

**RIGHTS OF WAY SUB-COMMITTEE**

MINUTES OF THE MEETING OF THE RIGHTS OF WAY SUB-COMMITTEE HELD ON MONDAY, 30 OCTOBER 2000, IN MEZZANINE ROOM 2, COUNTY HALL, AYLESBURY COMMENCING AT 10.00 AM AND CONCLUDING AT 11.00 AM

**MEMBERS PRESENT**

Mr T L Jones (in the Chair);

Mr J W Cartwright, Mrs P M Crawford, Mrs P M Bacon, Mr N I Brown,

**APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Mrs C M Aston, Dr B R Stenner and Mr F V J Sweatman

**ELECTION OF CHAIRMAN**

**RESOLVED**

**That Mr T L Jones be elected Chairman for the ensuing year.**

**MR T L JONES IN THE CHAIR**

**APPOINTMENT OF VICE-CHAIRMAN**

**RESOLVED**

**That Mr F V J Sweatman be appointed Vice-Chairman of the Sub-Committee for the ensuing year.**

**DECLARATIONS OF INTEREST**

There were none received.

**1 MINUTES**

The minutes of the meeting of the Sub-Committee held on 12 April 2000 were confirmed.

**2 DEFINITIVE MAP APPLICATIONS PROGRESS REPORT**

The Sub-Committee received and noted a report from the Head of Spatial Planning and the Head of Legal Services, which updated members on the current situation with definitive map applications and on the outcome of the sub-committee's earlier decisions. It was reported that there were currently 17 Definitive Map applications to be determined

by the Sub-Committee. There was also four outstanding applications previously determined by the Countryside Sub-Committee in the 1980s to be addressed, 14 Roads Used as Public Paths (RUPPS) to be determined and 42 applications to divert or extinguish rights of way.

It was reported that the Secretary of State had directed the County Council to make a Definitive Map Modification Order to upgrade Public Footpath No. 12 (Part), 12A and 13 to public bridleway at Pitstone. This application had previously been rejected by the Sub-Committee, however the Applicant made a successful appeal against the decision based on additional user evidence provided for the Secretary of State.

### **3 CLAIMED PUBLIC FOOTPATH NEAR DEANGARDEN WOOD, HIGH WYCOMBE**

Prior to discussion on this item the representative from Legal Services explained two elements of the Human Rights Act, which were issues for the Rights of Way Sub-Committee:

- i Article 6 – the right to a fair trial;
- ii Article 8 – the right to respect family life and possessions.

The Sub-Committee was advised that they should not their use discretionary powers in exercising their judgement with regard to the making of orders. If the evidence suggested that an order should be made, the sub-committee should make it.

The Sub-Committee went on to consider a report from the Head of Spatial Planning and the Head of Legal Services to:

- a Determine an application for a Definitive Map Modification Order to show a path from the end of Deangarden Rise to the edge of Deangarden Wood and round the edge of the wood as a Public Footpath on the Definitive Map and statement;
- b To consider whether a Definitive Map Modification Order should be made to show the Paths marked on the plan no. 16855WBT/1 between the points A-B-C-D from Abbey Barn Road to join the claimed path described in the paragraph above; between points F and G from the claimed path through Deangarden Wood to join Public Footpath No. 60, High Wycombe and between points E and H from the claimed path to join Public Bridleway No. 62, High Wycombe.

A letter was circulated at the meeting, from Cluttons, Chartered Surveyors who were acting on behalf of Mr P W Eldridge being the owner of the land adjacent to Deangarden Wood. Mr Eldridge claimed that members of the public could not have had uninterrupted use of the footpaths over the period of claim and could not, on the balance of probability, have believed that such use was “as of right”. The letter went on to state that:

“since 1966, signs have been put up by myself on various occasions drawing attention to trespass and the land being privately owned, but on each occasion barbed wire fences and notices have been torn down”.

The Definitive Map Officer stated that there was no evidence of fences or signs being put up during this period. During discussion members asked for absolute evidence to support the fact that fences and signs had not been erected. The Definitive Map Officer commented that the evidence was given by word of mouth of those who were claiming use of the route during those periods. A Member drew attention to the Isle of Wight case, which stated that 20 people claiming to use a route was not considered sufficient evidence for it to be regarded as a right of way.

In conclusion, the Sub-Committee did not accept there was sufficient evidence to indicate that it was reasonable to allege that the routes as stated in the report should be shown on the Definitive Map and Statement as Public Footpaths and that it would not be appropriate to make a Definitive Map Modification Order.

