

Planning and Rights of Way Committee

19 March 2024

DMMO 4/21 Definitive Map Modification Order Application for the addition of a footpath from Mouse Lane to footpath 2715 with an extension to bridleway 2714 and an extension to the historic Rifle Range Targets in the Parish of Steyning CP to the Definitive Map for Chanctonbury

Report by Tony Kershaw Director of Law and Assurance

Electoral division: Bramber Castle

Summary

The application seeks to modify the Definitive Map and Statement for Chanctonbury by adding a footpath from Mouse Lane to footpath 2715 with one extension of a footpath leading off to the north to bridleway 2714 and another extension of a footpath leading off to the west to a point known as the historic Rifle Range Targets in the Parish of Steyning CP. The application is supported by thirty public way evidence forms.

Recommendations

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 Mouse Lane to footpath 2715 with an extension to bridleway 2714 and an extension to the historic Rifle Range Targets in the Parish of Steyning should be made.

1. Introduction

- 1.1 The application, made by the Steyning Parish Council, was received on the 2nd February 2021 to add a new footpath with two additional footpath extensions leading off to the north and to the west in the parish of Steyning as shown on the annexed site plan 01830. It is supported by thirty public way user evidence forms from twenty six different postal addresses.
- 1.2 This application is made under Section 53(3)(c)(i) Wildlife and Countryside Act 1980 (WCA), being the discovery by the County Council of evidence which shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land.

- 1.3 The application is based on user evidence only. The requirements for the presumed dedication of a public right of way under statute are set out in Section 31 of the Highways Act 1980. This requires use of the claimed route by the public to be as of right and without interruption, over a period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner during this period to dedicate the way for use by the public.
- 1.4 Alternatively, a public right of way may be created at common law by the dedication of the landowner with the acceptance and use by the public. The land does not have to be used by a defined length of time. Although, use of the land must be sufficient to justify an inference that the landowner intended to dedicate. This may be rebutted if there is sufficient evidence that the landowner has no intention to dedicate the land to the public.
- 1.5 In considering the application it must be determined whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a right of way exists, or in the alternative that it can be reasonably alleged to subsist, which is a lower test. The lower test requires that a reasonable person, considering all relevant evidence available could reasonably allege a public right of way subsists over land. The burden of proving this fall to the applicant.
- 1.6 Matters relating to suitability and condition of a way and possible nuisance or need are irrelevant and cannot be taken into account when reaching a decision.

2. Characters and Features of the claimed route

The part of the claimed route labelled 'Path A' on the annexed site plan begins at Mouse Lane (grid reference 517275, 111572) and proceeds in a south-west direction for approximately 700 metres (grid reference 516646, 111272). Path A then advances south for approximately 20 metres and continues in a south-east direction for approximately 310 metres (grid reference 516944, 111290). Path A then continues in a southern direction for approximately 135 metres to footpath 2715 (grid reference 516999, 111167).

The part of the claimed route labelled 'Extension One' on the annexed site plan commences along Path A at grid reference 516662, 111283 and proceeds in a northern direction for approximately 220 metres until reaching bridleway 2714 (grid reference 516626, 111496).

The part of the claimed route labelled 'Extension Two' on the annexed site plan commences along Path A at grid reference 516647, 111258 and proceeds in a western direction for approximately 265 metres to the historic Rifle Range Target (grid reference 516397, 111176).

The claimed route is shown on site plan 01830, location plan 01830A.

