

**MINUTES** of the meeting of the **PLANNING AND REGULATORY COMMITTEE** held at 10.30 am on 8 June 2016 at Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN.

These minutes are subject to confirmation by the Committee at its meeting.

**Members Present:**

Mr Tim Hall (Chairman)  
Mr Keith Taylor (Vice-Chairman)  
Mrs Mary Angell  
Mrs Carol Coleman  
Mr Steve Cosser  
Mr Jonathan Essex  
Miss Marisa Heath  
Mrs Margaret Hicks  
Mr Ernest Mallett MBE  
Mr Michael Sydney  
Mr Richard Wilson

**Apologies:**

Mr David Ivison

**94/16 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS [Item 1]**

Apologies for absence were received from David Ivison.

Mary Angell attended to observe only.

**95/16 DECLARATIONS OF INTERESTS [Item 2]**

There were none.

**96/16 MINUTES OF THE LAST MEETING [Item 3]**

The Minutes were APPROVED as an accurate record of the previous meeting.

Further to Minute 88/16, Question from Earnest Mallett the Planning Development Control Team Manager informed the Committee that there was continuing progress in terms of correspondence. The Planning Manager explained that since the previous Committee meeting, Thames Water and Surrey Wildlife Trust had met on 5 May and were finalising arrangements in respect of the transfer. A report would go to the Surrey Wildlife Trustee Board in July for a decision. Ernest Mallett agreed that he was happy to receive the report in July.

**97/16 PETITIONS [Item 4]**

There were none.

**98/16 PUBLIC QUESTION TIME [Item 5]**

There were none.

**99/16 MEMBERS' QUESTION TIME [Item 6]**

There were none.

**100/16 RE16/00484/CON - LAND AT REIGATE PARISH CHURCH SCHOOL, BLACKBOROUGH ROAD, REIGATE, SURREY RH2 7DB [Item 7]**

Officers:

Chris Northwood, Planning Regulation Team Leader

**No one had registered to speak.**

Key points raised during the discussion:

1. The Planning Regulation Team Leader gave a short introduction to the report and the update sheet tabled at the meeting.
2. A Member asked for confirmation if they would replace all proposed and replacement trees if they were to die within 5 years which the Planning Officer confirmed.
3. The Planning Officer confirmed that there would not be any impact on the urban area and that the BB103 space standards exercise had not been conducted as it was for a temporary classroom.

The resolution of the Committee was unanimous.

**Resolved:**

1. That, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, application no. RE2016/00484 be **PERMITTED** subject to conditions and reasons set out in the report and the update sheet.

**Actions/further information to be provided:**

None

**101/16 APPLICATION TO UPGRADE TO BRIDLEWAY THE PUBLIC FOOTPATHS NUMBERED 129 BYFLEET, 3 WISLEY (PART) AND 566 WISLEY [Item 8]**

The Committee agreed to a change of agenda order in order to deal with items of public interest first.

**Officers:**

- Alan Stones, Planning Development Control Team manager
- Nancy El-Shatoury, Principal Solicitor
- Catherine Valiant, Countryside Access Officer

**Speakers:**

Mr. Garland, a local resident, made representations in objection to the application. The following points were made:

- The committee were requested to refuse the application or adjourn it for further enquiry
- Mr. Garland questioned the dates around the 20 year period relating to the Highways Act 1980 submitted in the report and explained that the current date details 2006 when the correct date should be 1 June 2013
- Informed the Committee that a case had previously been brought to the High Court regarding the public footpath in which the County Council had lost and had to pay the Court fees.
- Informed the Committee that any use of cycles on the footpath was illegal as signs clearly label it as a footpath.

Mr. Salaman, a local resident, made representations in objection to the application. The following points were made:

- That there were gates and a trench put in place to discourage access which showed there was no intention to dedicate.
- Informed the Committee that the Council accepted that the signs were put in place so there must be a record of this.
- That the evidence that stated cyclists did not see signs is not credible as it was impossible to go down Muddy Lane and not see them.
- A previous case regarding Muddy Lane in 2012 had concluded with Mr. Justice Collins stating that he was satisfied that it was only a footpath.
- Concern was expressed that much of the material had only reached him in the last two days and that was not a satisfactory amount of time to prepare.

