

Rights of Way Committee

22 October 2019

Recent Decision by the Secretary of State's Inspector:

West Sussex County Council (Chichester No. 1 (Parish of Walberton and Arundel addition of a Restricted Byway and Upgrade of Footpath 342 to a Bridleway)) Definitive Map Modification Order 2018

Report by Director of Law and Assurance

Electoral divisions: Fontwell / Arundel and Courtwick

Recommendation

That this report be noted.

1. Background

- 1.1 In January 2018 WSCC received a DMMO application, made by the British Horse Society for the addition of a restricted byway and upgrade of footpath 342 to a bridleway in the parish of Walberton and Arundel, under Section 53 (3) c (i) and c (ii) of the Wildlife and Countryside Act 1981.
- 1.2 The application was supported by documentary evidence only and was therefore considered with reference to section 32 of the Highways Act 1980.
- 1.3 Several landowners objected to the application with concerns relating to the suitability of the path being upgraded and impact that would have on the landowners.
- 1.4 The application was considered in two parts 1) the addition of a restricted byway from points A to B and 2) the upgrade of footpath 342 to a bridleway, points B to G.
- 1.5 The legal tests to satisfy before making a Definitive Map Modification Order are:
 - i. Test A – whether a public right of way subsists (in order for Test A to be fulfilled, the standard of proof is to show that a right of way does exist is the balance of probabilities); or

- ii. Test B – whether a public right of way has been reasonably alleged to subsist (in order for Test B to be fulfilled it must be shown that the reasonable person, considering all relevant evidence available could reasonably allege a public right way to subsist).
 - iii. An upgrade of a public right of way under section 53 (3) c (ii) must meet the higher test of balance of probability (Test A) and therefore only section A to B of the application route, for an addition of a restricted byway can be considered against the lower test of reasonably alleged (Test B).
- 1.6 The investigating officer considered that there was insufficient evidence to suggest that a status of restricted byway was established on the balance of probabilities or on the lower test of reasonable allegation for section A to B. For the application to upgrade the footpath 342 from points B to G to bridleway, it was also considered the evidence was inconclusive and it could not be proven on the balance of probabilities that a bridleway should be shown on the definitive map.
- 1.7 The application was considered under delegated authority and the decision was made on 30 October 2018 for an order to not be made.
- 1.8 The applicant appealed against the delegated decision under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981.
- 1.9 The Inspector has allowed the appeal and directed WSCC to make an order, a summary of the Inspector’s report is provided below and the report attached.

2. The Inspector’s Decision

- 2.1 A full copy of the Inspector’s decision is attached. By way of summary, the Inspector concluded that;
- i. For Points A-B there is a reasonable case for a public road to have existed from A-B as the application route appears to be consistently marked as a road or lane on historic maps and its public use is supported by evidence from the Tithe map, apportionment for Binsted and Finance map. The inspector highlighted that the evidence does not need to be conclusive as this section of the route is only required to meet the lower test of reasonably alleged.
 - ii. For points B to G the evidence such as the Glebe Terrier, estate maps 1724, county map 1778 and OS maps could indicate a bridleway existed. The inspector also concludes that A-B would not have existed in isolation and that extracts provided by the applicant provide the historical context for a route to have been used to travel by horse and foot from the Church towards Arundel. It was therefore concluded, although finely balanced, that drawing the evidence together it can be shown on balance a bridleway subsisted.

- 2.2 Overall, the Inspector found that on the balance of probabilities it can be reasonably alleged a byway existed between points A to B and she was satisfied, on the balance of probabilities that a bridleway subsists between points B-G. WSCC were therefore directed to make an order on 12 July 2019.
- 2.3 An Order to add a restricted byway and upgrade footpath 342 to a bridleway in the parish of Walberton and Arundel was made by WSCC on 13 August 2019. The objection/representation period will end on 11 October 2019.

3 Resource Implications and Value for Money

- 3.1 The County Council has the duty to investigate applications for Definitive Map Modification Orders made under the Wildlife and Countryside Act 1981. Applicants are not required to reimburse the County Council's costs for considering and determining these applications.

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Appendices

None

Background papers

- (a) [Delegated Report 9 October 2018](#)
- (b) [Inspectors full decision dated 12 July 2019](#)
- (c) [Location Plan](#)