

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Shoreham Village Hall, 8 High Street, Shoreham TN14 7TB on Tuesday, 17 July 2018.

PRESENT: Mr P J Homewood, Mr J M Ozog and Mr R A Pascoe

IN ATTENDANCE: Mr C Wade (Principal Legal Orders Officer), Mr W Barfoot (PROW Definitions Officer), Mr D Munn (PROW Area Manager - West Kent) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

5. Election of Chairman

(Item 1)

(1) Mr P J Homewood moved, seconded by Mr J N Ozog that Mr R A Pascoe be elected Chairman for the meeting.

Carried

(2) Mr R A Pascoe thereupon took the Chair.

6. Application to divert part of Public Footpath SR22, Shoreham in the District of Sevenoaks

(Item 3)

(1) The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by the applicant, Mr Jeremy Aslam and by some 12 other members of the public.

(2) The PROW Definition Officer introduced the report by saying that the County Council had received an application from Mr Jeremy Aslam in July 2015 to divert part of Public Footpath SR22 at Shoreham. Mr Aslam was the owner of The Garden House whose land the relevant section of the path ran through. The reason for the application was to provide greater security for his property.

(3) The PROW Definitions Officer moved on to describe the present route and proposed new route of Public Footpath SR22, its width of 2.0 metres (except for the area between points C and D which would be 1.2 metres. He added that the applicant would be required to improve surfacing on the diverted route to remove all unevenness caused by the current large pieces of masonry and tree roots and to provide a suitable depth compacted MOT Type 1.

(4) The PROW Definitions Officer then set out the County Council's agreed criteria that needed to be satisfied. These were:-

- (a) *The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981;*
- (b) *The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use;*
- (c) *The applicant must also agree to defray any compensation which may become payable as a result of the proposal; and*
- (d) *The definitive line should, where it is considered by the Council to be reasonably practicable be open, clear and safe to use.*

Nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

(5) The PROW Definitions Officer then set out the six criteria in the Highways Act 1980 that needed to be satisfied for the proposed diversion to be agreed. These were:-

- (a) *Whether it is expedient in the interests of the landowner that the right of way in question should be diverted;*
- (b) *Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;*
- (c) *Whether the right of way will not be substantially less convenient to the public;*
- (d) *The effect that the diversion would have on public enjoyment of the path as a whole;*
- (e) *The effect on other land served by the existing right of way; and*
- (f) *The effect that any new public right of way created by the Order would have on land over which the right is created and any land within it.*

(6) The PROW Definitions Officer considered the first criterion by saying that the landowner had applied to divert the public footpath in order to formalise the situation on the ground and for security in the garden of his property. Although the legal alignment of the route was currently obstructed, the application needed to be considered as though it was not. Diversion of the route away from the garden (it currently passed through the front lawn) would mean that no one would be have the legal right to walk on it without being challenged. The PROW Definitions Officer therefore concluded that the proposed diversion would be expedient in the interests of the landowner.

(7) The PROW Definitions Officer then said that the second criterion was met because the point of termination of the path was not changing and would therefore be substantially as convenient to the public.

(8) The PROW Definitions Officer moved on to consideration of the third criterion by saying that the proposed diversion would add approximately 39 metres to the total length of the path. This was a minimal increase in comparison to the total distance and was therefore unlikely to be a major inconvenience.

The same principle applied to the question of the direction of the route because the slight change of direction before returning to the previous straight line was unlikely to have a substantial effect on the users' onward journey.

(9) Comments had been received that the proposed diversion was much steeper than the definitive line. Some sections of the proposed diversion were indeed steeper than the definitive line, but the difference was relatively minimal. Furthermore, unaffected sections of the footpath, particularly through the woods to the north east were substantially steeper than the proposed diversion, which meant that this section of the footpath was unlikely to have a substantial effect on the overall convenience of the path to the public.

(10) Comments had also been received regarding the current uneven surface of the proposed diversion. Improvements would be required, and the use of Type 1 surfacing would increase the ease of access of the path.

(11) The PROW Definitions therefore concluded that, whilst the proposed diversion was slightly less convenient than the existing line, this was unlikely to have a substantial impact on the convenience to the public.

(12) The PROW Definitions Officer then turned to the question of the effect that the diversion would have on the public enjoyment of the path as a whole. He said that the section of SR22 which ran through the applicant's garden was relatively open with only two small sections of footpath running through trees and undergrowth. The proposed diversion ran along the outskirts of the garden with vegetation on either side, behind a shed where the path would slightly narrow, before running through a double fenced path along the bottom of the garden.

(13) Many comments received had mentioned that the proposed diversion was amongst the undergrowth and enclosed. However, parts of the whole path also ran through similar undergrowth and trees and were equally unpleasant to walk through.

(14) The PROW Definitions Officer then said that the existing alignment was one of the few sections which ran across open land and was therefore one of the most enjoyable parts of the lengthy path. By diverting this section to a new route enclosed by vegetation and trees, and beside a shed structure, the path would lose one of its most appealing sections, reducing the already limited number of open sections on the length of the path which would have a substantial effect on its enjoyment.

