

## Document Reference 8

### Dorset Council

#### County of Dorset Definitive Map and Statement of Rights of Way Dorset Council (Footpath from Footpath 17 at Higher Holt Farm to Bridleway 15 at Fuzzy Grounds, Melbury Osmond) Definitive Map and Statement Modification Order 2020

#### Responses to consultations.

Responses to consultations carried out by Dorset Council on the application for the modification order were considered by the Director for Economic Growth and Infrastructure in the report of 31<sup>st</sup> July 2019. (Document Reference 14). The relevant extract from this report, containing a summary of consultation responses and the comments of the Council's officer, is included in full below.

#### 6. **Additional Landowner correspondence** (copies available in the case file RW/T513)

6.1 On 14 November 2011, Mr Cheal, acting for the owners of the land, the Ilchester Estate, sent to the Council a detailed submission containing witness statements, comments on the user evidence submitted with the application, other information and documents which lead Mr Cheal to conclude that 'this case is demonstrably insufficient to satisfy the evidential tests, whether statutory or common law.'

6.1.1 Mr Cheal has summarised as follows the reasons for concluding there is insufficient evidence to show that the Council should make a modification order:

(a) 'The alleged users constitute much too small a group, and over too short a period, to qualify.'

Officer Comments: This is considered in analysing the user evidence in section 5 and in drawing conclusions in sections 8 and 9 below. Mr Cheal is maintaining that the evidence of use is insufficient for the purposes of section 31 of the Highways Act 1980 or to show dedication of public rights at common law.

(b) 'The Estate's witnesses will say how infrequently any of the claimant's witnesses have been seen on the Estate as a whole, let alone on this route.'

Officer Comments: The witness statements provided by Mr Cheal must be considered alongside the information contained in the user evidence forms. Whilst the Estate's witnesses may not have seen any of these users on the claimed footpath, this is not to say that it was not used by those people.

(c) 'Whatever use they have had of the route cannot be said to have been as of right, given the amount of challenges, and the Estate's access policy generally.'  
Officer Comments: Whilst the Estate's policy is made clear by its witnesses, none of those who have completed user evidence forms refers to any attempt taken to prevent their use of the path. Other users may have been asked not to use the path, but not those whose use of the path has been submitted to the Council and is being considered in determining whether a modification order should be made.

(d) The steps the Estate has taken, by way of permissions, challenges, opposing the 1978 Inquiry successfully, and a succession of section 31 (6) deposits, shows that the owners have done enough to demonstrate a lack of intention to dedicate and that, on the balance of probabilities, this is not a case in which an order should be made.'

Officer Comments: This is considered in detail in other paragraphs

6.2 On 26 April 2019 Mr Cheal wrote with comments on the three user evidence forms that were submitted in 2019. Accompanying Mr Cheal's letter was a bundle of letters, handwritten notes and emails from the Estate's files and two updated statements from witnesses.

Officer Comments: This information has been considered where appropriate in this report.

6.2.1 In his letter of 26 April 2019 Mr Cheal has summarised the Estate's position as follows:

(a) 'We stand by the contents of our Submission dated 14 November 2011 and all its appendices.'

(b) 'It is important to keep in mind that at the 1978 Inquiry no public right of way was found on the map evidence and no evidence of public use had been produced, and that the route had not been claimed on the Parish Survey.'

Officer Comments: The 1978 Inquiry has been considered in this report in drawing conclusions from the user evidence submitted in support of the application for the modification order. One witness testifies to having used the path prior to 1978; that is, from 1967.

- (c) 'The route was not formed until 1984. At the same time ditches were put in beside the route. Before then it was not a route at all and there was no apparent reason for anyone to walk along that line as opposed to anywhere else. It was just a grass field. Thus it is not possible for anybody to have claimed that the route itself had been in use in 1978 since it was not formed until 1984.

Officer Comments: Whilst the path runs on a track that was installed on the ground in 1984, the statements of witnesses indicate that they had used the path prior to that date. In considering the user evidence it is necessary to establish whether users have used a specific line of the claimed footpath. Whilst there may have been no physical indication of a path, or any physical feature that might have directed users of the path on a particular line prior to 1984, there is equally nothing to suggest that they had not used the line of path that has been claimed.

