



WILDLIFE AND COUNTRYSIDE ACT 1981

**COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNTY COUNCIL
(FOOTPATH FROM EAST LANE (D20502) TO D20503 PUBLIC ROAD EAST OF
COOMBE COTTAGES, BRADFORD ABBAS)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017**

STATEMENT OF CASE

DORSET COUNCIL

1 INTRODUCTION

1.1.1 Dorset Council ('the Council') supports the confirmation of the Dorset County Council (Footpath from East Lane (D20502) to D20503 Public Road east of Coombe Cottages, Bradford Abbas) Definitive Map and Statement Modification Order 2017 ("the Order").

1.2 This Statement of Case:

1.2.1 describes the effect of the Order;

1.2.2 sets out the background to making the Order;

1.2.3 sets out the Council's reasons for making the Order; and

1.2.4 sets out the law and evidence to be considered in determining whether to confirm the Order.

1.3 A copy of the Order forms **Appendix 1**.

1.4 A copy of an extract from the definitive map and statement for the area forms **Appendix 2**.

2 CONFIRMATION OF THE ORDER

2.1 The Council asserts that the evidence submitted in support of the Order is sufficient to establish, on the balance of probabilities, that public footpath rights exist from East Lane (D20502) to D20503 Public Road east of Coombe Cottages as set out in the Order.

2.2 The Council, therefore, requests that the Inspector confirms the Order as made.

3 DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER

- 3.1 The proposed route is shown by a broken black line between points A – A1 - B – C – D - E (“the Order Route”) on the plan which forms part of the Order (“the Plan”).
- 3.2 The Order Route runs from its junction with East Lane (D20502), west north west of East Farm at point A, east along a loose stone/gravel surfaced track to point A1, continue east, passing through the Saxon Maybank development with buildings on either side and passing to the north of East Farm to point B. Then turn north east to point C and continue north east along a hard stone surfaced track, hedged on both sides, south west of Coombe Cottages to point D. Continue north east, passing to the south east of Coombe Cottages to its junction with the D20503 Road at point E. Width: 9 metres at point A, narrowing to 5 metres at point A1 and 4 metres at point B, widening to 9 metres at points C and D and 10 metres at point E.
- 3.3 Photos of the Order Route can be found at **Appendix 3**.
- 3.4 The land crossed by the Order Route is owned by:

Saxon Holiday Lodges Limited, 6 Poole Road, Wimborne, Dorset BH21 1QE
(between points A – C); and

Charlotte Anne Townshend, The Estate Office, Melbury Sampford, Dorset DT2 0LF
(between points C – E)
- Copies of Land Registry title documents and plans can be found at **Document Reference 15** (of the OMA’s submission paperwork).
- 3.5 The effect of the Order, if confirmed, will record the Order Route as a footpath on the definitive map. The definitive statement will be amended accordingly.

4 **BACKGROUND**

4.1 Section 53 of the Wildlife and Countryside Act 1981 (“WCA 1981”) sets out the duty of an order making authority (OMA) to keep the definitive map and statement under continuous review. The section continues by setting out the requirements for OMAs to make orders when they discover evidence that shows the definitive map and statement of rights of way ought to be modified.

4.2 **Appendix 2** is copy of the Definitive Map and Statement for the area.

4.3 An application to modify the definitive map and statement by adding a footpath along the Order Route (‘the Application’) was made by Bradford Abbas Parish Council (‘the Applicant’) on 7 July 2008.

4.4 An investigation was duly carried out.

4.5 In accordance with paragraph 3(1)(b) of Schedule 14 WCA 1981 the Council carried out the necessary consultations.

4.6 The evidence was considered at a meeting of the Dorset County Council Regulatory Committee (“the Committee”) on 12 March 2015 (“the Committee meeting”). The Committee resolved that the available evidence showed, on balance, that the proposed route subsisted or was reasonably alleged to subsist and that an order be made (report and minutes can be found at **Appendix 4**).

4.7 The Order was made on 14 August 2017 and published on 24 August 2017.

4.8 The end of the objection period, as per the notice, was 6 October 2017. This was extended to 20 October 2017 by request.

4.9 Following the making of the Order 20 objections were duly made (see **Document Reference 5**).

5 **REASONS FOR MAKING THE ORDER**

5.1 The Order was made under section 53(2)(b) WCA 1981 by virtue of which the Council (as surveying authority for the purposes of WCA 1981) is required to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3) of the WCA 1981 by order make modifications to the map and statement as appear requisite in consequence of the occurrence of that event. In particular section 53(3)(c)(i) WCA 1981 refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

5.2 The making of the Order was based upon user evidence which demonstrates a reasonable allegation that footpath rights subsist over the Order Route.