(15) The PROW Definitions Officer continues that consideration also needed to be given to the views available to the public. He said that the existing route gave users a substantial open view of the valley and wider countryside. This view was available from the majority of the legal alignment through the garden, and only began to diminish after leaving the garden and approaching the unaffected section of the path. This view also included the Shoreham Cross on the hills on the opposite side of the valley. This cross had historical and cultural importance. The rest of the footpath did not offer such substantial views of the cross. The proposed diversion did give a few glimpses of the view, but these were limited to

the point where it was barely available at all for most of section A-C-D except where the surrounding vegetation had been cut back to offer a small glimpse of the surrounding countryside. Overall, the unimpeded view was unique to this section of the footpath but was not consistently available from the proposed diversion. It was clear from the comments and objections received that enjoyment of the views was a key reason for using the route.

(16) The PROW Definitions Officer informed the Panel that one comment had been received indicating that its author felt uncomfortable about walking through someone's garden. He believed that, on balance the enjoyment of the view and the openness of the path outweighed any discomfort felt by members of the public in using a route across the garden. He therefore concluded that the proposed diversion would have a substantial negative impact on the enjoyment of the path.

(17) The PROW Definitions Officer briefly summarised his views on the remaining two criteria by saying that the proposed diversion would have no impact on any land served by the existing public right of way and that it was unlikely to have a major effect on the land on which the right was so created.

(18) The PROW Definitions Officer concluded his presentation by saying that the proposed diversion met the legal tests which needed to be applied by the County Council when considering whether to exercise its discretion to make an order, but failed to meet the confirmation test regarding the impact on public enjoyment. He therefore recommended that the Order should not be made.

(19) Mr Neil Powell addressed the Panel as an objector to the proposed diversion. His remarks included references to the details of a neighbourhood dispute, which are not included in these Minutes.

(20) Mr Powell said that he lived next door to the property subject to the proposed diversion. The definitive route was blocked in a number of places, making it impassable. The effect had been to divert walkers onto his land, and he believed that the proposed diversion was also on his land. He had made his particular concern known to the County Council but it had chosen to disregard it.

(21) Mr Powell said that the right of the public to walk the present route needed to be protected, if necessary by the erection of fencing and clearance of the path. As he understood it, no discussion of a diversion of the footpath could take place until the current path was usable.

(22) Mr Powell concluded his remarks by saying that it was both National and Local Planning Policy to preserve the openness of the land. This could only be achieved through better signage and clearance which would enable Footpath SR22 to become part of a well-maintained network that could be enjoyed by all. The objections came from people who knew the area intimately and who particularly value the wonderful view of Shoreham Cross, which had been cut in 1920 and gained even greater significance during the Second World War when Shoreham had been the most bombed village in the country. If the diversion

were to be made, it would destroy not only the footpath, but also the village of Shoreham and its heritage.

(23) The Principal Legal Orders Officer explained that Mr Powell's understanding of the legal position was incorrect in one aspect. There was nothing in KCC's Policies which would enable it to insist that a footpath had to be cleared before it could be diverted.

(24) Mrs Lesley Spence (Shoreham PC) informed the Panel that she was the Chair of the Parish Council's Amenities Committee. She had lived in Shoreham for 15 years. She described Shoreham as a special and healthy community which was aware of its heritage.

(25) Mrs Spence went on to say that most of Shoreham lay within an AONB and that walking along the various footpaths was not simply a matter of travelling from one point to another, it was a living part of local heritage. Public Rights of Way should not be diverted unless there was an exceptionally good reason for doing so.

(26) Mrs Spence then asked the Panel to bear in mind that the Landowner would have been aware if the route of the path at the time when he had purchased the property. She recalled that the path had taken the form of a mown track across a meadow and that the small signs on the route had been replaced by KCC signs in 2003. Complaints about obstruction had only arisen in 2007. She considered it essential to maintain the path along its current route.

(27) Mr Nicholas Umney (Chairman of the Footpaths Section of the Sevenoaks Society) said that his role was to help the Society foster and promote the enjoyment of walks in the Sevenoaks District.

(28) Mr Umney said that he supported the diversion which he considered to be preferable in all respects to the original line. He said he was supported in this view by both the Sevenoaks Society Committee and by a number of walkers with whom he had walked the area in question.

(29) Mr Umney explained that he was entirely in agreement with the report author in respect of five of the six criteria within Section 119 of the Highways Act 1980 and as set out in Section 27 of the Officer's report.

(30) Mr Umney turned to the PROW Definitions Officer's conclusion that the proposed diversion would have a substantial negative impact on the enjoyment of the path as a whole. He noted that the report stated that the views of the Shoreham Cross were better from the original route than from the diversion. He said that this was simply not the case.

(31) Mr Umney said that he had recently walked both the route and the diversion and paced out the amount of each route from which views of the cross and of Shoreham Valley could be obtained. The length of the diverted route from which such views could be obtained exceeded by four times the length from which such views could be obtained from the original line. The quality of the

views obtainable from the proposed diversion was also at least equal to those on the original line. There were, in addition, some spectacular views still to be had from undisputed sections of the path.