3. Landownership

- 3.1 Land Registry documents show there are two landowners for the claimed route. The landowners are Richard John Goring of Guesses Farm, Spithandle Lane, Wiston, Steyning BN44 3DY and Richard Harry Goring of The Wiston Estate Office, Wiston Park, Wiston, Steyning, West Sussex BN44 3DD.
- 3.2 The applicant served notice of the application on Richard John Goring on the 24th April 2023 and on Richard Harry Goring on the 4th March 2021

4. Consultation

Before making a Definitive Map Modification Order, the County Council is obliged to consult the relevant District or Borough and Paris Councils and, in this case, the SDNP Authority. Consultations have also been carried out with other interested bodies/ standard consultees. Responses received to the consultations carried out can be found in the evidence file of background papers in the member's room. In considering the result of the consultations, members are reminded that when determining this application, they can only take into account evidence which demonstrates whether or not the legal tests have been satisfied. The following comments were received;

4.1 Cllr Paul Linehan

Cllr Paul Lineham stated he was happy to support the application in its current form.

4.2 Ramblers, West Sussex Area Footpath Officer

The Ramblers (Sussex) stated they support the application for the addition of the footpath across Steyning Rifle Range. The Area Footpath Officer claimed he walked all of the paths at various times in the last 5 years. He asserts to have witnessed many other walkers using the entire path and has never encountered any obstruction or restriction preventing access to the path, nor any signage to indicate that it is not a public right of way. He claimed he has seen other walkers using both extension routes. He states the additions would be a valuable addition to the public rights of way network, reflecting their general use by the public over an extended period.

4.3 Horsham District Council

Horsham District Council have no observations on the application.

5. Evidence Submitted in support of the application

- 5.1 The application is supported by thirty public way evidence forms, testifying to the use of the claimed route on foot by individuals from 1 to 504 times per year from 1960 to 2021.
- 5.2 All of the user evidence submitted with the application claims the route has been used on foot, either walking or jogging.
- 5.3 Three of the users claim to have seen others using the route by horseback and five users claim they have seen cyclists using the route.

- 5.4 Two users claim to have been given permission to access the route by the Occupier of the route, Mr May, in the 1980's and 1990's. One user claims to have been given permission by Richard Goring.
- 5.5 One user claims to have been given permission by signage, which appeared in approximately 2012 shortly after the formation of the Steyning Downland Scheme. The user recalled signs about keeping dogs on leads. They stated the current display boards date from 2016 and give a detailed history of the site. He recalled no signage during 1990 to 2009.
- 5.6 One user claims that after the Steyning Downland Scheme was formed notice boards were erected in 2016 saying use of the land was by permission. It had never advertised before.
- 5.7 One user claims to have been told that the route was not public. He stated he cannot remember when but reported that it happened twice.
- 5.8 One user claims to have seen a notice on one occasion in the 1980's while the range was in use but cannot recall the wording on a notice indeed if there was one. A red flag was visible when shooting in progress and may have been a sign saying danger when the flag was flying.
- 5.9 One user claims to have knowledge of someone being stopped or turned back when red flag was up during Range use.
- 5.10 One user stated she was a tenant and rented some garden land adjoining their cottage. She clarified that she rented land adjacent to her front garden on the north/east side of Mouse Lane. Therefore, she was not a tenant of the application claimed route.
- 5.11 Twenty one users state there are a gates across the route, however, all of these users state the gates were unlocked or had pedestrian access to the side of the gate, so it did not prevent use of the claimed route.
- 5.12 The applicant submitted two extracts from Google Earth dated 2001 and 2009 of the claimed route.

Officer comments: It is noted that the Google Earth extract from 2009 shows the claimed route well defined and used. However, it is noted that this was taken when the public were given permission to use the claimed route under the Higher Level Stewardship Agreement in 2009. The Stewardship Agreement is discussed further in section 10 of this report. Furthermore, the Google Earth extract from 2001 also shows the layout of the claimed route, although is shown as less defined. This suggests that the claimed route was being used in 2001.

