

Rights of Way Committee

22 October 2019

Recent Decision by the Secretary of State's Inspector:

DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly

Report by Director of Law and Assurance

Electoral division: Lindfield and High Weald

Recommendation

That this report be noted.

1. Background

- 1.1 In March 2019 the Committee considered a DMMO application, made by Mr Paul Brown, to add a bridleway and upgrade an existing length of footpath (FP 51ESx) to bridleway status.
- 1.2 With regards to the addition of a new length of bridleway (being points A – B on the plan) 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).
- 1.3 In relation to the upgrade of FP 51ESX (being points B – C on the plan) Section 53(3)(c)(ii) states that an order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other evidence shows that a highway shown on the map and statement as a highway of one description ought to be there shown as a highway of a different description. The test to apply in such circumstance is the balance of probabilities.
- 1.4 The application was supported by documentary archival evidence only. No user evidence was submitted with the application.

- 1.5 The affected landowners (Ibstock Bricks Limited, the Mayes Estate and the Guide Association) objected to the application and submitted their objection as a consortium. The consortium's objection argued that the claimed route did not appear consistently on the maps provided by the applicant and that where the claimed route was visible there is nothing to differentiate it from private ways or otherwise to indicate its status. Comments on the application were also received from the adjoining landowners.
- 1.6 The reporting officer concluded that the evidence provided by the applicant was not sufficient and did not meet the required legal tests applicable in both instances. It was therefore recommended that an order should not be made.
- 1.7 Committee agreed with the Officer recommendation and it was resolved that an order be not made.
- 1.8 On 25 March 2019 the applicant appealed the County Council's decision by making an application to the Planning Inspectorate.

2. The Inspector's Decision

- 2.1 A full copy of the Inspectors decision report is attached, however, after reviewing the appeal documentation the Inspector concluded that;
- i. In relation to part A –B, being the addition of a bridleway, evidence that a route physically existed on the ground was strongly supported by the mapping evidence. The inspector therefore concluded that the requirements of the lower test, being that a right of way has been reasonably alleged to subsist, had been met.
 - ii. In relation to part B – C, being the upgrade of the exiting footpath to bridleway, the inspector concluded that the appearance of the path suggests a route of more significance than a footpath.
- 2.2 In conclusion, when taking a pragmatic approach when considering the route as a whole the Inspector directed that an order for the whole route be made.
- 2.2 On 17 September 2019 the West Sussex County Council (Cuckfield Rural No.1 (Addition of public bridleway and upgrade public footpath 51ESx to public bridleway)) Definitive Map Modification Order 2019 was made.

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) [Committee Report 5 March 2019](#)
- (b) [Inspectors full decision dated 9 August 2019](#)
- (c) [Site Plan](#)