

## **Rights of Way Committee**

**12 June 2018**

**Rogate: Application for a Definitive Map Modification Order (Application No: 5/16) to add a public footpath from bridleway 1163 to Fyning Lane in the Parish of Rogate.**

### **Report by the Director of Law and Assurance**

#### **Executive Summary**

The application, submitted by Ann M Arnold, is made under the provisions of Section 53 of the Wildlife and Countryside Act 1981 and seeks to modify the Definitive Map and Statement for Rogate by adding a public footpath from bridleway 1163 to Fyning Lane in the Parish of Rogate.

All evidence in respect of this claim is available for inspection in the Members' Room prior to the meeting.

1. The application was submitted with 18 public way evidence forms supporting use of the claimed route between 1939 and 2016.
2. Each of the landowners has submitted evidence against the application including evidence that the claimed route has been blocked for various periods during buildings works from 1991. 30 local residents have also submitted objections to the application, most of which never understood the claimed route to be a public right of way, as it was not an accessible route, there being other more attractive and convenient routes available.
3. The first of act of challenge is taken to be when the claimed route was closed for 31 months between February 1995 and August 1997 whilst an extension was built directly adjacent the claimed route. The claimed route was completely blocked, having been dug with 2.9 metre foundations, leaving users with no alternative route. The relevant 20 year period of continuous use for the purpose of this application is therefore 1975 – 1995.
4. The archive evidence is inconclusive as to the existence of a public right of way over the claimed route.
5. The evidence of use asserts use of the claimed route for the relevant period 'as of right' and without interruption. However, there is a direct conflict of evidence from those in objection to the claimed route, which asserts that the claimed route was not an accessible route and was not used by the public. The landowner of part of the route also asserts that for periods from 1991 the claimed route was temporarily blocked during various building projects. In the absence of incontrovertible evidence that the claimed route cannot be reasonably alleged to subsist, on balance, it is concluded a path can be reasonably alleged to subsist.

6. On the basis of all the evidence available, it can reasonably be alleged that the owners of the land over which the claimed route runs dedicated public rights on foot and that the public has accepted that dedication.
7. It is recommended that an order to add the path to the Definitive Map be made on this basis.

### **Recommendation**

That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, to add a footpath from bridleway 1163 to Fyning Lane in Rogate be made.

## **1. Characters and features of the route**

- 1.1 The claimed route is shown on the plan attached to this report, running between points A, B and C.
- 1.2 The claimed route begins on point A bridleway 1163 and runs west to point B. From point B the track then runs south to point C to where it opens up on to Fyning Lane. Fyning Lane is an adopted highway.
- 1.3 A site visit of the claimed route was carried out starting at point C on the application plan. The path at point C has a width of 3 metres and is a loose gravel surface. The path runs north 178 metres from point C to B on the application plan. At point B, the claimed route proceeds east with a width of 1 metre and is of an earth surface. The site visit proceeded for approximately 50 metres where a fence belonging to Fyning Twitten was blown down obstructing the route. The site visit restarted at point A on the application plan.
- 1.4 Point A has a width of 8 metres and is a loose gravel surface. The path proceeds at a small incline where the surface changes to earth and runs for approximately 80 metres where the route was obstructed, making the route impassable and so had to continue through the property boundary.
- 1.5 Approximately 82 metres along, the path has a width of 1.5 metres with an earth surface. After a further 20 metres a gate has been installed by the landowners making the route impassable. Through the gate for a distance of approximately 65 metres, the claimed route has been obstructed by various trees and branches, leading to divert approximately 2 metres around the claimed route. After a further 10 metres, the claimed route runs behind Fyning Twitten.
- 1.6 At approximately 170 metres from point A to point B, the path is very difficult to pass due to obstruction by the fence of Fyning Twitten in several places. The claimed route is narrow in some places with a width of 0.5 metres although, in other parts the route has a width of 1 metre.

The claimed route has an earth surface for the majority of its length from A – B.

## **2. Land ownership**

- 2.1 Land Registry documents show there to be several different landowners for the claimed route, there is also some unregistered land.
- 2.2 The landowners of the claimed route are Mr and Mrs Noble, Mrs Abramovich, Mr and Mrs Grey and Mr Pope.
- 2.3 The applicant served notice of the application on each individual landowner on 5 December 2016. The applicant also displayed a copy of the notice on the claimed route.

