graham Morgan, Vice-Chair, paid tribute to Cllr Phil Awford, who had served as the Chair of the Commons and Rights of Way Committee since 2018, and who had sadly passed away recently. Cllr Morgan said that Cllr Awford would be greatly missed by this Council, and that his knowledge on flooding, commons and rights of way, and planning related matters, had been irreproachable.

Jaci Harris, Asset Data Officer, on behalf of officers, also paid tribute to Cllr Awford. She spoke of how much they had appreciated the support and encouragement that Cllr Awford had extended to officers whilst serving as the Chair of the Committee, and that he would be greatly missed.

Members stood and observed a minute's silence in Cllr Awford's memory.

## **1. MINUTES**

### **Resolved**

**That the minutes of the previous meeting held on 4 October 2022 be approved as a correct record.**

## **2. DECLARATIONS OF INTEREST**

- 2.1 Cllr Susan Williams declared an interest in respect of agenda item 6 (Application for a Definitive Map Modification Order) and left the meeting room whilst the item was considered.
- 2.2 At this juncture, Cllr Dr David Willingham reported that he had undertaken an independent informal site visit on Sunday 19 March 2023.

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

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

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

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

#### **5. 573/11/246(6) APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RE-CLASSIFY A LENGTH OF PUBLIC FOOTPATH ROUTE; MWH27 & PART OF MWH3 TO PUBLIC BRIDLEWAY, WHITESHILL PARISH**

- 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 re-classify a length of public footpath route MWH27 & part of MWH3 to public bridleway, Whiteshill Parish, Gloucestershire. On the Plan attached at Appendix JH2 to the report, the claimed bridleway was shown as a continuous black line between points A-B-C.
- 5.3 The Committee was informed that the statutory authority for this application was Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, which related to the discovery by the Authority of evidence that showed that a highway of a particular description ought to be there shown as a highway of a different description.
- 5.4 The Asset Data Officer explained that the claimed route under consideration comprised two designated public footpaths recorded on the Definitive Map and Statement. This constituted conclusive evidence of their status, but it was without prejudice to any unrecorded higher rights. By applying the principal "once a highway always a highway", if there was sufficient evidence to show that the claimed route had enjoyed highway rights at any time in the past then the public's rights would still exist today, unless there was evidence of a formal stopping up or closure order. As a result, those higher rights must be recorded. Simple disuse of a right of way did not mean that the right no longer existed, just that the right was not being exercised.
- 5.5 The Committee was advised that the test to be applied to the evidence subject to the application, was higher than that it was reasonably alleged to subsist. The Committee had to consider whether the evidence as a whole, was sufficient to suggest, on the balance of probabilities, or it was more probable than not, that the status of the claimed route shown on the Definitive Map and Statement had a higher status than that of a footpath.
- 5.6 The Committee was informed that there was no user evidence submitted with the application; consequently, the Committee's determination would be based solely on the documentary evidence.

- 5.7 The Asset Data Officer explained that the claimed route appeared to have been part of an old road connecting the parishes of Pitchcombe and Whiteshill. The origins and status of the old road were unknown.
- 5.8 The Asset Data Officer presented a series of photographs which showed the whole of the old road from Pitchcombe down to Whiteshill of which the claimed route formed part. She reported that the old road commenced at its junction with public highway 42455. For the first approx. 210 metres it was a private road know as Lurks Lane. It was co-existent with Public Bridleway MPC17. Lurks Lane and the adjacent properties were constructed in around 1952. Prior to that, the surrounding area was agricultural land, forming part of Manor Farm in Pitchcombe.
- 5.9 It was reported that Public Bridleway MPC17 diverged from Lurks Lane and continued as a stand-alone bridleway with no other classification. The route was narrow with an overall width of 2.8 metres; the narrowest point was 1.2 metres. On one side of the route there was the remains of an old stone wall and some well-established large trees. On the other side, the trees appeared to be younger, and there was a post and wire fence.
- 5.10 The Asset Data Officer referred back to the application for a DMMO for Gunhouse Lane, which was considered at the previous meeting of the Committee. The Pony Club had provided photos of horses passing through a gap that also measured 1.2 metres. Therefore, despite a 1.2 metre gap being perceived to be too narrow for horses, horses would in fact be able to pass through the narrowest point of the bridleway. This same perception issue could be applied to the narrow section of MPC17 at Whiteshill.
- 5.11 The Committee was informed that at point A of the claimed route there was a public footbridge that was installed in 1992 by the Public Rights of Way Team. A stile is located at point B where public footpath MWH27 became MWH3. The Public Rights of Way Team had received a complaint in 1991, that there was no stile at point B, just an old, fixed gate. The Asset Data Officer reported that it could be inferred that the old gate had been replaced with a stile, around the same time that the footbridge was installed, and therefore, importantly, neither structure was ancient. The claimed route continued as a public footpath MWH3 for approximately 130 metres to a point marked C at its junction with public footpath MWH30 and the 42455 public highway.
- 5.12 The Asset Data Officer explained that the documentary evidence suggested that the old road, and thus the claimed route had enjoyed a reputation as a public highway for over 200 years. She referred members to the full list of records that had been considered as part of this application, set out at Section 10 of the report.
- 5.13 The Asset Data Officer gave a detailed presentation of the documents that would suggest that the claimed route enjoyed higher rights than that of a public footpath. The Committee was informed that:
- The OS Pen and Ink OS Drawing of 1811 showed the old road to be the only visible and established track connecting the parishes of Pitchcombe and

