

## **Rights of Way Committee**

**7 February 2023**

**DMMO 4/20 - Definitive Map Modification Order application to modify the Definitive Map and Statement for Chanctonbury to add a footpath from Coombe Drove, Bramber to Bostal Road, Steyning in the parishes of Bramber and Steyning**

**Report by Director of Law and Assurance**

**Electoral division: Bramber Castle**

**Local Member: Paul Linehan**

---

### **Summary**

The application seeks to add a footpath from Coombe Drove, Bramber to Bostal Road, Steyning and was submitted with 127 public way evidence forms or individual statements testifying to use of the claimed route between 1964 – 2020.

The relevant 20-year period of continuous use for the purpose of the application is 1976 – 1996.

It is concluded that the credible evidence from a significant number of users meets the legal tests and that the original route of the path has, on the balance of probabilities, been proven to subsist. Therefore, an order should be made to add the path to the Definitive Map.

### **Recommendation**

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 to the Definitive Map and Statement for Chanctonbury from Coombe Drove, Bramber to Bostal Road, Steyning should be made.

---

## **1. Introduction**

- 1.1 The application was made by Paul Richards on joint behalf of Bramber and Steyning Parish Councils, and was received on 11<sup>th</sup> August 2020. It seeks to add to the Definitive Map and Statement a new footpath running between the parishes of Bramber and Steyning. The initial application was supported by 14 public way user evidence forms and 113 other user statements, testifying to the use of 127 users in total. The path claimed by the application is shown on the application plan.

- 1.2 The application is made under Section 53(5) and is reliant on 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 on the Definitive Map and Statement subsists or is reasonably alleged to subsist over land. The burden of proof rests with the applicant.
- 1.3 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 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(s) during this period to dedicate the way for use by the public.

## **2. Character and features of the claimed route**

- 2.1 The claimed route begins at Coombe Drove (grid reference 517852, 110644) and proceeds in an overall north-west direction on a path to Bostal Road (grid reference 517839, 110664). Through the narrow part of its route, the path varies in width between 0.95m and 1.4m. It widens at each end where it joins the existing highway. The route has been made up with tarmac.
- 2.2 During the course of the investigation, it was discovered that from the earliest user evidence submitted in the 1950s until approximately the mid-1990s, the path had been straighter and wider, following the course shown in the map in Appendix 2a, which is a typical example of the evidence sent in. Where given, evidence suggests this path covered the width of the gap between the eastern boundary of 12 Coombe Drove and the western wall of Penland Cottage, and was approximately 10' (3m) wide. According to user evidence, its surface during this period was gravel and stones, with some grassy verge in places (see Appendix 2b). These changes will be discussed further in paragraph 9.8.

## **3. Land Ownership**

- 3.1 Land Registry documents show the land to be either owned by Mr and Mrs Harding, of Penland Cottage, Bramber Road, Steyning BN44 3PB, or to be unregistered.
- 3.2 The applicant served notice of the application on the registered landowners on 6<sup>th</sup> August 2020. The case officer gained dispensation from the Planning Inspectorate to dispense with notifying the owners of the unregistered land in person on 15<sup>th</sup> September 2022, and notice was displayed on this land from 16<sup>th</sup> to 30<sup>th</sup> September 2022 inclusive.

## **4. Consultations**

- 4.1 Standard consultations were sent to the local member, local access ranger, amenity groups and Horsham District Council. They were not sent to either Bramber or Steyning Parish Councils as they are the applicants, and although the South Downs National Park Authority was consulted, the location falls just outside the Park boundary.

4.2 The following comments were received:

4.3 Steyning Access Ranger, Nigel Bird, on behalf of Bramber Access Ranger, Katrina Harper, and himself:

*"The path provides a useful pedestrian link between the public highways of Coombe Drove and Bramber Road."*

4.4 Tricia Butcher, Access & Bridleways Officer, The British Horse Society:

*"My only observation is that I have been informed by a colleague in Bramber this has been a path since before she moved here, over 40 years ago. It is a short cut which is very useful to avoid using a narrow pavement next to a busy road. I have been asked to forward her comments below:*

*"Yes I use this path often, it is my walking route from home to Steyning and I know it is well used by other locals including students walking to school. A few years ago the surface was tarmacked following a request to the parish from residents. It is more of an urban twitten but a very useful safer route avoiding the narrow path on Clays Hill."*

4.5 Louise Mathie, Principal Planning Lawyer, Horsham District Council, responded to notify that there is a Tree Preservation Order in place at the Coombe Drove end of the twitten (A0002 1961).

