

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Tuesday 6 June 2023 at the Cabinet Suite - Shire Hall, Gloucester.

PRESENT:

Cllr Alex Hegenbarth	Cllr Vernon Smith
Cllr Beki Hoyland (Vice Chair)	Cllr Robert Vines
Cllr Graham Morgan (Chair)	Cllr Dr David Willingham

Substitutes: Cllr Sue Williams and Cllr David Brown

Apologies: Cllr Terry Hale, Cllr Mark Mackenzie-Charrington and Cllr Roger Whyborn

1. ELECTION OF CHAIR

On calling for nominations for the 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 Chair for the ensuing civic year.

2. ELECTION OF VICE CHAIR

On calling for nominations for the Vice Chair for the ensuing civic year, Cllr Beki Hoyland was duly proposed and seconded. There being no other nominations, the Committee:

Resolved

That Cllr Beki Hoyland be elected Vice Chair for the ensuing civic year.

3. MINUTES

Resolved

That the minutes of the previous meeting held on 28 March 2023 be approved as a correct record.

4. DECLARATIONS OF INTEREST

No declarations of interest were made.

At this juncture, Cllr Dr David Willingham reported that he had undertaken an independent informal site visit on Saturday 3 June 2023.

5. PUBLIC QUESTIONS ON APPLICATION(S)

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

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

6. MEMBER QUESTIONS ON APPLICATION(S)

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

7. 573/11/222(1) APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER FOR AN ADDITIONAL LENGTH OF BRIDLEWAY, OLD RAILWAY LINE, FOX HILL (B4014) TO PRESTON PARK, PARISHES OF TETBURY AND LONG NEWNTON

- 7.1 Andrew Houldey, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the claimed route under consideration. (For information: A copy of the presentation slides has been uploaded to the Council's website.)
- 7.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) for an additional length of bridleway, Old railway line, Fox Hill (B4014) to Preston Park, in the parishes of Tetbury and Long Newnton. On the Plan attached at Appendix 1B to the report the way was shown running between points A and B.
- 7.3 The Asset Data Officer informed the Committee of the following corrections and clarifications to the report accompanying the agenda:
- Feoffees of Tetbury had a 999-year lease of the land from Simon Preston who was the freehold owner of the most northerly section of the path. Tetbury Town Council was the freehold owner of most of the former railway line (which closed in 1964) and the town council leased the Goods Shed and the area to the east of the Goods Shed, where the railway carriage was situated, to Tetbury Rail Lands Regeneration Trust.
 - The name of the street at the southern end of the claimed way at point A was referred to in the report as Fox Hill. This was the name used in the County Council's List of Streets and was therefore correct. However, Fox Hill was also known as Malmesbury Road, Newnton Road and Wiltshire Bridge. Officers would investigate this further if the Committee resolved that an Order should be made.
- 7.4 The Committee was informed that the path followed the trackbed of the former Tetbury to Kemble railway, running from Fox Hill, at point A, in a roughly north then northeasterly direction through the former Tetbury railway station and then along the course of the former railway line to Preston Park, at point B, where it joined a public bridleway NLN 21 and public footpath NTE 6A. Public bridleway NLN 21 ran along the former railway to Newnton Hill and then on to the Trouble House Inn. At point A the path ran through a small wicket access gate and along through a narrow path but did not extend through the double gates which were kept locked. The path ran along the west side of the Goods Shed; the cafe and the railway carriage were situated on the east side of the Goods Shed.

- 7.5 The Asset Data Officer drew attention to paragraph 7.8 of the report which detailed the wording of the notice from Tetbury Town Council (as landowners), on the signage located at approximately point E on map 1E. He informed members that the signage was erected in late 2021. This signage was considered by the applicant as bringing into question the public's right to use the path and led to the application for a DMMO for an additional length of public bridleway being made on 30 March 2022.
- 7.6 The Committee was informed that the Council had received a consultation response from the Open Spaces Society, after the applicant had contacted them directly. The Open Spaces Society confirmed that a detailed survey of the park had been undertaken, and the signposting of the route as a cycleway, both by the landowners and the DfT National Cycle Network, had been noted.
- 7.7 The Asset Data Officer referred to paragraphs 14.29 and 14.30 of the report and explained that it was not considered that the charitable status of Feoffees of Tetbury or the Rail Land Regeneration Trust meant they were incapable of dedicating land as a right of way within the context of Section 31 of the 1980 Highways Act. There was nothing to prevent the statutory dedication of public rights of way over land held for charitable purposes, provided always that such a dedication would not be contrary to the stated purposes of the charity concerned. He commented that the purposes of the charities, as set out in the Charity Commission Register, did not appear to be incompatible with the deemed dedication of the path as a right of way.
- 7.8 The Asset Data Officer referred to the case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* [2010] WWCA Civ 1486, which was often quoted where there was evidence of use on horseback and pedal cycle. He explained that Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards was said to be "by right". In *Whitworth* the route was found to have pre-existing bridleway status, i.e., it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of Section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. The judge in the *Whitworth* case, went on to discuss what the outcome would have been had there been no pre-existing bridleway status. His view was predicted on user evidence dominated by equestrians, a ratio of 8 equestrians to 2 cyclists (8 v 2). The judge accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication "least burdensome to the owner".
- 7.9 The Committee was informed that a past decision of a court of record was, on the whole, binding on a present case; however, consideration had to be given to whether the general principles of the past case needed to be applied to all cases, or whether they applied only to that specific case.