## **3. Consultations**

Before Making a Definitive Map Modification Order, the County Council is obliged to consult the relevant District or Borough and Parish Councils. Consultations have also been carried out with other interested bodies. Responses to the consultations can be found in the evidence file in the members' room.

In considering the result of consultations, members of the Committee are requested to bear in mind that, when determining this application they can only take into account evidence which demonstrates whether or not the tests in Section 53 have been satisfied. The following consultation responses were received:

### **3.1 Rogate Parish Council**

Rogate Parish Council is aware of a body of evidence that confirms this is an ancient path that dates back to 1810 and as a consequence, the parish council supports the DMMO application.

### **3.2 No consultation responses were received from the following bodies:**

Auto-Cycle Union, British Driving Society, British Horse Society, Byways and Bridleways Trust, Open Spaces Society, Cycling UK, Ramblers Association.

## **4. Evidence in support of the application**

- 4.1 The application was submitted on 5 December 2016 by Ms Ann Arnold and is supported by 18 user evidence forms; however, since the application was submitted 2 witnesses have withdrawn their evidence, leaving 16 user evidence forms spanning the period 1939 to 2016. The burden of proof rests with the applicant.
- 4.2 Most of the witnesses report to have seen no notices during their use of the claimed route. Although, 4 users claim to have seen a "private" sign

since June 2016. 12 of the users also note that two unlocked gates were erected in January 2016.

- 4.3 All users claim to have used the route on foot and the frequency of use varies between 3 times per year to weekly, with some users not stating how often they have used the route. Most users claim to have seen others using the claimed route. One user, Ellen Patricia Bateman states that she worked for Fyning Twitten during 1980 to 1986 for the period of her use. This user's evidence has been disregarded as despite the fact it is stated she was not given permission to use the route by the Owner, it is concluded that her use of the claimed route was likely in the exercise of a private right.
- 4.4 All users claim that they have never been told by an owner or occupier that the route was not public and that they have never sought or received permission to use the route. No users reference the presence of any signs other than that erected in 2016. No users report any stiles, gates or obstructions of the claimed route other than two unlocked gates since January 2016.
- 4.5 The applicant has submitted Ordnance Survey maps with the application with the earliest map showing the application route dating back to 1879. The applicant states that these maps are evidence that a path has existed since this date. One of the maps submitted by the applicant is dated 1913 – 1914 and shows the application route labelled "FP".

## **5. Evidence against the application**

### **5.1 The Grey family**

- 5.2 Mr and Mrs Grey are the owners of Fyning Copse which they have owned since 1990. The claimed route affects the majority of Fyning Copse's property boundary from point A to B.
- 5.3 They contest that the claimed route is a public right of way and state local people do not wish to walk it as it leads nowhere. They consider the claimed route should be described as an entirely private garden path.
- 5.4 They state that the claimed route was closed for 31 months between February 1995 and August 1997, whilst they were constructing an extension directly adjacent to the claimed route and assert that the right of the public to use the claimed route was therefore first called into question in February 1995.
- 5.5 The part of the claimed route that is adjacent to their property boundary has been seriously blocked many times over the past 27 years. This includes the building of a studio around 1991 for a period of nine months when the claimed route was covered by scaffolding. In 2010 a large oak tree fell from Fyning Estate across the claimed route onto the studio roof. The roof had to be rebuilt and for a period of approximately 3 months, the claimed route was blocked with scaffolding and building materials. Building materials for a copper roofed low building were stored on the

claimed route in around 1992. The building of a bicycle shed in 1994 involved the blocking of the claimed route for a period. An open log store extension to the bicycle shed building was made in 2005 resulting in the claimed route being used as a construction area for a couple of months. The back of this building has been continually used to store large items which have regularly blocked the claimed route. It is argued that these interruptions are strong evidence that they have never intended to dedicate the way to the public. They also assert that this is evidence that the claimed route was not heavily used by the public as they claim to have never received a single complaint in relation to these closures of the route. Evidence of the above is provided within section D of the background papers.

