

RIGHTS OF WAY SUB-COMMITTEE

10th January 2024

(B) QUESTIONS FOR WRITTEN REPLY

1. From Philip Lapper to the Chairman of the Sub-Committee

Does the sub-committee acknowledge that the evidence forms give a very mixed picture about the gate at the bottom of the track? From the wider evidence, there can be no reasonable doubt that there has been a locked gate for many years, so the forms saying otherwise must be inaccurate and should be dismissed from your consideration?

Reply:

The user evidence forms do give a mixed response regarding the existence of a gate. The existence of a gate across a way is not however evidence that public rights do not exist. In many instances witnesses will not recall the existence or location of gates if they do not impede their journey. People often only recall things that cause them a problem or inconvenience.

The fact that a gate is referred to by some user witnesses, does not mean that the gate was actually locked. That can only be taken to be the case if they specifically state this. Some user witnesses refer to locked gates along the route, not necessarily at the bottom of the track, other do not. This may be consistent with the occasional locking of the gates. It is however a matter for the Sub-Committee to determine how much evidential weight they place on this evidence.

The forms which do not mention gates certainly cannot be dismissed from consideration. It would be unlawful to do so. Such forms must be considered alongside all other available and relevant evidence.

2. From Helen Lapper to the Chairman of the Sub-Committee

Does the PROW committee accept that if the LBB employ a professional advisor to report on a technical issue beyond a layperson understanding that the LBB should only follow the recommendation provided by the paid/employed expert.

Reply:

The decision to be made by the PROW Sub-Committee is quasi-judicial in nature, which means that the Sub-Committee must make its own decision, based upon all of the available and relevant evidence. It would be potentially unlawful for it to blindly follow the recommendation, or opinion, of a third party.

Notwithstanding the above, the Sub-Committee cannot and should not disregard the advice it receive lightly. If the Sub-Committee reaches a different conclusion to that reached by its professional advisors, it will have to set out in some detail (as part of the minutes of the meeting) the rationale behind its decision.

3. From Simon McDowell to the Chairman of the Sub-Committee

Does the sub-committee acknowledge that the Landway only leads to fields that are actively farmed with large machines that take up the width of the track and, with blind spots, will pose significant health and safety risks to walkers and their dogs, which is one of the reasons why the landowners restrict access?

Reply:

The Landway as a physical track does lead to fields but also links to a public footpath at the golf course end. It would therefore be wrong to state that it only leads to fields at this stage of the proceedings. A full answer to that element of the question will only be resolved once the DMMO application has run its full course and the issue of the existence, or otherwise, of a public right of way has been determined.

Issues relating to health and safety, the width of the track, blind spots etc, whilst genuine concerns are not matters that can lawfully be taken into consideration. The DMMO application does not seek to create any new public rights, only record those already alleged to exist. If a public right of way is shown to have been established then both the landowners and the Authority may have to consider these issues.

4. From Richard Ward to the Chairman of the Sub-Committee

What is the Sub-Committee's opinion as to why two public footpaths lead into the western end of the Landway if not because the Landway has been used historically as a highway connecting the paths to the centre of the village? (See maps, Apps. 1&6.)

Reply:

The origin of the footpath that crosses the western end of the Application Route is unknown. The origins of the Application Route itself are however clearer and more probably than not rest in it being a private occupation road leading to fields. There is certainly insufficient historic evidence available at this time to suggest that the Landway was historically a public highway of any description. Whether public rights have been established through long public use has yet to be determined and is the

subject of the current application. It is however fair to say that if the footpath which crosses the western end of the Landway did not exist, then it would be highly unlikely that the Landway would be subject to any public right of way because it would be a cul-de-sac.

5. From Wendy Ward to the Chairman of the Sub-Committee

The user evidence summary table App 8 shows my name but no comment, and comments of others reduced to very few words / issues. I and others wrote on more than one issue. How will the committee be made aware of the full detail and range of comments made?

Reply:

The comments section of the Summary only contains comments that were considered relevant by the Consultant. If both comments were entered against a specific user, then this would indicate there is no information other than that covered elsewhere in the report. Appendix 8 should not be taken in isolation. All evidence provided to the Consultant is included within the report and its Appendices. The Sub-Committee will consider the report and its appendices in the whole, not isolated elements of it.

6. From Joanna Clark to the Chairman of the Sub-Committee

What evidence does panel consider is required if numerous statements, about 80, from local people confirming land used for many years as a path, is deemed insufficient? I would suggest that evidence provided by DRA is significant. It provides evidence that the community have used this path for many years.

Reply:

It is important to understand that no amount of public use will result in the establishment of a public right of way if there is evidence that the landowner had no intention to dedicate the route as a public right of way. In this particular case there would appear to be such evidence.