## **RESOLVED**

**That there is insufficient evidence to indicate, on the balance of probabilities, that it is reasonable to allege that the routes between the points A-B-C-D-E-F-G and between points E and H on the Director of Environmental Services’ Plan No. 16855 WBT/1 should be shown on the Definitive Map and Statement as Public Footpaths.**

### **4 PUBLIC FOOTPATH NO. 6, IVINGHOE**

The Sub-Committee considered a report from the Head of Spatial Planning and the Head of Legal Services to consider whether a Definitive Map Modification Order should be made to delete part of Public Footpath No. 6, Ivinghoe from the Definitive Map and Statement shown on Plan No. 16855AAY between points B-C. It was reported that on 26 October 1999 the owner of Rookery Nook at Ivinghoe Aston had applied to extinguish part of Public Footpath No. 6, Ivinghoe where it passed through his property and that belonging to the neighbouring property Rookery Nook Cottage. This application was made on the grounds that the path provided no access or throughway as it terminated at a point bordering private property. It was also made on the grounds that development had taken place which, although it did not obstruct the path, was close enough to seriously impair the occupier’s privacy.

The Definitive Map Officer reported that it appeared from the Ivinghoe Inclosure Award and Map that the status of the whole route of Public Footpath No. 6 from points A-B-C had been recorded as a Public Footpath since at least 1825, the date of the Award. It was noted that there was no evidence available to clearly show that the section of the route between points B-C had ever been legally extinguished. The fact that this was a cul-de-sac path did not provide evidence that it was not a right of way. The Definitive Map was transferred onto 1 : 10,000 scale in 1979 and the route of the path was then shown in the position between points A and B. Members were requested to consider whether the evidence showed that an error had been made during the transferring of information or whether the route stopped at point B on the Plan. Members considered that, although the evidence was not sufficient to show an error had been made, an extinguishment Order

(under the Highways Act 1980) should be made for the whole route.

**RESOLVED**

**1 That there is insufficient evidence to indicate that the route between points B and C on the Director of Environmental Services' Plan No. 16855AAY is shown on the Definitive Map in error;**

**2 That the route of Public Footpath No. 6 Ivinghoe be extinguished.**

**5 PUBLIC FOOTPATH NO. 9, PARISH OF STONE WITH BISHOPSTONE AND HARTWELL**

The Sub-Committee considered a report from the Head of Spatial Planning and Head of Legal Services to determine an application for a Definitive Map Modification Order to modify the Definitive Map and Statement in relation to Public Footpath No. 9, Stone with Bishopstone and Hartwell.

It was reported that the application was made under the Wildlife and Countryside Act 1981 (WCA81) to rectify an error in showing the route of a public footpath on the Definitive Map and Statement. Members noted that the route currently bordered the perimeter of the field and the amendment proposed would cut across diagonally. It was reported that the landowner had objected to the modification and had stated that should an Order be made by the Council on the proposed alignment it would be challenged if necessary in the High Court or by means of judicial review. The Definitive Map Officer commented that the points made on behalf of the landowner were that they conflicted with the Claimant's evidence as described in the claimed use section of the report. The Claimants maintained that the route of the path had always been along the line across the field and away from the edge. The application is supported by Public Rights of Way Evidence Forms from seven people and since the application was submitted, forms from a further six people had been received. The claimant's evidence was also supported by earlier Definitive Map records, Ordnance Survey plans and the Hartwell and Stone Inclosure Award.

**RESOLVED**

**1 That there is sufficient evidence to indicate on the balance of probabilities that it is reasonable to allege that the route of the Public Footpath No. 9 Stone with Bishopstone and Hartwell shown on the Director of Environmental Services plan no. 16855 AAX between points A-B-C has been shown on the Definitive Map and Statement in error and the route between points A-C should be shown on the Map and Statement as a public footpath**

**2 That a Definitive Map Modification Order be made to delete the route between points A-B-C from the Definitive Map and Statement and to show the route between points A-C as a public footpath.**

