

RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held at 7.30 pm on 1 November 2011

Present:

Councillor Stephen Wells (Chairman)
Councillor Michael Tickner (Vice-Chairman)
Councillors Gordon Norrie, Richard Scoates and
Harry Stranger

1 APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

Councillor Stephen Wells was appointed Chairman for the remainder of the Council year, and took the chair.

Councillor Michael Tickner was appointed Vice-Chairman for the remainder of the Council year.

2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS

Apologies for absence were received from Councillor Julian Grainger.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

(1) From Nigel Mclnery, Camden Park Road, Chislehurst

Please confirm that pursuant to correspondence between the solicitors acting for Camden Park Estate Limited and the Legal Democratic and Customer Services Department of the London Borough of Bromley (in particular our solicitors' letter of 16th November 2010 to the council, the council's response of 22nd December 2010 and the council's further letter to our solicitors of 9th May 2011) that the Minutes of the Sub Committee meeting held on 1st September 2010 be amended and corrected by adding the following statement:-

By way of correction it is to be noted that the minutes of the Rights of Way Sub Committee held on 5th January 2010 as are set out at point 4 of the Minutes of that Sub Committee held on 1st September 2010, are incorrect in that they stated that the correspondence with the solicitors acting for Camden Park Estate limited had ended on January 2008. Correspondence with the solicitors acting for Camden Park Estate Limited in fact continued into February 2008 when those solicitors wrote to the council on 7th February 2008 raising a number of points to which Tony Tompkins, on behalf of the council, responded by way of

letter on 12th February 2008 acknowledging receipt of the solicitors' letter and stating that he was taking further instructions and would then write again in due course. No further letters were sent by the council to the solicitors acting for Camden Park Estate Limited pursuant to the said letter from Mr Tompkins of 12th February 2008, notwithstanding the fact that the solicitors sent two further letters dated 19th March 2008 and 22nd May 2008 chasing a reply.

Reply:

The point you make can be addressed by adding the following clarification to the end of minute 4 from the meeting on 1st September 2010, and I will ask the Sub-Committee whether they will accept this change when we reach the confirmation of the minutes on our agenda.

"Note: It was subsequently confirmed that solicitors acting for Camden Park Estate Limited had written to the Council on 7th February 2008, and that the Council had acknowledged receipt of this on 12th February 2008 in a letter from Mr Tony Tompkins in which he said that he was taking further instructions. Two further letters had been sent by the solicitors on 19th March and 22nd May 2008, but no replies had been sent."

As a supplementary question, Mr McInery queried why the amended wording did not follow the precise wording given in earlier correspondence. In response the Council's legal advisor confirmed that the wording now proposed did in his opinion address the concerns that had been raised.

(2) From Ed FitzGerald, Camden Park Road, Chislehurst

With reference to the second resolution contained in point 6 of the Minutes of the meeting held by the Rights of Way Sub Committee on 1st September 2010 would the council please confirm that it has noted or will have noted on its records and in the Minutes of this meeting that Camden Park Estate Limited does not accept the proposed entry in the council's non statutory list that Camden Park Road is an unadopted highway and that it is the view of the company that the road should be listed as an unadopted highway with pedestrian rights of access only as confirmed by David Bartlett Chief Executive of Bromley Council in a letter to Mr W Hucklesby dated 30th July 2001 (the then chair of Camden Park Estate Ltd)?

Reply:

The Sub Committee agreed on 1 September 2010 that the entry for Camden Park Road in the Council's non-statutory list of un-adopted highways should be described as

" a highway restricted to footway rights running along the south side of Camden Park Road between the kerb line and street boundary and crossing Camden Park Road to join Footpath 41 on the other side, as shown along the route A to B in drawing EHP/9808/01 as circulated to the Rights of Way Sub-Committee for its meeting on 27 April 2005"

This description is entirely consistent with the description of Camden Park Road in the Council's street register as described in the then Chief Executive of LBB, David Bartlett's letter to Sir William Hucklesby of 30 July 2001.

Further, it is important that the description of the pedestrian highway running along Camden Park Road continues to be correctly recorded as described in drawing EHP/9808/01 as is shown in the description as agreed by the Sub-Committee on 27 April 2005.

Mr FitzGerald did not have a supplementary question.

5 MINUTES OF THE MEETING HELD ON 1ST SEPTEMBER 2010

It was proposed that the minutes as circulated be amended by the addition of the following note of clarification at the end of minute 4 -

"Note: It was subsequently confirmed that solicitors acting for Camden Park Estate Limited had written to the Council on 7th February 2008, and that the Council had acknowledged receipt of this on 12th February 2008 in a letter from Mr Tony Tompkins in which he said that he was taking further instructions. Two further letters had been sent by the solicitors on 19th March and 22nd May 2008, but no replies had been sent."