Whiteshill prior to the construction of the Painswick 'turnpike' Road (A46) of 1818.

- Mapmakers such as Ordnance Survey, Bryant and Greenwood consistently showed the old road as a through route connecting other highways and settlements and being part of the highway network of the day. As commercial maps, there would be an expectation that the public could use the routes that were recorded on it. The Greenwood map 1824, identified the old road as a crossroad, in case law (*Fortune & Others v Wiltshire County Council*, March 2012), the judge concluded that Greenwood's map supported the emerging picture of an established thoroughfare. This evidence could suggest use by public vehicles of the day. However, caution needed to be applied because routes recorded as public footpaths today were also identified on those documents as being part of the highway network. Those maps although providing valuable evidence of the reputation of the claimed route as a highway, were not conclusive as to its status.
- The Standish Tithe Map 1844 annotated both the old road connecting Pitchcombe and Whiteshill, which incorporated the claimed way, and the A46 Painswick Road at the parish boundary: "To Stroud". A named destination suggested that it was a through route and although not necessarily constituting evidence of public vehicular rights, it had been accepted through case law that it was good evidence of a public highway.
- The Bisley & Stroud Tithe Map 1842 showed the section of claimed route B-C (MWH3) as the continuation of the road known today as the 42455 public highway and was identified in a similar manner and excluded from the adjacent hereditaments. However, the map did not show the section of claimed route, A-B (MWH27), across field No.124, known as 'Lower Slad Ground', perhaps suggesting that it was considered to have a lower status than that of a road.
- From an article in the Stroud Journal (Saturday 25 September 1869), it was clear that Edwin Phipps of Stokenhill, (appointed Highway Surveyor in 1851 & 1852 and tenant farmer in 1851 of Kitesnest Farm), considered that the old road was a public carriage road which had been maintained by the parish for 38 years. This would take the public status back to approximately 1831. However, it was noted that Mr Capel, the Chairman of the Stroud Highway Board, considered the old road to be a branch road which led to the Slad Fields which was a public bridle road.
- Mr Phipps made four requests between May 1868 and December 1874 to the Stroud Highway Board for maintenance of the section of old road from Whiteshill to Stokenhill (point C). They were all turned down and the minutes of 13 August 1869 recorded that "the Board consider it to be an occupation road for the use of Stokenhill Farm". The route was considered by the Highway Board to be a public bridleway, co-existent with the private occupation road.

5.14 The Asset Data Officer explained that it could be inferred that over time, perhaps due to the construction of the Painswick turnpike, that this old road became less well used to the point that by the Finance Act 1910, the claimed route was considered to be at most a bridleway. By the 1950s when the Definitive Map and Statement was being compiled, Whiteshill Parish claimed the route as a footpath to

the parish boundary, acknowledging by annotation, that the connecting route in Pitchcombe was a bridleway.