- 5.13 In addition to this, the applicants provided an extract from "Steyning Rifle Range: History and Record of Existing Features by Justin Russell". This extract sets out some history of the Rifle Range and confirms its use of the range until it closed in 1989. It states that prior to 1989 the site had been in constant use as a rifle range for 129 years. The extract quoted accounts from people who used the Rifle Range for shooting and visiting when live firing was not in progress. Furthermore, the applicants provided an extract from the Steyning Downland Scheme Website from 2018 which provided information on how the Steyning Downland Scheme (the "SDS") began. It

set out that in March 2007 a public meeting was held to gauge local interest in a new conservation project. It stated that the aim, to bring together the needs of people and wildlife, was received very positively, and a steering group was formed of local people. The aims and objectives for the scheme were developed, and the Steyning Downland Scheme (SDS) was born. In 2009, the SDS became a UK registered charity. Moreover, an extract from "Reflections by Mark Emery" was submitted by the applicant. This extract included personal accounts of the authors visits to the Rifle Range and the Targets. It also included information of the historic use of the Targets, which were claimed to be first used in the mid to late 1800's.

Officer comments: This additional evidence submitted by the applicants, though interesting, does not have any relevance as to whether the claimed route has public status and to what extent.

6. Evidence submitted by Landowners and adjoining Landowners

6.1 Richard Goring, Landowner

Richard Goring stated that the evidence of long term use was interrupted as the claimed route, including Path A, Extension One and Extension Two, was open by permission under a Higher Level Stewardship Agreement since 2009.

Prior to the permissive access in 2009, he maintained that there was no public access to the claimed route and that there has not been uninterrupted use of the route for 20 years.

In addition, he claimed that "there have been signs on the land informing members of the public that access to the land is by permission only since 2007". He stated that in 2007 they invited locals and interested parties to come together to form what became the Steyning Downland Scheme. Furthermore, he claimed that when they held the first community open day in September 2007 information pamphlets were handed out at this event and in the following years which contained maps of the areas of land open by permission.

The landowner asserted that their tenant, Steyning Downland Scheme, has regularly stopped up the permissive paths to carry out agricultural activities and regularly carried out works to prevent unauthorised accesses and repair the damage caused.

The landowner claimed that a landowner statement was deposited in April 2013, and this does not show the route in question.

Mr Goring provided a copy of the SDS Steering Group Meeting Minutes from 20th May 2008. This record indicated that the SDS leaflet was to be trialled at the Live Lounge but then be widely available. The evidence suggests the Live Lounge was a community event which included activities and interactive leaflets for young people and families. In addition, a proposal was made for the production of information boards for the Live Lounge, an "enabling" map and an introduction to the project to be positioned in entrance to SDS. This was agreed by all. A copy of the leaflet and map circulated was provided by the landowner.

Richard Goring stated that that the area was an active Rifle Range from 1860's to 1990, during which there were red warning flags in place at all the surrounding Public Rights of Way and the public were not allowed to enter the range itself, for obvious safety reasons. The land in question was leased to Arun Gun Club which expired on 25th December 1993, but they gave notice to end the lease in 1990.

Mr Goring expressed that the last time the guns were regularly fired on site, thereby stopping any public access for that day was on 30th December 1990. This is supported by a notice dated 21st December 1990 and a letter dated 4th January 1991 which complained about the shooting that took place on 30th December 1990.

The landowner also provided an extract from "Steyning Rifle Range: History and Record of Existing Features by Justin Russell" which was discussed in section 5.13. The extract states that every rifle range requires a danger area and explains the requirements for the danger zone area, as laid down in the 1931 Small Arms Training manual. The full report by Justin Russell shows under figure 23 the theoretical danger zone.

Officer comments: The evidence indicates that part of Path A and Extension One falls within the theoretical danger zone. In addition, the entire length of Path Two would fall within the theoretical danger zone. This suggests that the claimed route would not have been accessible to the public until after the 30th December 1990 when the last guns were fired on the rifle range.

6.2 Steyning Downland Scheme

Steyning Downland Scheme have stated that there has not been uninterrupted use of this route by the public as of right for a full period of 20 years. They claim their access track, which is Path A, is a permissive path with no public right of way.