## **5. Evidence submitted in support of the application**

5.1 The application was made following the erection of a notice by the landowner at the Bostal Road end of the twitten, stating that the path was not a public right of way but used with permission of the landowner. This sign was apparently removed soon afterwards.

5.2 The application was supported initially by 14 public way user evidence forms, testifying to the use by 14 individuals from 14 unique postal addresses over the period of 1964 to 2020. Additionally, there were 113 individual user statements in the form of letters from 72 unique addresses, testifying to use of the path over the period 1964 to 2020.

5.3 The 14 user evidence forms initially submitted with the application show the following type of use:

5.3.1 all users claim to have used the routes on foot

5.3.2 six users claim to have used the routes on a bicycle

5.4 One of the 14 users reports having seen someone be turned away whilst using the route, and four claim to have seen a notice stating the path was used with permission only, rather than being a public right of way. None have been otherwise prevented from using the route.

5.5 All of the initial 14 user statements claim regular use of the path on foot, and many also state that they have used it on a bicycle in the past. None of them claim to have been turned back or to have seen others prevented from using the path. Many claim to have seen the notices stating the path was a permissive way not a right of way.

- 5.6 All users report to have seen others using the routes either on bicycles and/or walking. Three of the initial 14 who completed evidence forms report seeing people use the path on horseback.
- 5.7 Eleven of the 14 users who initially completed evidence forms claim that the path was historically much wider and running a straighter course, but that fencing has been erected at Penland Cottage, making the route narrower and adding corners. Many of those writing letters in support corroborate this evidence. Maps dating to the 1960s showing this were submitted by several individuals; again a typical example can be seen at Appendix 2a and further consideration of this route is given in paragraph 9.8.

## **6. Evidence submitted against the application**

- 6.1 An objection was received from Mr Harding, the current owner (with his wife) of Penland Cottage. He stated that he considered that people had only ever used the path with his permission, and that he had adopted this position on the basis of what the previous landowners had done. On the standard form requesting evidence from landowners, Mr Harding stated that he had kept the Parish Council informed that the footpath was permissive. Requests were made for copies of this correspondence on two occasions by the investigating officer, but none have been received.
- 6.2 In an email to the investigating officer, Mr Harding wrote:
- "We will be strongly opposing the DMMO Application which we argue is vexatious and unnecessary."*
- 6.3 On investigation, it was discovered that the above landowners deposited a section 31(6) Highways Act 1980 landowner statement and map with the County Council in September 2009, but to date this has not been followed up by a statutory declaration, and as it was made before October 2013, it expired in 2019 as it has not been renewed. Additionally, the previous owners of Penland Cottage had also submitted a deposit in May 1996, with a declaration in May 2002.

*Officer comment: The effect of the previous owners' Landowner Deposit was to protect their land from Rights of Way claims between the period of May 1996 and May 2006. In any case they sold Penland Cottage to Mr and Mrs Harding in August 2006. The Deposit made by Mr and Mrs Harding is not in current effect as it expired in 2019, having not been renewed.*

- 6.4 No response or evidence was received from the unidentified owner of the unregistered land covered by the route.

## **7. Archive evidence**

- 7.1 The following were consulted: Sussex Ordnance Survey Map dated 1875, the Tithe Maps for Bramber and Steyning Parishes, and the Sussex Estate Maps for Bramber (dated 1729) and Steyning (dated 1825). It is concluded that none of these maps show evidence of a historic right of way.
- 7.2 The Draft and Provisional Definitive Maps were consulted and neither map show evidence of a historic right of way.