- 7.10 The Committee was informed that the application for a DMMO was for an additional length of bridleway, which was consistent with its continuation on to dedicated bridleway NLN 21. The application was supported by 22 evidence forms supporting use on foot, 20 on bicycle and 7 on horseback. For the relevant period of 2001-21, there were 15 witnesses who had used the path on foot during the whole 20-year period, 14 by bicycle and 3 by horse. When determining whether the status should be bridleway or restricted byway, consideration needed to be given to the dominant user between cyclists and equestrians. In this case, the predominant users were cyclists, by a ratio of 20 : 7 (or 14 : 3 for the relevant twenty-year period), this distinguished the current application from the Whitworth case.
- 7.11 The Asset Data Officer explained that when looking at the period before 2006, when it was first clarified in Section 68 of the 2006 Natural Environment and Rural Communities (NERC) Act that long use by bicycles gave rise to restricted byway rights, there were 13 witnesses who had used a bicycle and 4 who had ridden a horse. Officers considered that the pattern of use was more consistent with the dedication of a restricted byway as opposed to a bridleway, and therefore the recommendation before the Committee was that an Order be made to add a length of restricted byway to the Definitive Map and Statement.
- 7.12 The Committee was informed 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, most of the rights of way added to the Definitive Map through DMMOs, were not maintainable at the public expense. Rights of way that were included on the Definitive Map when it was prepared under the provisions of the National Parks and Access to the Countryside Act 1949, had automatically become maintainable at the public expense as part of this process. The exception was roads used as public paths (RUPPs); this category was replaced in 2006 by restricted byways. Under the provisions of the NERC Act 2006 all restricted byways were maintainable at the public expense. Therefore, if an Order was made to add a length of restricted byway to the Definitive Map and Statement, then the route would become maintainable at the public expense.
- 7.13 One member questioned whether by making an Order for a restricted byway, as opposed to a bridleway, this would place any restrictions on horse riders using the route. The Asset Data Officer explained that a restricted byway carried all the same legal rights as a bridleway; however, in addition, restricted byways were open to drivers and riders of non-mechanically propelled vehicles, (such as horse drawn carriages and pedal cycles). He added that if an Order was made for a restricted byway, the County Council was not legally required to make the route more suitable for use as a restricted byway, (such as increasing its width to accommodate a horse drawn carriage).
- 7.14 One member asked whether Sustrans had been contacted as part of the consultation process, given that the claimed route was part of the National Cycle Network. In response, the Asset Data Officer explained that Sustrans was not a statutory consultee and had not been consulted. He acknowledged, however, that it would have been better practice if they had been consulted, and agreed to make

contact with them as part of any future consultations for claimed routes designated on the National Cycle Network. He was of the view that for this application, it was unlikely that Sustrans would have uncovered any additional evidence.

- 7.15 One member referred to the consultation response from Tetbury Town Council which outlined their health and safety concerns about making the route from the Wiltshire Bridge to Newton Hill a bridleway, due to use by cyclists causing a hazard for people using the facilities around the Goods Shed. She suggested that additional signage such as director arrows, could be erected in this area, to make it clear to cyclists the route they should take around the area of the Goods Shed.
- 7.16 Cllr Dr David Willingham informed the Committee that he had commenced his site visit at point A, where the signage was clear that it was the start of the route NCN 48. There was also clear signage indicating that cyclists and horse riders could use the path, and that it was 2 miles to the Trouble House Inn. He commented that he had cycled along the route and whilst it was not material to the Committee's consideration, it appeared that the people who had transformed the old railway line into the route today, had done a great job and it was clear the intention was for it to be cycled upon. Regarding the health and safety concerns of Tetbury Town Council, he referred to the new rules in the Highway Code around the hierarchy of road users, and stated that cyclists were required to give way to both horse riders and pedestrians, and horse riders were required to give way to pedestrians. He suggested that the town council's concerns around health and safety would be addressed by the public complying with these rules.
- 7.17 The Chair on behalf of the Committee, thanked officers for the comprehensive report.

Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved

- (a) That the application to add a length of public bridleway to the Definitive Map and Statement between points A and B (as shown on map 1B) be refused.**
- (b) That an order be made to add a length of restricted byway to the Definitive Map and Statement between points A and B (as shown on map 1B).**

8. 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.

9. 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.

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

CHAIR

Meeting concluded at 11.00 am