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Minutes of the meeting of the
Elmbridge LOCAL COMMITTEE
held at 4.00 pm on 7 December 2015
at Council Chamber, Elmbridge Civic Centre, High Street, Esher, KT10 9SD.

Surrey County Council Members:

- * Mrs Margaret Hicks (Chairman)
- * Mr Mike Bennison (Vice-Chairman)
- * Mr Ramon Gray
- Mr Peter Hickman
- * Rachael I. Lake
- * Mrs Mary Lewis
- Mr Ernest Mallett MBE
- Mr Tony Samuels
- * Mr Stuart Selleck

Borough / District Members:

- * Cllr Nigel Cooper
- * Cllr Andrew Davis
- * Cllr Chris Elmer
- Cllr Brian Fairclough
- * Cllr Neil J Luxton
- * Cllr Dorothy Mitchell
- * Cllr T G Oliver
- * Cllr John O'Reilly
- Cllr Peter Szanto

* In attendance

50/15 APOLOGIES FOR ABSENCE [Item 1]

Apologies for absence were received from SCC Councillors Peter Hickman, Ernest Mallett and Tony Samuels and Elmbridge Borough Councillors Peter Szanto and Brian Fairclough.

51/15 MINUTES OF PREVIOUS MEETING [Item 2]

The minutes of the meeting held on 14th September 2015 were agreed.

52/15 DECLARATIONS OF INTEREST [Item 3]

Borough Councillor John O'Reilly made a declaration in respect of Item 10, saying he had met with Burhill Estates over a lunch, at which their plans had been discussed. He believed the discussions did not preclude him from participating in item 10.

ITEM 2

53/15 JOINT WASTE COLLECTION CONTRACT [Item 4]

Matt Smyth (SCC Waste Development Group Manager) and Ray Lee (Strategic Director Elmbridge Borough Council) gave a presentation on the Joint Waste Collection Contract. The presentation is attached as Annex A.

Members' questions/concerns included the following:

- Whether when working out the new more efficient routes for the refuse trucks would air quality management areas and social areas be taken into account.
- The breaking of the speed limit by the trucks
- Why Elmbridge is in 8th place out of the 11 Surrey boroughs for the rate of recycling
- How other businesses involved in recycling e.g. charities will be affected
- How the Members can be assured that the contract will go to the lowest bid
- The public still need reminders about recycling

The officers responded that the areas through which the truck routes were planned would be taken into consideration and that, as with all contractors that the Council uses, the drivers are expected to follow the Highway Code. One of the reasons why the recycling rate has reduced is that the total volume of waste has increased and therefore the percentage is lower. In addition there has been an issue as regards the recycling of dead leaves in roads which can currently no longer be recycled, but this is under discussion with the Environment Agency. Officers added that the aim is to award the contract to the 'best' contractor so both quality and price are being considered and that they are currently working on new ways to promote recycling.

54/15 CHAIRMAN'S ANNOUNCEMENTS [Item 5]

The Chairman announced that 2 Elmbridge organisations had been successful in their bids to the SCC Community Improvements Fund:

- Princess Alice Hospice £10,000 towards the Man shed
- St Marys Church East Molesey £20,000 towards changing the layout of the church and resurfacing the car park.

She also informed the meeting that Hampton Court Way would be closed on 19th February 2016 for a sports event.

55/15 LOCAL COMMITTEE DECISION TRACKER (FOR INFORMATION) [Item 6]

The information contained in the tracker document was noted.

56/15 PUBLIC QUESTION TIME [Item 7]

Two public questions had been received. The questions and responses are attached as Annex B.

Barry Fairbank, Elmbridge Borough Councillor, put his question and Frank Apicella, Highways officer, added to his tabled response that the costs incurred are for the advertising of the TRO to close the road, but that Network Rail could reduce the costs by amalgamating road closures. The £4k quoted includes the diversion which would be required.

Mark Sugden, Chairman Claygate Parish Council, put his question and Frank Apicella added to his tabled response that it should be known by the end of the financial year when the work on the roads in question would be carried out.

57/15 MEMBER QUESTION TIME [Item 8]

No Member questions were received.

58/15 PETITIONS [Item 9]

Four petitions were received. They are attached in Annexes C, D and E.