**Key Points made during the discussion:**

1. The Countryside Access Officer introduced the report and the update sheet tabled at the meeting and appended to these minutes. She responded to the local resident's points by informing the committee that the case that previously went to the High Court, although it concerned the path, was a completely different matter and was not relevant to the current issue. The Principal Solicitor agreed this and reminded Members that they must make a decision on relevant evidence.
2. A Member questioned who else was able to use the path as all evidence had been gained from cyclists. The Countryside Access Officer responded to this by informing the Committee that although horse riders may use the path, the majority of users were cyclists.
3. Members discussed the security of the pathway as it was important to maintain and prevent illegal use such as illegal dumping of waste and the use of quad bikes on the pathway.
4. The Chairman reminded the Committee that their role was to make a decision based on the evidence presented and currently evidence suggested that cyclists were the main users of the path.
5. The Principal Solicitor informed the Committee that the Wildlife and Countryside Act made it a duty that mapping should be under continuous review and that should there be new evidence of use then it was the Council's statutory obligation to review the Definitive Map.

**Resolved:**

1. That a Definitive Map Modification Order be made to change the status of Public Footpaths Numbered 129 Byfleet, 3 Wisley (Part) and 566 Wisley to public bridleway as shown on drawing 3/1/75/H25 (Annexe A to the report).
2. That if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Action/further information to be provided:**

None.

**102/16 SP16/00616/SCC - CHARLTON LANE WASTE MANAGEMENT FACILITY, CHARLTON LANE, SHEPPERTON, SURREY TW17 8QA [Item 9]**

**Officers:**

Alan Stones, Planning Development Control Team Manager  
Stephen Jenkins, Deputy Planning Development Manager

**No one had registered to speak.**

**Key points raised during the discussion:**

1. The Deputy Planning Development Manager introduced the report and the update sheet tabled at the meeting and informed the Committee that this was a proposal for the use of the Recycling Bulking Facility, which formed part of the Eco Park development, for an extra two hours each evening to enable bulking up of waste. He informed the committee that Spelthorne Borough Council raised no objections subject to conditions and there were no technical objections and that procedural issues raised in paragraph 11 of the report had been addressed in the update sheet tabled at the meeting.
2. Members raising concerns about why the application had been brought to this Committee and why the conditions of the development were changing if it was only temporary. Members also enquired into other alternatives for the application and if they had been considered.
3. The Deputy Planning Development Manager informed the Committee that the temporary permission was not amending the Eco Park permission but was a temporary separate permission, which would fall when the temporary period had ended. He also explained that the need for this application was to maintain continued efficiency in the project and flexibility was needed for this. Furthermore this facility of allowing heavy goods vehicles (HGVs) movements during this extended opening time may not always be used, but would provide operational flexibility.

**Resolved:**

That application SP16/00616/SCC was **PERMITTED** subject to conditions and reasons set out in the report and in the update sheet.

**Actions/further information to be provided:**

None.

**103/16 SP16/00481/SCC - LAND AT SAXON COUNTY PRIMARY SCHOOL,  
BRIAR ROAD, SHEPPERTON, SURREY TW17 0JB [Item 10]**

**Officers:**

Sean Kelly, Senior Planning Officer

**No one had registered to speak.**

Key Points raised during the Discussion:

1. The Senior Planning Officer introduced the report and informed the Committee that it included a new double demountable classroom unit, the permanent retention of a previously temporary unit, a new car parking and scooter parking area and a new hard play area. He went on to highlight the details and risks included in the application.
2. Committee Members enquired into the archaeological aspects of the site and asked the Planning Officer for confirmation on the depth of the service trench running across the site. The Senior Planning Officer was unable to confirm the depth of the service trench but could confirm that there would be a watchman brief implemented on site during the construction to oversee if any archaeological findings were encountered. He would inform Members outside of this meeting on the depth of the trenches and any findings.
3. A Member queried the conditions in the report referring to possible death of the trees within five years and if they would be replaced. The Senior Planning Officer responded that a condition to replace all proposed and replacement trees if they were to die within 5 years would be added. Committee Members questioned the travel plan included in the application and enquired into how this was communicated to the community. The Senior Planning Officer responded that there were robust measures included in the travel plan which include staggered start and finish times, car sharing and creating a walk distance map.

The resolution of the Committee was unanimous.

**Resolved:**

1. That: Pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, the application SP16/00481/SCC be **PERMITTED** subject to conditions and reasons set out in the report.

**Actions/further information to be provided:**

4. To add a condition to replace all proposed and replacement trees that die within five years.

**104/16 EP15/01831/LAND AT DANETREE PRIMARY SCHOOL, DANETREE ROAD, WEST EWELL, SURREY KT19 9SE [Item 11]**

Carol Coleman left the meeting at 12:08pm.

