

Extraordinary Licensing and Regulatory Committee



St Edmundsbury
BOROUGH COUNCIL

Minutes of a meeting of the **Extraordinary Licensing and Regulatory Committee** held on **Thursday 28 March 2019** at **5.00 pm** in **Conference Chamber West, West Suffolk House**, Western Way, Bury St Edmunds IP33 3YU

Present:

Councillors

Vice Chairman in the chair Clive Springett

John Burns
Mike Chester
Susan Glossop

Margaret Marks
Peter Thompson

Substitutes attending:

Ian Houlder
David Nettleton

Patricia Warby

By Invitation:

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

112. Apologies for Absence

Apologies for absence were received from Councillors Sarah Broughton, Wayne Hailstone and Diane Hind.

Councillors Mary Evans, Beccy Hopfensperger and Richard Rout were also unable to attend.

113. Substitutes

The following substitutions were declared:

Councillor Ian Houlder for Councillor Sarah Broughton.
Councillor David Nettleton for Councillor Diane Hind.
Councillor Patricia Warby for Councillor Wayne Hailstone.

114. Public Participation

[Councillor Peter Thompson arrived at 5.04pm during the consideration of this item].

Mr Peter Newlands, being the objector to the proposed diversion addressed the Committee on Item 4 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. Following his presentation to the Committee on 29 January 2019, he trusted the Committee’s path inspection team enjoyed the exquisite public amenity that was the current position of this Right of Way across the Water Cottage garden. He felt it would be a massive public disservice should the Committee decide to agree to place the line of the path behind a hedge, as proposed, as this would hide the view away from the public enjoyment, which it had for more than 100 years, if not more. He then provided the following additional information:

Looking from the West to East of Rougham Footpath No: 7, from point H on the map to the second stile, the tree lined path was obvious. These path lining trees were between 100 and 200 years old. The path line continued with a beech hedge on the left to an indicator post shown in application photograph number 2. Before the previous Water Cottage owners (who set the path diversion ball rolling after they took residence in late 2011) moved the post, depicted in photograph 1 to its current location. If you had stood by the post in photograph 2, the next post in line, photograph 1, was clearly visible to the right of the tree in front of you. Currently the post was hidden by the tree trunk following its repositioning from 4 to 5 metres nearer to Water Cottage and south of the cottage driveway. Walking the line from the photograph 2 post to photograph 1 post’s old position, described above, puts you on a trajectory through the middle of the stable yard, along the join of old and new concrete, to cross the ditch (map point D) along the eastern railway sleeper of the current ditch crossing. This was the ditch crossing point before 2012 and was always barrier free.

In 2011, following a report I submitted, SCC replaced the old crossing sleepers as they were too dangerous to use. The new sleepers installed were redeployed in 2012 by the previous owners of Water Cottage in their construction of the ditch crossing as it was today. I alerted the Rights of Way department to the alterations made. They insisted that a new, but dangerously designed stile was removed and settled for the current walkers’ gate in its place, but unfortunately, denied my request to insist on moving the line of the path back to where it had been for at least my previous 25 years of using it.

The current owners of Water Cottage had inherited a Rights of Way office condoned non-approved alteration that the Committee might think was the “original” line.

The report before you suggests that the use of the path was purely for recreational use. However, not for me it’s not as I use it as a traveller uses the A14. Therefore my objection to the application stands.

Councillor Karen Soons, Suffolk County Councillor for Thingoe South Ward, which included the parish of Rougham, addressed the Committee on Item 4 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. She informed members that she had spoken with Rougham Parish Council and was also speaking on their behalf. Rougham Parish Council and herself were concerned about spending

taxpayers money to divert the footpath. If there was a way to avoid using taxpayers money to achieve this then she believed the Parish Council and herself would be supportive of the diversion.

Mrs Davina Strong, being the applicant for the proposed diversion addressed the Committee on Item 4 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. She was sorry she was not at home when the site visit took place, but appreciated members taking the time to visit. She stressed she and her husband were trying to resolve a problem inherited when it was brought to their attention by Patrick Scrivens that St Edmundsbury Borough Council and Suffolk County Council (SCC) had way-marked the walked route when it was not actually the legal, definitive route. A solution had to be found and the status quo could not remain. The current proposal, formulated with Sharon Berry and SCC officers met the criteria set out in the Highways Act and would solve the problem. It would also give us, as owners, greater security. The problem was if the Order failed to be made, then SCC would have to undertake a costly (£3,000 - £10,000) Definitive Map Modification Order (DMMO) to align the definitive route with the walked route. SCC were aware a mistake had been made and were prepared to contribute financially towards the proposed solution. There was some misconception about the cost, but the present proposal, even if objected to, would be minimal in comparison to the cost of a DMMO.

Finally, this was a very small diversion from the walked path. The route was used for pleasure. Nobody objects to an extra few seconds on a walk. It would be clearly defined, easier underfoot, avoiding walkers feeling intrusive or embarrassed. It would actually enhance public enjoyment of the path as a whole. It also offered greater safety for our grandchildren and would allow us to shepherd walker's dogs more easily.

