

Consultation Report

Arundel – Section 116 Highways Act 1980 – Stopping up of Public Footpath 3788

1) The existing path and background to the proposal – see attached [plan \(PDF, 1MB\)](#)

This consultation relates to footpath 3788 in the Town of Arundel which was legally established following a confirmed Definitive Map Modification Order, as a result of an application made under the provisions of Section 53 Wildlife and Countryside Act 1980.

The Order, as made, received objection resulting in the submission of the Order to the Planning Inspectorate for determination.

In determining the opposed Order, the Inspector considered that the evidence before them did not support dedication of the route shown on the Order plan. They did consider however, on the balance of probability, that the evidence supported dedication of a route traversing the Caen Stone Court site during the period 1985 – 2005. In their interim decision dated 23 July 2020, the Inspector modified the Order recording a 2-metre-wide footpath as shown in red between points X and Y on the 2018 Order. As this route was not the route originally shown, the Inspectorate was obliged to advertise the modifications allowing further evidence to be submitted and considered. Two objections to the modified Order were received.

In considering the evidence submitted, the Inspector confirmed.... *"In light of the arguments and being mindful of the implications arising from confirmation of this Order, the entirety of the evidence has been reviewed. I am satisfied, on the balance of probabilities, that there was sufficient evidence that the proposed route (as modified) was used over the period 1985 – 2005, giving rise to a presumption of dedication. Whilst the user evidence is lower in the earliest years, it is sufficient to support the evidence and presumption"* (para 5 Order decision dated 1 June 2022)

A copy of the Inspectors' [interim decision \(PDF, 322KB\)](#) and [final decision \(PDF, 296KB\)](#), together with a copy of the [modified Order \(PDF, 2MB\)](#) are attached.

The Inspector therefore confirmed the modified Order, recording a footpath through the Caen Stone Court retirement building between Queen Street and Fitzalan Road as shown on the [modified Order \(PDF, 2MB\)](#) attached.

It was acknowledged by the Inspector that the routing of a right of way through the building is a matter of concern for those owning and occupying the property. However, such issues are not ones that the Inspector can take into consideration when applying the test for presumed dedication of a right of way under Section 31 Highways Act 1980. As highlighted by the Inspector in paragraph 8 of the final decision (dated 1 June 2021), management of the process going forward to identify an appropriate solution sits with the County Council in its role as the highway authority.

2) Proposal

As acknowledged by the Inspector, management of the process going forward rests with the County Council as highway authority. In this regard we are sympathetic to the owners and occupiers and appreciate that the recording of a route through their property may cause concern.

In consultation with the relevant head lessee (McCarthy & Stone Retirement Lifestyles Limited) and in consideration of the physical inaccessibility of the route and the availability of the surrounding highway network, West Sussex County Council consider the path on this alignment to be unnecessary. In considering whether this footpath is unnecessary, we have looked at the availability of the surrounding highway network and the ability for users to travel between Queen Street and Fitzalan Road.

A publicly maintainable lit footway, approximately 40 metres northwest of footpath 3788 runs east to west between Queen Street and Fitzalan Road, terminating at a point approximately 60 metres west of footpath 3788 on Fitzalan Road. Users also have the ability to use the public highway, Queens Lane to travel between Queen Street and Fitzalan Road. Each of these routes are shown highlighted pink on the attached [highway boundary plan \(PDF, 755KB\)](#).

Seeking to enforce the opening of this footpath on its confirmed alignment would have devastating consequences on the owners and occupiers of the retirement village for very little, if any, public gain to the public rights of way network.

Under Section 116 of the Highways Act 1980 a highway authority can apply to a Magistrates' Court to stop up any type of highway, apart from a trunk road or a special road, on the grounds that it is "unnecessary". Whether or not a highway is "unnecessary" will be a question of fact. Evidence of lack of current public use and the existence of an alternative route will be material considerations as established in (*Ramblers Association v Kent CC (1990)* and *Westley v Hertfordshire CC [1995] C.L. 846*)

The alignment of the path, being under the building has rendered it completely inaccessible to the public since construction of Caen Stone Court in circa 2005. The legal recording of the route is based on the presumption of dedication during the period 1985 – 2005, some 17 years ago and there has been no physical use of the path since that date.

3) Consultations

A copy of this consultation report has been sent to the Arun District Council, Arundel Town Council, the Southdown National Park Authority and relevant amenity groups with the request that any comments be submitted by 9 March 2023. Before proceeding, careful consideration will be given to all comments received.

4) The Works and Costs

There are no physical works needed should this path be stopped up. All costs associated with the legal process to stop up the path under Section 116 Highways Act 1980 will be met by the head lessee.

Were the recommendation of officers to be accepted and consent to proceed given by the County Council, an integral part of the statutory process is a legal requirement for the head lessee to arrange for a formal notification of the proposal to the freehold owners, all statutory undertakers with apparatus under the site as well resident leaseholders. The freehold interest in the Caen Stone Court site is held by Aviva Investors Ground Rent GP Limited (Co. Regn. No. 7584928) and Aviva Investors Ground Rent Holdco Limited (Co. Regn. No. 7604385). The head lessee is confident that the freehold owners are content to support this process

5) Overall Conclusion

There is significant history surrounding the legal recognition of a public right of way across the Caen Stone Court site, resulting in the legal recognition of a public right of way that is obstructed by a substantial residential building.

As mentioned by the Inspector in her decision reports, management of this path going forward sits with the County Council as Highway Authority.

In consideration of the apparent unavailability of this path, the implications this has on all owners and occupiers of the building, and the availability of the nearby highway network, footpath 3788 on its current alignment it is considered unnecessary.

It is recommended that an application to the Magistrates' Court be made to stop up footpath 3788 under Section 116 Highway Act 1980.

Ami Dye
Senior Rights of Way Officer
9 February 2023

Attachments:

- [Inspector's interim decisions dated 23 July 2020 \(PDF, 322KB\)](#)
- [Inspector's final decision dated 1 June 2022 \(PDF, 296KB\)](#)
- [Copy of the confirmed modified order \(PDF, 2MB\)](#)
- [Highway boundary plan \(PDF, 755KB\)](#)