**Officers:**

Dawn Horton-Baker, Senior Planning Officer

Caroline Smith, Transport Development Planning Team Manager

Jan Mason, the Local Member, made the following points:

3. That local residents were unaware of the plans for Danetree and that she had to send letters to residents to inform them of the plans that would be considered at this meeting.
4. It was noted that local residents were concerned about the public highways around Danetree as there would be an increase in traffic.
5. It was requested that plans for highways and landscaping be sent to the local committee for their information.
6. Raised concern that there would be no shelter between buildings as there would be young children making their way across without cover from inclement weather.

**Key points raised during the discussion:**

1. The Senior Planning Officer introduced the first Danetree item, two demountable temporary buildings. It was reported that there had been two letters of objections and a transport officer had suggested conditions following an assessment of the application. The Senior Planning Officer went on to introduce the second Danetree item, an application for the expansion from a 4FE Junior School to a 4FE Primary School and a 52 place Nursery. It was noted that 'Sport England' had objected the application as the proposed extension used some playing field; Officers acknowledged this and informed the Committee that there was no impact on sports provisions. An Update sheet was tabled at the meeting.
2. The Senior Planning Officer confirmed that 332 residents had been consulted and re-consulted once plans had changed.
3. The Committee raised suggestions that more consultation should be had with the Local Committee as they would have greater knowledge of any surrounding highway problems.
4. The Committee discussed transport arrangements and were informed that a new housing estate would be built within walking distance of the school.
5. A Member expressed concern around the lack of shelter for young children between the two buildings.
6. It was suggested that trees to be replaced during the development should be at a mature age, as younger trees would be less likely to survive on a school play area.
7. A discussion around the catchment area of the school was had as well as alternative parking in the local area.

The resolution of the Committee was unanimous.

**Resolved:**

That pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, application EP15/01831/CMA be **PERMITTED** subject to conditions and reasons set out in the report and update sheet.

**Actions/further information to be provided:**

None.

**105/16 EP15/01567/CMA DANETREE COUNTY JUNIOR SCHOOL, DANETREE ROAD, WEST EWELL, SURREY KT19 9SE [Item 12]**

Item 12 was discussed with item 11.

The resolution of the Committee was unanimous.

**Resolved:**

That pursuant to the provisions of the Town and Country Planning (Consultation) (England) Direction 2009, application EP15/01567/CMA be forwarded to the Secretary of State and in the absence of any direction by him and pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, the application be **PERMITTED** subject to conditions and reasons set out in the report and update sheet.

**Actions/further information to be provided:**

1. To forward the decision to the Secretary of State.

**106/16 DATE OF NEXT MEETING [Item 13]**

The date of the next meeting was noted.

Meeting closed at 12.48 pm

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**Chairman**

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Planning &amp; Regulatory Committee 8 June 2016

Item No

**UPDATE SHEET****SURREY COUNTY COUNCIL PROPOSAL RE16/00484/CON****DISTRICT(S)** REIGATE & BANSTEAD BOROUGH COUNCIL**Land at Reigate Parish Church School, Blackborough Road, Reigate, Surrey RH2 7DB****Erection of a single storey building comprising of 2 classrooms and ancillary accommodation for a temporary period and the creation of 14 replacement parking spaces.****CONSULTATIONS AND PUBLICITY*****Consultees (Statutory and Non-Statutory)***

- 11 County Arboriculturist: no objection subject to conditions to secure compliance with measures proposed in submitted Arboricultural Method Statement

**RECOMMENDATION**

Add new conditions:

- 10 The development hereby permitted shall be carried out in full accordance with the procedures for planning and communication set out in section 5 and Table 3 of the Arboricultural Method Statement AMS 03 Rev B dated 17/05/16 submitted with the application.
- 11 For the whole duration of works to carry out the development hereby permitted, copies of the Arboricultural Impact Assessment (AIA 02 Rev D) dated 02 February 2016, and Arboricultural Method Statement (AMS 03 Rev B) dated 17 May 2016 submitted with the application, shall be held on site by the appointed main contractor and be available upon request for inspection by any officer of the County Planning Authority.

Add new reasons

- 10,11 To minimise potential impacts on retained trees of the development hereby permitted, pursuant to Policies Pc4 and Cf2 of the Reigate and Banstead Borough Local Plan 2005.