Petition 1

The resident, Kevin Shields, presented the petition requesting the resurfacing of Fleet Close, explaining the road provides vehicular access to houses, flat and garages to the residents of both Fleet Close and Fleetside and pedestrian access to Island Farm Rd where a shop is located and which, along with Central Avenue, has major bus routes. The road has been in existence approximately 42 years and has worn well over this period until the last 9 months when it has deteriorated due to heavy lorries and machinery using the road on an almost daily basis to access the site on the old Surveyor Public House grounds. He added that as it is a cul-de-sac the vehicles need to turn around in the road which has cut up the road surface, particularly the corner which is used to access Island Farm Road and this is a safety concern for the elderly and very young. The petitioner asked whether, when planning permission was granted, was there no provision requiring the construction company to make good any damage caused to the road. He finished by saying that although they are keen for the repairs to take place as soon as possible they do not think it should be down to the taxpayers to fund them.

The Chairman told the petitioner that a response will be provided at the next meeting on 21st March 2016.

Petition 2

Wendy Vinzce, a resident, presented the petition requesting Surrey County Council to urgently improve road safety on Manor Road North leading to Claygate Lane for all pedestrians and cyclists. She explained that the petition has huge support including from local schools, local councillors, residents, Elmbridge Sustainable Transport Team and voluntary groups with 1,076 signatures and 136 letters of support. The number of school children crossing the road has increased

ITEM 2

with Hinchley Wood Secondary School number on role increasing from 1100 to 1300 and the primary school changing from 1 form to 3 form entry. Too many near misses are taking place on this section of road. She added the main concern is the secondary school children, who we know are not risk averse. Drivers have also said they do not like travelling along that stretch of road.

She said that the Elmbridge Sustainable Transport Team had visited the location in June and will be revisiting in January 2016 to assess the situation as part of Road safety outside schools, along with the Highways and the Police.

Mike Bennison, the Divisional Member, thanked the petitioners for bringing their petition and for the good presentation.

A response will be provided at the next meeting on 21st March 2016.

Petition 3

Paul Welham, a resident, presented the petition requesting a lorry ban in Egerton Road, Weybridge. He explained that this is a purely residential road, which is being used by contractors' lorries, who are accessing properties on St George's Hill. It is a narrow road, which is not suitable for lorries. The contractors are parking the lorries making it difficult for residents to exit their driveways and they are particularly dangerous for children and the elderly. In addition the lorry drivers can be rude and aggressive. He added that the lorries had caused the damage which had led to the collapse of the drain at the corner of Old Avenue and Egerton Road.

Ramon Gray, the Divisional Member, said that there are a lot of HGVs and this was a significant problem for the residents, but thinks a restriction would be ineffective. He explained if a ban was introduced the residents of Egerton Road would be happy, but the problem would be moved to another location and it would also increase the length of the journey for the contractors. He asked the petitioner to contact him directly to discuss the anti-social behaviour issues.

A response to the petition had been tabled at the meeting as in Annex D. Frank Apicella, the Highways officer, added to the tabled response by reiterating that a ban would mean that the problem would migrate to another location.

Petition 4

Elio Hannuna, a Hersham resident, presented the petition requesting the traffic regulation order in force in Mayfield Road to be amended so the residents of Waterloo House and other future developments are not eligible to apply for residents or visitor parking permits as part of the existing scheme. He explained that the residents of Waterloo House have their own parking and the residents' bays in the road are needed for those people who don't have alternative places to park. The current situation is that there are very few bays and if the residents of Waterloo House and similar developments are allowed to park, it will mean that people are leaving their cars in roads

where they are not residents. He added that already there are vehicles which have been left in the bays for over a week without having been moved.

Rikki Hill, the Parking Project Team leader, added to the response tabled at the meeting, as per Annex E, by confirming that the team will be looking at the whole area as part of the current Strategy. He also said that Elmbridge Borough Council had advised that only 4 permits so far had been issued to Waterloo House residents and there was no reason to believe that there would be more requests.

**59/15 PETITION RESPONSE: FAULKNERS ROAD (EXECUTIVE FUNCTION)
[Item 9a]**

Frank Apicella, Principal Highway Maintenance Engineer, introduced the report which was a response to both petitions received at the last meeting concerning Faulkners Road. He explained that there was an issue with the solution proposed by the petitioners as a Traffic Regulation Order (TRO) would be required to ban the turns and the introduction of a new TRO requires robust reasons and therefore it is recommended that the parking review takes place first and then the situation is considered when the outcomes of this review are seen.

