

DOCUMENT REFERENCE 5

Dorset Council

County of Dorset Definitive Map and Statement of Rights of Way

Dorset Council (A Byway Open to All Traffic, Beaminster at Crabb's Barn Lane) Definitive Map and Statement Modification Order 2020

Names of those who have made representations

1. Mr. G. Plumbe, on behalf of Green Lanes Protection Group
2. Mr. B. Dupont
3. Beaminster Ramblers

GREEN LANES PROTECTION GROUP

The Green Lanes Protection Group (GLPG) is an alliance of 25 organisations representing the interests of over 350,000 walkers, cyclists, horse riders and country lovers who wish to preserve and protect the nation's precious network of green lanes.

Please reply to:

Vanessa Penny
Dorset Council

5 March 2020

Dear Ms Penny

T354 - Beaminster at Crabbs Barn Lane

Thank you for sending me a copy of the above order to which I object. My reasons are:

1. I endorse and adopt the submission by Mr Cheal of Mogers Drewett LLP (formerly of Thring Townsend) on 21 July 2005 as to lack of historic evidence, inadequacy of user evidence to justify implied dedication and other reasons. He speaks as a qualified lawyer.
2. The Committee and Officers agree to exclude the section A-B-C from the Order, ie about 25% of the BOAT applied for. Arguably that makes the way that is the subject of the DMMO a substantially different entity to that applied for. That raises questions as to whether in law a different application should have been made relating to the shortened route (it is too late for a new Council proposal), taking into account (a) the question of whether exemption under s67(3) NERCA can apply to what is only part of the route applied for, and (b) the fact that public consultation prior to the making of the order related to a different route.

The Green Lanes Protection Group presently represents the following organisations: Allen Valleys Action Group, Battle for Bridleways Group, Brecon Beacons Park Society, British Driving Society, Cambrian Mountains Society, Campaign for National Parks, Campaign to Protect Rural England, Campaign for the Protection of Rural Wales, Country Land and Business Association, Cycling UK, Exmoor Society, Friends of the Lake District, Friends of the Ridgeway, Green Lanes Environmental Action Movement, Lake District Green Lanes Association, Long Bostle Downland Preservation Society, North Wales Alliance to Influence the Management of Off-Roaders, North Yorks Moors Green Lanes Alliance, Peak & Northern Footpaths Society, Peak District Green Lanes Alliance, Save our Paths (North Wales), South Downs Society, West Somerset & Exmoor Bridleways Association, Yorkshire Dales Green Lanes Alliance and Yorkshire Dales Society

Contact the GLPG through its Chairman, Dr Michael Bartholomew, bartholomew656@btinternet.com

3. Re validity of application (supply of evidence), sch 14, para 1 of WCA 1981 says 'An application shall be made in the prescribed form and shall be accompanied by (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application. Under *Winchester*, it was held by the Court of Appeal that to be valid, applications must conform strictly to the requirements of Sch 14. The Supreme Court held in the *Dorset* case that *Winchester* was correctly decided.
4. My letter of 6.8.18 submits that FoDRoW deliberately withheld evidence which, as Leading Counsel advises (copy available on request), makes the claim invalid. DC has the letter which will be copied to PINS when we get to that stage. It is considered at Report para 11.3/4. DC argues that omitting the submission of incomplete evidence in order to beat the clock is not 'deliberately holding back evidence'. I disagree – a point which will be developed.
5. As to dedication, the Report at para 13.15 says 'For an objection to override an otherwise valid claim, an objector must show that the landowner had no intention of dedicating public rights over the path in question and had taken steps to prevent the accrual of such rights. That is wrong. Report para 9.5 correctly paraphrases s31 HA80, including '.....unless there is sufficient evidence that there was no intention during that period to dedicate it.' There is no requirement in law to 'take steps to stop use' or 'to prevent the accrual of such rights'. All that is required is evidence of non-intent, and ensuring that the public are aware of that fact. The fact that a number of vehicular users were stopped and warned, together with the erection of a finger post saying no through road' (presumably with liaison between the landowners and the highway authority) indicates satisfaction of both requirements (contrary to DC views at Report para 11.42). So does the grant of private consent to a motor cycle club.
6. The assertion at Report para 9.15 as to the absence of locked gates was due to the fact that most of the way has been a footpath or bridleway.
7. The Finance Act evidence is not indicative of a vehicular way in respect of the section E-I. FA evidence is regarded as strong, and the deduction of a £100 non-attributed allowance is not compatible with a public vehicular way. (Report paras 8.24 and 13.5)
8. The point has been made that evidence relying on extracts from documents is incomplete, which invalidates that evidence. This view was wrongly said to be my view, whereas it is advice contained in the Joint Opinion of Leading Counsel (available

