

3<sup>RD</sup> DECEMBER, 2002

WORTHING: APPLICATION FOR A MODIFICATION ORDER  
(APPLICATION 1/00) TO ADD A FOOTPATH TO THE DEFINITIVE MAP  
FOR WORTHING

REPORT BY COUNTY SECRETARY

EXECUTIVE SUMMARY

1. The application which is made under the provisions of Section 53(3)(c)(i) of the Wildlife & Countryside Act 1981 by Mr. Ronald Hayes seeks to modify the Definitive Map and Statement for Worthing by adding a footpath from Devonport Road to Brighton Road, Worthing. The application was received on the 27<sup>th</sup> January, 2000. The application was made following the erection of a fence across the claimed route.
2. Members are requested to refer to paragraph 8 of the County Secretary's "Guide to the Law" for the Rights of Way Committee. All evidence in respect of this claim is available for inspection in the Members room prior to the meeting.

CONCLUSION

In order for a Definitive Map Modification Order to be made, the County Council must be satisfied on the balance of probability that the route is a public highway of a given status. The evidence of use set out in paragraph 4.3 of this report provides evidence of use of the route on foot. The evidence set out in paragraph 5.2 of this report provides evidence of the existence of private rights in relation to properties on Devonport Road. The archival research undertaken as part of the investigation is set out in paragraph 6 of this report. The route is not indicated on any of the early maps. It is first shown on the Ordnance Survey 1:1250 revision of June 1960 with a staggered barrier indicated approximately half way along its route. It also appears on the Ordnance Survey 1:1250 1998 again with a staggered barrier. There is evidence that challenges the user evidence.

RECOMMENDATION

That a Definitive Map Modification Order under Section 53(3)(c)(I) of the Wildlife & Countryside Act 1981 be not made.

1. CHARACTER AND FEATURES OF THE ROUTE
  - 1.1 A plan showing the location of the claimed route is annexed to this report. Photographs of the route taken in February 2000 showing the route as claimed will be displayed at the meeting.

1.2 The site was visited on the 1<sup>st</sup> February, 2000.

1.2.1 The claimed route commences at Devonport Road between nos. 20 and 26 Devonport Road. At point A there is a wrought iron gate with a notice "No public right of way". The path proceeds in a south westerly direction between hedges and garages on a concrete pathway approximately two metres wide.

1.2.2 After a distance of approximately 32 metres the path turns south south east continuing on a concrete pathway with the width increasing to approximately three metres.

1.2.3 After a distance of approximately 19 metres, the surface changes to tarmacadam and after a further five metres there are two concrete bollards where the claimed route crosses a garage compound.

1.2.4 The claimed route then enters the western area of the curtilage of Windsor Court (a block of flats) adjacent to the eastern boundary of no. 235 Brighton Road. Continuing on a tarmacadam surface for approximately a further 42 metres, the route then emerges onto the Brighton Road at point B.

## 2. LAND OWNERSHIP

2.1 Notice was served by the applicant on Mr. L.S. Salt of 36 High Street, Tarring Village and 30<sup>th</sup> May, 2001 by the County Council on Mr. L.S. Salt and on properties adjacent to the route of the claim. None of the owners of the adjacent properties on which notices were served claimed ownership of any land the subject of the claim.

2.1.1 In response to the Notice served by the County Council on Mr. Salt, he identified his ownership of the southern portion of the claim adjacent to Windsor Court and stated that he had in early 2000 sold the freehold interest of the Windsor Court flats/garages to the lessees of Windsor Court and a Company was formed by them known as Windsor Court (Worthing) Limited.

2.1.2 Notice was therefore served on the Company Secretary, Mr. S.J. Bailey.

2.1.3 A Land Registry search was carried out in relation to the remainder of the claimed route. The result of the search was that the land is unregistered.

## 3. CONSULTATIONS

Before making a Definitive Map Modification Order, the County Council is obliged to consult the relevant district/borough council. Consultations have been carried out with other interested bodies. In considering the consultations, Members of the Committee are requested to bear in mind that in determining this application, they could only take into account evidence which demonstrates whether or not tests set out in Section 53(3)(c)(i) have been satisfied.

### 3.1 Worthing Borough Council

No response has been received from this Council. A reminder letter has been sent.

