

AT A MEETING of the REGULATORY COMMITTEE of HAMPSHIRE COUNTY
COUNCIL held in the Council Chamber at The Castle, Winchester on
Wednesday 20 November 2013

PRESENT:

Chairman:

p Councillor R.C. McIntosh

Vice-Chairman:

p Councillor G Hockley

Councillors:

p C Carter
p M Cooper
p J Frankum
p C Greenwood
p K House
p R Humby
p R Huxstep

p P Latham
a F Pearce
p R Price
p T Rolt
p D Simpson
a J West
a S Wheale

Substitute Members:

p Councillor A Joy (Substitute Member for Councillor Pearce)

***The order of the agenda at this meeting was as follows:
Items 1-9***

47. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Frank Pearce, John West and Sharyn Wheale.

48. DISCLOSURES OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Non-Pecuniary Interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

Councillor Price declared a non-pecuniary interest in Item 53 (Fareham Footpath 3a), as a member of Fareham Borough Council, one of the landowners of part of the footpath. Councillor Price spoke and voted thereon.

49. MINUTES

Councillor Joy explained that he had attended the previous meeting as the substitute member for Councillor Humby, and not Councillor McIntosh as recorded. He also highlighted that the failed suggested amendment on page 6 (Kingsclere) was to reduce the hours of operation from 8.00am to 1.00pm on Saturdays, and not 2.00pm as recorded.

Subject to the above, the minutes of the meeting held on 23 October 2013 were agreed as a correct record and signed by the Chairman.

50. CHAIRMAN'S ANNOUNCEMENTS

No announcements were made.

51. DEPUTATIONS

The Committee were advised that seven deputations had been received for this meeting and the deputation process was explained.

52. ARMSTRONG ROAD, DANESHILL, BASINGSTOKE RG24 8NU (APPLICATION NO. 13/01239/CMA) (SITE REF: BA161)

The Chairman agreed that this item would be considered at the start of the meeting to enable one of the deputations (Mr Sandbrook) to attend a funeral later that day.

The Committee considered a report from the Director of Economy, Transport and Environment (Item 9 in the minute book) regarding a retrospective application for waste transfer and recycling, waste picking station, parking of lorries combined with the existing biomass facility and associated operations granted under planning permission number BDB/72250.

The officer explained that the application sought retrospective approval for the waste picking station, which the applicant confirmed had been operational on the site, without consent, from 2009. It also sought to regularise and clarify existing waste transfer and recycling operations taking place at the site, and consolidate the biomass and all existing permissions through this application. In addition, the application sought permission for the parking of eight heavy goods vehicles (HGVs) overnight at the site. These HGVs were associated with the applicant's nearby Wade Road site, rather than the Armstrong Road site.

The officer suggested an amendment to conditions changing the word 'vehicles' to eight 'HGVs' that could access and leave the site between the hours of 0500 and 0700 hours on any day. This was later agreed by the Committee.

Representations had been received which expressed concerns regarding noise and dust from the site, the number of retrospective applications submitted and that the site was too small to accommodate the proposal. In addition, concerns had been raised regarding a breach of the lorry routing permission set out in the previous application. CCTV footage from the site had confirmed that this condition had been breached for a period, but after a change of working practices, the applicant was now in compliance with this condition.

The officer explained that some of the representations received to the current application, raised concerns regarding the operation of the biomass facility. However, the Committee noted that this facility had been granted permission in July 2010, and its conditions had been carried forward in the current application for completeness and to consolidate the two applications. For information, it was noted that the applicant was giving consideration to re-starting the biomass facility, which had been dormant since approximately April 2013.

The Committee also noted that, whilst the application was very close to the boundary, it fell within the Division of Basingstoke North (Councillor Frankum) and not Loddon (Councillor Still), as set out in the Report. The officer reported the comments of Councillor Still, which had been received after the publication of the report. In summary, Councillor Still had supported the view of the parish council, raised concerns about the number of retrospective applications on the site and recommended that a liaison panel be created to improve communications between the applicant and the local community.

At the conclusion of her presentation, the officer explained that in considering the highway safety and the HGV routing plan, no objection had been received from the Highway Authority. Furthermore, the application was a sustainable waste management development, which complied with the new Minerals and Waste Plan, and there had been no objection from Environmental Health. Therefore the application was recommended for approval, subject to the conditions set out in the report

The Committee received a deputation from David Sandbrook, on behalf of the applicant, who stated that he concurred with the presentation given by the officer and the content of the committee report. In summary, Members noted the applicant's offer to establish, on a pilot basis, a liaison panel relating to the Armstrong Road site only. It was noted that this panel would be independently chaired, a role that could be taken by a local county councillor.