on request). Although the point has not been tested in law, advice from Leading Counsel must be the best legal authority available. Officers were questioned on this point (Minute 19) and were wrongly advised that the applications were 'in accordance with the necessary requirements'.

9. Report para 13.22 says: 'The County Council must make a modification order if the balance of evidence shows either (a) that a right of way subsists or (b) that it is reasonably alleged to subsist. It is considered that the evidence described above is sufficient to satisfy (b)'. As is rightly said at Appx 2, para 1.4, the evidence necessary to satisfy (b) is less than that necessary to satisfy (a). The distinction between the two functions and appropriate tests is considered in *Todd + Bradley v SoSEFRA* [2004] EWHC 1450 (Admin).
10. At Report para 11.9, you correctly state 'To confirm an order to add a right of way, the evidence must show that the right of way exists (not only that it is reasonably alleged to exist).' DC has rightly made a DMMO based on the lower test but would only be confirming if there were no objections – which is not the case. As matters stand, the Order will have to be referred to PINS for confirmation or otherwise.
11. In the Update to the C'ttee, it is said that I was wrong as to the map not showing the way. The map I was referring to is that which is recorded in the Council's Statutory Register under the T354 application, and shows in green only the section F – I ('unrecorded') plus part of the section shown as 'road', but stopping short of Dirty Gate. There is no marking at all on the rest of the route. If the actual application map (as shown to the C'ttee) is different, then the register is wrong and the public and landowners have been misinformed. That invalidates the consultation process.
12. It was reported to the Committee (Appx 2, para 6.4) that application had been made to the Supreme Court for clarification of its so called 'Order' (in fact an ambiguous Declaration by the Registrar of what the Court had ordered). Officers reported that the 'Order' found that the applications 'complied with all of the requirements of para 1 of Sch 14', which is wrong. The ambiguity in fact lay in the Registrar's wording which was that they had been 'made in accordance with Paragraph 1 of Schedule 14' without recognising that only one small part of Para 1 had been in issue. The TRF are making the same mistake as DC in claiming that the Declaration was an Order which ordains that 'all' the requirements were met, which effectively argues that the Registrar had authority to overturn the findings of the Court of Appeal given that at least some of the 5 applications most certainly did not comply fully with Para 1, Sch 14. The Supreme Court did not make a ruling in response to the Council's application for clarification

and the matter will fall to be decided by the Inspector when the Order is referred to PINS. A letter from me dated 16 Nov 19 under ref FPS/C1245/14A/10 (Dorset Ref T353) is already with PINS and will be referred to when appropriate.

13. User Evidence

I register the fact that (i) the UEFs were orchestrated to refer only to section C - I, ie they did not thereby relate to the application as made, and (ii) they were not submitted until 2008 – 2010 (4 – 6 years after the application) and so did not meet the requirements of Sch 14 which specifically require that the application shall be accompanied by (a) (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application. This again appears to be the consequence of deliberately omitting the submission of known evidence in order to beat the clock. It is echoed by Mr Cheal who speaks as a qualified lawyer.

14. Prior to 1985 (ie within the 20-year dedication period) there were only 4 people who claimed to have used the way. That is not enough to justify implied dedication, and the Committee was right (as minuted) to 'not consider that the user evidence was sufficient to demonstrate that vehicular rights had been dedicated', contrary to the Officer recommendation (Report 13.14).