SDS stated that Path A then passes west and joins Extension One which heads north, following the boundary of their field. An informal path has been formed here without permission from the landowner or the SDS. They assert that public access is planned through organised activities and nature surveys, investigated and implemented by local volunteers.

They claim that the effect of the proposed DMMO would permanently and fatally undermine their objectives, which includes creating a field free from disturbance specially for wildlife and the recreation of species-rich chalk grassland, by giving right of access to this ecologically sensitive area by everyone at all times.

They assert that Extension Two which runs to the old Target area is unsafe for public access, based on advice from their insurers. They state their plans for the Targets area are developing but for the foreseeable future it would be irresponsible to encourage unregulated public access to this area.

SDS raised concerns about the effect if the proposal on ongoing conservation management work and that it is important they are able to fell trees suffering from Ash Dieback without delay, to minimise risk of sudden collapse. They

assert that giving the public a legal right of access threatens to undermine their objective to manage the land responsibly and to encourage biodiversity.

6.3 Glyn Spackman, Adjacent Owner Occupier

Glyn Spackman confirm they have no interest in the land mentioned in the application neither as owner, tenant or interested party.

They became aware of the existence of Path A and the small number of people who have walked down it when carrying out fencing work. Glyn Spackman thought that Wiston Estate owned the land.

In Glyn Spackman's Public Way Evidence Form, they stated they considered the route to be a public right of way with the status of a footpath. They have neither been informed by anyone that the route is or is not public. Furthermore, they have never used the route themselves. They have not seen any obstruction or notices on the route.

7. Other Evidence

7.1 Ordnance Survey Maps

Ordnance Survey Maps were consulted at the West Sussex Record Office – OS 1875, OS 1897, OS 1911, and OS 1932. It is concluded that none of these maps show evidence of a historic right of way. OS maps can show the physical existence of a route on the ground but are not definitive in connection with the status of a route or whether it is public or private. From 1888, OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public rights of way and on late 20th Century OS maps which show those ways which are recorded in definitive maps and statements, the disclaimer is modified to acknowledge that some route shown are public rights of way.

7.1.1 Ordnance Survey (OS) 1875

Part of the claimed route along path A running from the open access field (grid reference 516860, 111340) to the second extension to the historic Rifle Range Targets was shown on the map denoted by double dashed line. A section of Path A from grid reference 517072, 111465 to the open access field (grid reference 516860, 111340) is depicted in a singular black line. The start of the route commencing at Mouse Lane to grid reference 517072, 111465, the first extension to BW 2714 and the remaining route from the second extension to the Targets to FP 2715 was not depicted on this map.

7.1.2 Ordnance Survey (OS) 1897

A section of Path A from grid reference 517072, 111465 to the open access field (grid reference 516860, 111340) was depicted in a singular black line. The remaining claimed route was not depicted on this map.

7.1.3 Ordnance Survey (OS) 1911

Part of the claimed route along path A running from the open access field to the second extension to the historic Rifle Range Targets was shown on the map denoted by singular dashed line. A section of Path A from grid reference

517072, 111465 to the open access field (grid reference 516860, 111340) was depicted in a singular black line. The start of the route commencing at Mouse Lane to grid reference 517072, 111465, the first extension to BW 2714 and the remaining route from the second extension to the Targets to FP 2715 was not depicted on this map.

7.1.4 **Ordnance Survey (OS) 1932**

Part of the claimed route along path A running from the open access field to the second extension to the historic Rifle Range Targets was shown on the map denoted by singular dashed line. A section of the claimed route along path A running from grid reference 517213, 111543 to the open access field (grid reference 516860, 111340) was depicted in a singular black line. The start of the route commencing at Mouse Lane to grid reference 517213, 111543, the first extension to BW 2714 and the remaining route from the second extension to the Targets to FP 2715 was not depicted on this map.

7.2 **Draft and Provisional Definitive Map**

The Draft and Provisional Definitive Maps were consulted, and it is concluded that neither map show evidence of a historic right of way for the claimed route.