- 5.6 Mr and Mrs Grey have also provided witness statements from their four grown up children; 5 past employees of Johnny Grey Studios; 5 current employees of Johnny Grey Studios; 3 past builders or other contractors at Fyning Copse; their daughter's partner Dr Henry Bowyer and their lodger Korel Walley in objection to the claimed route. All of these people have been in very close proximity to the claimed route at various points. With the exception of Mrs Grey, none of these people has seen a single user of the claimed route up until 2016. Mrs Grey refers to two people she has seen using the path between 5 and 8 times and to whom she has given permission to use the claimed route over the period she has lived at Fyning Copse.
- 5.6 Mr and Mrs Grey have questioned the validity of the user evidence forms stating that there is a serious conflict of interest at the heart of the DMMO application, which they state arises from a boundary dispute dating back to 2006. They note that two of the users asked for their evidence to be discounted as they believed the claimed route was a different path in the woods to the north. Mrs and Mrs Grey also question the stated route of 11 witnesses who state they were walking the claimed route as a means of going from Fyning to Rogate Village. In order to do so people would walk through the Fyning Hill Estate woods to the north and west of the claimed route. It is concluded therefore that the witnesses were confused about which path they were giving evidence about.
- 5.7 Mr and Mrs Noble
- 5.8 Mr and Mrs Noble occupy Fyning Twitten which is situated at point B on the application plan and have occupied this property for 5 years. Prior to their occupation they were long standing residents of the village and have lived within ½ mile of the claimed route for over 20 years.
- 5.9 Mr and Mrs Noble do not consider the route to be a public right of way stating that when they purchased the property legal searches confirmed this to be the case. They advise that they have never seen any walkers using the route A to B, that they were never told of it by others and that there is nothing to indicate there was a path there. Mr and Mrs Noble have only ever seen the owner of Fyning Copse use the claimed route A to B. There are large signs all over Fyning Hill Estate declaring it to be

Private Property and for anyone entering to keep on the clearly signed rights of way.

- 5.10 During 2014 when the eastern boundary of the property was cleared no users were visible and in 2015 when 2 garden sheds were relocated bordering the claimed route A to B, the work took several months and during that time no-one was seen using it. The claimed route has been overgrown with bracken which has not been trodden down, a good indicator of use.
- 5.11 One side of the claimed route A to B is bordered by an old boundary fence. When the property was purchased in 2013 the fence was braced against trees on the opposite side of the claimed route by well-aged wooden braces, which effectively blocked the claimed route. Mr and Mrs Noble note that the fence has collapsed into the claimed route at the present time. They have not received any complaints about this.
- 5.12 Mr and Mrs Noble advise that the claimed route identified as point B to C on the application plan is very narrow with insufficient room for cars and pedestrians to pass each other. This part of the claimed route is used by vehicles as a private right of access to properties, meaning the route would be unsafe if it were to be made a public right of way. On a number of occasions they have had cause to block the claimed route B to C for maintenance of overhead branches and tree cutting, and over the last 18 months a building project. On several occasions the claimed route has been completely blocked by large vehicles bringing materials to and from the site and to work on site. There have been no complaints during this time about rights being denied.
- 5.13 Mr and Mrs Noble note that the user evidence forms are not consistent with their descriptions of the track and so have questioned the validity of the user evidence forms. It is surmised that there is confusion over the route being claimed. Many users refer to the track being predominantly grass/turf/sandy which mis-describes the surface. The claimed route A to B is not grass but leaf litter. The claimed route B to C is a hard surface along its full length.
- 5.14 Mr and Mrs Wakeland
- 5.15 Mr and Mrs Wakeland occupy Foresters Cottage which is situated just north of the claimed route, identified as point B and have done so for over 14 years. The claimed route from point B to C is their private access route to the property, which they travel over frequently (approx. 750 times per year in the case of Mr Wakeland and approx. 2000 times per year for Mrs Wakeland). During that time they have never seen any of the users who assert to have used the claimed route.
- 5.16 Mr and Mrs Wakeland state that the claimed route from point B to C was closed for a period from February 2008 to March 2008 for forestry work. Mrs Wakeland also advises that since moving into the property she has maintained the hedges, at least four times a year, at which times access to the claimed route has been blocked. There has never been any

challenge from members of the public. Evidence of the path's closure is provided in section D of the background papers.

