

Minutes of the Countryside and Rights of Way Panel Meeting held on 28 April 2023

Present: Mark Winnington (Chair)

Attendance

Jak Abrahams
Robert Pritchard

David Smith

Apologies: Paul Snape and Jill Waring

Part one

1. Minutes of meeting held on 20 January 2023

The minutes of the meeting held on 20 January 2023 were circulated.

Referring to item no.49 relating to an application to upgrade public footpath 35 Ipstones to a Bridleway, the Chairman proposed a revision to the recorded decision in order to better reflect the intention of the Member's to support the application.

Decision (i) – That the decision shown at item no.49 be replaced with the following.

- (a) the information presented by the Director for Corporate Services detailing the legal and historical documentary evidence and user evidence be acknowledged and is considered to be finely balanced
- (b) taking into account the unexplained presence of bridle gates along the footpath and the absence of any opposition from the Landowner, the local Parish Council and the County Councillor for the area to the proposal, the application to upgrade the footpath to a bridleway be supported
- (c) that an Order be made to upgrade the route of footpath 35, Ipstones to a Bridleway on the Definitive Map and Statement of Public Rights of Way.

Decision (ii) – That with the above amendment the minutes of the held on 20 January 2023 be confirmed and signed by the Chairman.

2. Declaration of Interest

There were no Declarations of Interest on this occasion.

3. Application For An Order Under The Wildlife and Countryside Act 1981 To Modify The Definitive Map and Statement By The Addition Of A Public Footpath From Stretton To The Highway To The East Of Bickford Grange Farm

The Panel considered a report by the Director for Corporate Services on an application to review the decision of the Countryside and Rights of Way Panel on 16th July 2021 to make an order under the Countryside and Wildlife Act 1981 Section 53 to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm.

The report was presented verbally to take Members through the various legal documentary and historical evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to the evidence and gave guidance on the legal tests which they should apply. In applying these tests, Members were made aware that they should examine the evidence in its totality. During their consideration of the application, Members had regard to the Appendices attached to the report including; (i) Copy of Addendum Report by William Webster with appendices; (ii) Copy of Objectors response to Addendum Report with appendices.

The Panel heard from barrister Mr W Webster who had acted for the Council at judicial review proceedings brought by Mr P Monkton and the Somerford Home Farm Partnership in October 2021.

The Panel were asked to consider whether their original decision continued to be justified or whether the decision should be rescinded. Mr Webster explained that the only decision for the Panel to make was whether it was reasonable to allege that the claimed footpath "subsists or is reasonably alleged to subsist". The Council was not required to investigate matters in greater depth and details than it reasonably judges to be necessary.

The Panel were made aware that none of the judges involved in the judicial review proceedings criticised the final decision of the Council nor found that it disclosed any serious or obvious errors of law which would have given rise to a compelling need for the Court to intervene by way of judicial review. Mr Webster concluded by explaining that should the Panel take the stance that the claimed footpath subsists over the relevant land, an order should be drawn up and the publicity provisions for orders contained in paragraph 3 to Schedule 15 of the 1981 Countryside and Rights of Way Act should be followed.

The Panel also heard from barrister Mr M Dale-Harris on behalf of the objector. He argued that the author of the original report had failed to address a number of issues relating to the interpretation and application of various items of legislation from the 1800's.

Mr Dale-Harris also argued that the Panel had not been advised properly for the purposes of the meeting in an impartial way with errors that had been explained with the balanced discussion of their implications. He reported that should the Panel be minded to confirm their original decision his client would continue to pursue his objection to the proposed footpath, giving a brief indication of the points on which the objection would be based.

Following a vote the Panel decided that;

Decided – That, after reviewing all available evidence and the Addendum Report, the Panel confirms the decision made on 16th July 2021 that:

(a) the evidence submitted by the applicant was sufficient to show that the alleged public footpath was reasonably alleged to subsist as shown running between A-B-C on the plan at page 2 of the bundle of documents attached to the Addendum Report and should be added to the Definitive Map and Statement of Public Rights of Way as such, and

(b) an Order should be made to add a public footpath from Stretton to the highway to the east of Bickford Grange Farm as shown running between A-B-C on the plan at page 2 of the bundle of documents attached to the Addendum Report to the Definitive Map and Statement of Public Rights of Way for the District of South Staffordshire.

Chairman