- 7.3 The Parish file for Steyning contained evidence of correspondence dated between 1994 and 1996 between the previous owners of Penland Cottage, and the County Secretary's Office at WSCC, and also between the County Secretary's office and George Cockman, of 12 Coombe Drove, which is the other property that borders the claimed path, and which is still owned and occupied by Mr Cockman's widow.
- 7.4 In summary, this correspondence (copies of which can be found at Appendix 3) included:
- 7.4.1 A letter with an initial request on the part of the previous owners of Penland Cottage (dated 19<sup>th</sup> May 1994) into whether the footpath that ran alongside their house could be moved over by a few feet, following at least two instances where they claimed that a window in their property overlooking the path had been smashed. The request proposed that moving the path would allow them to erect fencing to protect their property;
- 7.4.2 A response from the County Secretary's office (dated 31<sup>st</sup> May 1994) stating that the footpath was not registered as a public right of way;
- 7.4.3 A file note detailing:
- 7.4.3.1 A conversation between the County Secretary's office and Mr Cockman (on 11<sup>th</sup> March 1996) wherein Mr Cockman rang to ask what the position was regarding the previous owners of Penland Cottage having recently moved the path closer to his property, and to tell the County Secretary's office that the path in its previous format had been in regular use by the public for at least 32 years. Mr Cockman was given details of how to make a DMMO application for the route of the original path, even though it had now incorporated it into the garden of Penland Cottage.
- 7.4.3.2 A conversation between the County Secretary's office and the previous owners of Penland Cottage (on 13<sup>th</sup> March 1996) where they reported that they did not think they had done anything wrong, based on the information given to them in the exchange of letters with WSCC in 1994. It was again explained that a DMMO application may conceivably be made to claim the original route as a right of way, which would involve the removal of any new obstacles. The owners reportedly "*hoped that the provision of an alternative route would head off a claim,*" and agreed to fax over a plan of the original route, and the new available route;
- 7.4.3.3 A note that the previous owners of Penland Cottage had called again on 13<sup>th</sup> March and expressed grievance that they were not informed of a potential DMMO claim when they contacted WSCC in 1994, but did not want to make an issue of it;
- 7.4.3.4 A note that the then Clerk to Steyning Parish Council had called two days later on 15<sup>th</sup> March to ask the situation, as

had the then local footpath secretary of The Ramblers' Association. The latter had contributed that the northern end of the path was part of the highway network and publicly maintainable, but the rest of it was not;

- 7.4.4 A faxed note dated 13<sup>th</sup> March 1996 from the previous owners of Penland Cottage to the County Secretary's office including the promised plan;
- 7.4.5 A (faxed) letter from the previous owners of Penland Cottage to the County Secretary's office dated 14<sup>th</sup> March 1996 confirming the details of their earlier telephone conversation and their frustrated position, while also stating they would consider dedicating the new footpath as a public right of way, and challenge an application claiming a right of way on the existing route;
- 7.4.6 Letters from the County Secretary's office to both Mr Cockman (dated 15<sup>th</sup> March 1996) and the previous owners of Penland Cottage (dated 18<sup>th</sup> March 1996) confirming their conversations, and thanking the latter for sending the plans;
- 7.4.7 A letter from the then local footpath secretary of the Ramblers' Association dated 17<sup>th</sup> March 1996 in which he gives details of the path and states that he himself has used it for around 25 years. He also points out that he believes the public will find the changes to the path to be "unacceptable", as they have enjoyed the use of a much wider area for many years, but he feels that a width of at least 6' [1.8m] should be maintained;
- 7.4.8 A (faxed) letter from Mr Cockman to the County Secretary's office dated 18<sup>th</sup> March 1996 detailing conversations between himself and the previous owners of Penland Cottage which took place on 15<sup>th</sup> March and 17<sup>th</sup> March, in which negotiation on what width the new path and its boundary should take, and expressing the "distress" felt by him and his wife on the subsequent actions of the previous owners of Penland Cottage. This letter included plans given to Mr Cockman of the new path layout;
- 7.4.9 A letter dated 22<sup>nd</sup> March 1996 from the County Secretary's office to the then local secretary of the Rambler's Association acknowledging the latter's letter, confirming information on the maintainable status of the various areas of the path, and advising of the potential to make a DMMO application;
- 7.4.10 A letter dated 22<sup>nd</sup> March 1996 from the County Secretary's office to Mr Cockman acknowledging his letter of 18<sup>th</sup> March and reminding him of the possibility to make a DMMO application for the original route;
- 7.4.11 A letter from the previous owners of Penland Cottage to the County Secretary's office (dated 20<sup>th</sup> March 1996 and stamped received by WSCC on 26<sup>th</sup> March) stating that where they had previously considered dedicating the footpath on the new route as a public right of way, they now no longer intend to, owing to the potential of an

