

# Minutes

Name of meeting	<b>GENERAL PURPOSES (APPEALS) SUB COMMITTEE</b>
Date and time	<b>MONDAY, 11 APRIL 2011 COMMENCING AT 10.00 AM</b>
Venue	<b>COMMITTEE ROOM ONE, COUNTY HALL, NEWPORT, ISLE OF WIGHT</b>
Present	Cllr Susan Scoccia (Chairman), Jonathan Bacon, Paul Fuller
Officers Present	Darrel Clarke, Julie Martin, Alex Russell, Justin Thorne

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24. [Minutes](#)

RESOLVED :

THAT the Minutes of the meeting held on [28 February 2011](#) be confirmed.

25. [Declarations of Interest](#)

Councillor Paul Fuller declared a personal interest in Minute 26, as he was a member of the Local Access Forum.

Councillor Susan Scoccia declared a personal interest in Minute 26, as she knew Mr Rodley through his brother, who was Chairman at Ventnor Tennis Club, to which she was a trustee.

26. **Report of the Strategic Director of Economy and Environment**

Application for Definitive Map Modification Order, Public Footpath NT46, Castlehaven, Niton Undercliff, Niton, Ventnor, Isle of Wight ([Recording 1](#) and [2](#))

The applicant was in attendance.

The Rights of Way Manager presented her report which set out evidence to determine an application under Section 53 of the Wildlife and Countryside Act 1981 for an order to modify the Definitive Map and Statement by deleting a section of Public Footpath NT46 at Castlehaven, Niton Undercliff, Niton, Ventnor, Isle of Wight.

The application was for a modification order to delete a section of Public Footpath NT46 marked ABC on the application plan, adjacent to Beach Cottage at Castlehaven from the Definitive Map and Statement. The grounds for the application were that the true route of the footpath was on the beach below

mean high water mark which no longer existed. The applicant, Mr L Thorne, was the owner of Beach Cottage.

Members were advised that the presumption was that the definitive map was correct and the onus was on the applicant to prove otherwise.

The Committee was told that the only statutory consultee was the Parish Council, who had objected to the deletion as the footpath was used regularly.

The applicant had suggested that the correct route was on the beach in front of (rather than along the front) of the sea wall as there was a drop of approximately four metres from the top. He believed the sea wall had been gated at the eastern end.

Upon receiving the report of the Rights of Way Section, oral and written evidence from the applicant the Sub Committee reject the application in relation to path B – A to make an Order under Section 53 (3)(c)iii of the Wildlife and Countryside Act 1981. Members did not hear any new, cogent and substantial evidence that showed that an Order should be made in relation to this part.

In particular Members considered there was no conflict between the Map and the Statement. The Statement clearly identified the location of the path. The photo's that were supplied did not, on the balance of probabilities; show the section of path should be modified.

Members did note that there may have been a drop of varying heights at the western end of the wall. Members were not convinced there were ramps in situ although do believe something was there.

The photographic evidence did not prove that the Statement was wrong in its entirety. Members did not hear any evidence of actual use of the beach in front of the wall. In fact photo's suggested the beach was not conducive to walking. Members noted the 1908 and 1939 OS plans. Whilst noting the plans were of significance they did not believe it showed, on balance that an Order should be made.

In relation to part B – C Members noted the divergence was evidence itself of 'new evidence'. Members considered the route shown on the plan was more likely than not to have been the correct route. Noting the path has since gone and agree the recommendation in the report.

In reaching the decision the Sub Committee had had regard to the Human Rights Act 1998 and in particular Article 1 of the First Protocol, Article 8 and Article 6.

If the applicant was dissatisfied with the decision then he may make representations to the Secretary of State.

RESOLVED :

*Decision*

THAT no order be made to delete part of path NT46 between points ABC on the application plan from the Definitive Map and Statement and reject the application but a modification order be made before the next consolidation to remove the section of NT46 between the western end of the sea wall and the base of the coastal slope and modify the Definitive Statement accordingly, and also modify the Definitive Statement to remove reference to a path running along the western boundary of Beach Cottage.

CHAIRMAN