7.3 **County Council Parish and Path Files**

Letter dated 18th July 1963 from the Ramblers Association to the County Council reported an obstruction caused by the War Department and reported the existence of notices on public path 2714 stating "This footpath is closed under range byelaws when red flags are flying".

A response letter dated 19th July 1963 from the County Council confirmed that in September 1960 the County Council, in agreement with the National Parks Commission, gave their consent to the byelaws proposed by the War Department Land Agent in respect of the Steyning Range. In addition, they state Bridleway 2714 passes through the danger area for a considerable distance.

The Ministry of Defence were contacted to obtain a copy of the byelaw affecting Steyning Rifle Range. They confirmed they had no information to provide on the officer's request. However, they did state that Steyning Rifle Range was a Volunteer Rifle Range set up in 1860 and altered over the years. The Ministry of Defence stopped using the range in the late 1960s and the range was closed by 1990. They further claimed that if Byelaws were made for this location by the Ministry of Defences predecessor organisations, the Byelaws would no longer be in effect as the land is not in the ownership or control of the Secretary of State.

Officer Comments: These records imply that when the red flags were flying, paths within the danger area would be closed from the public. The information provided by the Ministry of Defence suggests that the Byelaw would no longer be in effect once the land is no longer in the Secretary of State's ownership or control. As such, the Byelaw by the Ministry of Defence would no longer be in effect after the 1960's when the Ministry of Defence stopped using the range.

7.4 **S31 (6) Deposits under the Highways Act 1980**

A Section 31(6) Deposit was made in 2013 by Richard Goring of Wiston Estate, no footpath is shown along the claimed route.

In the pre-2013 register an entry for J Goring, Wiston, Horsham has been made at entry number 22 but no date is provided and there is no document saved for entry number 22 therefore it is unclear if this deposit was ever made.

7.5 **Tithe Maps, County Surveyors Map, Adcock Map, Inclosure Awards and Quarter Sessions**

Tithe Map for Steyning, County Surveyors Map, Adcock Map, Inclosure Awards and the Quarter Sessions were consulted. It is concluded that neither the maps nor the Quarter Sessions show evidence of a historic right of way.

8. Consideration of Claim

8.1 The application was submitted with user evidence and some background images summarised in paragraph 5 and contained in the background papers of this report. Evidence against the application is summarised in paragraph 6 and contained in the background papers of this report. Archive evidence has been reviewed as summarised in paragraph 7 of this report. Section 53 WCA 1981 requires there to be a "discovery" of evidence and the applicant relied on user evidence.

8.2 In determining the application, there are two possible tests. The Committee must decide whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability 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. Matters such as suitability of a way and possible nuisance or need, are irrelevant and cannot be taken into account when reaching a decision. In respect of the user evidence, the application has been considered under Section 31 of the Highways Act 1980, which requires consideration of whether there has been use of a way by the public 'as of right' and without interruption for a period of twenty years prior to its status being brought into question and if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

8.3 On the other hand, we can consider if the evidence is such as to establish dedication at common law, which requires dedication by the landowner and acceptance by the public of that right of way. In addition, we would need to consider if there is any evidence which demonstrates that the landowner has no intention to dedicate the land.

9. The 20-Year Period

9.1 Under Section 31 of the Highways Act 1980, a relevant date needs to be established for the 20-year period of use. The relevant date is determined as the period when the land has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years taken back retrospectively from the first date of challenge.