15. There is no mention of DC interviewing the witnesses to assess their reliability (all it says is that Officers didn't interview all of them). That is particularly relevant as to the 4 whose use is said to span the full 20 years. It needs to be ascertained whether they had records and what their historical reports are based on given a span of 32-37 years between start of use and completion of forms. Officers according to the minutes advised the Committee that "The objectors stated that they had taken steps to stop use, but none of the user evidence confirmed that." That is predictable and meaningless when the evidence is from occasionally visiting members of the applicant group. Evidence from local residents is far more cogent. Eg, see Report para 11.35 re evidence from Mrs Jones.

16. It is relevant that those attending the Committee gave evidence as to stopping such few vehicular users as there were, and that much of this information was not available to Officers when preparing the Report.

Sincerely

cc Interested Parties

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Also see the 10th March 2020 M.A. Report

Miss Penny

Catharine Way, Team Manager, Local Planning

Dorset Council

Bournemouth

Dorset

Dorset

Dorset

5th March 2020

Dear Miss Penny

I write to lodge my objection and confirm I oppose the Definitive Map and Statement Modification Order 2020 made to upgrade the status of the Crabb's Barn Lane and BR35 to a Byway Open to All Traffic referred to in the letter from Dorset County Council on 4th February 2020.

I base this objection mainly on the very detailed submission to Dorset County Council dated 21st July 2005 by my solicitor, Jonathan Cheal, then with Thring Townsend, following the application by FODRW to designate Boat on a way, which includes BR35. That submission disagrees with the Council's conclusion at Report para 13.8 as to historic evidence. In particular Mr Cheal's submission's conclusion on page 35, clause 13.4 states "on the balance of probabilities there is not sufficient documentary evidence in favour of public vehicular status on the claimed route as a whole to prove this claim". When reaching their majority 3/2 decision to award BOAT status, it appears to me that the Regulatory Committee chose to accept the evidence of a number of motorcyclists, who had used the route on an unauthorised basis from time to time in recent years rather than the weight of historical evidence contained in the submission.

I am a director, secretary and shareholder in Langdon Dorset Farms. I have personal knowledge of the relevant facts having lived at Langdon Manor Farm since my birth there in 1942. Since 1937 Langdon Dorset Farms has owned the land, over which part of the route passes, namely from the Corscombe Parish boundary (point I) to the farm boundary (point E). Prior to 1950, approximately, the route was unfenced from point H on the map to point E, with cattle and sheep able to graze the route to the eastern hedge of both fields. There were field gates at points H, F, E and between the two fields. The fencing was erected to facilitate the private farm traffic to Higher Langdon Farm and to the field next to Crabb's Barn Lane. There has never been a public right of way for vehicles to pass

along the route and any vehicle, which did so, did not have the landowner's authority. It is a fact that in the period of 20 years leading up to 2004, a number of motorists have been stopped and cautioned that they have no vehicular rights. As recorded in the minutes I stated to the Committee we had taken steps to stop use. Furthermore I said that whenever motor cyclists had been seen, they were turned away and I had two witness statements to confirm that challenges had been made to those using the route. As further evidence that those attempting to use the route knew that they had no right, some twenty years ago Langdon Dorset Farms was approached by a local motor cycle club for permission to use the route as part of a rally they were holding. Permission was granted on condition that marshals were positioned at each of the narrow gateways on the route. The club was clearly aware of the need to obtain private consent.

The Council finger sign post at Dirty Gate, which was knocked down recently, stated clearly "Langdon No Through Road". The Council thus signalled that the route could not be used by vehicles. Users of the route, who ignored the sign, had notice and knew they were using it without authority.

Responsibility for the maintenance of the tarmac on the road from point I on the map to point F on the map is shared between Langdon Dorset Farms and the owner of Higher Langdon Farm and is evidence of the private ownership of the route and the private (not public) rights, which affect it.

The route forms part of the fabulous West Dorset Ridgeway footpath and bridleway, which is enjoyed by countless tourists, local residents, ramblers and horse riders. Regular use of the narrow route by motor cycles and four by fours would be harmful to the use by the public including local residents. It would also adversely affect the enjoyment of the peace and spectacular views afforded to the current walkers and riders, who could well regard such use as a public nuisance.

For these reasons Langdon Dorset Farms argues that the Order should not be confirmed.

Yours sincerely,