- 5.17 Mr and Mrs Wakeland claim that the track from point B to C is very narrow and difficult to pass pedestrians safely. If the claimed route were to become a public right of way there would be an increased safety risk for pedestrians and restrict access to their property.
- 5.18 Mr and Mrs Wakeland also question the validity of the user evidence forms, which were originally canvassed by Rogate Parish Council. The Parish Council sought to make the application for route A-B-C on the application plan but subsequently voted against pursuing the application in November 2016.
- 5.19 Mr Hall
- 5.20 Mr Hall is the Estate Manager of Fyning Hill Estate. Part of the claimed route from point A to B is within the Estate. Mr Hall has acted as agent for the owners of Fyning Hill Estate since August 1991.
- 5.21 Mr Hall advises that there is a "private land" sign erected along the claimed route A to Band states that it is sited near a security access gate and adjoins the claimed path, making it clear that the land is private property. Mr Hall's evidence is provided in section D of the background papers.
- 5.22 Mr Hall refers to new fencing erected opposite the claimed route between A to B approximately 10 to 15 years ago. It is stated that the fencing was erected across the claimed route and was cut by members of the public over a period of 6 to 8 weeks and each time replaced by Fyning Hill Estate. This became such a repeated problem that a gate was installed.
- 5.23 Mr Hall advises that the claimed route has always been very narrow and overgrown with holly and brambles and is obstructed at several points by large trees. Mr Hall claims that the wooden fence forming the boundary with Fyning Twitten has not been maintained by the owners of Fyning Twitten and it has been falling across the path making it virtually impassable. Mr Hall further notes that from time to time the owners have supported this fence with props which has further obstructed the path at head height and lower.
- 5.24 Objections from local residents
- 5.25 The County Council has also received 30 letters and emails from local residents opposing the application.
- 5.26 The majority of objections are from residents or former residents of Fyning Lane or Rogate who know the area well and regularly walk the area. In summary most argue that they never understood the claimed route to be a public right of way as it was not an accessible route and that there are other more attractive, convenient and available routes. One objector (Bev Albery) states that she has only ever seen one person walk

along the claimed route, which was the Estate Manager for Fyning Hill Estate. Another objector (Harriet Heslop) has lived in Rogate for over 30 years and has never been told that there was a public right of way along the northern boundaries of Fyning Copse and Fyning Twitten. The understanding has always been that this was an informal path used, fairly infrequently by local residents. Another objector (D J Leonard) has been walking in the woods for over 30 years and states that the claimed route A to B has been very overgrown and towards the western end barely visible and they cannot remember ever seeing anyone try to use the claimed route.

## **6. Archive and other evidence**

6.1 The following historical maps of the area have been examined as part of the research into this claim.

6.2 Ordnance Survey Mapping 1<sup>st</sup> Edition 1875

The claimed route begins from the southern end of Upper Fynings Lane and runs west as a double pecked path through a field where it joins a few different tracks. The claimed route then runs south as a pecked and solid lined track until it adjoins Fyning Lane.

6.3 Ordnance Survey Mapping 2<sup>nd</sup> Edition 1897

The claimed route runs the same path as its earlier edition map; however, it has now been identified as a footpath by the depiction 'FP'.

6.4 Ordnance Survey Mapping 3<sup>rd</sup> Edition 1912

This edition of the map has now identified two property boundaries through which the claimed route runs. The route begins from the southern end of Upper Fynings Lane and is now identified as running through parcel number 295a as a double pecked path. As the route links with the north east corner of parcel number 295 the route runs as a double solid lined track until the north western boundary where it then runs as a double solid lined track south and joins onto Fyning Lane.

6.5 Tithe Map dated 1843

The track from A – B specified on the application plan is not shown on the Tithe Map. B – C is shown as an open track that stops at point B on the map. This route could be identified as an access track as opposed to a public way.

6.6 Draft and Provisional Definitive Maps

The draft and Provisional Definitive Maps are very similar in how they are set out. They identify the route as beginning from Bridleway 1163 and running north-west as a pecked track which is labelled as "FP" at point B of the route. From point B the route opens up into a double solid lined track where it runs south and joins onto Fyning Lane. The tracks are not coloured.

6.7 Analysis of the Archive



The archive evidence taken together is inconclusive as to the existence of a public right of way over the claimed route. While the claimed route B – C can be identified on the Tithe Map, there is no evidence of a public right.

## **7. Consideration of claim**

- 7.1 In determining the application the Committee has to decide whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probabilities a right of way exists, or that it is reasonable to allege the existence of a public right of way. The burden of proving this falls to the applicant.
- 7.2 The application is supported by 16 user evidence forms which attest to use of the claimed route that spans the period 1939 to 2016. As stated in paragraph 6.7 above, the archive evidence is inconclusive as to a right of way along the claimed route. In the absence of any conclusive documentary evidence it is necessary to consider the user evidence provided by the applicant. In accordance with Section 31 of the Highways Act 1980, the user evidence must show that the public have enjoyed use of the claimed route 'as of right' and without interruption for a full period of 20 years.