RESOLVED that, subject to the addition of the note set out above, the minutes of the meeting held on 1st September 2010 be confirmed as a correct record.

6 FOOTPATH 280 (PART) GRAYS ROAD TO BOROUGH BOUNDARY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER TO UPGRADE TO BRIDLEWAY Report ES11136

The Sub-Committee received the Secretary of State's decision upholding an appeal against the Sub-Committee's decision on 1st September 2010 not to make a Definitive Map Modification Order (DMMO) to upgrade Footpath 280 to a bridleway. The Council was now required by the Secretary of State to make the DMMO.

Councillor Richard Scoates, as the ward Councillor, insisted that the Sub-Committee had taken the correct decision in 2010 and should be prepared to object to the order. He considered that the evidence supporting the existence of a bridleway was circumstantial and did not provide a strong case, and he drew attention to a number of sections in the Inspector's report, including the Inspector's statement that she had not visited the site (paragraph 4), the delay in making the application (paragraph 19), the issue of logs placed across the path (paragraph 23) and the two witness forms that were not considered (paragraph 26.) He also stated that he was disappointed that he had not been informed as the Ward Councillor of the Inspector's decision.

Other Members agreed with Councillor Scoates, and were concerned that opening the gates could increase the risk of trespass on adjoining land given the history of traveller incursions in the area. Members also referred to the costs of making the path up to bridleway standards, and the amount of time spent on the issue already.

The Sub-Committee was informed that Kent County Council had already agreed to follow the Secretary of State's direction to make the Order and to take a neutral stance in any subsequent appeal should further objections be made to the confirmation of the Order.

The report recommended that the Council should take a neutral stance at any Public Inquiry into any further objections resulting from the making of the Order, and in any similar cases in the future where the Secretary of State directed the Council to make a DMMO. The Sub-Committee considered that, while the Council should neither take a neutral stance or a pro-active stance of opposition, it should await responses to the DMMO and support any objections that were made. The Sub-Committee accepted that the Council ran the risk of unlawfully fettering its discretion if it were to authorise a particular position in respect of potential appeals on other Public Path Inquiries in the future and unanimously resolved that it would consider each case and the Council's position on their merits at the appropriate time.

RESOLVED that

(1) The Director of Resources, in consultation with the Director of Environmental Services, be authorised to make a Definitive Map Modification Order under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to 'upgrade' that part of footpath 280 shown on dwg. ESD-10967-1 to bridleway.

(2) Kent County Council be informed of the Council's decision and invited to send their views to the Chairman.

(3) The Director of Environmental Services be authorised to take further action as necessary on behalf of the Council, subject to consultation with the Chairman and Ward Councillor in the event of objections being lodged by third parties.

7 MAINTENANCE OF THE PUBLIC RIGHTS OF WAY NETWORK
Report ES11138

The Sub-Committee considered a report which had been requested by Councillor Tickner on the options for reducing the maintenance costs of little-used paths and bridleways. The annual budget for maintenance of the Rights of Way network was £58,550, of which around £25,000 was used for the clearance of vegetation. Use was made of Community Payback teams for removing graffiti, rubbish and litter and clearing vegetation, but this required extensive supervision and could not meet all the borough's maintenance needs. Officers confirmed that it was more cost effective to have a planned programme for

clearing vegetation than to have a reactive approach based on responding to reports and complaints.

Members considered that, although this was a relatively small budget, the possibilities for making savings should still be investigated. It was noted that closing a footpath would require the extinguishment of highway rights and compelling evidence that it was redundant, and that there would probably be strong resistance to any proposed closures. Some Members commented that hard-earned access rights should be protected.

The Council had been successful in harnessing the support of local residents through various initiatives such as the Friends of Parks, Snowfriends and footpath custodians, of whom there were about thirty five across the borough. The Sub-Committee suggested that the possibilities for increased use of this approach to support the maintenance of the Rights of Way network should be investigated.

Members also noted that although fines imposed by the courts on fly-tippers did not come to the Council, officers had been successful in persuading residents caught fly-tipping to reimburse the Council's costs.

RESOLVED that the report be noted, and that efforts be made to extend the involvement of voluntary groups and footpath custodian schemes in the maintenance of footways and bridleways in the borough.

The Meeting ended at 8.32 pm

Chairman