The Committee noted that whilst Councillor Keith Nuttall (Old Basing and Lychpit Parish Council) had registered to speak, he had arrived late was therefore unable to make his deputation. However, the officer reiterated to the Committee the Parish Council's written submission as summarised in the report which highlighted the retrospective nature of the application, breaches of previous conditions, the Parish Council's view that it had an unacceptable impact on local amenity (in relation to noise, vermin and highways), that the site was too small to accommodate the HGVs.

In response to Members' questions:

- Current legislation and guidance regarding retrospective applications was explained, including the inability of the Planning Authority to impose punitive fines relating to breaches of conditions.
- Members' attention was drawn to the proposed hours of working and access conditions 5 and 6 and it was confirmed that the proposed conditions would only allow no more than eight HGV's entering or leaving the site between 0500 and 0700 hrs.

At the conclusion of debate, the Committee agreed that the application be approved for the reasons, and subject to the conditions (as amended above), as set out in the report. Furthermore, the Committee agreed that the permission should include an informative regarding the creation of the Liaison Panel.

RESOLVED:

That planning permission for retrospective application for waste transfer and recycling, and waste picking station; and, parking of lorries, combined with the existing biomass facility and associated operations granted under planning permission number (BDB/72250) at Armstrong Road, Daneshill, Basingstoke RG24 8NU. (Application No 13/01239/CMA) be granted subject to the conditions listed in Integral Appendix B and as amended above.)

Voting:

In favour: 14

Against: 0

Abstained: 0

53. FAREHAM FOOTPATH 3A

The Committee considered a report from the Director of Culture, Communities and Business Services (Item 6 in the minute book) regarding an application made under section 53 (3) of the Wildlife and Countryside Act 1981, to record public restricted byway rights over Fareham Footpath 3a.

The officer explained that the applicant had submitted that higher rights (to permit cycling) had been acquired on the footpath. The Committee therefore had to assess the application against the tests set out in the Highways Act 1980 (section 31). In summary, this gave a presumption to dedicate higher rights (cycling in this instance) if there was evidence that the land had been used by the higher rights (cycling) for 20 years and there had been no intention to not dedicate those rights.

The Council had received an unusually high number of user evidence forms (232), which underlined that the path has been used by cyclists for a long period.

However, in subsequent interviews, most cyclists agreed that they had seen various signs which prohibited cycling and some had been physically challenged by walkers and landowners.

The path ran close to the eastern bank of the River Hamble and, as such, had suffered multiple breaches from the tidal river. It was not until the erection of the Chinese Bridge in 1986 that officers considered it would have been physically possible to cycle the entire length of the footpath. Before this date, it was likely that cyclists rode part of the route and diverted inland to avoid breaches in the path.

The officer's presentation set out a table assessing whether the application met the test set out in the 1980 Highways Act during the periods 1966-1986 and 1989-2009. For both periods, it was clear that, whilst cyclists had used the route (and were physically able to ride the entirety of the route after 1986), there was also evidence that some of the landowners had not intended to dedicate higher rights and had erected no cycling signs and challenged cyclists. On this basis, the legal test had not been met and the dedication of higher rights could not be made.

The Committee noted that, given the above, the less specific requirements of Common Law rights had also not been met.

The Committee received deputations from John Betts and Andrew Smith (both local residents) and Peter Beagan (Cyclists along the Shore – CATS). In summary, Members noted:

- That there was no legal basis to dedicate the higher rights for cyclists.
- That for long periods, the breaches to the path made cycling its entire length physically impossible.
- That there was no dividing line on the path to segregate cyclists and pedestrians.
 - On wide parts of the path some cyclists ride three-a-breast and at great speed.
 - That there was a lockable gate at Tidemark, which was removed after renovations to that property.
 - That there have always been “no cycling” signs along the route.
 - From 2001, the path had been used by competitive cyclists with little regard to other users of the path. Concerns were raised that, if the designation was changed, the number of competitive cyclists would increase greatly. Some of these cyclists had been aggressive when questioned.
 - That the majority of users of the path were walkers that would be detrimentally affected if the higher rights were granted.
 - The dangers cyclists posed to walkers at night was highlighted.
 - That the application had the support of Fareham Borough Councillors, but if it was refused, cycling rights along the path should be granted through other means.
 - A survey should be undertaken to highlight the large number of cyclists that currently use the path.