### **7.1 The 20 year period?**

- 7.1.1 Under Section 31 of the Highways Act 1980, a relevant date needs to be established in order to establish the 20 year period. The period of 20 years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question, whether by a notice or otherwise.
- 7.1.2 As mentioned in paragraph 4.3 above, 4 users make reference to "private" signs and unlocked gates present in January and June of 2016. Mr Hall has also provided evidence that a "private" sign was installed and maintained since 1991. However, the evidence submitted by Mr Hall details that a sign was sited near a security access gate adjoining the claimed route. A photograph has been provided, showing that the sign reads "PRIVATE PROPERTY FYNING HILL ESTATE SECURITY ACCESS GATE ONLY". This has been in place and maintained since 1991 to present. However, it is concluded that this does not represent an act of challenge to use of the claimed route, given that a true reading of the sign, taken with its location adjoining the claimed route suggests that access to Fyning Hill Estate is restricted. The evidence in support states that there were no notices on the claimed route other than the notice erected in 2016 and so the evidence this notice was ambiguous and so would not render use contentious.
- 7.1.3 Mr and Mrs Grey provide evidence that the claimed route was closed for 31 months between February 1995 and August 1997, whilst they were constructing an extension directly adjacent to the claimed route. This is corroborated by Tony Dowdell (building contractor); Mike Rooke (Design and Build Consultant) and Felix Grey all of whom confirm the claimed route was completely blocked, being dug with 2.9 metre foundations,

leaving a user of the claimed route with no alternative route. It is concluded that the right of the public to use the claimed route was therefore first called into question by the digging of foundations in February 1995. The relevant 20 year period is therefore 1975 to 1995.

- 7.1.3 Whilst it is not necessary for all users to demonstrate continuous use throughout the 20 year period, they must demonstrate that the use has been made by the public continually during that period.
- 7.1.4 During the relevant 20 year period 8 users claim to have used the claimed route, 2 of which, Simon Wright and Roger Eade, claim to have used it continually for the whole 20 year period. One of the 8 users is Jennifer Ramsey who provided clarification of her evidence of use of the claimed route 30 times per year for which she had thought she was referring to the track from Foresters Cottage to Fyning Lane. Jennifer Ramsay says she has walked the claimed route since 1981 but fewer times. The frequency of use is not specified. The volume of use in this period for the other 7 users ranges from 4 times per year to 20-30 times per year.
- 7.1.5 There is considerable evidence from those in objection to the application that the claimed route has not been used as a public right of way as it has not been an accessible route and because there are other more attractive and convenient routes available. Evidence submitted by Mr and Mrs Grey also refers to various obstructions of the route for building projects from 1991. This evidence is in direct conflict with the evidence of use in support of the claimed route during the relevant period.

## **7.2 As of right and without interruption?**

- 7.2.1 The user evidence must show that the public have enjoyed use over the land 'as of right' and without interruption for the full period of 20 years. Use of the land "as of right" means without force, without secrecy and without permission.
- 7.2.2 As detailed above in paragraph 7.1.4, evidence submitted in support of the application has shown that the claimed route has been used by 8 users throughout the relevant period. None of the users report to have been challenged whilst using the route or to have been given permission to use the route or report to having seen any signs other than those erected in 2016
- 7.2.3 All users of the claimed route for the relevant period claim that they have never been told by an owner or occupier that the route was not public and that they have never sought or received permission to use the claimed route. No users report any stiles, gates or obstructions of the claimed route throughout the relevant period.

## **7.3 Evidence of no intention to dedicate**

- 7.3.1 User evidence submitted in support of the application appears to show that the route has been used 'as of right' and without interruption for a

period of 20 years or more. It is therefore necessary to consider whether there is evidence of no intention to dedicate by the landowner.

- 7.3.2 Evidence of a landowner's intention not to dedicate a public right of way must be overt and contemporaneous. The landowner cannot assert after the event that there was no intention to dedicate.
- 7.3.3 Evidence submitted by The Grey family details the temporary closure and blockage of the route on many different occasions throughout the period between 1991 and 2018. This is in direct conflict with the evidence submitted in support of the claimed route, which does not reference any closures or blockages of the route throughout the relevant period.
- 7.3.4 Evidence submitted by Mr Hall details that a sign was sited near a security access gate adjoining the claimed route and maintained since 1991 to present. However, it is considered that this does not represent evidence of no intention to dedicate as it relates to access to Fyning Hill Estate and does not refer to use of the claimed route.
- 7.3.5. It is concluded that there is no incontrovertible evidence which shows a lack of intention to dedicate the claimed route.