Councillor O'Reilly said it was a narrow road, there had been many near misses and it would be better to be proactive. He felt the report was weak and that there had been no reference in the report to the requirement of a robust reason. He explained that all regulations can be breached so that is not a good enough reason and if the number of people using the turns was reduced by 30 to 40 % that would be an improvement. He added that he thought installing a bollard making it difficult for lorries to use the turn was an excellent idea and it was important to take some positive steps.

The Local Committee resolved to defer this decision, until a separate meeting of officers and local Councillors has taken place.

Reason: to enable further discussions to take place regarding this matter.

60/15 ALLEGED PUBLIC RESTRICTED BYWAY ALONG TURNERS LANE AND PART OF BURHILL ROAD, WALTON AND WEYBRIDGE (OTHER COUNTY COUNCIL FUNCTIONS) [Item 10]

The Chairman, Margaret Hicks, declared that she had been consulted on the issue in this report, had attended a presentation by Burhill Estates and had also had contact with the applicant.

Before introducing the speakers for this item, the Chairman explained how the item would run and added that the Committee had received training on ROW items and that a site visit had taken place.

Rodney Whittaker spoke in favour of the application. He explained he was speaking as an Elmbridge resident and on behalf of the Ramblers Association. The agreement of the recommendation and the addition of the route to the definitive map would guarantee for the future the access for walkers/cyclists/horse riders, which they have already been able to use freely for many years.

ITEM 2

He continued that it is the limitation of the right which is in question, but that he agrees with the officer's report that no exception to the 2006 Act applies.

He emphasised that this decision only applies to public rights, not private rights, but that he believed a number of the small enterprises along the lane had been misled into thinking the making of this order would affect their private rights such that their businesses could not be accessed by motor vehicles, which is needed.

He said he hoped the committee would assure them that the making of this order would have no impact on their private rights.

He ended by saying it is the duty of the local committee to make the order if the evidence on the balance of probabilities supports it, which Rodney Whittaker believed it does.

The next speaker was Colin Mayes, Chief Executive of Burhill, who was concerned about the recommendations of the report. He explained that the road had been open to the public and people had been driving on it for many years and since 2006 when the legislation came into force.

The only difference in his view and that of the officer is as to whether the rights were extinguished by NERC 2006 Act.

He added he had sent a summary of his reasons to the Committee Members on 3 December.

He explained that the majority of the owners of properties along the lane don't have any private rights on paper, so they would have to prove they do, otherwise they would be committing a criminal offence each time they drive down Turners Lane.

It is not enough for one ROW officer in 2015 to say that SCC will turn a blind eye to the public driving down the road. It is not good creating such uncertainty and could have an adverse affect on the businesses.

He ended by asking the Committee to recognise the public right to drive down Turners Lane.

The next speaker was Tony Pidgley speaking on behalf his Uncle, Victor Pidgley, himself and his family, who confirmed he owns a property along the route. He explained he didn't want to argue this issue from a legal position, but said that this is an issue about people and the community accessing the lane by vehicle. He had started his business over 50 years ago and had been accessing it by vehicle 7 days per week, sometimes 10 to 12 times a day. His Uncle's business which has been operating since 1960s using lorries and machines is also based there. Many other families have also used the lane to access properties and adjacent fields for leisure and equestrian purposes. There are also other properties which are let on a commercial basis.

He added that Turners Lane is not made up so it is not easy to walk along in the winter when it is dark and wet.

He ended by asking the Committee to protect the community right to use the lane to access their properties and businesses.

Coral Davies was the next to speak and she explained that she kept horses on the lane along with 6 others and had rented the yard on the west for 25 years. Since 1985 she and her daughter had been driving up and down Turners Lane and the people who keep horses need to use vehicles for numerous reasons including to carry kit, to use horse boxes, for people to give and attend riding lessons, to have feed delivered and for vets to visit. She said if it becomes a restricted public byway then it will be a criminal offence for the public to drive on the lane and the public need to be clear they can access it without any confusion. She asked that the Committee vote for it to be recognised as a public road.

