

CITY AND COUNTY OF SWANSEA

MINUTES OF THE RIGHTS OF WAY AND COMMONS SUB-COMMITTEE

HELD AT THE CIVIC CENTRE, SWANSEA ON WEDNESDAY 8 OCTOBER
2014 AT 2.00 P.M.

PRESENT: Councillor J A Raynor (Chair) presided

Councillor(s):

A M Cook
K E Marsh

Councillor(s):

P M Meara
R V Smith

Councillor(s):

L J Tyler-Lloyd
T M White

ALSO PRESENT:

Councillor C M R W D Thomas - Newton Ward Member

Officers:

S Richards - Principal Lawyer
M Workman - Rights of Way Officer
J Parkhouse - Democratic Services Officer

21. **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors J E C Harris, Y V Jardine, J Newbury and D W W Thomas.

22. **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS**

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

23. **MINUTES**

RESOLVED that the Minutes of the meeting of the Rights of Way and Commons Sub-Committee held on 13 August 2014 be accepted as a correct record.

The Sub-Committee were updated on the following:

Minute No. 15 - Extinguish Right of Way - Path No. 88 - Community of Llangyfelach

It was reported that the Order could be referred to the Planning Inspectorate who could consider the request to sever the Order. However, that does not mean the request will be successful. The Chair requested that a written report be provided at the next scheduled meeting.

24. **ALLEGED PUBLIC FOOTPATH FROM BIRCHGROVE ROAD TO SMITH'S ROAD - COMMUNITY OF BIRCHGROVE**

The Head of Legal, Democratic Services and Procurement presented a report to determine the application in accordance with the provisions of the Wildlife and Countryside Act 1981.

It was outlined that on 5 December 2013 an application was made under the provisions of the Wildlife and Countryside Act 1981 to the Council to recognise the path shown on the attached plan provided at Appendix 1 as a public right of way on foot. The claim had been supported by 10 individuals who allege an average of 40 years use of the path. The usual means by which an application is determined is to assess whether the way had been dedicated under Section 31 of the Highways Act 1980, that is if there had been a minimum period of 20 years uninterrupted use from the date the alleged existence of the path was called into question. Appendix 2 of the report provided the relevant extract. The date was taken either from the occasion the path was blocked or warnings given to the public that no such right existed or from the date of the application.

The path comprises tarmac for its central portion being 2.5 metres wide and flanked by two grass verges which increase the width of the lane to 6 metres. Five bollards had been placed at its junction with Birchgrove Road and three at its junction with Smith's Road. The path is included as a publicly maintained highway on the Council's Plan of Adopted Streets. Section 36(6) of the Highways Act 1980 requires all authorities in England and Wales to provide and keep up to date a list within its area of such highways which are maintained by them and Appendix 3 provided further information on what the list should include. The Sub-Committee was also provided with the history of the path.

It was concluded that the evidence shows that the Council has adopted the entire width of the path between point A and B and so given its physical character it must have a minimum status of footpath. It is possible to be accessible by equestrians but there is no evidence of such use. The application had specified the narrower central section which is tarmacked and subject to the formal adoption procedure under Section 228 of the Highways Act 1980. As such, that narrower section could be made the subject of a Legal Event Modification Order so that it could be added to the Definitive Map and Statement. Given that it would be made on the basis that it had already been recorded as a public highway, there will be no opportunity for the public to take issue with that and so the Order would not have to be advertised.

RESOLVED that a Legal Event Modification Order be made to add the path shown A-B into the Definitive Map and Statement reflecting the 2.5 metre wide length of footpath.

25. **APPLICATION TO REGISTER LAND KNOWN AS CASTLE ACRE GREEN, NORTON, SWANSEA AS A TOWN OR VILLAGE GREEN - APPLICATION NO. 2731(S)**

The Head of Legal, Democratic Services and Procurement presented a report to inform the Sub-Committee of the proposal to hold a non-statutory inquiry.

It was outlined that the Council had received an application made by Dr Robert Leek on behalf of the Castle Acre Village Green Action Group under Section 15(3) of the Commons Act 1996 in respect of land known locally as Castle Acre Green, Norton, Swansea. The application sought to register the land as a town or village green and a plan of the land was provided at Appendix 1.

It was added that the land in question is not registered at HM Land Registry. However, it had been confirmed by the Council that the land had been maintained by its Parks Services Department since the 1970s and the Council had made an objection to the application. The Head of Legal, Democratic Services and Procurement had used the delegated authority granted by the Sub-Committee on 15 February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application. Counsel had advised that there are issues of fact and law in dispute and it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the application and the objectors can be heard and tested and the issues examined and argued. Once the inquiry had taken place, Counsel will issue a report with recommendations for the Sub-Committee to consider.

RESOLVED that the contents of the report be noted.

26. **APPLICATION TO REGISTER LAND AT PICKET MEAD, NEWTON, SWANSEA AS A TOWN OR VILLAGE GREEN - APPLICATION NO. 2730(S)**

The Head of Legal, Democratic Services and Procurement presented a report to inform the Sub-Committee of the proposal to hold a non-statutory inquiry.

Minutes of the Rights of Way and Commons Sub-Committee
(08.10.2014) Cont'd

It was outlined that the Council had received an application by Mr Simon Arthur under Section 15(2) of the Commons Act 2006 in respect of land at Picket Mead, Newton, Swansea. The application sought to register land as a town or village green and a plan of the land was provided at Appendix 1.

It was added that the land in question is owned by the Council and the application site forms part of common land unit CL 4(S). It is of note that the Council in its capacity as landowner had not made an objection to the application. However, an objection has been received from Carrington Moore Estates who own Picket Mead House and have the benefit of an easement over the land. The Head of Legal, Democratic Services and Procurement had used the delegated authority granted by the Sub-Committee on 15 February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application. Counsel had advised that there are issues of fact and law in dispute and it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the applicant and the objectors can be heard and tested and the issues examined. Once the inquiry has taken place, Counsel will issue a report with recommendations for the Sub-Committee to consider.

RESOLVED that the contents of the report be noted.

27. **DATE OF NEXT MEETING**

NOTED that the next meeting be held at 2.00 p.m. on Wednesday 3 December 2014.

The meeting ended at 2.17 p.m.

CHAIR