- 9.2 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.
- 9.3 In this instance, the landowner's evidence infers that the route has been used by permission only and that there have been signs on the land informing members of the public that access to the land is by permission only since 2007. He claims that locals and interested parties were invited in 2007 to come together to form what became the SDS, in a public meeting. The evidence suggest that the first community open day was held in September 2007, during which pamphlets were handed out showing that the claimed route was to be opened to the public by permission only. Therefore, the relevant 20-year period must be taken back retrospectively prior to 2007.
- 9.4 It was noted in section 6.1 that the land was used as an active rifle range until the last shooting on the 30th December 1990. Whilst the land was used as an active rifle range, there were red warning flags in place at all the surrounding Public Rights of Way and the public were not allowed to enter the range itself for safety reasons. In addition, it is understood that part of Path A, Extension One and the entire length of Extension Two falls within the 'theoretical danger zone'.
- 9.5 Furthermore, a letter dated 18th July 1963 reported an obstruction caused by the War Department, they referenced existence of notices on public path 2714 stating "This footpath is closed under range byelaws when red flags are flying".
- 9.6 Having considered the evidence, the use of the land as an active rifle range suggests that the claimed route would not have been accessible to the public until after the last shooting on the 30th December 1990. As such, there is insufficient evidence to establish that the claimed route has been used continuously for a 20-year period. Therefore, it cannot satisfy the requirements under s31 Highways Act 1980.
- 9.7 However, the evidence supports use of the claimed route for the period 1991 to 2007. Consequently, we can consider if there is sufficient evidence to establish dedication at common law.

10. Consideration of the Claim – Common Law

- 10.1 At Common Law a right of way may be created through expressed or implied dedication and acceptance. Therefore, both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to do so and that the public have accepted such dedication through their actual use of the claimed route. Whilst there is no defined minimum period of continuous use to establish a right of way at Common Law, the use must be shown to have been as of right and must be long enough to justify an inference that there was an intention by the Landowner to dedicate.
- 10.2 For the public 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 the case of

Nicholson v Secretary of State for the Environment 1996, Dyson J stated in his judgment that the use by the public must be open, uninterrupted, and as of right. Furthermore, the more notorious the use, the more readily will dedication be inferred if the conditions are satisfied.

- 10.3 Furthermore, in *Godmanchester Town Council v Secretary of State for Environment 2007* Lord Hope of Craighead clarified "Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way has been dedicated, and the owner has taken no steps to disabuse them of that belief".
- 10.4 Any presumption raised by user evidence may be rebutted by evidence of no intention to dedicate throughout the period of use. The position was clarified in *Fairey v Southampton County Council 1956* which held that "in order for there to be 'sufficient evidence there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate".

11. Inference of Dedication

- 11.1 As set out in section 9 above, there is insufficient evidence to establish that the claimed route has been used continuously for a 20-year period.
- 11.2 Although, the evidence suggests that there has been use of the claimed route for the period 1991 to 2007. As such, we can consider if there is sufficient evidence to establish an inference of dedication at common law.
- 11.3 Use of the route has been between 1 to 504 times per year by thirty users during the above period.
- 11.4 Sixteen users claim to have used Path A over 100 times a year, eleven users claim between 15 and 100 times a year and three users under 15 times a year.
- 11.5 Thirteen users claim to have used Extension One over 100 times a year, ten users claim between 15 and 100 times a year, six users under 15 times a year and one user claims not to have used this extension.
- 11.6 Eleven users claim to have used Extension Two over 100 times a year, ten users claim between 15 and 100 times a year, eight users under 15 times a year and one user claims not to have used this extension.
- 11.7 Twenty five users claim to have used Path A throughout the entire relevant period with use ranging from 3 to 504 times a year. Twenty four users claim to have used Extension One and Extension Two throughout the entire period with use ranging from 1 to 504 times a year.
- 11.8 Use of the route was on foot by all users.

