

## **Rights of Way Committee**

**5 March 2019**

### **Recent Decision by the Secretary of State's Inspector:**

#### **West Sussex County Council (Petworth No.1 (Parish of Loxwood addition of Footpath)) Definitive Map Modification Order 2014**

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

#### **Recommendation**

That this report be noted.

#### **1. Background**

- 1.1 In February 2014 the Committee considered an application, made by Mrs Wendy Andrews to add a footpath from Station Road to High Street in Loxwood, under Section 53 of the Wildlife and Countryside Act 1981.
- 1.2 The application to add a footpath from Station Road to the High Street in Loxwood was accompanied by seventeen public way evidence forms, which testified to the use of the route as of right on both foot and horseback between 1940 and 2013 and a number of historical maps of the area.
- 1.3 The adjoining landowners objected to the application. Their objections mainly focused on anti-social behaviour and were not considerations which could be taken into account when determining an application under the provisions of the Wildlife and Countryside Act 1981.
- 1.4 The legal tests to satisfy before making a Definitive Map Modification Order are:
  - 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
  - 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).
- 1.5 The reporting officer concluded that the evidence of use asserts use throughout the relevant period “as of right” and without interruption, therefore recommended that, on the balance of probability and order be made.

- 1.6 Committee agreed with the Officer recommendation that the tests for the making of the order could be met and approved the officer recommendation.
- 1.7 On 28 March 2014 the West Sussex County Council (Petworth – No.1 (Parish of Loxwood: addition of a footpath)) Definitive Map Modification Order was made.
- 1.8 Three objections were received during the statutory notice period; therefore the orders fell to be determined by the Secretary of State.
- 1.9 On 12 October 2017, the opposed order was submitted to the Secretary of State for the Environment, Food and Rural Affairs who held a local public inquiry on 4 September 2018.

## **2. The Inspector's Decision**

- 2.1 The Inspector concluded, after hearing evidence given during the inquiry, they concluded that the statutory tests for dedication of a path under Section 31 Highways Act 1980 could not be met. Therefore it was necessary for her to consider whether there had been dedication of the route at Common Law.
- 2.2 The Inspector was satisfied that there had been use of the Order route for a period in excess of 60 years by a group of people which constitute the public and that their use of the route had been "as of right".
- 2.3 The Inspector was satisfied that the use was sufficiently notorious that the Landowner must have been aware of it and has acquiesced in it. The Inspector was satisfied that dedication of the order route as a footpath can be inferred at Common Law, therefore confirmed the order.

## **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.

## **Background Papers**

- (a) Committee Report October 2014  
<http://www2.westsussex.gov.uk/ds/cttee/row/row250214i9a.pdf>
- (b) Inspectors full decision dated 23 October 2018  
<http://www2.westsussex.gov.uk/ds/cttee/row/row050319loxwood.pdf>

## **Tony Kershaw**

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