impending DMMO application adding a second right of way over their land, and finally

7.4.12 A letter from the County Secretary's office to the previous owners of Penland Cottage (dated 29<sup>th</sup> March 1996) acknowledging the reasons for them changing their minds about path dedication, and advising that they can protect the new path against rights of way claims by making a Landowner Deposit under Section 31(6) Highways Act 1980.

7.5 The overall picture presented by this correspondence is the history of the changes to the path and the reasoning and intentions of the landowners around potential dedication of the new path and the lodging of the S31(6) Deposit. Further discussion of these factors can be found in paragraph 9.8 below.

## **8. Consideration of claim**

8.1 In determining the application, there are two tests to consider. The Committee has to 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 subsists, or is reasonably alleged to subsist. The burden of proving this falls to the applicant. DMMO applications have to be determined on the basis of the available evidence and the rule of law. Matters such as suitability of a way and possible nuisance or need, are irrelevant and cannot be taken into account when reaching a decision.

8.2 In the absence of map-based archival evidence the application has been considered under Section 31 of the Highways Act 1980, deemed dedication of a way after uninterrupted use of 20 years.

8.3 Section 31 of the Highways Act 1980 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.

## **9. The 20-Year Period**

9.1 A relevant date needs to be determined in order to establish the 20-year period. The relevant date is the period when the land has actually been enjoyed by the public as of right (without permission, without force and without secrecy) and without interruption for a full period of 20 years taken back retrospectively from the first date of challenge.

9.2 In this instance, the application claims that some users saw a notice in 2020 posted briefly on the fence at Penland Cottage stating that use of the footpath was permissive, rather than by right, which is the event that triggered the current DMMO application. Therefore, the relevant 20-year period for the purpose of determining this application should be 2000-2020.

9.3 However, owing to the Section 31(6) Landowner Deposit – made the previous owners of Penland Cottage in 1996, as a consequence of the events summarised in paragraph 7.4 – which protected the land against Rights of Way claims, there has not been 20 years' usage by the public as of right and

without interruption since 2006, when the Deposit expired, as only 14 years elapsed between that date and the application being made.

- 9.4 Nonetheless, the significant quantity of evidence submitted in the first instance by the applicant shows that 91 members of the public claim usage of the path for some or all of the period 1976 to 1996 (either through user evidence forms or through personal statements) before the Landowner Deposit came into effect, and 24 of these individuals claim to have used it for the whole 20-year period.
- 9.5 Therefore, owing to the evidence produced with the original application, and the common law rule "once a highway, always a highway" ([\*Dawes Hawkins \(1860\) 141 E.R. 1399\*](#) and [\*Eyre v New Forest Highway Board \[1892\] 56 JP 517\*](#)), the 20-year period can be pushed back, and considered as 1976-1996, i.e. the 20 year period before the previous owners of Penland Cottage made their changes to the path, and then registered their Landowner Deposit, with the act of challenge being the changes themselves.
- 9.6 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.
- 9.7 As detailed in paragraph 9.4 above, evidence was provided with the initial application of a significant level of use of a path by members of the public during the relevant 20-year period, and where numbers have been submitted for frequency of use of this path, the number of times given ranges between 20 to 730 times a year.
- 9.8 However, before considering the claim any further, it is necessary to consider the actual route of the path. As explained in paragraphs 2.2 and 5.7 above, and evidenced in the correspondence described in paragraph 7.4, the course of the route changed in early 1996, when the previous owners of Penland Cottage erected their fencing. As the relevant period of 20 years ends in 1996, the route that should actually be claimed is the one used between 1976 and these changes, and which now runs through the fenced-in garden of Penland Cottage. This route can be seen in Appendices 2a and 2b.
- 9.9 With a large quantity of the original user evidence having been submitted as statements, rather than on a standard public way user evidence form, it was considered appropriate, given the adjustment to the relevant 20-year period, that those members of the public claiming usage in the 1976-1996 period via a statement should be asked to complete the standard form, which gives more detail about their usage of the path.
- 9.10 Requests and forms were sent to 73 of those people who had written statements in favour of the application. They were also sent plans with a request to depict the changes to the path over the time of their usage (see appendix 2). These plans were also sent to the 14 people who returned user evidence forms in the first instance.
- 9.11 Of the 73 requests sent out, 29 were returned showing use of the original path during the 20-year period. The total number of users giving detailed evidence of their use of the path between 1976-96 therefore increased to 43. All of these users claim to have used the route on foot, and 13 of them claim