### 3.2 Interested Bodies

The local area Footpaths Secretary for the Ramblers' Association responded that a successful application would result in a greater amenity for the residents, especially the elderly to reach the coastal region more easily and enjoy a walk beside the sea.

## 4. EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

4.1 The application was submitted by Mr. Ronald Hayes, 91 Ophir Road, Worthing.

4.2 The application was accompanied by 14 completed Evidence Forms and seven signed statements.

4.3 Mr. Hayes also submitted a copy of a deed relating to no. 17 Devonport Road and included in the schedule to the deed is a right of way over the passageway marked "pedestrian access way". This is shown over the route, the subject of the claim.

4.4 A further 13 completed Evidence Forms were received independently.

### 4.5 Evidence Forms

The 27 Evidence Forms are summarised in Table 1 attached to this report.

4.5.1 All witnesses have testified to use of the same route on foot.

4.5.2 Four of the witnesses claim to have used the route for 30 years or more, six of the witnesses for more than 20 years. Of the remaining 17 witnesses, nine claim to have used the route for 10 years or more.

4.5.3 It would appear that four of the witnesses who live in Devonport Road who stated that they do not have a private legal right - in fact do have a private legal right.

### 4.6 Letters of Support

The 15 letters of support received, are summarised in Table 2 attached to this report.

4.6.1 Eleven of the letters are from residents of Devonport Road, two from Devonport Place (off Devonport Road).

4.6.2 All the writers claim to use the route as a shortcut either to the beach, to the bus stop or for both.

4.6.3 Two of the letters state that the right of way is mentioned in the deeds to their properties (please see paragraph 5.2.2).

## 5. RESPONSES FROM ADJACENT LANDOWNERS

5.1 Notices were served on adjacent properties. Three responses were received to the notices from Mr. & Mrs. Wilkins, Mrs. Whiting and Mr. S.J. Bailey the company secretary of Windsor Court (Worthing) Limited stating that they did not own any of the land, the subject of the claim.

5.1.1 Mr. & Mrs. Wilkins state that although they considered the route a right of way, it was only for the use of Devonport Road residents.

5.1.2 Mr. & Mrs. Wilkins also refer to two gates at the northern end of the claimed route at the entrance to the passageway between nos. 20 and 26 Devonport Road. They say the gates were not locked but closed and a Notice was on the gate stating "Private, No Public Right of Way". They also referred to two concrete bollards on the claimed route just before the entrance to the garage compound.

5.1.3 Mr. & Mrs. Wilkins state that they were informed some years ago that when the estate was first developed on a certain day each year, the residents of Devonport Road would walk through the passage and return to ensure their right to use the passageway was maintained but have given no specific details.

5.1.4 Mrs. Whiting who has lived adjacent to the northern end of the claimed route for more than 15 years, uses the route on a daily basis to the seafront. Mrs. Whiting also refers to a notice at the northern end of the claimed route stating "Private".

### 5.2 Mr. S.J. Bailey, Company Secretary, Windsor Court Worthing Limited

5.2.1 Mr. Bailey states that although the Windsor Court residents do not own any of the claimed route, they all have a private right of access to the garages to the rear (north of) Windsor Court also that he is aware that others have a private right of access to the other bank of garages remaining in the ownership of Mr. Salt.

5.2.2 As part of his objection, Mr. Bailey submitted a copy of Title no. WSX154599 relating to Windsor Court and a letter of explanation from the Company's solicitor. Listed in the charges register of that title are private rights of way on foot in favour of 1-15 (odd) and 18-36 (even) Devonport Road.

5.2.3 Mr. Bailey also refers to an existing right of access being "perfectly adequate" which is to the east of the claimed route between bungalows on Devonport Road and exiting at Brighton Road between nos. 249 and 250 opposite a pedestrian crossing on Brighton Road.

5.2.4 Mr. Bailey states that when he first owned his flat (approximately 15 years ago), there was in existence then a Notice which read "Private right of way" at the Devonport Road end of the claimed route and attached to old short black ornamental gates which were across the route.

## 6. RESPONSES FROM THE LANDOWNER

### 6.1 Mr. L.S. Salt

Mr. Salt has since March 1992 owned part of the claimed route from the two concrete bollards which are to the north of the garage compound southwards adjacent to the western boundary of Windsor Court to join Brighton Road.