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**APPLICATION TO UPGRADE TO BRIDLEWAY THE PUBLIC FOOTPATHS NUMBERED 129 BYFLEET, 3 WISLEY (PART) AND 566 WISLEY (KNOWN AS MUDDY LANE)**

This case involves the claim for a change in status of an existing public right of way which crosses the Borough Council border of Guildford and Woking. It would be usual to take Rights of Way cases to the Local Area Committee however, because it would involve two Committees we have been advised to bring it to Planning and Regulatory Committee instead. This is in accordance with section 9.2 of the Surrey Code of Best Practice in Rights of Way Procedures

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement if it discovers evidence which can be reasonably alleged to support a modification.

An application was received in 2013 from Woking Cycle Group represented by Carole Frost and Elmbridge Cycle Group represented by George James for a Map Modification Order to modify the DMS by the upgrade to a public bridleway of the public footpath that runs from Sanway Road, Byfleet to the Byfleet/Wisley parish boundary (Public Footpath No.129 Byfleet) and the public footpaths from the Byfleet/Wisley parish boundary to Wisley Lane, Wisley (Public Footpath No's 3 (part) and 566 Wisley). The route claimed is shown as A to H on the plan in the Committee Report, at Annexe A. This route will be referred to as Muddy Lane for ease.

The only relevant consideration when determining this matter is whether the evidence is sufficient to raise a presumption that a public right of way exists. Other issues such as security, privacy, safety or future use of the land are irrelevant. This is set out in Annexe C.

In this instance the challenge to the public's right to use the route was taken to be 2006, which is the date when the landowners of part of the land over which the path runs, Mr Salaman and Mr Garland, bought the land and began to stop users from using the route by any means other than on foot. This meant that the 20-year period as set out in the Highways Act 1980 has been taken to be 1986 – 2006. Other landowners of land over which the route runs have either not responded to consultation, have indicated that they have taken no steps to prevent access or have no opposition. One landowner, Mr & Mrs Woodruff indicated that they were in favour of it becoming a bridleway and felt that the route had been used by the public by other means than on foot.

Since the Countryside Act 1968 bicycles have been able to use public bridleways legally. Recent case law (*Whitworth & others v Secretary of State for Environment, Food & Rural Affairs*, [2010] EWCA Civ 1468) has clarified the impact of this where there is sufficient evidence of use by bicycles to record a public right. The case states that bicycle use since 1968 could lead to bridleway rights as a landowner, on seeing bicycles using a route, would conclude that they were exercising the rights given to them in the 1968 Act to cycle on a bridleway.

The majority of the evidence supplied to the investigation related to use of the route by members of the public on bicycles and the investigation looked at the volume and frequency of that use.

At this point I need to draw the attention of the Committee to the evidence from Mr & Mrs Kaile – numbers 23 and 24 on the user evidence graph in Annexe D. These residents of Muddy Lane completed user evidence forms and were interviewed and spoke about their use of the route on bicycle. However they also indicated to me that they have a private right of access which they purchased from a previous landowner which allows them access from Wisley Lane, along footpath 566 to their property. This private right of access means any use that they made of Muddy Lane

from their property south to Wisley Lane would not be as a member of the public and should not have been included in the analysis.

If we remove Mr & Mrs Kaile's evidence from the analysis we find that there are now 38 users that have used the route on a bicycle during the 20 year period, there are still 14 that have used it for the full 20 years and now 12 for more than 50% of that period. Number of trips per year were still 347 at the start of the 20 year period, and by the end were 323 (not the 551 as referred to in the report)

The evidence from Mr Salaman and Mr Garland as landowners and from users indicates that from 2006 there is significant and substantial evidence of a lack of intention to dedicate any higher rights over Muddy Lane. However, the only evidence for any lack of intention to dedicate prior to 2006 is Mr Salaman and Mr Garland's assertion that there was clear signage on site prior to their ownership, and Mr Drummond's reference to public footpath signs being present. None of the users refer to ever having seen such signs.

The evidence of lack of intention to dedicate is not considered sufficient to counter the evidence of use, which even with the removal of Mr & Mrs Kaile's evidence is considered sufficient during the relevant 20 year period to reasonably allege that there has been a deemed dedication of the route as a bridleway.

Due to changes in the legislation brought about by the Natural Environment and Rural Communities Act 2006, it is not possible for use by mechanically propelled vehicles to give rise to vehicular rights over the route so the route cannot therefore be considered a Byway. There is some documentary and anecdotal evidence to indicate that the route may carry public Restricted Byway rights, however whilst the evidence for higher rights is suggestive, it is not thought that it is sufficient to reasonably allege that the route should be recorded with Restricted Byway status.