- (d) 'The land has been the subject of Deposits since 1995, each of which has formed a bringing-into-question date. The 1995 deposit itself will have brought into question the public right to use the route, which will have made a claim period of 1975 to 1995. In view of the fact that the route did not exist as a route until 1984, it means that there are only 11 years at most of that period of possible use.'

Officer Comments: The effect of the 1995 Deposit is considered below in drawing conclusions from the user evidence submitted in support of the application. The implications of the installation of the track on which the claimed path runs are noted above. The evidence of three users (Users B, C and H) testifies to their use of the path after 1995, and this evidence cannot be taken into account in considering whether the requirements of section 31 of the Highways Act 1980 have been met. There is evidence that one person used the route from 1967 until the time of the 1995 deposit, and in total the evidence of six people indicates that the path was used by the public between 1967 and 1995.

## **7. Consultation responses and other correspondence** (copies available in the case file RW/T513)

### **7.1 The applicant**

Mr Caesley, the applicant for the modification order, sent, on 12 March 2019, a letter explaining that, prior to the submission of the application for a modification order, the claimed footpath had been the subject of a 'protracted negotiation' between Melbury Osmond Parish Council and Ilchester Estate. Accompanying the letter is a briefing containing background information, correspondence between Melbury Osmond Parish Council and Ilchester Estate, and notes of meetings that have taken place between various interested parties, including Melbury Osmond Parish Council, Ilchester Estate, Officers of Dorset County Council and a representative of the Ramblers Association.

7.1.1 Correspondence and meetings between Melbury Osmond Parish Council and Ilchester Estate took place following the placement of the notices to prevent access to the path in 2009. As a result of these meetings a proposal was put forward that the Estate would dedicate the claimed footpath as a public footpath as part of a package of changes which included the extinguishment and diversion of a number of other paths. It was proposed that these changes would be the subject of applications made to Dorset County Council for public path extinguishment and diversion orders under the Highways Act 1980. However, whilst the package of changes appears to have been supported by the Estate and Melbury Osmond Parish Council, these proposals were not pursued due to disagreement about the contributions towards funding the applications to Dorset County Council for public path orders that would be made by the Estate and the Parish Council.

7.1.2 Officer Comments: This information is of interest, but does not assist in assessing whether the claimed footpath carries public rights.

## 7.2 Melbury Osmond Parish Council

The Parish Council explained in a letter dated 13 March 2019 that at its meeting on 11 March 2019 the Parish Council reviewed the briefing pack submitted by the applicant and did not wish to add or delete anything from it. The briefing pack contains a draft of a letter from the Parish Council to Ilchester Estate, which refers to the Parish Council's meeting on 28 January 2011. There was 'unanimous agreement that the Council's preferred option is for the Ilchester Estate to allow the Holt Farm Track to be designated as a permissive path...'. The letter goes on to explain that the Parish Council would not raise any objections to the creation of the path as part of a package of changes which included the diversion and extinguishment of a number of other paths, so long as the cost of making such an application was met by the Estate.

7.2.1 Officer Comments: This is noted but is of no assistance in determining whether the claimed footpath carries public rights. The view of the Parish Council indicates their desirability for the availability of the path for use by the public, but the information provided does not give any indication as to the extent to which it had been used by the public.

### 7.3 Ramblers

Mrs Wardell, on behalf of Dorset Ramblers Association, has walked the path, in July 2010, when she was approached as Group Footpath

Secretary, for her views on the feasibility of a path 'reorganisation proposal in the parish of Melbury Osmond', but has not walked it before, or since. Mrs Wardell has no evidence to offer as a user of the path but notes that the Ramblers would welcome the addition of a path to the network.

### 7.4 Local Residents

In an e mail of 23 April 2019, stated as follows:

'I am the owner of Fuzzy Grounds and have lived at Lewcombe Manor since 1992. We have used the track between Higher Holt and Fuzzy Grounds with the permission of the landowner and are aware that it is not a public right of way. We have never seen anyone else on the track other than those with the same permission or who work for the landowner. There have always been notices advising that the track is private and not a public right of way at both ends and at points where it is crossed by existing footpaths.'