

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the TN2 Community Centre, Lakeside, Greggs Wood Road, Tunbridge Wells TN2 3LZ on Friday, 18 March 2016.

PRESENT: Mr A H T Bowles (Chairman), Mr C W Caller, Mr A D Crowther and Mr P J Homewood

ALSO PRESENT: Mr C P D Hoare

IN ATTENDANCE: Ms M McLauchlan (Definition Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

3. Application to extinguish Public Footpath WB71 in Tunbridge Wells (Item 3)

(1) The Panel Members viewed the area under question from both entrances prior to the meeting.

(2) The Definition Officer began her presentation by explaining that an application had been received from the landowner, the Town and Country Housing Group (TCHG) to extinguish public footpath WB71. The footpath did not appear on the Definitive Map as the Modification Order had not been made until 15 June 2015 in response to an application by local councillor Frank Williams. The original decision to make the Order had been taken on the basis that public rights on foot were reasonably alleged to subsist due to use by the public over a period in excess of 20 years. A petition had been received after the consultation period against the footpath. By Law, this petition could not be considered as an objection. The Order had not yet been confirmed.

(3) The Definition Officer went on to say that the matter had become further complicated as prior to the making of the Modification Order, a development of 6 dwellings had been built on the land over which the footpath ran. TCHG had not wished to apply for a diversion of the footpath because they considered would neither be in the interests of the occupiers of the new dwellings nor of those local residents who had signed the petition against it. TCHG also considered that the existing footpath between Burslem Road and Greggs Wood Road via Harries Road would serve the same purpose and that footpath WB71 was therefore not needed for public use.

(4) The Definition Officer said that under the changed circumstances, she had concluded that the application to extinguish the footpath was an effective way to resolve this matter. The Extinguishment Order and the Modification Order could be confirmed simultaneously. The result would be that footpath WB71 would never appear on the Definitive Map.

(5) The Definition Officer then set out the legal tests for extinguishment of a public path. The County Council could make an Order to this effect if it considered it expedient to do so on the grounds that it was not needed for public use. This Order could not be confirmed without regard to the extent to which the path was likely to be used by the public, apart from the Order, as well as the effect which extinguishment would have as respects land served by the path or way.

(6) The Definition Officer briefly explained her conclusions in respect of the legal tests. She considered that it was expedient to extinguish the path on the grounds that it was not needed for public use. This was because its use was likely to be limited to a small number of residents from Burslem Road and Allandale Road who wanted to get to the shops and community centre. There were more convenient routes available from other parts of the area, whilst the existing footpath via Harries road generally served the same purpose and was substantially as convenient despite being some 145 metres longer.

(7) The Definition Officer moved on to consider the extent to which it appeared that the path would, apart from the Order, be likely to be used by the public. She said that Mr Hoare, the Local Member and Cllr Frank Williams had both stated that some of their more elderly and infirm constituents would use the path. She asked the Panel to note that the Law did not require that no one at all would use the path, but rather to consider the extent of any likely use. For the reasons already given, she considered that the path would be used by a very small number of people.

(8) The Definition Officer's view on the third test (the effect that extinguishment would have as respects land served by the path or way) was that the land over which footpath WB71 ran was now a residential area of 6 dwellings. Originally, the openings at either end had been for vehicular access, although it had allowed people to cut through from Burslem Road to the shops and community centre. As this path was no longer needed for this purpose, its extinguishment would not adversely affect those residents.

(9) The Definition Officer explained that the question of anti-social behaviour was not one which she or the Panel could have regard to. She had, therefore not considered this factor in the preparation of her report and recommendations.

(10) In response to a question from Mr Caller, the Definition Officer said that there was no legal definition of a suitable alternative route. Each case had to be considered on its own merits.

(11) Mr Homewood asked whether there was an incline along the route of footpath WB71. The Definition Officer replied that there was a slope going through the garages. The incline was the same whether on the footpath or the footway along Harries Road.

(12) Mr Tim Warren (TCHG) addressed the Panel as the applicant. He said that TCHG had managed the estate since 1992. They had demolished 176 properties and built 250 to replace them. A major concern of the residents was the management of anti-social behaviour such as drug use and vandalism.

(13) Mr Warren went on to say that TCHG had been very mindful of local concerns when it had planned the development and created the allotments in March 2014.

They had followed the advice of the Police by not seeking to create a footpath and had received no complaints about the lack of access since then. Whilst TCHG could accommodate the footpath if the Panel were minded not to grant the application, he considered that to do so would defeat the object of the development, whilst going against the wishes of the community and the advice of the Police.

(14) Three local residents spoke in favour of the extinguishment. A resident from Greggswood Road said that everything had been much quieter since the six new houses had been built and the pathway had become inaccessible. There were no longer any needles, drugs, cans and bottles that she used to have to clear away from the entrance to her property and which had made local residents' lives a nightmare. Other factors that should be borne in mind were firstly that the path had been known to provide an additional escape route for shoplifters. Secondly, an elderly lady had recently collapsed in Harries Road. If she had been using the seldom-used path instead, she might well have been dead by the time that she was found.

(15) A second local resident (from Harries Road) said that she could confirm the description given. It would be a terrible backward step if the Extinguishment Order did not go through. This was particularly as the promised additional lighting had never materialised.

(16) A third local resident (from Harries Road) said that he was concerned that the allotments would become a dumping ground and that people using the path would take whatever they wanted from them.

(17) Mr C P D Hoare, Local Member said that the local community was divided on the question. In his view, the mere fact that the path had been in existence proved that it was needed. During the elections, he had canvassed residents in Burslem Road and Allandale Road. One very senior resident had been very strongly opposed to the closure of the footpath because people used it as a cut through in order to get to the shops, particularly the pharmacy.

(18) Mr Hoare added that the local Borough Councillor, Mr Frank Williams was also opposed to the extinguishment. He recognised that there was considerable local concern about events that had taken place along the path and suggested that a possible compromise would be to keep the path open during the day and gate it off at night.

(19) On being put to the vote, the recommendations of the Definition Officer were unanimously agreed.

(20) RESOLVED that, for the reasons set out in the report, the applicant be informed that the application to extinguish Public Footpath WB71 under section 118 of the Highways Act 1980 has been accepted.