

RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 10 January 2024

Present:

Councillor Simon Fawthrop (Vice-Chairman, in the Chair)
Councillors Adam Jude Grant, Alisa Igoe, Chris Price,
Michael Tickner, David Jefferys and Tony Owen

Also Present:

Councillor Jonathan Andrews

6 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Jonathan Laidlaw and Harry Stranger, who was replaced by Councillor David Jefferys. The Chairman, Councillor Jonathan Andrews, was replaced by Councillor Tony Owen and the Vice-Chairman took the chair. Apologies for lateness were received from Cllr Michael Tickner.

Note from Director of Corporate Services and Governance: Councillor Andrews before the meeting gave notification that although he was not a member of the Downe Residents Association (on whose behalf the DMMO for the Landway was made) he had attended their Committee meetings at their invitation as ward councillor. He had also walked the path with local residents opposed to the application. In the circumstances he had decided to stand down from acting as Chairman or as a voting member of the Sub-Committee for this item but with the permission of the appointed Chairman would address the Sub-Committee in his capacity as a ward councillor only.

7 DECLARATIONS OF INTEREST

There were no declarations of interest.

8 QUESTIONS

Seven questions had been received for oral reply, and six questions for written reply. The questions and replies are set out in [Appendix A](#) and [Appendix B](#) to these minutes.

9 MINUTES OF THE MEETING HELD ON 28 SEPTEMBER 2022

RESOLVED that the minutes of the meeting held on 28 September 2022 be confirmed.

**10 PROPOSED PUBLIC RIGHT OF WAY AT THE LANDWAY,
DOWNE**
Report ES20341

The Sub-Committee received a report requesting them to determine an application for a Definitive Map Modification Order to recognise a public right of way at the Landway at Petleys Farm, Luxted Road, Downe. The application had been made under the Wildlife and Countryside Act 1981 which placed a duty on the Council, as the Surveying Authority for public rights of way, to keep the Definitive Map and Statement under continuous review.

The application had been made by Mr Steve Barnes on 10th June 2020 on behalf of the Downe Residents Association. The landowners objected to the application. The Council had appointed a consultant, Robin Carr Associates, to investigate the application and his report, concluding that the application should be refused, was at Appendix 1 to the report.

The Sub-Committee had received a statement from David Evans, Vice-Chairman of the Downe Residents Association, and a number of public questions (set out in Appendices to these minutes). Members also noted that, in the report, references to Schedule 13 of the Act should be to Schedule 14 and that the Secretary of State (and not the Magistrates Court) had directed the Council to determine the application by March 2023.

The Director of Corporate Services and Governance's representative summarised the legal position and the process to be followed by the Sub-Committee. The Sub-Committee was in a quasi-judicial role and needed to consider the evidence for whether there was use of the way over a period of twenty years as of right and without interruption and whether there was sufficient evidence of lack of intention to dedicate on the part of the landowners.

The Vice-Chairman invited Cllr Jonathan Andrews to address the Sub-Committee as ward councillor. Cllr Andrews stated that this was a long-running matter and that he had heard concerns from residents of Downe on both sides. He drew attention to two small discrepancies in the Consultant's report at paragraph 4, where there was reference to a Parish Council which did not exist and to consultation with ward councillors which had not taken place. He referred to recent case law which showed that applications should be granted by the Council where a right of way which was not shown in the map and statement is reasonably alleged to subsist. Over 80 residents had submitted evidence forms stating that they had used the path without requiring permission. The evidence concerning the presence of gates was varied and not clear as to whether a particular gate was locked or could be walked through. He therefore concluded that there was a reasonable case that a right of way existed.

The legal representative confirmed that the relevant test for the Sub-Committee was whether the right of way subsists or is reasonably alleged to subsist.

Members of the Sub-Committee discussed the report. The Chairman remarked on the large number of evidence forms in support of the application gathered

from a small village in a sparsely populated rural area showing the intensity of use of the way over a twenty year period, and this point was supported by other Members. Members noted the evidence about the gates and stiles, but disagreed with the Consultant that the evidence as to the presence of locked gates was sufficient to show a lack of intention to dedicate. The evidence was not unambiguous as to when and which gates may have been locked and a gate might need to be installed for various purposes in a rural location. Some of the objectors had moved in more recently and their evidence would inevitably be more limited. The unanimous view was that there was no incontrovertible evidence to indicate that an order should not be made.

RESOLVED that the Director of Corporate Services and Governance, in consultation with the Director of Environment and Public Protection, be authorised to make a Definitive Map Modification Order under section 53(c)(i) of the Wildlife and Countryside Act 1981 to add the route shown by a broken line (A-B) on Plan 1 to the Definitive Map.

(Councillor Michael Tickner, having arrived late, did not vote.)

The Meeting ended at 7.36 pm

Chairman