

Rights of Way Committee

12 June 2018

Recent Decision by the Secretary of State's Inspector:

**West Sussex County Council (Fittleworth) Public Path (No. 702)
Extinguishment Order 2016**

**West Sussex County Council (Fittleworth) Public Path (No. 2866)
Extinguishment Order 2016**

Report by Director of Law and Assurance

Recommendation

That this report be noted.

1 Background

- 1.1 In February 2016 the County Council received an application by the owners of Warren Barn in Fittleworth to extinguish and divert public footpaths in the vicinity of their property and their application was determined under officer delegation in February 2016. The decision of the Principal Rights of Way Officer was that Public Path Orders be made.
- 1.2 When the Orders were made and published, an objection was received from the South Downs National Park Authority to the Extinguishment Orders. No objections were made to the associated diversion Order for part of Footpath 702 and that Order was confirmed on 21 March 2018.
- 1.3 Principal Rights of Way Officer, having considered the objection from the South Downs National Park, remained of the view that the legal tests for the making and confirmation of the Orders under Section 118 of the Highways Act 1980 were capable of being met and following a report to the Rights of Way Committee on 14 March 2017 it was resolved that the Extinguishment Orders should be submitted to the Secretary of State for determination with the recommendation that the Orders be confirmed.

2 The Inspector's Decision

- 2.1 The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs, in his decision letter, set out the tests for confirmation:-

'By virtue of Section 118 of the Highways Act 1980, for me to confirm the Orders I must be satisfied that it is expedient to stop up the paths having regard to:

(a) the extent (if any) to which it appears likely that the paths would, apart from the Order, be likely to be used by the public; and

(b) the effect that the extinguishment of the rights of way would have as respects land served by the path, account being taken of the provisions as to compensation'

The Inspector further sited the need to have regard to the material provisions of any public rights of way improvement plan (ROWIP).

- 2.2 With regards to sub-paragraph (a) above, the Inspector considered representations from the applicants and the South Downs National Park and conducted an independent site visit. The inspector concluded that there was regular, albeit low, use of the paths and that should the existing paths be better signposted and maintained that said use by the public could increase.
- 2.3 With regards to sub-paragraph (b) above, the Inspector considered that there were no adverse effects arising from the proposed closures on the land concerned and compensation issues have not been raised. The inspector further considered that there were no implications to the ROWIP with regards to these Orders.
- 2.4 The Inspector considered that there would be an advantage to the landowners in not having a public footpath cross their land but did not however believe that the use of the path posed a risk to person and/ or property that would outweigh the extent of likely use of the path.
- 2.5 The Inspector did attach weight to the argument put forward by the South Downs National Park that confirmation of the Extinguishment Orders would create a loss of tranquillity and peace to the public that parts of the paths afford.
- 2.6 In summary the Inspector concluded: *'The Orders clearly benefit the landowners, but there would also be a loss to the public from removal of the paths from the network. In the circumstance, I am not satisfied that it is expedient to stop up either path as shown in the Orders.'*
- 2.7 The Inspector's decision was received from the Secretary of State for the Environment, Food and Rural Affairs was dated 19 February 2018 not to confirm the Orders.

3 Resource Implications and Value for Money

- 3.1 Expenditure incurred by the County Council in processing the Public Path Orders were offset to a degree by the standard fees charged to the applicants. The costs included officer time and advertising in the local press.

Tony Kershaw
Director of Law and Assurance

Appendices

- 1) Delegated Officers Report dated 23 February 2016
- 2) Rights of Way Committee Report and Minutes dated 14 March 2017
- 3) Inspector's Decision (ref: ROW/3180352) dated 19 February 2018

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