(32) Mr Umney then said that the view was only one aspect of enjoyment of the path. The negotiation of a steep mud bank between Point A and the garden boundary, together with the need to negotiate the garden boundary twice, seriously detracted from the enjoyment of the route when walking the original line. Furthermore, he personally felt uncomfortable and anxious when crossing someone else's garden close to their property. He knew that others shared these feelings. This could be related to anxiety over whether the walkers were going to encounter dogs loose or more generally because of the feeling that they were invading someone else's privacy.

(33) Mr Umney concluded by saying that the diversion was better for the landowner, both more convenient and enjoyable for the public and that there were no other reasonable grounds for refusing the diversion.

(34) Mr John Saynor (Shoreham Society) said that the role of his Society was to preserve the heritage of the village. The network of local Public Rights of Way was very special. The Shoreham Society believed that no existing footpath should be diverted without reason. The house was 24 metres the path and was situated above its level. The legal route passed through a pleasant meadow which the landowner had begun to use. He considered the concern about loose dogs to be unfounded as there would be ample opportunity for children to run away if they were approached by one. The Shoreham Society considered that the view from the main path was the most important reason that the proposed diversion should not be permitted.

(35) Mr Jeremy Aslan (Landowner and applicant) said that the diverted route had been established in 1987 following the obstruction of the original route during that year's hurricane. Mr David Munn, the Area PROW Officer had personally cleared the large tree from this route in 2015, which was the point at which he had first become aware of the official route which ran diagonally across his garden.

(36) Mr Aslan then said that the proposed diversion would afford greater privacy for his family. He had already satisfactorily answered the 4 questions posed by the County Council (*see para (4) above*) and he did not believe that public enjoyment of the whole path would be negatively affected. He asked the Panel to note that his view was supported by the Ramblers and the Sevenoaks Society. He also considered that the diversion would avoid the steep inclines that were a part of the original path. The diverted route was comfortable for walkers and had been used without complaint since 2007. He considered that the logic of the report was based simply on the proposed diversion rather than upon the entire path. He therefore asked the Panel to agree the proposed diversion.

(37) The Area PROW Officer informed the Panel that 2 trees had fallen across the original path in 1987, making it impassable. He had studied aerial

photographs from 1945 which showed no route. A mown route was visible in the 1990s which was still visible in 2005.

(38) The Chairman informed the meeting that the Local Member, Mr R W Gough had been unable to attend the meeting but that he had submitted his views as set out in paragraphs 7 to 10 of the report.

(39) During its ensuing discussion of the application, Members of the Panel commented that the diversion had clearly been in place since at least 1987 without any complaint; that the view of the Shoreham Cross was not substantially different to that of the original route; that the route of the diversion was more convenient to walkers in terms of ease of access; and that the diversion overcame the invasion of privacy experienced by the landowner as well as the uneasiness that walkers would inevitably feel when they walked intrusively through a private garden.

(40) On being put to the vote, the Panel unanimously agreed to exercise the County Council's power to make the Order.

(41) RESOLVED that for the reasons set out in (39) above, the applicant be informed that the County Council has agreed to exercise its power to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath SR22 at Shoreham

7. Urgent request to amend the application to register land at The Downs, Herne Bay as a Town or Village Green
(Item 4)

(1) The Principal Legal Orders Officer briefly explained that an application for The Downs at Herne Bay to be registered as a new Town or Village Green had been made in 2009. It had been considered by a Regulation Committee Member Panel in 2011. It had been resolved to refer the matter to a Public Inquiry in order to clarify the issues.

(2) The Public Inquiry had taken place over 8 days in 2011-12. The Inspector had issued her report in 2013. Post Inquiry submissions had been submitted by both the applicant and Canterbury CC. These submissions were still in the process of being resolved.

(3) The Principal Legal Definitions Officer then explained that there was one issue which required a fundamental amendment before the Public Inquiry could be recommenced. This related to the qualifying Locality or Neighbourhood within a Locality. The applicant had originally identified this as the former Urban District Council area of Herne Bay. This identification had recently been challenged by Canterbury CC on the grounds that there had been no such area during the 20-year qualifying period.

(4) The Principal Legal Definitions Officer then said that the current Inspector had advised that the best course of action was for the County Council to agree that the applicant could amend his application so that it relied on an alternative

claimed locality or neighbourhood within a locality. All parties agreed with this advice, and he was therefore recommending to the Panel that the applicant should be allowed to argue that the relevant locality was one of the following:-

- The locality of the urban area of Herne Bay;
- The locality of the electoral ward of belting;
- Herne Bay as a neighbourhood within the locality of Canterbury District; or
- The locality of Reculver.

(5) The Panel unanimously agreed to the Principal Legal Orders Officer's request.

(6) RESOLVED that the applicant be given permission to amend the application to rely on the alternative localities set out in paragraph (5) above, with the Inspector's recommendation to the Regulation Authority thereon being included in her report.