

Licensing and Regulatory Committee



Minutes of a meeting of the **Licensing and Regulatory Committee** held on **Tuesday 29 January 2019 at 5.00 pm** at the **Conference Chamber West, West Suffolk House, Western Way, Bury St Edmunds IP33 3YU**

Present: **Councillors**

Chairman

Vice Chairman in the chair Clive Springett

John Burns
Mike Chester

Susan Glossop

Substitutes attending:

David Nettleton Patricia Warby

By Invitation:

Sharon Berry, Communities Officer (Public Rights of Way), Babergh and Mid-Suffolk District Council

103. **Apologies for Absence**

Apologies for absence were received from Councillors Sarah Broughton, Mary Evans, Diane Hind, Beccy Hopfensperger, Margaret Marks and Richard Rout.

Councillors Wayne Hailstone and Peter Thompson were also unable to attend.

104. **Substitutes**

The following substitutions were declared:

Councillor David Nettleton for Councillor Diane Hind
Councillor Patricia Warby for Councillor Sarah Broughton.

105. **Public Participation**

Mr Peter Newlands, being the objector to the proposed diversion addressed the Committee on Item 5 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. He stated he used the footpath several times a year when he visited Bury St Edmunds, which he had done for about 30 years. He explained the applicants tried to contact him several times by telephone before the Committee meeting notice was published as the objector to their proposal. Failing to contact me, they then sent a letter, which contained the following:

"If the present walked route became the definitive route, we would erect a high fence along both sides of the route to form a corridor".

He wished to confirm to the Committee his continued objection to the proposed changes. He hoped the Committee had before it, in addition to the official objection, a copy of the subsequent email exchanges between Sharon Berry, Communities Officer (Public Rights of Way Department) and himself between 25 January and 24 April 2016. It questioned the accuracy of the line of the path, as depicted on the Definitive Map, when set against the current line on the ground, which appeared to follow the actual historic line of the path as recorded on a Suffolk County Council (SCC) map "Rougham Public Footpath 7 OS, second edition County Series Map Circa 1904". It made the Definitive Map line very questionable, and showed that the footpath had never been routed along the western end of the intended change, which would take the path along the Rushbrook Lake outflow sluice. Much of the path had been where it currently was for more than 100 years. These email correspondence included Mary George, Senior Definitive Map Officer, Rights of Way and Access Team at SCC. At no time was it suggested to him that this subsequent substantive research and correspondence would be omitted from any possible future hearing. He stressed that any decision by the Committee must take into account that SCC were not happy with the accuracy of the Definitive Map line of the footpath, given the photographic evidence and comprehensive review supplied by himself to both SCC and St Edmundsbury Borough Council on 23 February 2016, as part of that email exchange. Following a meeting with Mary George in February 2016, it was suggested that SCC would need to take out a DMMO, effectively against themselves to correct the Definitive Map line. Therefore, having provided the evidence the matter was left because from the perspective of SCC, such a move to a Definitive Map Modification Order (DMMO) would be costly, and that the importance was of a low priority to them.

Mr John Drewienkiewicz, being the Footpaths Warden for Rougham and Rushbrooke addressed the Committee on Item 5 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. He informed members that he had been the Footpath Warden since 2013. He explained that in 2014 action was needed because the previous owner was acting in defiance of the right of way. In 2015, the current owners started the current application process, who in his experience had behaved responsibly. At the time they consulted with Patrick Scrivens, Public Rights of Way Officer at SCC, and it was felt the proposal was reasonable and would not have a major impact on the footpath. Discussions were also with the Parish Council and the proposal was deemed reasonable. Since 2015, no one had approached him to make any comments on footpath 7. He remained of the view that no harm would be done to the rights of way /area by this minor adjustment. It was very small tweak seen on the definitive 1:10,000 map where a 1mm line was 10 metres on the ground. It would be difficult to work out the advantages of moving the path. He felt the money would be better spent on changing the stiles to kissing gates and improving disabled access.

Mrs Davina Strong, being the applicant for the proposed diversion addressed the Committee on Item 5 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. She provided

members with the background to the application, and explained that the definitive map was not the walked route. With the agreement from the Chairman of the Committee, she circulated photographs on setting out the proposed changes to the footpath. Her grandchildren and family visited every day and their safety, particularly the grandchildren was paramount. She stated that the new defined path would encourage walkers to put their dogs on their leads. Notice had been put up, which walkers ignored. Finally, she explained that it would be a relief to have this issues sorted.