Paul Barnes, the Property and Asset Manager for the Burhill Group was the next speaker. He said he wished to respond to some of the points made by Rodney Whittaker. He does not believe that this is a section 67/5 situation and the public rights to drive along Turners Lane were not extinguished by the 2006 Act. In addition there is no court decision to support 'what private rights that are reasonably necessary' means. He added that it would not be good for SCC Members to vote for a public restricted byway knowing that their authority is going to turn a blind eye to the implications of its responsibilities as a highway authority. There was concern that if people think they may be committing a criminal offence then they may be put off using the road, which could have a negative effect on businesses. Paul Barnes ended by asking for responsible decision making from the Committee.

The applicant, Doug Williams, then spoke, explaining he had lived on Burwood Road opposite Turners Lane since 1971. In 2011 he had seen a barrier being erected, but it was removed the following day. After further attempts to restrict access he decided to make the application in order to safeguard public access to this greenbelt, biodiverse area.

He added that he supports the officer, who had carried out the legal analysis and Rodney Whittaker and urges the LC to agree the recommendation.

Dan Williams, the Countryside Access Officer, introduced the report explaining SCC has a duty to modify the map if there is sufficient evidence to support the modification. The process here is to register the right. SCC considers the roads in question are private roads, over which the nature and extent of rights is unknown at the current time.

He continued that the public user evidence shows that it was mainly on foot or bicycle. Further evidence supplied by Burhill demonstrates vehicular use, but most of the vehicular use would normally be considered as exercising a private right. By user evidence alone it ought to be considered a public bridleway.

Many of the frontagers have private rights recorded in their deeds. Historical evidence, however, shows that both routes have long been considered as public highways, perhaps since 1700s, and supported by

ITEM 2

evidence from 19th and 20th centuries, as outlined in paragraphs 2.14 to 2.33 of the report.

If the Committee considers that it is a public highway, then it must consider whether vehicular rights were extinguished by NERCA 2006, as the officer deems that none of the exceptions were met. Burhill claimed that the main lawful use was in motor vehicles, but had no data for the period 2001 to 2006, however they supported it with data from traffic surveys in 2013/14.

The officer explained why Burhill's arguments were problematic. In the guidance to NERCA 2006 section 67(2)(a), the use must have been by the public and private use is irrelevant. If it didn't mean public use and the use by frontagers was relevant then there would have been no need to include 67(5), which expressly provides for private rights. With reference to the traffic survey provided by Burhill from 2013/14, the character and use of the lane in 2014 would have been different from that of 2001-6.

The officer summarised that he believed that NERCA 67(1) extinguished any public rights, the exception in 67(2)(a) was not met, but 67(5) means that the private rights of landowners/guests/invitees/business attendees are not compromised and that the public restricted byway can reasonably be alleged to subsist.

Members questions/concerns included the following:

- a. Why are SCC getting involved in the issue
- b. That it is a very complicated issue to understand. The committee needs to be sure that it is not discretionary whether SCC will prosecute
- c. Are existing rights protected?
- d. Whether the application could be considered in 2 separate parts? A to C as a highway and C to D as a bridleway
- e. What are the options if the Committee don't agree the recommendation
- f. What the difference will be for real people if it is agreed?
- g. What is the advantage of formalising the right?
- h. Why are we changing it?

The officer responded as follows:

- a. SCC have a duty to look at the evidence
- b. There is no example to base this on, but 67(5) states where MPV rights are extinguished, private rights are granted.
- c. The Golf Club are a frontager so are in the same position as other frontagers
- d. It is in the power of the Committee to break the order apart
- e. The Committee could decide that no public rights exist or they could turn down the recommendation because they think it should be a public highway. If not agreed the applicant could appeal to the Secretary of State, who might direct us to make the order. If the Committee agrees the recommendation, it is advertised, anyone can raise objections. If sustained the order can't be confirmed and a public inquiry will probably follow.
- f. In practice there will be no real difference for frontagers and the public will have the legal right.

- g. The public will have a legal right to use the route on foot, horseback, bicycle and in a non- mechanically propelled vehicle so the council is protecting their public rights.
- h. Currently the public have no recorded rights. The process is about recording rights, which we believe the public already have, not creating new rights.

The Members asked further questions and expressed the following concerns/views:

- a. If we agree this recommendation are we protecting the current rights, giving them a legal basis. If so I think this is the way to go.
- b. We must make sure there is no derogation of anyone's rights. If so I am happy to proceed.
- c. Think the recommendation is the best level on offer
- d. Did the officer say that if you have a reasonable need you can still use the road?
- e. Not convinced, I think it should be a highway. No point in changing.