to have used it on a bicycle. They have all seen others use it on foot, 19 claim to have seen it used on a bicycle and five claim to have seen others use it on horseback.

- 9.12 Significantly, 33 out of 43 claim that the path in its current form is not the same as it was in the past. 29 users give detailed descriptions of how the path has changed, including such factors as it being (much) narrower and having bends where before it was wide and more or less straight. 10 individuals specifically state that what was part of the path is now in the garden of Penland Cottage.
- 9.13 If this route is added to the Definitive Map as a public right of way, it will mean significant change to what is now Mr and Mrs Harding's garden to reinstate the line of the path as it was up until 1996. Such considerations are not relevant to the legal tests for presumed dedication pursuant to S31 Highways Act 1980 and for committee decision. Any required changes to the path would be a matter for the future should an Order be made, and eventually confirmed. Consideration has to be to the route which would have been in use by the public for the relevant 20-year period from 1976 to 1996 and whether this meets the tests. It is concluded that the evidence of use for this period is credible and from a significant number of users which meets the legal tests in S31 Highways Act 1980.

## **10. As of right and without interruption?**

- 10.1 "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 path as of right.
- 10.2 As detailed in paragraph 9.4 above, evidence submitted in all forms in support of the application has shown that the route has been used by 91 users, 24 of whom used the route continuously from 1976 – 1996, and who continued to use it at the time of application in 2020. This is a significant number of users, especially considered against the length of time since the relevant 20-year period elapsed.
- 10.3 During 1976-1996, none of the users claim to have been stopped from using the route, or to have been given permission to do so. It therefore appears that access to the route has been available throughout the relevant period.
- 10.4 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 (i.e. by giving their permission), 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.
- 10.5 In their correspondence with WSCC, the previous owners of Penland Cottage confirmed that they were aware of the public use of the application routes across their land and her only objection was to people loitering on the path and damaging her property. It can be concluded in this instance that she

and her husband tolerated normal use of the path, i.e. it being used as a means of walking from Bostal Road to Coombe Drove or vice versa.

- 10.6 However, the situation would be different if the landowners 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 consent could be withdrawn in the future. In that case the use would be with permission and not as of right.
- 10.7 Between 1976 and 1996, until the path was changed, no landowner (the previous owners of Penland Cottage or their predecessors in title) appears to have prevented the use of the path by the public by way of signage, or told anyone they may use it only with permission. In summary therefore, the significant use by substantial numbers of people of the route between 1976 and 1996 which the previous landowners did not prevent or explicitly permit, indicates that the use during the relevant period was as of right and without interruption.

