

RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 4 February 2015

Present:

Councillor Simon Fawthrop (Chairman)
Councillor Lydia Buttinger (Vice-Chairman)
Councillors Vanessa Allen, Teresa Ball,
Richard Scoates and Michael Turner

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Councillor Mary Cooke.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received.

4 MINUTES OF THE MEETING HELD ON 10TH JULY 2013

RESOLVED that minutes of the meeting held on 10th July 2013 be confirmed.

5 PROPOSED DIVERSION OF PART OF PUBLIC FOOTPATH 258 - 2 PECKS COTTAGES CHURCH ROAD CHELSFIELD Report ES15009

Public right of way 258 runs from Pecks Cottages Church Road at its northern end, southwards in varying sections of Footpath, Bridleway and Byway, for some 3.5km to the Borough Boundary with Kent County Council at Washneys Road. The route was shown on an extract from the Council's Definitive Map attached to the report, together with photographs showing examples of the nature and width of the footpath along its route together with photographs of other footpaths nearby.

The section of the route affected by the current diversion application related to a short length of footpath (approximately 36m) running from Church Road diagonally through land at 2 Pecks Cottages, shown on drawing 11858-01.

A similar diversion had been proposed by the previous owner of the property in 1995. That application was considered by the then Environmental Services (Operations) Sub-Committee on 3 September 1996, when it was resolved to make a Public Path Diversion Order.

The ensuing diversion order was subsequently made and objections were received from both the Ramblers Association and EnBro on a number of grounds. These resulted in the matter being considered at a Public Inquiry held in November 1998. (The Inspector's report dated 5 March 1999 was appended to the report submitted to the Sub-Committee.) In all but one issue the Inspector was not opposed to the Order, however on the ground of public enjoyment of the way as a whole he found the objector's argument persuasive and decided not to confirm the Order.

The current owner of 2 Pecks Cottages had been made aware of the history but nonetheless, decided to make the current diversion application to the Council under section 119 of the Highways Act 1980 on the basis that such diversion was in his interest.

The current route of the footpath ran diagonally across land that although having an agricultural designation, was being used for garden purposes. It was understood that the intention of the applicant was to make an application for a change of use to the Council. The applicant had made the diversion request on the ground that it would enable him to maximise his use/enjoyment of the land by not having a footpath running diagonally across the middle of his garden. The diversion was also perceived to have security benefits for the property.

The applicant had recently fenced the garden land and created a permissive alternative route for use by walkers around the garden. The proposal was for the path to run around the outside of the fenced garden along the permissive route currently available.

The applicant had made an informal offer to maintain the route of the diversion on behalf of the Council should his request ultimately prove successful. Such an informal arrangement would, however, not affect the Council's maintenance responsibility for the path as a highway.

Extensive informal consultation had been carried out including Ward Members, Environment Bromley, local Residents Associations, local Ramblers Association and British Horse Society representatives and public utility companies. No objections had been received from the utility companies and the only comment received from the other consultees came from Enbro who considered '...the diversion to be minor and makes little difference to the walker whilst giving benefit to the landowner.' The Council's costs associated with the making and advertising of the Order, estimated at £1.5k would be recovered from the applicant.

A Project Engineer from the Environment and Community Services Department presented the detailed report and answered questions raised by Members of the Sub-Committee.

The Sub-Committee were advised that public right of way 258 had been in existence for a long time and it had been shown on Ordnance Survey maps in the 1930s and 1940s. It was confirmed that the proposed diverted route running parallel to Church Road was on land owned by the applicant.

Although designated as agricultural land, the area concerned had been enclosed and used as a garden by the previous owners of the property. The Project Manager advised that the area was small and had not been used as agricultural land for many years.

Councillor Buttinger (Ward Councillor) had visited the site and although considering that the proposed diversion to the right of way would not be a huge inconvenience to the public, had concerns about the impact of the high wooden close boarded fencing which obscured the view of the golf course. The Project Engineer confirmed that a fence of up to 1.8 metres could be erected without planning permission, as long as it was not adjacent to a vehicular highway. Councillor Buttinger commented that fencing on agricultural land would not normally use high boarded fencing and a more open type of fencing or hedge would be usually be used.

The Legal Adviser confirmed that if the diversion was designated as a public highway the Council would have a legal obligation to maintain it.

The Legal Adviser and Project Engineer advised that if the proposed diversion was in the interest of either the owner or the public, the Council should make a Public Path Diversion Order, following which it would be advertised and any objections could then be raised during the second stage of the process.

Having considered all the factors involved, the Sub-Committee agreed to the recommendation in the report, subject to planning permission being granted for the relevant land being granted a change of use from agricultural to residential use.

RESOLVED that the Director of Corporate Services in consultation with the Executive Director of Environment and Community Services, be authorised

(i) to take the necessary steps to make a combined Public Path Diversion and Definitive Map Modification Order for part of Footpath 258 as shown on drawing no. 11858-01, subject to planning permission being granted for a change of use from agricultural to residential land, and

(ii) if no objections are received, or any such objections are withdrawn, to confirm the Order subject to the relevant tests set out in the Highways Act being satisfied.

**6 DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
 Report ES15010**

The Sub Committee received a report which requested authority to enable the Council to make Definitive Map Modification Orders (DMMOs) under the provisions of the Wildlife and Countryside Act 1981, to make amendments to the Definitive Map and Statement of Public Rights of Way (DMS) to bring it up to date, and subsequently prepare a modified copy of the Map and Statement.

The Council last prepared a modified copy of the DMS in 1998. Since that time some 16 legal event orders had been made and confirmed by the Council. The Council was required to keep available for public inspection a copy of the 1998 DMS together with a copy of each of the legal event orders. This was a cumbersome record resulting in the need to consult both sets of information in order to ascertain the up to date position. Preparing an updated DMS was therefore of benefit to both the Council and the public.

In order to enable the Council to amend the DMS to reflect the legal event orders, Definitive Map Modification Orders (DMMOs) had to be made in respect of each order. Recent legislation had enabled the making of combined Diversion and Modification orders. The latter approach had been used for the two most recent legal event orders and there were still nine needing DMMOs.

To comply with the duty to keep an up to date DMS and to be in a position to publish an accurate up to date DMS the making of the DMMOs referred to above was necessary. It was noted that in addition, the Council had been carrying out an exercise to digitise the DMS with the aim of publishing the information on its website.

Due to the duty imposed by the Wildlife and Countryside Act to keep the DMS under continuous review the Council, as the Surveying Authority, had to bear the costs associated with the making and advertising of the necessary Orders, estimated at £2.5k. This would be funded from the Highways budget.

The Sub-Committee agreed to the recommendation in the report, however Members considered that in future, rather than necessitating committee authority, delegated authority should be given to officers. The Sub-Committee requested that this suggestion be referred to Council to be considered as an amendment to the Scheme of Delegation to Officers.

RESOLVED that

(i) the Director of Corporate Services, in consultation with the Executive Director of Environment and Community Services, be authorised to take the necessary steps to make Definitive Map Modification Orders (DMMOs) under section 53(2) (a) of the Wildlife and Countryside Act 1981 to enable the Definitive Map and Statement to be brought up to date and subsequently prepare a new consolidated Map and Statement under the provisions of section 57(3) of the same Act, and

(ii) Council be requested to consider amending the Scheme of Delegation to Officers to enable them to make Definitive Map Modification Orders and amendments to the Definitive Map and Statement of Public Rights of Way.

The Meeting ended at 7.26pm

Chairman