



Minutes

Name of meeting	APPEALS SUB COMMITTEE
Date and time	WEDNESDAY, 7 MARCH 2018 COMMENCING AT 10.00AM
Venue	COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT
Present	Cllrs John Kilpatrick (Chairman), Paul Fuller, Brian Tyndall
Officers Present	Marie Bartlett, Darrel Clarke, Ben Gard

1. [Declarations of Interest](#)

Councillor Paul Fuller declared an interest as he sat on the previous application in 2012 for this footpath and he was also the vice chairman of the Local Access Forum.

2. [Minutes of this meeting](#)

RESOLVED :

THAT the Chairman be authorised to sign, as a true record, a copy of the Minutes when they had been produced.

3. [Application for Definitive Map Modification Order: Public Footpath NT46, Castlehaven, Niton Undercliff, Ventnor, Isle of Wight](#)

The Chairman advised that evidence submitted by the applicant after the report had been published was circulated to the Committee and noted by members.

The Rights of Way Manager explained that an application to vary the particulars relating to an existing public right of way by claiming an alignment of a section of a public footpath NT46 of Castlehaven, Niton had been submitted to the authority for consideration. The footpath was first recorded in 1952 in the first definitive map and statement.

It was noted that there were temporary traffic regulation order currently in place on the public footpath due to storm damage affecting the surface of the section along the sea wall and at another part of the Public footpath due to effects of landslip and erosion.

The applicants had previously submitted an application in 2009 to delete a section of NT46, this application had been fully investigated by the authority and considered by a committee. The application was rejected and the applicants appealed the decision which was dismissed in 2012.

The Rights of Way Manager explained that there was a number of matters that could not be considered these included:

- Evidence from the 2009 application
- If the public footpath would be reopened
- Possible privacy and security issues
- Any claims that NT46 being obstructed

The Committee were advised that the key document was the definitive statement as it described where the footpath was.

The applicant was asked to present his case for the application and explained that he was not in dispute of the wording of the definitive statement, he questioned what was meant by the word “shore”, which he understood to mean it was an area of land between high and low mean water marks. A right of way would only be needed when people leave the shore.

The Committee asked if the applicant had challenged the inspector’s decision in 2012 and were advised that the applicants had sought advice and that the decision had indicated that another application had been invited in the decision.

The representative from the Parish Council advised the committee that as custodians of the village green they had recognised the wider context regarding the issue. The footpath was still used by the public and they felt that the seawall if repaired would also be used. The Parish Council supported the recommendation to refuse the application.

The Committee then retired to consider the application and advised that they would return with a decision.

RESOLVED:

That upon receiving the report of the Council’s Rights of Way Manager, having considered all of the oral and written evidence submitted to it on behalf of the Council, the Applicant, Land Owners and consultees; and having been advised as to the correct application of the law in respect of the evidence, the sub-committee hereby:

Reject the application to make an order under s53 of the Wildlife and Countryside Act 1981.

In particular Members considered, on the balance of probabilities that they had not been provided with any new cogent evidence of sufficient substance to displace the presumption that the Definitive Map and Statement, when taken together, are correct and that an order should be made.

In reaching the above decision the sub-committee had regard to the Human Rights Act 1998, and in particular Article 1 of the First Protocol, Article 8 and Article 6.

Having decided not to make an order, the applicant may, under Schedule 14 to the Wildlife and Countryside Act 1981, serve notice of appeal to the Secretary of State and the Council. Any appeal must be made within 28 days of service of notice of the decision on the applicant.

Any other person dissatisfied by this decision should take their own independent legal advice in relation to any challenge to this decision.

CHAIRMAN