## **11. Evidence of no intention to dedicate**

- 11.1 It is considered that the user evidence has met the statutory tests as set out in Section 31 Highways Act 1980. User evidence submitted in support of the application shows that the original route had been used as of right and without interruption for a period of 20 years or more.
- 11.2 It is therefore necessary to further consider whether there is sufficient evidence of no intention during the relevant 20-year period to dedicate by the landowner.
- 11.3 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.
- 11.4 With regard to the original line of the path, it is clear that the previous owners of Penland Cottage had no intention to dedicate once they actively fenced the area into their garden to prevent it being used as a public footpath. With regard to the new route, their lack of intention to dedicate is evidenced by their submission of a S31(6) Landowner Deposit. However, these actions are what precipitate the end of the 20-year period and do not have any bearing on the relevant time period beforehand.
- 11.5 No evidence is available that any previous landowner of Penland Cottage, or any owner of the unregistered section of land, had any intention not to dedicate the land, as such information would be held on record. The freely available use of the path without restriction speaks to, at very least, the tolerance of other landowners of its use by the public, and that of the previous owners of Penland Cottage s before they changed the path.

## **12. Common Law**

- 12.1 At Common Law a right of way may be created through expressed or implied dedication and acceptance. 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. 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.

- 12.2 Dedication at common law is presumed if the way has been used by the public as of right. There is no defined length of time over which the use must occur and it simply must be long enough to justify an inference that there was an intention by the Landowner to dedicate. A Landowner needs to be legally capable of dedicating the way as public, therefore any periods in which the land was occupied by tenants could not be included in the period of user.
- 12.3 In this case there is a significant amount of evidence of use, which spans a considerable period of time, and this use by the public demonstrates their acceptance of the dedication. It could therefore be concluded that rights of way have been created at common law.

### **13. Overall Conclusion and Recommendation**

- 13.1 The applicant has produced a substantial amount of credible evidence which demonstrates clear use of the application route, as of right, during the 20-year period. The landowners, by closing off the path, could be argued to show that they did not intend to dedicate a public footpath across their land. However, as previously described, these actions are what precipitated the end of the relevant period. As such, it is not considered that there is a conflict of credible evidence of use and landowner submissions.
- 13.2 It is concluded that the legal tests have been met and that on the balance of probabilities the original route of the footpath as depicted in Appendix 2a has been proven to subsist.
- 13.3 It is therefore recommended that an order should be made to add the original route to the Definitive Map.

### **14. Consultation, engagement and advice**

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

### **15. Finance**

- 15.1 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.
- 15.2 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 submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, fees relating to advert
  - ii. Should an order be made and confirmed; if any works are necessary to ensure the path is open for public use.

- iii. Should the decision of the committee be challenged by way of Judicial Review.

15.3 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

## **16. Risk implications and mitigations**

16.1 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.

16.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

## **17. Policy alignment and compliance**

### ***Equality and Human Rights Assessment***

17.1 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***

17.2 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.

17.3 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.

17.3.1 In this instance, the home of Mr and Mrs Harding may suffer interference if the route is added according to the recommendation. WSCC would be acting to protect the rights of way of the general

public, here, rather than intentionally causing interference to the Hardings.

- 17.4 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.
- 17.4.1 In this instance, the home of Mr and Mrs Harding may suffer interference if the route is added according to the recommendation. WSCC would be acting to protect the rights of way of the general public, here, rather than intentionally to cause interference to the Hardings.
- 17.5 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 and obligations. Article 6 provides that in the determination of these 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***

- 17.6 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***

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

### ***Public Health***

- 17.8 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 test.

## **Tony Kershaw**

Director of Law and Assurance

**Contact Officer:** Naomi Taite, Legal Assistant, 0330 222 5375

## **Appendices**

- Appendix 1 – Sample of plan to show evidence of changes to route, sent to users providing statements of support
- Appendices 2 - Evidence submitted by users of previous route:
  - Appendix 2a – development plan from 1963 showing the path between Penland Cottage and the plot at 12 Coombe Drove.
  - Appendix 2b – A plan from Appendix 1, submitted as part of user evidence to show the change in the route since 1976.
- Appendices 3a and 3b – 1990s correspondence between WSCC and various interested parties
- Appendix 4 – Location Plan
- Appendix 5 – Site Plan

## **Background papers**

- (1) Application and plan
- (2) Witness list
- (3) Letters and emails of support
- (4) Landowner objections

**\*\* Please contact the contact officer to request a copy of the background papers**