6 **LAW**

6.1 The test to be considered when making an order pursuant to section 53(3)(c)(i) WCA is considered above (paragraph 5.1).

6.2 A modification order should be confirmed if, on the balance of probabilities, the evidence shows that a right of way subsists: *Todd v Secretary of State for the Environment, Food and Rural Affairs*.

- 6.3 In considering the evidence, matters such as desirability and suitability, safety and sensitivity should not be taken into account.
- 6.4 Section 32 of the Highways Act 1980 states that a tribunal (which includes a public inquiry) must take into consideration any map, plan or history of the locality. It should give such weight as considered justified by the circumstances, including the antiquity of the document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 6.5 Inclosure Consolidation Act 1801
- 6.5.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.
- 6.5.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.
- 6.5.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.
- 6.5.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.
- 6.5.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

6.6 Finance Act 1910

6.6.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

6.6.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

6.7 National Parks and Access to the Countryside Act 1949

6.7.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

7 **EVIDENCE**

7.1 Documentary evidence

7.1.1 A table of all the documentary evidence considered during the investigation into the Application, together with extracts from the key documents, is contained within **Appendix 4** (at Appendix 3).

7.1.2 Analysis of the documentary evidence can be found within **Appendix 4** (at paragraph 8)

7.1.3 The investigation concluded that the documentary evidence alone was insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the Order Route.

7.1.4 The Order was made on the strength of the user evidence, supported by the Ordnance Survey maps which showed the physical characteristics on the ground at the date of the maps.

7.2 User Evidence

7.2.1 22 forms of evidence were received from 24 users of the Order Route.

7.2.2 A table of all the user evidence and a chart showing the periods of use can be found at **Appendix 4** (appendix 4).

7.2.3 Four of the users were given permission or were tenants/workers on the farm therefore evidence from these users should be given less weight.

7.2.4 The earliest date of use is 1956 and the erection of the gate in 2007 is the last date of use.

7.2.5 The main use was by foot and there was other use including bicycle and by car.

7.2.6 Five users said that owners or occupier was aware of the public using the Order Route as they spoke to workers and previous owners.

7.2.7 In comparison with an urban environment, 24 users giving evidence of their use in this rural location is considered to be significant.

7.2.8 More detailed analysis of the user evidence can be found at Appendix 4 (paragraph 9).

7.2.9 The user evidence indicates mainly public use on foot along the Order Route. There is some use by bicycles and cars but this is not considered sufficient to have established higher rights. The user evidence is considered to be sufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date of bringing into question, which is 31 October 2007 (see paragraph 8 below).

8 **DATE PUBLIC USE WAS BROUGHT INTO QUESTION**

- 8.1 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was first brought into question.
- 8.2 18 of the users of the Order Route state that there were never any gates or stiles until notices “Private No Public Right of Way” and gates were erected at point A1 by the current owner from 31 October 2007.
- 8.3 The locked gate and private notice is evidence of bringing the use of the Order Route into question.
- 8.4 The Application was made on the 7 July 2008 and is a further date of bringing the use into question.
- 8.5 The locked gate and private notice is the earlier of the two possible dates of bringing the right into question and consequently the period of use, in accordance with s31, will be the 20 years between 1 November 1987 to 31 October 2007.

9 **OBJECTIONS TO THE ORDER**

- 9.1 There were 20 objections to the Order (**Document Reference 5**). Details of the objections and the Council’s comments on the objections can be found at **Document reference 6**.

10 **SUPPORT OF THE ORDER**

- 10.1 There is one representation in support of the Order from Mr Longdon, the Rights of Way Liaison Officer for Bradford Abbas, who regularly used the Order Route with his wife from May 1997 until the East Farm gates were erected.

11 **SUMMARY OF POINTS FOR CONSIDERATION**

- 11.1 The Council is satisfied that the user evidence supports the existence of public footpath rights along the Order Route.
- 11.2 The objections contain such matters which cannot be taken into consideration when determining whether the Order should be confirmed. The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it.
- 11.3 None of the objections contain any evidence to dissuade the Council's position.

12 **CONCLUSION**

- 12.1 The Council asserts that on the balance of probabilities, the evidence shows that a public footpath subsists along the Order Route.
- 12.2 The Council requests that the Inspector confirm the Order as made.