- That the Police had no record of reported incidences relating to cycling along the path.
- That private rights for cycling along the path already existed for a small number of landowners and employees.
- That cycling the path provided a pleasant and safe alternative to using the nearby busy roads.
- That the majority of the landowners along the path did not object to cycling.
- That many cyclists currently ride only part of the path to the Warsash Café and return.

In response to Members' questions, the status of private rights was explained and Members noted that this was applicable to approximately only ten cyclists on this route.

Members also noted that a written representation from Sustrans had highlighted the number of cyclists which used part of the path to access the Hamble ferry. The Committee therefore considered dedicating higher rights between points Q-R towards the southern end of the path (Passage Lane, Warsash).

In response, the officer explained that whilst the application was for the entire route, the Committee was under an obligation to consider any relevant evidence which had been submitted. From this information, the Committee may determine that the legal test had been met for part of the path and therefore dedicate higher rights to that part only. In addition, it was noted that Q-R of the path was continuous to the public highway. Following debate, a proposed amendment to designate higher rights between Q-R failed because the Committee considered that designation of part of the path should be subject to further consultation with the public and Fareham Borough Council.

At the conclusion of debate, Members agreed with the recommendation in the report that the legal test to designate higher rights for cyclists had not been met. However, in refusing the application, the Committee commented on the need for officers to investigate the possibilities to enable cycling along the route at a future date.

RESOLVED:

That the application be refused as:

1. There was no evidence under section 31 of the Highways Act 1980 that a right of way which was shown on the Definitive Map and Statement as a highway of a particular description ought to be shown as a highway of a different description.
2. There was no evidence upon which Members found that a common law dedication has taken place, during the period 1931 to 2009.

Voting:

In favour: 14

Against: 0

Abstained: 0

54. APPLICATION FOR A PUBLIC PATH DIVERSION ORDER FOR PART OF BRIDLEWAYS 15, 16, 17, 18, 20A, 20B & 26 AND PART OF FOOTPATH 47, AND FOR THE DEDICATION OF PUBLIC BRIDLEWAY RIGHTS IN THE PARISH OF YATELEY

Councillor Simpson declared a non-pecuniary interest in this item as Chairman of Yateley Common Management Committee. He explained that he had taken no part in the Management Committee's prior consideration of the application and that he knew one of the deputations (Sarah Palmer). He spoke and voted thereon.

The Committee considered a report from the Director of Culture, Communities and Business Services (Item 7 in the minute book) which considered an application for a Public Path Diversion Order for part of Yateley Bridleways 15, 17, 18, 20a, 20b and 26 and part of Footpath 47.

The officer explained that, over time, the bridleways on the Common had naturally migrated and some of the original routes had become overgrown. The proposed Diversion Order mainly sought to recognise this change on the Definitive Map. In considering the application, the Committee was under a duty to consider whether the diversion was in the interests of the landowner and/or the public and whether the new routes were not substantially less convenient. The Committee also noted that the Common had Open Access Rights, which entitled walkers and horse riders to roam free across the Common.

In addition, the officer explained that, to improve safety, the application sought to reduce the number of crossing points on Vigo Lane from six to three. These crossing points would be on straighter sections of the Lane and therefore improve visibility.

The Committee received deputations from Sarah Palmer (local resident) and Nicki Paton (HCC Countryside Services, the landowner). The main points were:

- That a lack of maintenance from the Council had allowed the existing bridleways to become overgrown and therefore, without additional resources, it was likely that another diversion would be required in the future, as the proposed routes become impassable.
- There was a need to erect road signs warning of horse riders crossing Vigo Lane and that the current crossing points of Vigo Lane were considered to be unsafe.
- That the proposed diversion had taken into account the need to protect ground nesting birds.

During questions, Members noted the Council's duties to maintain the bridleways as landowner and its enforcement powers as the Highways Authority. Members also noted that, if the application was approved, it would enable limited resources to be more effectively focused on the definitive routes.

