

RE/pvln  
06 February 2009

Cllr. Mrs. Maureen C. Comber  
East Hampshire District Council  
Penns Place  
Petersfield  
Hampshire GU31 4EX

**Councillor Raymond J. Ellis**

Executive Member for Efficiency, Performance & Rural  
Policy

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Dear Maureen

Thank you for your email of 12 December, 2008. I apologise for the delay in responding but I wanted to ensure that I had all the facts before doing so.

I do understand why it might appear odd that the County Council is objecting to an order to add a bridleway to the definitive map at the same time as it is looking for opportunities improve the rights of way network for users. I think the problem lies in the fact that there are a number of different ways in which access can be improved but the definitive map process is applicable only where the desired path already exists. It cannot be used to add a path to the map unless the path is already a right of way.

My understanding of the situation is that the Regulatory Committee did not feel the evidence presented with your application was sufficient to show that the bridleway existed. The Secretary of State concluded that there was sufficient evidence to justify the making of an order, although he did not go as far as deciding whether the bridleway should be added to the definitive map. In any event, the effect of his decision is to facilitate a public debate about the evidence. The County Council's objection to the order has been based on the Regulatory Committee's view of the evidence rather than on any assessment of the public benefit of the bridleway.

Therefore, please see below answers to the five questions you originally asked  
Councillor Kemp-Gee:


1. Andrew Smith is an officer of the County Council and is merely implementing the decision of the Regulatory Committee.
2. There is no need for further ratification from Councillors because the objection is in accordance with the Committee's decision.
3. I understand that costs can be awarded against any party whose conduct at, or in advance of, a hearing or inquiry incurs unnecessary or wasted expense. Costs should not be awarded against any party merely for sustaining an objection.
4. It is a shame that the County Council's view of the evidence differs from yours but, given that we have taken the view that the right of way has not been shown to exist, it could also be argued that the Council would be acting inconsistently if it did *not* object to the order. It would be inappropriate to use the 1981 legislation to gain improvements to the network on the basis of public benefit.

5. I do not think that the County Council will be withdrawing its objection to the order. Quite apart from the fact that it reflects the decision of the Regulatory Committee, there would be no saving of costs as there are other objections which need to be sent to the Secretary of State which will cause him to hold a hearing or public inquiry. This is all part of the statutory process set out in the 1981 Act and is intended to ensure that an order is only confirmed if it is fully justified on the facts: it is not really 'litigation'.

I hope you will agree that if there is any doubt or disagreement about the order it is only right that a full and proper debate should take place about the evidence which supports it. This is important to maintain the credibility of the definitive map as a record of public rights.

I am sure that if the Secretary of State is satisfied that a bridleway exists on your claimed route he will confirm the order. I see no disadvantage in allowing all those with an interest in the matter, including the County Council, to express their views before such a decision is made. The definitive map will be a better and more robust record as a result of that debate.

Yours sincerely



Cllr Dr Raymond J Ellis C.Chem FRSC  
County Councillor, Fareham Town