Mr Glen Strong, being the applicant for the proposed diversion addressed the Committee on Item 5 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. He informed members that the proposal before the Committee had been drawn up with signification help from St Edmundsbury Borough Council, which met all the tests of the Highways Act, and neighbours. He made reference to photographs circulated by Mrs Strong. He explained that the proposals would resolve the Definitive Map issue without huge costs to SCC undertaking the DMMO and would leave one legal route. It was supported by the Parish Council, Borough Council member and no other body, including The Ramblers Association had objected. The only objection was from Mr Newlands, whose views were contradictory and not those of the wider public. He felt many walkers would prefer the change. Views of the lake and valley would not be impaired. However, removing hedges would put Water Cottage in full view. Land to west of Water Cottage was not boggy and the route did not concern SCC. My wife and I regularly use the footpath, and we feel the proposal would only put an additional walking time of roughly 20 seconds onto a person's walk. Regarding the Order it would cost £800, of which we are prepared to contribute up to £500 to the £300 from SCC, for St Edmundsbury Borough Council to make the Order, meaning there should be no cost to the Council. However, it went to the Secretary of State, we would be willing to contribute up to £1,000 in making written representation.

Finally, he wished to thank SCC, St Edmundsbury Borough Council and Sharon Berry for all their help, and hoped Mr Newlands would withdraw his objection.

The Chairman thanked the public speakers for their attendance and contribution to the meeting.

106. **Minutes**

The minutes of the meetings held on 3 July 2018 and 4 December 2018 were unanimously accepted by the Committee as accurate records and were signed by the Vice-Chairman in the chair.

107. **Highways Act 1980 Section 119 - Application to Divert Part of Rougham Public Footpath No 7**

Prior to receiving the report, the Vice-Chairman in the Chair (Chairman) outlined the procedure for the conduct of this particular Licensing and Regulatory Committee meeting.

The Committee then received Report No: LIC/SE/19/001, presented by Sharon Berry, Communities Officer (Public Rights of Way) from Babergh and Mid-Suffolk District Council, which sought authority to make an Order to divert part of Rougham Public Footpath No: 7, under the provisions of Section 119 of the Highways Act 1980.

Attached to the report were a number of appendices, namely:

- Appendix 1 – Proposal map in light of an objection from a local resident
- Appendix 2 – Location map and images
- Appendix 3 – Applicants statement of reasons for requesting the Order
- Appendix 4 – Letter of objection dated 21 October 2015.

Background

The Borough Council had received an application to divert part of Rougham Public Footpath No: 7, which crossed the garden of a property known as "Water Cottage". The application was submitted by the owners of Water Cottage on the grounds that it was in their interests to divert the footpath for reasons of privacy and security, (Appendix 3).

The proposal included a minor diversion of a section of Footpath No: 7 which crossed a meadow to the north-east of Water Cottage. The proposed route through the meadow closely reflected the route that members of the public were currently walking, and the owners of the meadow had consented to the diversion proposal.

The existing definitive (legally recorded) route of the footpath was not currently available. It was obstructed by an established boundary hedge at point C on the map, a post and wire fence at point B and dense vegetation south of point B. There was no bridge across the ditch at point B.

Walkers had been using an "unofficial route" for many years and currently access the applicants land from the adjacent meadow through a pedestrian gate at point D. The route across the garden of Water Cottage was not clearly defined. Walkers currently exit the applicant's property via a stile at point G. The stile was not on the definitive line of the footpath.

The existing footpath had no legally recorded width. The proposed footpath would be 2 metres width. The applicants were proposing to remove the laurel hedge between points G – F, and the conifer hedge between points D – E to achieve the width.

The report also included information on the legislation; consideration of the tests (expediency in the interests of the owners of the land; termination points and convenience of the public); consultations; the objection and comments on the objection; determination of opposed orders; costs and conclusion.

It was reported that the purpose of the public path order was to allow changes to be made to the rights of way network to suit evolving needs and to ensure that, in making those changes, opposing interests were not disproportionately affected. In this case there was a fine balance between

public and private interests. The tests for an order under Section 119 of the Highways Act 1980 could be met although the objection and associated costs arising from the matter being referred to the Secretary of State for the Environment, Food and Rural Affairs, should be noted by the Committee.