#### 7.4 **Conclusion:**

- 7.4.1 Where an applicant for a DMMO produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, but there is a conflict of apparently credible evidence from the owner in relation to one or other issues arising under Section 31 of the 1980 Act; then the allegation that the right of way has been 'reasonably alleged to subsist' is used. That is unless there is documentary evidence produced which must inevitably defeat the claim. Either, for example, by establishing incontrovertibly that the landowner had no intention to dedicate or that the way was of such character that the use of it by the public could not give rise at common law to any presumption of dedication.
- 7.4.2 The evidence of use asserts use of the claimed route for the relevant period 'as of right' and without interruption. However, there is a direct conflict of evidence from those in objection, which asserts that the claimed route was not an accessible route and was not used by the public. The landowner of part of the route also asserts that for periods from 1991 the claimed route was temporarily blocked for various building projects. In the absence of incontrovertible evidence that the claimed route cannot be reasonably alleged to subsist, on balance, it is concluded that a path can be reasonably alleged to subsist. Therefore, it is recommended that an order to add the path to the Definitive Map should be made on this basis.

#### 7.4.3 Common Law

Dedication at common law is presumed if the way has been used by the public as of right. There is no defined length of time over which the use

must occur and it simply must be long enough to justify an inference that there was an intention by the Landowner to dedicate. A Landowner needs to be legally capable of dedicating the way as public.

For public use of a route to raise an inference of dedication it must be sufficient to carry to the mind of a reasonable landowner the fact that a continuous right of enjoyment is being asserted and ought to be resisted. In this case, the asserted use of the claimed route spans a considerable period of time (1939 to 2016), demonstrating a frequency of use ranging from 3 times a year to weekly. The erection of signs by the Fyning Hill Estate adjacent the claimed route between A and B was not effective to demonstrate a lack of intention to dedicate the claimed route on the part of the landowner. On the basis of all the evidence available, it can reasonably be alleged that the owners of the land over which the claimed route runs dedicated public rights on foot and that the public has accepted that dedication.

## **8. Resource Implications and Value For Money**

8.1 The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.

8.2 Cost implications arise:

- In the event of an order being made and objected to;
  - The matter may fall to be considered at a public local inquiry or a public hearing.
- Should an order be made and confirmed;
  - if any works are necessary to ensure the path is open for public use.
- Should the decision of the committee be challenged by way of Judicial Review.

8.3 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on legal tests and the above costs cannot be a consideration in the determination of the application.

## **9. Risk Management Implications**

9.1 The decision is one that must be taken on strict legal tests:

- the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
- In the event that an order is made the landowner could appeal to the Secretary of State and the matter be considered by way of written representations, hearing or public inquiry.

9.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

## **10. Crime and Disorder Act Implications**

The Definitive Map Modification Order process involves the application of legal tests, which mean that it is not possible to give weight to any effect on crime and disorder.

## **11. Human Rights Act 1998 Implications**

- 11.1 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 11.2 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 11.3 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.
- 11.4 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

## **12. Equality Act 2010 – Equality Impact Report**

- 12.1 The Committee should be aware that the Equality Act 2010 bans unfair treatment, and seeks equal opportunities in the workplace and in wider society. It also introduced a Public Sector Equality Duty (PSED). The PSED requires us to have due regard in all decision making processes to the need to:
  - a) Eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
  - c) Foster good relations between those who share a relevant characteristic and those that do not share it.

- 12.2 The relevant protected characteristics are age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 12.3 An Equality Impact Report has been undertaken and is detailed below/ attached as an Appendix.
- 12.4 No relevant impact upon any of the protected characteristics in the Equality Act 2010 emerged during the consideration of this application.

**Tony Kershaw**  
**Director of Law and Assurance**

Background Papers

- (a) Application (DMMO 5/16)
- (b) Consultations
- (c) Evidence in support
- (d) Evidence against
- (e) Archive, mapping and photographic evidence

Appendices

Appendix 1 Location Plan  
Appendix 2 Site Plan

Contact: Georgia Hickland  
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