

Minutes

Minutes of the Bury Local Access Forum Meeting Held at Bury Town Hall on Wednesday 23rd October 2019 at 1.30pm

1.0 Present

LAF Members

Edgar Ernstbrunner (Chair)
Irene Pope
Debra Batchelor
Valerie Johnstone
John Southworth
Margaret Stewardson
Cllr Tony Cummings

Also Present

David Chadwick (LAF Secretary) - Bury MBC
Jon O'Connor – Bury MBC
Paul Robinson – Bury MBC
Barry Smith – public
Diane Davies - public

Apologies

Lesley Tierney
Peter Varetto
Fal Binns
Christine Taylor
Graham Schoon – Bury MBC

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| 2.0 | Minutes of the Last Meeting Accepted as an accurate record of the meeting. | |
| 3.0 | Matters Arising With reference to the application to upgrade the path to a bridleway, Diane Davies of 65 Holcombe Road explained that Public Footpath Number 56, Tottington runs very close to her property along the edge of Old Kays Park. The footpath is in a disgraceful condition with water running over the wall onto Holcombe Road. A gas pipe was exposed but repaired by the Council. DD wondered how horses will get in and out of the field? It is not useable as a footpath and acts as a stream. Complaints have been made but nothing has been done. | |

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| | <p>EE responded that the LAF is not the forum for reporting such problems and the matter needs to be addressed through appropriate Council avenues.</p> <p>JOC explained the matter could be dealt with after the meeting.</p> <p>DD made it clear that the deeds to her property record the path as a bridleway/footpath.</p> | |
| <p>4.0</p> | <p>Public Rights of Way across the Holcombe Training Area</p> <p>BS informed the LAF that posters have been erected across the Moor regarding the need to respect the red flags.</p> <p>JS has done an interview with Bury Times and attended a positive MOD conservation meeting. The article in the Bury Times had a positive response.</p> <p>MOD are still looking at who will be responsible for the Bull Hill path.</p> <p>DB added that information regarding the red flags has been posted on Facebook.</p> <p>EE acknowledged the opportunity for the LAF to report any issues to the MOD Conservation Meetings via DC.</p> <p>BS added that there is a path at Holcombe Head which is not included on the Definitive Map which does cause confusion when attempting to follow the PROW network around the MOD site.</p> <p>DC clarified that the Highway Authority is responsible for the maintenance of the public rights of way crossing the MOD site. The MOD have previously contributed with signposting and the resurfacing of the footpath at Simons Lodge and continue to take responsibility for stiles and gates. DC met on site with Phill Ingledew on 29th August and walked a number of paths across the site. It was noted that Public Footpath Number 4 Ramsbottom is overgrown and waterlogged as reported by CT. However, an unofficial path has developed in parallel to the definitive line and the MOD do not object to its use. Works to improve Footpath Number 4 would be extensive, expensive and may be damaging to the local ecology. As a result, the Authority does not propose to carry out works on the path and is satisfied with the status quo.</p> <p>DC added that there are some issues that he needs to bring to the MOD's attention – the gate on Moorbottom Road is damaged and cannot be locked in the open position as had been intended; one notice referring to Bull Hill is still in place at the northern end of the assault course and there are drainage issues at the junction of Public Footpath Numbers 14 and 282 Ramsbottom below Higher Ridge.</p> | |
| <p>5.0</p> | <p>Bury PROW Survey – Consolidation of the Definitive Map and Paths requiring Remedial Works including Capital Projects</p> <p>JOC has had a meeting with David Giblin (Head of Engineering) and David Brown (Director of Operations) regarding the PROW workload. The amount of work generated by the PROW survey is too great when compared to the current resources allocated to PROWs. The Capital budget is £20,000 per year but this does not cover organising and procuring a project.</p> <p>EE asked if there were difficulties in putting together costing and</p> | |

tendering. JOC confirmed that is the case and this needs to be discussed with management.
 EE suggested that the Authority should appoint a second PROW Officer.
 JOC is attempting to balance expectations and the DMMO applications are currently a high priority.
 EE asked about the revenue budget. JOC explained that a significant proportion of this covers vegetation clearance through the year.
 EE asked if it was possible to allocate such work to volunteers. DC explained that individual issues are covered by volunteers but the annual vegetation clearance programme would require a level of organisation from the PROW Officer that would override the financial savings.
 EE hoped for a better situation at the end of the austerity measures.

6.0 Officer Report

DC provided a list of 25 items of work carried out on the PROW network since the last LAF meeting. Seven of these related to issues reported in the PROW survey. Four items had been carried out by volunteers from three groups – Bury Volunteer Ranger Service; Ramsbottom Countryside Access Volunteers and Hollins Conservation Group.

DC passed around photographs showing the works currently taking place on Moorbottom Road and Public Footpath Number 3, Ramsbottom.

Two items are currently with the Planning Inspectorate (PINS) – the Authority is awaiting a direction from PINS regarding six DMMO applications and a response to a Closure Order in Radcliffe for which one objection has been received.

Prestwich Golf Club have recently changed the layout of their course and DC reported that the Club has been in contact with the Authority on a regular basis regarding the PROW network across the course to ensure they were doing everything correctly.