For the majority of the route it is felt that the widths described in the current definitive statements accurately describe the route as used by bicycles and that these widths should be maintained. However, there is evidence that the section used by the public on bicycle underneath the motorway bridge was only that of the lower section. It would be appropriate for this section (D-E), therefore, to be recorded as having a width of 5m (being the width between the bollards on the eastern side of the lower path and the bridge posts on the western side).

Notwithstanding the evidence for statutory deemed dedication of the route as a public bridleway, it is thought that there is sufficient evidence of use, coupled with no clear act of contrary intention prior to 2006 for bridleway rights to have been acquired over the claimed route at common law. In addition it is thought that the actions of the Safer Guildford Initiative to improve the surface specifically with a view to cycle use is an indication of acquiescence and lends support to evidence at common law for a public bridleway along the claimed route.

In conclusion it is my view that, by virtue of the use by the public on bicycle, public bridleway rights have been acquired over the route claimed and shown between A-H on plan at Annexe A to the committee report.

I therefore ask the Committee to agree that Public Bridleway rights are recognised over the route A-H on the map in Annexe A, and that a Map Modification Order under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement.

## UPDATE SHEET - AGENDA ITEM 9

Planning &amp; Regulatory Committee 8 June 2016

Minerals &amp; Waste Application: SP16/00616/SCC

**Charlton Lane Waste Management Facility, Charlton Lane, Shepperton, Surrey TW17 8QA**

**The access, loading and exit of vehicles with waste for export from the existing Recyclables Bulking Facility between the hours of 6pm and 8pm Monday to Saturday until 31 December 2017.**

*Please note the Committee Report should be amended / corrected as follows:*

### **CONSULTATIONS AND PUBLICITY**

#### ***District Council***

6 Spelthorne Borough Council

*'That Surrey County Council be advised that this authority raises no objection in principle to the proposal, subject to the following:*

- *A condition be imposed restricting the number of HGVs to a maximum of 3 per hour;*
- *A condition be imposed restricting the additional hours to a period of 18 months or whenever the gasification building is commissioned, whichever is the sooner; and*

*The applicant makes all reasonable efforts to minimise the operation during the amended hours.'*

*Officer Comment:* The Borough's recommended second condition would not meet the NPPF policy tests, as the commissioning date may not be the appropriate time. The conditions within the Committee Report's recommendation are considered to be appropriate.

#### ***Summary of publicity undertaken and key issues raised by public***

11 Further comments were received from the local resident who submitted the letter of representation. The resident does not agree with the County Planning Authority's response in respect of the procedural issues and asks for the proposal to be postponed. The resident also asked for a traffic analysis.

*Officer Comment:* The consultation and notification exercise undertaken was proportionate to the scale of the development proposed and the provisions of the Statement of Community Involvement (SCI). The Charlton Village Residents Association was notified of the application and the applicant also briefed local residents who attend the Eco Park Liaison Group meeting. The application is being dealt with in an open and transparent fashion. The proposal involves a limited extension to the hours of operation of the RBF and is a separate planning application to the Eco Park planning permission and does not involve any overall increase in HGV traffic per day.

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**PLANNING AND REGULATORY COMMITTEE 8<sup>TH</sup> JUNE 2016**

**UPDATE SHEET 7<sup>th</sup> June 2016**

**Item 11 EP15/01831/CMA and Item 12 EP15/01567/CMA**

**Danetree County Junior School, Danetree Road, West Ewell, Surrey KT19 9SE**

**Item 11**

**page 129**

**SUMMARY REPORT**

5<sup>th</sup> line down '60' should be '52'

**Para 11 page 132**

2<sup>nd</sup> line '60' should be '52'.

**Item 12**

**page 155 para 12**

4<sup>th</sup> and 5<sup>th</sup> lines '60' should be 52

**Page 156 para 16**

4<sup>th</sup> line down 41 should be 56 as a further 15 letters have been received since the report was prepared raising objections to the proposals and in particular the proposed off -site parking restrictions. Additional comments made can be summarised as follows (additional to the 9 points already listed in the report)

10. Proposed parking bays are directly in front of residents' driveways

11. The proposed parking changes should have been part of the original submission (Officer comment: It is normal practice for negotiations on planning applications to result in the submission of amended plans as has occurred in this case)

12. I do not wish to pay to park outside my own house when the problem that exists does so for only small period of the day

13. The few parking bays to be created on the green space are not going to make much difference to the problems

14. The proposed new entrance is on a dangerous corner

15. The only sensible solution is to make Danetree Road one way

16. Yellow lines are no good without enforcement

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