12. As of right

- 12.1 "As of Right" means use without force, secrecy or permission. It is irrelevant whether the users actually knew they were not entitled to use the route or were indifferent as to whether they could use it. What is important is that looked at objectively they appeared to be using the paths as of right.
- 12.2 With regard to the issue of 'permission' a distinction needs to be drawn between toleration and permission. A landowner may be aware of the use of a path but chooses to do nothing to prevent that use. In those circumstances, even if they later make it clear they did not support the use of the path during the relevant period, their actions could be regarded as toleration of the use during that period. This means the use could still be regarded as being as of right.
- 12.3 However, the situation would be different if the landowner permitted the public to use the path but made clear (either expressly e.g. by a sign or through their conduct e.g. by closing the path occasionally) that their consent could be withdrawn in the future. In that case the use would be with permission and not as of right.
- 12.4 One of the user's claims to have been told the route was not public on two occasions. As such, this user did not use the route 'as of right'.
- 12.5 Two of the user's state they were given permission to use the route from the occupier, Mr May, in 1980's and 1990's. One of the users claims to have been given permission to use the route by Richard Goring. Clarification was sought on when permission was given, but no date has been provided. Therefore, these three users did not use the route 'as of right', leaving twenty six users who have claimed to use the route including Path A, Extension One and Extension Two as of right during the relevant period.
- 12.6 None of the twenty six users claim to have been stopped from using the route. The fact that the twenty six users regularly used the route and all state to have seen others doing so suggests the route was not used in secrecy.
- 12.7 In a letter received on the 28th June 2023, Mr Goring states that prior to the Higher-Level Stewardship Agreement in 2009 it was used as a Rifle Range with no public access. He claims that access to the land is by permission only and seeks to rely on the plans provided to members of the public and the Higher-Level Stewardship Agreement to evidence this. Furthermore, he claims that "there have been signs on the land informing members of the public that access to the land is by permission only since 2007". He states that the first community open day took place in September 2007, during which information pamphlets were handed out showing the claimed route was open by permission.
- 12.8 Mr Goring asserts that their tenant, Steyning Downland Scheme, have regularly stopped up the permissive path to carry out agricultural activities. In addition, he states they have undertaken works to prevent unauthorised access and repair the damage caused.

- 12.9 Mr Goring claims that the area was an active Rifle Range from 1860's until March 1990, during which there were red warning flags in place at all the surrounding Public Rights of Way and the public were not allowed to enter the range itself, for obvious safety reasons. In addition, he claimed that the land was used as an active rifle range until the last shooting on the 30th December 1990.
- 12.10 Correspondence dated 18th July 1963 and 19th July 1963 between the Ramblers Association and the County Council were found in the County Council's Path File. These letters reported that the notices were present on path 2714 stating "This footpath is closed under range byelaws when red flags are flying". In addition, it confirmed that in September 1960 the County Council gave their consent to the byelaws proposed by the War Department Land Agent in respect of the Steyning Range.
- 12.11 In summary, there is evidence of use on foot from 1991 to 2007. It can be concluded that the use during this period has not been in secret or by force. However, evidence submitted by the landowner suggest that prior to 1991 the land was an active rifle range and as such the use would not have been as of right and since 2007 the land has been managed by the Steyning Downland Scheme who have promoted the paths as permissive.

13. Evidence of no intention to dedicate

- 13.1 Dedication under the Common Law rule can be rebutted if there is evidence of no intention to dedicate by the landowner.
- 13.2 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.
- 13.3 One user states they saw a notice on one occasion in 1980's for a shoot. They recalled that "there used to be a red flag visible from the footpath along and outside of the Eastern edge of the Rifle Range when shooting was in progress and there may have been a sign saying Danger when the flag was flying". However, they believe this was before 1989.
- 13.4 One user claims others were stopped when red flag was up when the Range was in use.
- 13.5 No other users report a notice being put on site during the period 1991 to 2007 indicating the route was private and the landowner had no intention to dedicate.
- 13.6 Twenty one users claim there are gates on the claimed route but that the gates are accessible and do not prevent access.
- 13.7 The Landowner claimed this was an active rifle range from 1860's to March 1990, during which red warning flags were in place at all the surrounding Public Rights of Way and the public were not allowed to enter the range. Furthermore, he stated that the land was used as an active rifle range until the last shooting on the 30th December 1990.
- 13.8 As set out in paragraph 12.10, letters found on the County Council Path Files suggest that public rights of way falling within the danger area of the range

were closed when the red flag was flying. However, this does not itself suggest that the claimed route was not a public right of way. Although, this does indicate that the claimed route would have been closed to the public when the red flag was flying.