IP reported the current issues with a planning application at Gorses Quarry, Bury which directly affects Bridleway Number 24, Bury. There are concerns regarding the proposed drainage channels and the surfacing which would be detrimental to use of the route by horses. DC advised that the applicant has been made aware of these issues and has been asked to rethink his proposals. Members of the LAF discussed planning applications affecting bridleways and appropriate bridleway surfaces. *(Information relating to bridleway surfacing is appended to the Minutes).*

7.0 Bridleway Strategy Update

IP - informed the members of the LAF that the BHS is putting Finance Maps on its website for inspection.

- Asked that the minutes of today's meeting be put in the file for the DMMO applications.
- Had a site meeting with the owner of Three Acres Farm on Hawkshaw Lane regarding the upgrading of a footpath across

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| | <p>her land to bridleway status. – The outcome was that the landowner is not prepared to dedicate the route.</p> <ul style="list-style-type: none"> - Submitted an application to upgrade to bridleway Public Footpath Number 7 Ramsbottom and part of Public Footpath Number 6 Ramsbottom at Three Acres Farm. - Submitted an application to upgrade the public footpath section of Bentley Hall Road to a Restricted Byway and to add a Restricted Byway at Heights Barn Farm. - A claim in Simister will be submitted at the next meeting. Records show a route to Bowlee Common as a public vehicular highway. The Common was enclosed in 1717. - Also looking at Egypt Lane and Pole Lane for applications. - Currently looking at three planning permissions affecting bridleways including Andrews Textiles, Walshaw. Comments on these matters have been submitted to Planning and have been erroneously labelled as objections. <p>The LAF discussed the role of the Forum in commenting upon planning applications. EE confirmed that the LAF should be looking at general issues rather than specific applications. IP asked if the LAF could have a policy relating to planning applications affecting public right of way. EE responded that this was possible but the Authority needs to enforce matters where appropriate. The ideal position would be for a policy to be included in a ROWIP.</p> | |
| <p>8.0</p> | <p>Any Other Business</p> <p>PR reported that the Friends of Redisher cut back Public Footpath Number 25, Ramsbottom from Park Road. DB asked if the National Trust had provided permission for the route up to Peel Tower to be used as a bridleway? DC confirmed that he had not received a response. EE asked if consideration could be given to moving the LAF meetings back to Burrs Country Park. DC was unsure of the current position regarding the use of the buildings but would make enquiries.</p> | <p>DC</p> |
| <p>9.0</p> | <p>Date and Time of Next Meeting</p> <p>Wednesday 5th February 2020, Committee Room A, Town Hall at 1.30pm</p> | |

Appendix 1: E-mail question and responses regarding the surfacing of bridleways

Dear Eugene,

If a landowner or resident surfaces a PROW (typically with tarmac) without reference to the Highway Authority, can the HWA take enforcement action to restore the original surface? After all, they "own" the surface.

The most common issues arise with bridleways - equestrians are opposed to tarmac. Could it be argued that a tarmacked bridleway is out of repair in that it is no longer suitable for horses? With inclined routes that can be a very serious issue, rendering the route very hazardous for shod horses.

Best wishes

Edgar

Dear Edgar

Yes, a highway authority can take enforcement action. The surface of the way is vested in the highway authority for maintenance purposes in the case of any publicly maintainable highway – section 263(1) of HA 1980, and earlier legislation. It includes the stratum of air above the surface, see *Finchley Electric Light Company v Finchley Urban Council* [1903] 1 Ch 437, 440, where the Master of the Rolls said "It has been decided by a long series of cases that the word "vest" means that the local authority do actually become the owners of the street to this extent: they become the owners of so much of the air above and of the soil below as is necessary to the ordinary user of the street". This must mean that for maintenance purposes the highway authority can take action concerning anything done in the stratum of air above the surface as surely as it can regarding interference with the surface itself

While the landowner owns the subsoil, and while the General Permitted Development Order normally allows tarmacking without planning permission, the Court of Appeal has ruled that since it affects the character of a public right of way, planning permission is needed to tarmac a right of way. The case was *Shepherd v Secretary of State for the Environment & Three Rivers District Council* [1997] EWCA Civ 2457. So there should have been an application for planning permission and it would have been open to the highway authority to object. But even if they did not object, the *Finchley* and *Shepherd* cases, which I attach, are clear authority for the highway authority being able to take action about inappropriate tarmacking.

I certainly agree that it can be argued that a surface which makes it dangerous or less easy for users, including equestrians, can render the highway out of repair.

Good wishes

Eugene

Eugene Suggett

Senior Policy Officer, Policy and Advocacy Team The Ramblers

Dear Edgar

The extent of a highway authority's ownership of the highway above and below the surface was considered recently by the Supreme Court. That case was about whether the highway authority owns more than the immediate margin above and below. The Supreme Court's ruling did not upset the principle that the airspace immediately above the highway is within the highway authority's control. For possible interest, judgment here:

<https://www.supremecourt.uk/cases/docs/uksc-2017-0160-judgment.pdf>

Good wishes

Eugene

Appendix 2: Works in Progress

Bridleway No.5 Moorbottom Road, Red Brook, Ramsbottom



Public Footpath No.3 Ramsbottom