Mr Glen Strong, being the applicant for the proposed diversion addressed the Committee on Item 4 on the agenda; Highways Act 1980 Section 119 – Application to Divert Part of Rougham Public Footpath No: 7. He was grateful to the Councillors who were able to find time to visit Water Cottage. Throughout this long, highly stressful process we had nothing but support from members of the community, apart from Mr Newlands objections. Without his objections, which had been contradictory over the years, the whole matter would have been agreed a long time ago, incurring minimal costs. We had agreed to contribute up to £500 towards the cost of making the Order along with SCC's £300 this should cost St Edmundsbury Borough Council nothing. We had discussed our case with the Rights of Way Section of the Planning Inspectorate in Bristol who would deal with any objection submitted to the Secretary of State and it was worth noting that:

- Firstly, the case would be dealt with by written representations only, which was the lowest level possible.
- Secondly, the Council would just have to submit paperwork already produced.
- Finally, the Planning Inspectorate would review the material, visit the site and make a decision. There would be no charge by the Planning Inspectorate for any of this.

We had also agreed to fund up to £1,000 which we were led to believe would fully cover the costs, if an objection was made to the Secretary of State. My wife and I cannot see why there should be a problem with such a small change to the path, that also sorts out all definitive map issues. We fail to understand why this could be derailed by one person when the community at large was so supportive. We both appreciate your time with this matter.

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

115. 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 and subsequent adjournment.

Members were reminded that the Licensing and Regulatory Committee considered this application at its meeting held on 29 January 2019, and resolved that the application be deferred to allow officers to arrange a site visit for members of the Committee.

A site visit was undertaken on 11 March 2019, and attended by Councillors Mike Chester, David Nettleton, Clive Springett and Patricia Warby. Also in attendance were Councillor Karen Soons (Suffolk County Councillor); the Public Rights of Way Manager (Suffolk County Council); the Communities Officer (Public Rights of Way); and the Highways Officer and Service Manager (Property) from St Edmundsbury Borough Council.

The Committee received Report No: LIC/SE/19/003, 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.

The report included information on the background; legislation; consideration of tests; consultations; the objection and comments on the objection; determination of opposed orders; costs and conclusion.

There had been no material change to the issues raised in Report No: LIC/SE/19/001, since members last considered this item at its meeting held on 29 January 2019.

As previously reported, 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 response to concerns raised by Mr Newlands regarding the route being wrongly signed, Sharon Berry explained that this had been acknowledged in the report (LIC/SE/19/003). SCC could resign the route, but had chosen not to, until the outcome of this application was known.

In response to a statement made by Mr Strong, she was surprised that any objection submitted to the Secretary of State would only be considered by written representation, as any objection could also be considered by a local enquiry or by the Planning Inspectorate. She explained that written representations would be an involved, slow process.

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

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 what the cost of an appeal to the council would be, members were informed that it would depend on how the case was heard. It could cost up to £5,000 for a public enquiry. It was difficult to quantify.

In response to a question raised regarding who owned the shed located at point B on the map, members were informed that Mr Strong owned the shed.

In response to a question raised regarding not being able to walk the official route at point B on the map, and whether SCC could apply to change the route from D to G, members were informed that there would be no benefit to SCC. SCC had their own powers under Section 119. They could divert the route, but would have to go through the same consultation process.

In response to a question raised regarding whether SCC could ask for the shed to be moved, located at point B on the map, members were informed that SCC had the powers to open up the legally recorded route.

In response to a question raised regarding the difficulty of walking down the route marked G to F on the map which was overgrown, members were informed that the hedge would need to be cut down.

In response to a question raised regarding the failings of SCC, members were informed the Committee had to make its decision on the solid bold line marked on the map. SCC should have had the route marked correctly.

Members asked questions of the objector, Mr Peter Newlands

In response to a question raised concerning the tree line between points A and D on the Map, Mr Newlands informed members that these trees were not under threat.

Members asked questions of Councillor Karen Soons (against)

In response to a question raised regarding what SCC thought was a large amount of taxpayers money to divert the footpath, Councillor Soons explained, she personally felt a large amount would be over £1,000.

Members asked questions of the applicants, Mr Glen and Mrs Davina Strong

In response to a question raised regarding the proposed path from Points A to D, E, F to G, members were informed the hedge from F to G would be removed and the path would then be defined by logs from D, E, F and G by fallen down laurel trees.

In response to questions raised regarding how long they had lived at the property, and whether land searches brought up the footpath, members were informed they had lived at the Water Cottage for five years. Mr Strong explained that they had been misled by the previous owners and the estate agent. Mr and Mrs Strong were not aware of the two footpaths, and the route being walked was not the definitive route. The previous owner advised that the application to move the footpath was nearly completed. Furthermore, the solicitor had not picked up on the issue. Mr and Mrs Strong stated that their preference would be to have the footpath go around the edge of their garden. If the application was not approved, then we would have to submit a DMMO to move the footpath.

In response to a question raised regarding what would happen if people walked the footpath from D to G, members were informed that the footpath through the garden would be clearly marked out with logs and bark chippings.

Once members had completed their questioning, at 5.44pm 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 Chairman informed all those present that the Committee had debated in depth the application before it, and considered both the applicants and objectors comments.

Councillor Chester then stated that having considered the interests of the owners of the land crossed by the public right of way and that of the public, it was proposed to **reject** the application for this diversion. This was duly seconded by Councillor David Nettleton, and with the vote being 5 for, 3 against and 1 abstention, it was:

RESOLVED:

**That the application to make an Order to divert part of
Rougham Public Footpath No: 7, be REFUSED.**

The Meeting concluded at 6.13pm

This was the last meeting of the Licensing and Regulatory Committee before it's dissolution on 6 May 2019. As a result, the minutes of the meeting remain as drafted following the meeting and cannot be confirmed by the Licensing and Regulatory Committee and signed by the Chair. This is consistent with all other dissolved committees and bodies.

Signed by:

Chairman
