

## **Rights of Way Committee**

**5 March 2019**

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

**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 Director of Law and Assurance**

#### **Recommendation**

That this report be noted.

#### **1. Background**

- 1.1 In June 2018 the Committee considered an application, made by Ms Ann Arnold to add a footpath from bridleway 1163 to Fyning Lane in Rogate, under Section 53(2) of the Wildlife and Countryside Act 1981.
- 1.2 The application to add a footpath from bridleway 1163 to Fyning Lane in Rogate was accompanied by eighteen public way evidence forms, which testified to the use of the route between 1939 and 2016.
- 1.3 Each of the adjoining landowners submitted evidence against the application, including evidence that the claimed route has been blocked for various periods for building works from 1991. 30 local residents also submitted objections to the application.
- 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. However, as there was a direct conflict from those in objection to the claimed route, it was recommended that an order be made on the lower, reasonably alleged test.

- 1.6 After hearing evidence from a number of speakers during the Committee Meeting, a motion, proposed by Mr Bradbury and seconded by Mr Baldwin was voted on by Committee and approved by a majority. Committee resolved to refused the application on the following grounds:
- 1.6.1 There is a conflict of evidence provided in support and against the application. Having heard the representations by all parties and understanding the evidence summarised in the report, it is concluded that the evidence in objection is considerable with little credible evidence of actual use in support and thus the claimed route cannot be alleged to subsist and that an order to add the path to the Definitive Map and Statement be not made.
- 1.7 On 5 July 2018, the applicant appealed this decision of the Committee to the Secretary of State for the Environment, Food and Rural Affairs.

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

- 2.1 The Inspector concluded that although there is a conflict between the evidence of the users and landowners, no evidence has been submitted which would establish incontrovertibly that the owners of the land during the relevant period has demonstrated a lack of intention to dedicate, or that the route was of such a character that use of it by the public could not give rise at common law to a presumption of dedication.
- 2.2 The inspector therefore concluded that the application succeeds against Test B as it is reasonable to allege the existence of a public right of way over the claimed path and directed the County Council to make 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 dated 12 June 2018  
<https://westsussex.moderngov.co.uk/ieListDocuments.aspx?CIid=167&MIid=564&Ver=4>
- (b) Inspectors full decision dated 25 January 2019  
<http://www2.westsussex.gov.uk/ds/cttee/row/row050319rogate.pdf>

## **Tony Kershaw**

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