

# LICENSING PANEL MINUTES

## 4 MARCH 2013

**Chairman:** \* Councillor Phillip O'Dell

**Councillors:** \* Mano Dharmarajah \* John Nickolay

\* Denotes Member present

### 151. Appointment of Chairman

**RESOLVED:** That Councillor Phillip O'Dell be appointed as Chairman for this Licensing Panel Hearing.

### 152. Declarations of Interest

**RESOLVED:** To note that there were no declarations of interest made.

### 153. Minutes

(See Note at conclusion of these minutes).

### 154. Public Questions, Petitions and Deputations

**RESOLVED:** To note that no public questions were put, or petitions or deputations received at this meeting.

## RESOLVED ITEMS

### 155. Application to Modify the Definitive Map - Land Rear of The Avenue, Hatch End

#### In attendance:

Legal Adviser: Sian Webb

In attendance: Katherine Hamilton (Presenting Officer, Legal and Governance Services, Harrow Council)

Mr Shahid Pervez (Objector)

Mr Tanvir Quereshi (Objector's Representative)

Mr David Fordham (Applicant)

Democratic Services Officer: Vishal Seegoolam

The Panel considered a report, which set out an application from Mr Fordham to modify the Definitive Map and Statement in respect of alleged public rights of way over land to the rear of The Avenue, Hatch End. The report recommended that the application be refused.

The Presenting Officer reported that:

- following the application from Mr Fordham, Mr Pervez had registered an objection. Mr Pervez was the owner of the land in question;
- officers from the Council had conducted a site visit. These officers had been unable to walk all of the alleged footpaths. However there was some evidence of footbridges and some pathways;
- questionnaires had been submitted along with the application. These had been used by the applicant to demonstrate his contention that the footpaths across the land had been in existence since 1970 and that use by the public had been for a minimum of 20 years;
- the Objector had submitted that he purchased the land in 1998 and since this period the site had been fenced and gated to prevent access. The Objector had also claimed that a sign was on the site indicating that it was private land;
- the Definitive Map was a conclusive document on public rights of way from a legal perspective;
- the Definitive Map had last been reviewed on 31 December 1969. The Council had a statutory duty to continuously review this;

- the application had been assessed under Section 53(3)(b) of the Wildlife and Countryside Act 1981. This section related to where events had occurred since the Definitive Map was last prepared or reviewed and a right of way had come into existence where none had existed before;
- under Section 53(3)(b) there were three tests which were required to be satisfied for the application to be successful. These were as follows:
  - did the application relate to a way over land that is of a character that use of it by the public could give rise at common law to a presumption of dedication?
  - if so, had it been enjoyed by the public for a full period of 20 years without interruption?
  - if so, had that use been as of right?
- consideration had been provided to all three tests. It was officers' view that the application be rejected as the applicant had failed to demonstrate the public nature of the right. Whilst access to the land from The Avenue could indicate a public use, the two footbridges were unlikely to because they were over private land. Additionally to demonstrate a public nature, it was not required to demonstrate that everyone had used the land but on the other hand the use of the land could not be limited to a specific number of people. From the evidence provided by the applicant, it appeared that users of the land were specific and limited. There was also a lack of detail in the evidence provided on how often the land was used or any specific detail.

The Applicant addressed the Panel and made the following points:

- it was accepted that the decision on whether the application would succeed or fail was based on the public use of the footpaths;
- the footpaths had been in existence before the 1970s. The Avenue had been built in the 1920s. Gaps had been deliberately left in between the houses to allow access to the land. This had always been intended for public use;
- when vehicular gates were put up in the 1960s, a gap had been deliberately left to allow the public to use the land;
- it may have been the case that the numbers who used the land for public use had dwindled. However the facts were important. If the application was granted, it would also establish an excellent Green Lane linking up to the open space in Hatch End on to Oxhey Lane and the Grimsdyke.

Following questioning from Members of the Panel, the Applicant commented that residents close the land had considered if there would be security issues if a public right of way was granted. However it was considered that the principle of establishing the right of way was more important. In addition to this, no residents had complained about the planning application submitted in 1995 to build a house on the land, because the application had no chance of succeeding as it was green belt land.

The Objector's Representative addressed the Panel and made the following points:

- the Applicant was inviting the Panel to speculate on the evidence provided. It was important for the Panel to base their decision on the evidence provided;
- no prior evidence had been provided on establishing a Green Lane within the borough. This should therefore be disregarded for the purposes of this hearing;
- the Definitive Map was conclusive in terms of depicting public rights of way. The Panel should therefore bear this in mind;
- there was no conclusive evidence to support the Applicant's contention that there was public use of footpaths across the land;
- evidence provided by the Applicant had been limited to evidence provided by neighbouring properties to the land. This was not sufficient to satisfy the legal tests;
- officers from the Council had inspected the alleged routes. They had encountered access issues due to overgrown vegetation demonstrating that there was no public use;
- in 1995 a previous owner had lodged an application to build a house on the land. No objection had been received from any members of the public claiming that they had access to the land. If public rights of way had existed, objections to the application would have been received;
- the interpretation placed by the Presenting Officer on the legal tests surrounding the application were endorsed by the Applicant.

Following questioning from Members of the Panel, the Objector's Representative submitted that there were no documents providing any rights of way to any members of the public. The reason for their objection to the Application was to ensure adherence to the Law.

**RESOLVED:** That

- (1) Committee Procedure Rule 16 relating to deputations be suspended for the duration of this meeting;

- (2) the application be refused, in accordance with the officer's recommendation, as the Applicant had not demonstrated the public nature of the use of the right of way.

(Note: The meeting, having commenced at 7.42 pm, closed at 9.08 pm).

(Signed) COUNCILLOR PHILLIP O'DELL  
Chairman

[Note: Licensing Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chairman for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Licensing Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chairman and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].