

## **Rights of Way Committee**

**18 May 2021**

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

**DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly**

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

---

## **Recommendation**

That this is a report to be noted

---

### **1. Background**

- 1.1 In March 2019 the Committee considered a DMMO application, made by Mr Paul Brown, to add a bridleway and upgrade an existing length of footpath (FP 51ESx) to bridleway status.
- 1.2 In relation to the addition of a new length of bridleway (being points A – B on the plan) 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 is 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 available could reasonably allege a public right way to subsist).
- 1.3 In relation to the upgrade of FP 51ESX (being points B – C on the plan) the legal test to satisfy before making a Definitive Map Modification Order is whether evidence is discovered which, when considered with all other evidence shows that the footpath ought to be shown as a highway of a different description. The standard of proof to be applied in such circumstance is the balance of probabilities.
- 1.4 The application was supported by archival evidence only. No user evidence was submitted with the application.
- 1.5 The affected landowners (Ibstock Bricks Limited, the Mayes Estate and the Guide Association) objected to the application and submitted their objection as a consortium. The consortium's objection centred on the claimed route not appearing consistently on the maps provided by the applicant and that where

the claimed route was visible there was nothing to differentiate it from private ways or otherwise to indicate its status.

- 1.6 The reporting officer concluded that the evidence provided by the applicant was not sufficient and did not meet the required legal tests and it was recommended that an order should not be made.
- 1.7 Committee agreed with the Officer recommendation, and it was resolved that an order be not made.
- 1.8 On 25 March 2019 the applicant appealed the County Council's decision by making an application to the Planning Inspectorate.
- 1.9 The Inspector allowed the appeal and directed the County Council to make a Definitive Map Modification Order.
- 1.10 On 12 November 2019 the West Sussex County Council (Cuckfield Rural No.1 (Addition of public bridleway and upgrade public footpath 51ESx to public bridleway)) Definitive Map Modification Order 2019 was made.
- 1.11 Four letters of objection were received within the statutory notice period.
- 1.12 As the order received objections, it was necessary to submit the order and associated documents to the Planning Inspectorate for determination in relation to confirmation.

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

- 2.1 A full copy of the Inspectors decision report is attached. The Inspector concluded that on the balance of probabilities, the evidence currently available does not indicate that the definitive map and statement is incorrect and that the status of the Order route should be altered, or that the map should be added to.
- 2.2 On 15 February 2022 the Planning Inspectorate concluded that the order should not be confirmed.

## **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.

### **Tony Kershaw**

Director of Law and Assurance

**Contact Officer:** Georgia Hickland ext. 25360

### **Appendices**

- Appendix 1 Committee Report March 2019
- Appendix 2 Inspector's appeal decision dated 9 August 2019
- Appendix 3 Inspector's full decision dated 15 February 2022