- 13.9 As examined in paragraph 12.7, the landowner claims signage has been on the land informing the public that access is by permission only since 2007. In addition, he states in September 2007 the first community open day took place, during which information pamphlets were handed out showing the claimed route was open by permission.
- 13.10 As indicated in paragraph 6.1, the SDS Steering Group Meeting Minutes from 20th May 2008 suggests that the SDS leaflet was to be trialled at the Live Lounge event and then be widely available. Furthermore, the landowner asserts the claimed route has been open by permission under Higher Level Stewardship Agreement since 2009.
- 13.11 As outlined in paragraph 7.4 a landowner deposit was submitted to WSCC in 2013 indicating there was no intention to dedicate the route, however, this is outside the relevant period.
- 13.12 There is no other evidence of no intention to dedicate.

14. Overall Conclusion and Recommendation

- 14.1 The applicant has produced a sufficient amount of credible evidence which demonstrates an inference of dedication by clear use of the claimed route during the period 1991 to 2007. In addition, the evidence suggests that the use within this period was as of right and without interruption. As such, the evidence is sufficient to give rise to the common law presumption of dedication.
- 14.2 The common law presumption can be rebutted by demonstrating that the landowner had no intention of dedicating the land to the public. However, there is no evidence provided by the landowner to rebut this presumption between the period 1991 to 2007.
- 14.3 It is therefore considered that the legal test has been met on the balance of probabilities.
- 14.4 It is therefore recommended that an order should be made to add the claimed route to the definitive map.

15. Consultation, engagement and advice

See paragraph 4 above which details responses to statutory consultations as well as responses to additional consultations that were carried out as part of the investigation process.

16. Finance

- 16.1 The County Council is under a duty to investigate Definitive Map Modification Order applications and all costs associated with the consideration of the application by officers' falls within existing budgets.

16.2 Cost implications arise:

- i. 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. All fees incurred after the submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, advertising costs etc.
- ii. Should an order be made and confirmed; if any works are necessary to ensure that the path is open for public use.
- iii. Should the decision of the committee be challenged by way of Judicial Review.

16.3 The recommendation made by the case officer and the decision of the Planning and Rights of Way Committee is based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

17. Risk implications and mitigations

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

- i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review
- ii. 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.
- iii. In the event that an order is not made and the applicant disagrees with the decision then they have a right of appeal pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 to the Secretary of State. The Secretary of State may direct the County Council to make an order, which if objected to could be considered by way of written representations, hearing or public inquiry.

17.2 In reaching a recommendation the case officer has considered the evidence in accordance with the law.

18. Policy alignment and compliance

Equality and Human Rights Assessment

18.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

18.2 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.

- 18.3 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.
- 18.4 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 an interference with these rights and whether the interference is proportionate.
- 18.5 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, 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.

Crime and Disorder

- 18.6 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.

Climate Change

- 18.7 Enhancement of the public rights of way network is a positive contribution towards the County Council's stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when considering applications against the strict legal tests.

Public Health

- 18.8 The addition of public rights of way through the Definitive Map Modification Order process could assist in enhancing the general health and wellbeing of the communities served by the Council. However, such considerations are not matters that can be taken into account when considering applications against the strict legal tests.

Tony Kershaw

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Appendices

- Appendix 1 – Site Plan 01830
- Appendix 2 – Location Plan 01830A
- Appendix 3 – Parish Location Plan 01830B

Background papers

- (1) Application and plan
- (2) Witness Table
- (3) Consultation responses
- (4) Evidence in support
- (5) Evidence in opposition
- (6) Archive Evidence