

Brighton & Hove City Council (EC715.415 Benfield Valley)

Submission to Secretary of State

Document 04

Statement of the grounds on which it is considered the order should be confirmed

STATEMENT OF THE GROUNDS ON WHICH IT IS CONSIDERED BY THE ORDER MAKING AUTHORITY THAT THE ORDER SHOULD BE CONFIRMED

The Brighton & Hove (Brighton Footpaths H23 & 24) Benfield Valley Definitive Map Modification Order 2022

Brighton & Hove City Council (the Council) made the above named order in accordance with its duty under Section 53 of the Wildlife & Countryside Act 1981 (the Act) to keep the definitive map and statement under continuous review.

More particularly the Council has had regard to the duty as expressed in Section 53(2) of the Act:

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event

The above-named order was made because of the occurrence of events set out in:

Section 53(3)(c)(i) “....the discovery by the authority of evidence which (when considered with all other evidence available to them) shows (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic....”

INTRODUCTION

The Council made the above-named order on 12 October 2022 to add Footpaths H23 and H24 to the Brighton (Downland) Definitive Map & Statement. Under the Act surveying authorities have a statutory duty to keep the definitive map and statement under continuous review and to add to or delete public rights of way, record additional rights or remove existing rights over a way and amend particulars contained in the definitive map or statement.

On 20 October 2022 a notice that the order had been made was:

1. Published in the local press and put up on site
2. Served on the prescribed organisations
3. Served on the freeholder (the Council’s Estates department) and the long leaseholder (Benfield Investments Ltd).

One objection was made to the order during the statutory period for objections and representations from Jonathan Lea Solicitors on behalf of Benfield Investments Ltd.

POWER TO CONFIRM AN OPPOSED ORDER

The power of confirmation of an opposed order made under section 53(2)(b) of the Act is set out in Schedule 15, paragraph 7 of the Act. On considering any objections or representations duly made and the report of any person appointed to hold an inquiry or hear representations or objections the Secretary of State may confirm the order with or without modifications.

REQUIREMENTS FOR CONFIRMATION OF AN OPPOSED ORDER MADE UNDER SECTION 53 OF THE ACT

The Secretary of State needs to be satisfied that the order has been made in consequence of an event set out in section 53(3) of the Act. The events that the Council considers have occurred are:

Section 53(3)(c)(i) the discovery of evidence of a hitherto unrecorded right of way. Before making an order the surveying authority must have discovered evidence which (when considered with all other evidence available to the authority) shows that a right of way subsists or has been reasonably alleged to subsist. An example would be evidence of use by the public over a period of 20 years not offset by any evidence that the landowner during that time had no intention to dedicate the way, or evidence from documents that showed the way as a public right of way, possibly supplemented by evidence of use.

DOCUMENTARY EVIDENCE

Section 32 of the Highways Act 1980 provides that a court or other tribunal before determining whether a way has or has not been dedicated as a highway shall take into consideration any map, plan or history of the locality.

As part of the process of determining this matter the Council undertook research regarding the following pieces of evidence:

- Ramblers Association report on the survey of footpaths in Brighton & Hove – 26 November 1950
- Overton & Bowles survey of the County of Sussex 1740
- Walkers County Map of Sussex 1861
- Yeakall & Gardner Map of Sussex 1778-1783
- Greenwood Map of Sussex 1824
- Map of the County of Sussex as at April 1958
- Ordnance Survey County Series for Sussex 1875 to 1995
- Ordnance Survey Maps: online mapping and walking, running and cycling routes

There were no details of the ways on the evidence listed above,

EVIDENCE DISCOVERED BY THE COUNCIL SATISFYING THE TESTS IN SECTION 31 OF THE HIGHWAYS ACT 1980

Section 31 states, "Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years the way is

deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

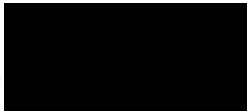
34 user evidence forms were submitted in support of the application, 19 for Footpath H23 and 15 for Footpath H24. The date of 2018 was accepted as the date of challenge setting the relevant period under legislation as 1998 to 2018. When measured against the tests prescribed under Section 31 of the Highways Act 1980 it is considered that the evidence indicates that Footpaths H23 and H24 are public footpaths as a result of presumed dedication of the ways during the periods 1998 to 2018 when the ways were used by the public.

RERESENTATIONS AND OBEJECTIONS TO THE ORDER

The Council's comments on the representations and objections to the order are included at Document no. 06

CONCLUSION

Brighton & Hove City Council requests that the Planning Inspectorate confirms the order without modifications

Signed. 

Katie Kam

Senior Solicitor

Brighton & Hove City Council

Dated 2nd March 2023