## **6 CLAIMED PUBLIC FOOTPATHS AT WELLWICK HOUSE/WELLWICK FARM, PARISHES OF ELLESBOROUGH AND WENDOVER**

The Sub-Committee considered a report from the Head of Spatial Planning and Head of Legal Services to determine an application for a Definitive Map Modification Order to show the paths at Wellwick House and Wellwick Farm in the Parishes of Ellesborough and Wendover shown on the Director of Environmental Services' Plan No. 16855AAQ/1 between points A-K and J-I as public footpaths on the Definitive Map and Statement. It was reported that on 17 November 1998, the Clerk to Wendover Parish Council submitted an application to modify the Definitive Map by adding the paths between points A-K and J-I as Public Footpaths. The application was supported by Public Rights of Way Evidence Forms from 14 people, use of the paths was claimed for varying periods of time between 1945 and 1996 when the Evidence Forms were completed. The application was made on the basis that the public had used the paths for at least 20 years until 1996 when the forms were completed. It was noted that the land in question was owned by two people, Mr Griffin of Wellwick House and Mr Howe who owns Wellwick Farm. Both were consulted during the investigation of the application in July 2000. Evidence supplied by Mr Griffin was reported to conflict with claimants' evidence and it was noted that Mr Howe had confirmed that people had always walked the route.

### **RESOLVED**

- 1 That there is sufficient evidence to indicate on the balance of probabilities that it is reasonable to allege that the routes between points A-K and J-I on the Director of Environmental Services' Plan No. 16855AAQ/1 should be shown on the Definitive Map and Statement as public footpaths;**
- 2 That a Definitive Map Modification Order be made to show the routes described above as public footpaths.**

## **7 PUBLIC FOOTPATH NO. 6, WOTTON UNDERWOOD**

The Sub-Committee received a report from the Head of Spatial Planning and Head of Legal Services to consider whether a Definitive Map Modification Order should be made to modify the Definitive Map in relation to part of Public Footpath No. 6, Wotton Underwood, shown on the Director of Environmental Services' Plan No. 16855AAZ between points A and B. It was reported that the question of the accuracy of the Definitive Map had arisen following an application to divert part of the footpath in the interest of the landowner's security, privacy and reasonable use and enjoyment of the property.

It was discovered during consideration of the diversion application that there might have been an error on the current Definitive Map in showing the route of the footpath south of the section to be diverted. Earlier Definitive Maps showed the path between points C and B.

It was reported that in 1979 the Definitive Map was transferred onto 1 : 10,000 scale and that at some time between 1979 and 1995, when a consolidated Definitive Map, with a relevant date of 1993 was produced, the route of the path was moved to the position

shown on the current Definitive Map ie between points A and B. No objections had been received, other than a request that the local authority must prove beyond reasonable doubt that there had been a drafting error. The evidence showed that the Parish Survey Map and the Definitive Map and Statements up until the time the Map was transferred to the 1 : 10,000 scale showed the route of the footpath along the line marked C-B on the Plan. This is further supported by the depiction of the path on the OS Plans.

## **RESOLVED**

- 1 That there is sufficient evidence to indicate on the balance of probabilities that it is reasonable to allege that the route of public footpath No. 6, Wotton Underwood shown on the Director of Environmental Services' Plan No. 16855AAZ between points A-B had been shown on the Definitive Map and Statement in error and that the route between points C-B should be shown on the Definitive Map and Statement as a public footpath;**
- 2 That a Definitive Map Modification Order be made to delete the route between points A-B from the Definitive Map and Statement and to show the route between points C-B as a Public Footpath.**

## **8 THE TRIANGLE BUSINESS PARK, STOKE MANDEVILLE**

The Sub-Committee received a report, which informed of an obstruction to the public Footpath No. 6A, Stoke Mandeville/No. 4, Wendover, at the new Post Office sorting facility on the Triangle Business Park in Stoke Mandeville. It was reported that a site visit had indicated that parts of the new car park were limiting the width of the path and rendering it almost impassable in places. This matter has been pursued by the Barrister acting for the Post Office and it had been suggested that the County Council divert the present route of the footpath onto land of an adjacent landowner. In order to allow the diversion to be achieved more quickly, it was suggested that an application to the Magistrates' Court under s116 of the Highways Act 1980 would be the most expedient. The County Council had a statutory right to recover all of the related costs and it was reported that the Post Office had indicated that it would be responsible.

## **RESOLVED**

**That the Council proceeds with an application under s116 of the Highways Act 1980 to divert Public Footpath No. 6a, Stoke Mandeville/No. 4, Wendover and investigates the possibility of prosecution proceedings being lodged against the Post Office for the current obstruction.**

**MR T L JONES  
CHAIRMAN**

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