6.1.2 Mr. Salt sold the freehold interest of the Windsor Court flats and garages to the lessees in early 2000 and states that other persons including the Windsor Court residents have private rights across the section of the claimed route in his ownership to a bank of garages which he still owns.

6.1.3 Mr. Salt states that the claimed route is most certainly not a public right of way and that its purpose is for access to banks of garages to the north and north west of Windsor Court.

6.1.4 Mr. Salt states that during his ownership and before, there have been "Private Property" notices on the claimed route which always get damaged or removed.

## 7. ARCHIVAL AND OTHER INFORMATION

7.1 There is no Inclosure Award for this area, also there are no Estate Maps.

7.2 The route is not indicated on any of the early maps including the Broadwater Tithe Map of 1848.

7.3 It is first shown on the Ordnance Survey 1:1250 revision of June 1960 with a staggered barrier indicated approximately half way along its route. The barrier is not discernible on the Ordnance Survey six inch to the mile of 1969 although the route is shown. The staggered barrier also appears on the Ordnance Survey 1:1250 of 1998.

## 8. CONSIDERATION OF THE CLAIM

8.1 The archival evidence indicates the route on a small number of maps (see paragraph 7.3)

8.2 As the documentary evidence available is inconclusive that public rights for use of the footpaths exist, the application must rely on user evidence either by statute or common law. Section 31 of the Highways Act 1980 which states ".....Where a way over any land, other than a way of such a 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 to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The period of 20 years referred to above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.....” must be considered. ‘As of right’ - means that use has been without force, secrecy, stealth or licence.

- 8.3 On the relevant period of use, the application was stimulated in January 2000 by the erection of a fence which has since been removed. The relevant period is therefore the 20 years preceding the date on which the fence was erected. The relevant dates are therefore 1980 - 2000.
- 8.4 Nine of the witnesses claim to have a private right of access to and from their properties (in Devonport Road).
- 8.5 There are in existence private rights which are listed in the charges register of Title no. WSX 154599 which are on foot only for a number of properties in Devonport Road. Addresses of 11 of the witnesses who completed evidence forms, are included in this list.
- 8.6 The applicant Mr. Hayes included as part of his evidence a copy of a Deed relating to no. 17 Devonport Road which contains in the Schedule a private right of access on foot over the claimed route (see paragraph 4.3).
- 8.7 Mr. Bailey, the Company Secretary of Windsor Court (Worthing) Limited refers in his evidence to a “perfectly adequate” existing access which is to the east of the claimed route and exits on to Brighton Road between nos. 249 and 250 Brighton Road opposite a pedestrian crossing (see paragraph 5.2).
- 8.8 Mr. Bailey also states that when he purchased his flat more than 15 years ago i.e. during the 20 year period claimed there was a Notice at the Devonport Road end of the claimed route which stated “Private Right of Way” (see paragraph 5.2).
- 8.9 In conclusion, taking into account all the evidence supplied, it is not considered on the balance of probability that the public at large have established a public right to use the claimed route on foot.

## 9. FURTHER CONSIDERATION

Following comments by members at the meeting on 1<sup>st</sup> October, 2002 the evidence in respect of this claim has been reviewed. This has confirmed the earlier conclusion that, on the balance of probability, a public right has not been established over the claimed route, and that use has primarily been made as a result of the private rights described in paragraph 5.2

## 10. CRIME AND DISORDER ACT IMPLICATIONS

The Definitive Map Modification Order process involves the application of legal tests which means that it is not possible to give substantial weight to any effect on crime and disorder in this area.

## 11. HUMAN RIGHTS ACT 1998 IMPLICATIONS

- 11.1 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.
- 11.2 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 the intention of protecting the right and freedom of others.
- 11.3 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. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.
- 11.4 The Committee should also 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.

MIKE KENDALL  
County Secretary

### Background Papers

- (1) Application made by Mr. Ronald Hayes
- (2) Application and Plan
- (3) Evidence submitted in support of the application
- (4) Evidence submitted by landowners and other interested parties
- (5) Consultations
- (6) Certificate of result of HM Land Registry search
- (7) Archival and other information

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