- 5.15 The Committee was informed that the Whiteshill Parish Council minutes of 20 February 1952 indicated that a meeting took place during the process of drawing up the Definitive Map, between the Chairman and an official of Gloucestershire County Council. This process did not address the anomaly of a footpath connecting to a bridleway at the parish boundary. In addition, the anomaly was not raised as an issue by the Ramblers Association when it made an objection relating to the deletion of routes in the Whiteshill/Pitchcombe parish area.
- 5.16 The Asset Data Officer reported that the consultation responses received in respect of the application, seemed to collaborate that the claimed route became less well used over time. One of the landowners, Mr Hawkins, whose family owned horses, claimed that he had never seen anyone using the claimed route on horseback and there was a complete lack of response from the British Horse Society. Further, there were no objections to the removal of an old gate that existed at point B, and the installation of a stile and a footbridge at point A in the early 1990's.
- 5.17 The Asset Data Officer advised members that in her view it was submitted that the evidence as a whole was sufficient to suggest, on the balance of probabilities, or it was more probable than not, that the route shown on the Definitive Map and Statement had a higher status than that of a footpath but was not sufficient to establish that historic public carriage or vehicular rights existed. The evidence of the Stroud Highway Board who were the authorised Highway Authority of the time, was considered sufficient to re-classify the claimed route as a public bridleway.
- 5.18 The Asset Data Officer concluded her presentation by advising the Committee that in her view it was submitted that the claimed route A-B-C must now be protected by being recognised on the Definitive Map as a public bridleway.
- 5.19 A member questioned whether it was required that a bridleway had to terminate at the point of a designated highway, the same way in which a public footpath would need to. In response, the Asset Data Officer explained that the existing bridleway was currently a cul-de-sac. The anomaly had occurred when the Definitive Map was drawn up in the 1950s, as each parish separately submitted their maps marked with the routes that they considered to be their public rights of way network. If the Definitive Map was being produced today, then one of the requirements would be that the bridleway had to terminate at a highway. If an Order was made to re-classify the claimed route as a public bridleway, this would correct the anomaly as the bridleway would then connect with public highway 42455. However, she stressed that this could not be a factor in the Committee's determination. The Committee had to consider whether the evidence showed, on the balance of probabilities, that the status of the claimed route shown on the Definitive Map and Statement had a higher status than that of a footpath.
- 5.20 Cllr Dr David Willingham explained that during his site visit he had walked the route from Whiteshill, up until the junction of public footpath MWH3, and that it had the appearance of being a route that could be passed on horseback. At the junction of

public footpath MWH3 there was a track that led into a farm, which was not a public right of way; the public right of way was a very narrow footpath only, and it looked like it would be difficult for someone to navigate on horseback. He had noticed that there was quite a steep incline immediately after the stile, and he suggested that if an Order was made then this would need to be looked at. He commented that he had spoken to a local resident who had lived in the area for 30 years, and they could not recall having seen anyone using the route on horseback, but they had seen the occasional cyclist. Cllr Dr Willingham added that at the end of the claimed route MWH27, he had noted that the river, since the bridge was installed in 1992, had changed course and moved slightly to the north. He had noticed that there was a gate on the path just down-stream, which looked to be passable by horseback; however, this was not on the claimed route. He commented that he had walked along the path MWH17, and had observed that the level of the tree canopy was around 6ft, which may make it difficult for horse riders to pass under. At the end of Lurks Lane he had observed that there was no signage indicating the bridleway. He suggested that it would be helpful to have a marker at that point. Cllr Dr Willingham indicated that if he was in attendance, in-person, in the meeting room, and therefore eligible to vote, he would support the officer's recommendation.

5.21 In response to a question, the Asset Data Officer confirmed that if an Order was made, then a range of actions could be undertaken by the Public Rights of Way Team, in association with the landowners, to make the path more accessible for horse riders, such as adding signage, removing the existing footbridge and replacing it with a bridleway bridge and reducing the tree canopy.

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

**Resolved**

**That an order be made to re-classify public footpath MWH27 & part of public footpath MWH3 to public bridleway between points A-B-C.**

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

6.1 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.

6.2 The Committee noted the question and answer.

6.3 Dr Gilbert asked the following supplementary question:

"Given that this application has the written support of more than fifty witnesses and would make a Gloucestershire Wildlife Trust beauty spot easily accessible to people of all ability, would it not be in line with Gloucestershire County Council's "Building Better Lives Policy 2014-2024" which aims to support people with disabilities, for this application to be given the highest possible priority?"

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

- 6.4 In response, Philip Cameron, Traffic Manager, explained that a priority assessment system was in operation for all applications that were submitted, and the application would be reviewed in-line with that policy.
- 6.5 Dr Gilbert emphasised that the path was a metalled road which made it accessible for wheelchair users.
- 6.6 Cllr Dr David Willingham suggested that the Council should consider its legal duties under the Human Rights Act, as people were entitled to justice within a reasonable period of time. He also suggested that Dr Gilbert be supplied with information on the Council's complaints process and how to escalate it to the Local Government Ombudsman, if he felt that this was necessary. In response, the Traffic Manger confirmed that those points would be taken into consideration.

**7. 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 11.07 am

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