

## HIGHWAYS ACT 1986 Section 117

### INQUIRY TO CONFIRM THE STATUS OF THE DONKEY TRACK (U72 ANDREAS) AND WHETHER THE DONKEY TRACK IS A HIGHWAY MAINTAINABLE AT THE PUBLIC EXPENSE UNDER THE ACT

#### SECOND PRE-INQUIRY NOTE FROM THE APPOINTED INSPECTOR

#### **NOTE**

***The following comments take into account the views of DOI and the landowner, Ballaseyr Stud Limited, on procedure and are a guide to the conduct of the Inquiry which will be confirmed in opening.***

#### **Introduction**

This Note is circulated to all those with an interest in the above matter and the Inquiry.

This Note is intended to assist the smooth running of the Inquiry set down to open at 10.00 am on **Tuesday 9 November 2021** at the iMuseum Kingswood Grove, Douglas IM 3LY adjacent to Manx Museum. The Inquiry is provisionally expected to sit for up to three days - 9 to 11 November.

This Note is not itself a formal document. It is entirely procedural, and does not consider the merits of the case, which are strictly for the Inquiry itself.

Any queries arising from this Note can be raised with the Appeals Administrator or at the opening of the Inquiry.

#### **Documentation**

I have before me the following documentation:

##### ***DOI***

Folders A4 1-5 of Documents including Appeal Statements (proofs) Tracy McQuillan and Timothy Cowin (File 5/9-10)

A3 folder of plans

Timeline

##### ***Landowner***

Proof of Evidence by Balasseyr Stud Ltd and Appendices (one folder).

### ***Third Parties***

27 catalogued representations for and against highway status (one folder).

### **Inquiry Procedure**

Highway Services Division of the Department of Infrastructure will first be invited to present its case that the Donkey Track is a Highway Maintainable at the Public Expense, with questions in turn by the land owner, Ballaseyr Stud Limited and any other party of the opposite view and entitled to appear, and from the Inspector.

Ballaseyr Stud and any other parties who support the view that the Donkey Track is not publicly maintainable will then be invited in turn to present their own cases and may be asked questions by the Department, supporters of public status and the Inspector.

It is expected that the respective cases will be presented with reference to the documentary evidence which has been submitted and copied to all parties concerned or placed upon the IoM Government website. Any outstanding queries regarding documentation should be taken up with the Cabinet Office as soon as possible.

After the completion of the evidence, participants will be given the opportunity, if they wish, to sum up their cases in reverse order, followed by the Department.

### **Preliminaries**

The Inspector will begin by noting those who wish to speak and seeking confirmation that any statutory procedures have been completed.

The Inspector will then refer to the submitted documentation, plans and photographs and may provide an outline provisional programme or agenda to guide the proceedings, including whether evidence will be heard by way of cross-examination or round table discussion or a combination of both.

### **Legislation, Submissions and Scope**

The Inquiry is held under Section 117 of the Act and with reference to Sections 3 regarding maintenance of highways, Sections 88-89 regarding presumption and evidence of dedication as a highway and any other legal relevant legal provision.

The Inspector will, if necessary, hear submissions as to the appropriate legal tests to be applied.

However, the Inquiry is limited to the essential question whether the Donkey Track is maintainable at the public expense as a matter of

judgement with reference to the relevant legal tests and in light of the available evidence.

In the absence of other guidance or legislation, the Inquiry will be conducted on similar lines to a planning hearing, ensuring that all points of view on relevant issues are explored.

## **Issues**

The essential issues to be determined are:

- whether the Donkey Track is a highway at all, and if so,
- whether and to what extent it is maintainable at public expense.

The relevant matters for discussion are considered to be:

- The origins and history of the Donkey Track
- The historic use of the Track up to the present, including any interruptions to its use especially within the period of 21 years prior to the present dispute (Section 88(1))
- Properties previously or presently served by the Track
- Maintenance history of the Track (including recent voluntary work and, for clarity, the appropriate level of maintenance, if without prejudice, the Track is judged by the Minister to be publicly maintainable)
- Overall, the weight to be given to (ie reliability to be placed upon) the submitted documentary and oral evidence (Section 89)

It is emphasised that, whilst a range of other matters raised in the written evidence are of understandable concern to respondents, such as the condition of the Track, public benefits, present usage, voluntary maintenance, road safety etc, it is not intended that these will be heard orally because they are peripheral to the central issues set out above.

## **Appearances**

Participants who wish to appear in person and are likely to raise the same or similar points are encouraged to combine together or to appoint a single spokesperson, as the Inspector will not allow undue repetition.

In the event that a participant fails to appear in person or be represented, the written evidence will still be taken into account and the Department and other parties may comment upon it at the Inquiry.

## **Site Visit**

The Inspector has inspected the Donkey Track and its junctions with Bernahara Road and St Judes Road.

*B J Sims*

Inspector

19 October 2021