The officer answered as follows:

- a. Yes
- b. I can only assure you on the basis of what the legislation 67/5 states.
- c. *No reply required*
- d. Yes the Act refers to reasonable need for access e.g. for people who live there and their guests
- e. We have a duty based on the evidence to make a decision. We believe it was historically a full highway, but as discussed this was subject to extinguishment under NERCA 2006. The exceptions were considered, but I don't believe it meets any of them. Evidence shows that it is a public restricted byway. If Members think any of the exceptions are met then they could say they think it should be a highway, but that would be outside this process to record.

Recommendation i) the Members voted 9 for, 3 against with 1 abstention

Recommendation ii) the Members voted 9 for, 3 against with 1 abstention

The Local Committee agreed that:

- i. Public restricted byway rights are recognised over the routes A-B-C (Turners Lane) and C-D (Burhill Road) on Drawings Nos. 3/1/78/H22 and H23 and that the application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the DMS by the addition of a public restricted byway is approved. The routes will be known collectively as Public Restricted Byway No. 41 (Walton and Weybridge).
- ii. A MMO should be made and advertised to implement these changes. 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

**61/15 COBHAM, STOKE D'ABERNON AND OXSHOTT PARKING REVIEW
(EXECUTIVE FUNCTION) [Item 11]**

Adrian Harris, the Parking Project Team Engineer, introduced the report explaining that the review in Cobham, Oxshott and Stoke D'Abernon area was the first since the new strategy had been introduced. It had considered both on and off street parking and there were some off street parking issues which were still being looked at.

Mary Lewis, Surrey County Councillor, thanked officers for their systematic approach. She said she had visited all the sites where changes were being recommended and that the recommendations provided some good solutions and had addressed some safety needs. There are still some further options particularly for off street parking, which hopefully the borough can take forward. Borough Councillor Dorothy Mitchell commented that County and Borough had worked well together on the process. She added that land ownership is one of the barriers to resolving some of the problems.

The Local Committee resolved:

- (i) The county council's intention to introduce the proposals in Annex 1 is formally advertised, and subject to statutory consultation;
- (ii) If objections are received the Parking Strategy and Implementation Team Manager is authorised to try and resolve them;
- (iii) If any objections cannot be resolved, the Parking Strategy and Implementation Team Manager, in consultation with the Chairman/Vice Chairman of this committee and the county councillor for the division, decides whether or not they should be acceded to and therefore whether the order should be made, with or without modifications.

Reason: Changes to the highway network, the built environment and society mean that parking behaviour changes and consequently it is necessary for a Highway Authority to carry out regular reviews of waiting and parking restrictions on the highway network.

62/15 HIGHWAYS UPDATE (EXECUTIVE FUNCTION) [Item 12]

Frank Apicella (Principal Highway Maintenance Engineer) introduced the report. He explained the various tables in the document had been updated with the latest information and the report included details of the Long Ditton Trust Fund in paragraphs 2.9 to 2.12. In addition the proposed bus stop in Station Avenue was detailed in paragraph 2.13 to 2.15.

The Chairman encouraged the SCC councillors to contact the Area Highways Manager with their divisional programmes for the next financial year. Comments were made about how highly the Members value the local highway allocation.

The Local Committee resolved to:

- (i) Authorise the implementation of a new bus stop clearway outside numbers 39 and 41 Station Avenue, Walton (paragraphs 2.13 to 2.15 refer);

- (ii) Authorise the Area Team Manager in consultation with the Chairman and Vice Chairman to decide Divisional Programmes for next Financial Year, in the event that individual Divisional Members have not confirmed their priorities by 18th December 2015 (paragraphs 2.23 to 2.25 refer);
- (iii) Authorise the Area Highway Manager in consultation with the Chairman, vice Chairman, and relevant Divisional Member(s) to undertake all necessary procedures to deliver the agreed programmes.

Reason: to enable the 2016-17 Highway programmes funded by the Local Committee to be decided in good time to facilitate timely delivery of those programmes.

63/15 MEMBERS' ALLOCATIONS UPDATE (EXECUTIVE FUNCTION - FOR INFORMATION) [Item 13]

The Local Committee noted:

- (i) The amounts that have been spent from the Members' Allocation budget, as set out in Annex 1 of the report.

Meeting ended at: 6.25 pm

Chairman

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