In summing up Sharon Berry explained that the Committee needed to consider the balance between the owner and the public.

The Chairman then invited Councillor Sara Mildmay-White, Ward Member for Rougham to address the Committee in respect of this item. She thanked the Committee for allowing her to speak. She informed the Committee that she had lived in Rougham for 40 years and had walked the footpath for as many years. She explained that she had never passed more than one or two people in any one day using the footpath, which was a very attractive route to walk. She felt that there would be some unintended consequences if the footpath was diverted, mainly being the cost to the Parish Council and the public purse, if the Order was granted. She explained that the previous owners of Water Cottage had moved the hedge, and questioned what would stop any other owner putting in another hedge. Finally, she summed up by stating that it was up to the Committee to make the decision.

The Committee then considered in detail the application for the diversion of the footpath.

Members asked questions of officers, in particular, Sharon Berry

In response to a question raised regarding fencing, members were informed that there was nothing stopping the applicants fencing the definitive route either side, so long as they left the correct width for the path, which was not uncommon in stopping dogs from wondering.

In response to a question raised regarding how many stiles and kissing gates there were on the footpath, officers advised that there were stiles on the existing route at Point G then to the west on the map. There were gates at Point D where the footpath met the U8018 road. There were two stiles and a kissing gate in the vicinity. Regarding the cost of a stile or kissing gate, officers explained they did not have these to hand, but could look into this.

In response to a question raised regarding the community benefit and the benefit to the owner in diverting the footpath, officers explained that the Parish Council, Borough Council; the Ramblers and Open Space Society were all consulted, and the only objection received was from Mr Newlands.

Councillor John Burns informed the Committee he had walked part of the footpath before attending the meeting, and questioned the length of the diversion. In response officers informed members it would be approximately 50 – 60 metres.

Members asked questions of the objector, Mr Newlands

In response to a question raised regarding why he was the only objector to the footpath diversion, Mr Newlands informed members that he did not know

why no one else had objected to the proposal. Notices for the required change had been put up, and I lodged my objection accordingly.

Members asked questions of the applicant, Mr Strong

In responses to a question raised regarding the suggestion of fencing would be of interest, Mr Strong informed members that he could install some dog fencing up across the grass, but this would mean it would make it difficult to cut the grass. His main concern was the safety of his grandchildren.

In response to a question raised regarding how many walkers used the footpath, Mr Strong informed members that it varied from the time of the year. Some weekends there could be up to 30 walkers.

Councillor Mike Chester informed the Committee he had also walked part of the footpath prior to the meeting, and questioned how the proposed new footpath would be maintained. Mr Strong informed members that he would cut down the conifers and use the bark to mark out the footpath, which he would maintain.

In response to a question raised regarding public liability, Mr Strong stated that any liability was with SCC. He felt something had to be done as the route walked was not the legal route, which could cost SCC anywhere between £3k - £10k.

No questions were put to the Footpaths Warden or the Ward Member for Rougham by the Committee.

Prior to the Committee adjourning its meeting, the Chairman asked the objector if he wished to withdraw his objection, to which he stated he had no intention of withdrawing his objection.

At 5.45pm the Committee adjourned the meeting, and all those present other than the members of the Committee, the Lawyer (Licensing / Regulatory) and the Democratic Services Officer (Scrutiny) would be asked to leave the meeting to allow the Committee to give further consideration to the application to divert the public footpath.

At 6.10pm all parties were recalled back to the meeting, where the Vice-Chairman in the chair advised on the Committee's decision.

The Business Partner (Litigation / Licensing) informed all those present that the Committee had debated in depth the application before it.

Councillor Susan Glossop then proposed that the decision on the application to make an Order be **deferred**, to enable a site visit to be arranged for Members and Sub-substitute members of the Licensing and Regulatory Committee. This was duly seconded by Councillor David Nettleton, and with the vote being unanimous, it was:

RESOLVED:

**That the application to make an Order to divert part of
Rougham Public Footpath No: 7, be DEFERRED in order to allow
officers to arrange a site visit for members of the Licensing and
Regulatory Committee.**

The Meeting concluded at 6.11 pm

Signed by:

Chairman
