



The Planning
Inspectorate

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Ms Charlotte Nash
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Your Ref: CC803.13882/CN1
Our Ref: ROW/3212603

6 December 2018

Dear Ms Nash

Wildlife and Countryside Act 1981 – Section 53

Order Making Authority: West Sussex County Council

Title of Order: (Horsham No. 1) (Addition of Public Footpath) Definitive Map Modification Order 2018

I write further to my colleague Clive Richards' letter of 27 September 2018, acknowledging receipt of your letter and letter via e-mail of the same date submitting the above-mentioned Order for determination by the Secretary of State for Environment, Food and Rural Affairs. I must apologise for the delay in sending this further response, as consideration of this matter has taken longer than I would initially have expected, and has been further delayed by staff absences in the interim.

However, examination of the Order has revealed that the Order has been incorrectly drafted. Regulation 4 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (Statutory Instrument 1993 No. 12) requires that modification Orders shall be in the form set out in Schedule 2 of those Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case. Having reviewed the Order, however, I note that the first paragraph of the preamble to the Order indicates that the Order has been made under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. The form set out at Schedule 2 to the Regulations outlines that Modification Orders should be made under sections 53(2)(a), 53(2)(b) 55(4) or 55(5) of the 1981 Act.

Our [Rights of Way Advice Note No. 20 – Inspectors' Power To Modify Definitive Map Modification Orders](#) outlines, in paragraph 8, the scope of the Secretary of State's powers to correct an Order by modification if it contains an error that does not prejudice the interests of any person, render the Order misleading in its purpose or appear to result in incorrect information being recorded on the Definitive Map. *Advice Note No. 20* also indicates, at paragraph 29, that where an Order incorrectly cites (for example) section 53(2)(a) rather than section 53(2)(b), Inspectors appointed by the Secretary of State will have to decide whether to modify the Order.

However, in this instance, the sub-section of the 1981 Act cited as the power under which the Order was made does not fall under those specified in Schedule 2 to the

Regulations. As such the error would appear to be a substantive one, in the context of the advice in paragraph 8 of *Advice Note No. 20*.

The Secretary of State therefore takes the view that this constitutes a fundamental error which is fatal to the validity of the Order. As he cannot purport to use his power of modification to correct such an error, he has decided not to exercise his power of confirmation. The sealed Orders are being returned to you under a hard copy of this letter, and a copy of this letter is being sent to the applicant, objectors and all other interested parties.

Yours sincerely

David Bourton

(Rights of Way Section)