Part of the diversion related to the Welsh Drive, points Aa–V on the map. In response to Members’ concerns, it was explained that the route Aa-V was indicative of the route that herders would have used to take their cattle to London and it was likely that, over the heathland of the Common, the herd would have spread out over a wide area. The County Archaeologist had raised no objection to the proposal and it was not possible to precisely determine the route of the Drive from historical maps. The applicant had suggested the diversion of Aa-V to take users further into the Common and away from the adjacent A30.

However, following debate, the Committee agreed an amendment to delete the proposed diversion of Aa-V (part of the Welsh Drive), as they considered the route of historical importance. Further concerns were raised regarding the long-term protection of this route over the neighbouring Blackbushe Airport, if HCC (the applicant) were to divert the route over its own land.

At the conclusion of debate, the Committee agreed that the application be approved for the reasons set out in the report, subject to the above amendment to delete the proposed diversion of the Welsh Drive (Aa-V).

RESOLVED:

1. That an Order be made diverting parts of Yateley Bridleways 15, 16, 17, 18, 20a, 20b, 26 and part of Footpath 47 at Yateley Common Country Park, as shown on the accompanying plan, subject to the deletion of the proposed diversion of route Aa-V (the Welsh Drive).
2. That the County Council dedicates a public bridleway by means of a public path creation agreement between points N-O as shown on the accompanying plan.
3. That following confirmation of the diversion Order and completion of the public bridleway dedication referred to above, an Order be made to extinguish part of Yateley Bridleway 504.

Voting:

In favour: 13

Against: 0

Abstained: 1

55. NEWBOURNE FARM, ROCKBOURNE, FORDINGBRIDGE SP6 3NT

The Committee considered a report from the Director of Economy, Transport and Environment (Item 8 in the minute book) regarding a proposal to vary conditions 2, 5 and 6 of planning permission no 12/98401 regarding operating capacity, traffic movements and days of operation; part proposed and part retrospective permanent extension to the site operational area for use as green waste processing and composting at Newbourne Farm, Rockbourne, Fordingbridge SP6 3NT.

The officer recommended a change to the proposed condition 6 set out in the report. This change recommended that all references to vehicles be amended to

“heavy commercial vehicles” and this was later agreed by the Committee. In addition, the officer highlighted that the red line plan attached to report illustrated the land within applicant’s control, rather than the smaller area of the application site.

The officer’s presentation explained how the use of the site had developed to the proposed 25,000 tons set out in the current application. The Committee noted that the majority of this green waste would come from neighbouring Wiltshire County Council and would be sourced and dispersed locally. A lorry routing scheme ensured that HGVs could only access and leave the site to the north and the site’s location and impact on the Area of Outstanding Natural Beauty (AONB), together with its minimal impact on the nearby footpath and Scheduled Ancient Monument, was explained.

Whilst no objection had been received from the Parish Council, an objection had been received from the AONB Officer, who considered it inappropriate to import waste into the AONB and raised concerns regarding the application’s impact on the character and tranquillity of the area. Other representations had raised concerns regarding dust and odour from the site, although there had been no complaints to the Environmental Health on the current operation.

The Committee received a deputation from Jerry Davies (applicant’s representative). In summary, Members noted:

- That the applicant requested a permanent permission, rather than the temporary five year permission set out in the report. He explained that this was required to reflect the long-term strategic planning associated with the waste industry and to protect against the significant investment required. If permanent permission was granted, the applicant volunteered to not import waste on Sundays and Bank Holidays.
- The applicant also spoke in support of the proposed amendment to Conditions 5 and 6, which distinguished between the effect of private cars visiting the site and HGVs.

During questions, Members noted the type of HGVs that were likely to visit the site and the need to collect waste material on Sundays and Bank Holidays.

At the conclusion of debate, the Committee agreed that the application be approved for the reasons, and subject to the conditions, set out in the report and as amended above. The Committee agreed to grant temporary permission so that its effect on the AONB and the local community (in terms of traffic, dust and noise) could be properly assessed.

RESOLVED:

That permission for Variation of conditions 2, 5 and 6 of planning permission no 12/98401 regarding operating capacity, traffic movements and days of operation; part proposed and part retrospective permanent extension to the site operational area for use as green waste processing and compositing at Newbourne Farm,

Rockbourne, Fordingbridge SP6 3NT (application No 13/10972) be approved for a temporary period of five years and the conditions listed in Integral Appendix B and as amended above.

Voting:

In favour: 13

Against: 0

Abstained: 0

Councillor R McIntosh
Chairman
8 January 2014