

Rights of Way Committee

12 October 2021

Recent Decision by the Secretary of State's Inspector:

DMMO 5/16 – To add a footpath at Fyning Lane, Rogate

Report by Director Law and Assurance

Recommendation

That this is a report to be noted

1. Background

- 1.1 In June 2018 the Committee considered a DMMO application, made by Ms Ann Arnold, to add a footpath at Fyning Lane in the Parish of Rogate.
- 1.2 The legal tests to satisfy before making a Definitive Map Modification Order are:
 - i. 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 on the balance of probabilities); or
 - ii. 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 a1.4 The application route was divided into three parts as described below in reference to plan 01733a (appendix 1):
- 1.3 The application was supported by user evidence only.
- 1.4 The affected landowners Mr and Mrs Grey and Mrs Abramovich and adjoining landowners Mr and Mrs Noble, Mr Pope and Mr and Mrs Wakeland all objected to the application.
- 1.5 The reporting officer concluded that the applicant had produced credible evidence of enjoyment of the way as a public right of way over a full period of 20 years, but there was a conflict of apparently credible evidence from the owner in relation to one or more other issues arising under Section 31 of the Highways Act 1980, therefore the test 'reasonably alleged to subsist' was recommended.

- 1.6 The Committee refused the application, and it was resolved that an order be not made.
- 1.7 On the 25th March 2019 the applicant appealed the County Council's decision to the Planning Inspectorate. The case was considered by an Inspector by way of public inquiry.

2. The Inspector's decision

- 2.1 A full copy of the Inspectors decision report is attached, however, after reviewing the appeal documentation the Inspector concluded that;
 - It was not considered that there was a sufficient indication of a lack of intention to dedicate a public right of way on foot over this land on the part of the landowner within the relevant period.
 - The level of use was insufficient to raise a presumption that the way has been dedicated as a public footpath in the twenty-year period 1975 – 1995.
- 2.2 In conclusion, the Inspector directed that an order for the whole route should not be made.

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.

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Appendices

- Appendix 1 – Committee report, dated 12 June 2018
- Appendix 2 – Location plan
- Appendix 3 – Site plan
- Appendix 4 – Inspector's full decision report, dated 8 July 2021