



WILDLIFE AND COUNTRYSIDE ACT 1981

**COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNCIL
(PART OF FOOTPATH 30, CHURCH KNOWLE AT CHARMSWELL)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2019**

STATEMENT OF CASE

DORSET COUNCIL

1 **INTRODUCTION**

1.1.1 Dorset Council ('the Council') supports the confirmation of the Dorset Council (Part of Footpath 30, Church Knowle at Charmswell) Definitive Map and Statement Modification Order 2019 ("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 part of the current recorded route of Footpath 30 is incorrect, as a result of a historic drafting error, and should be corrected on both the Dorset Definitive Map and Statement.

2.2 In preparation of this submission it has become apparent that part of the wording of 53(c)(iii) Wildlife and Countryside Act 1981 is missing from page 1 of the order. The Council does not consider that this omission materially affects the validity of

the Order but requests that the Inspector use their power of modification to insert the missing words prior to confirmation.

- 2.3 The Council, therefore, requests that the Inspector confirms the Order with the requested modification.

3 **DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER**

- 3.1 The existing recorded route, to be deleted, is shown by a solid black line with horizontal bars at intervals between points A and B (“the Existing Route”) on plan number 14/44 (“the Plan”) included in the Order (**Appendix 1**). The proposed route is shown by a broken black line between points A – C - B (“the Order Route”) on the Plan.

- 3.2 The Order Route runs from the unaffected part of Footpath 30, in an area of scrub vegetation, north east of Charmswell at point A, south south east, across the garden and driveway of Charmswell to point C, then continuing west, across the garden and through a small grass field, to re-join the unaffected part of Footpath 30 at the field boundary at point B. The width of the Order Route is 1.5 metres.

- 3.3 Photos of the Order Routes can be found at **Appendix 3**.

- 3.4 The land crossed by the Order Route is owned by: Dr R and Mr T Kavanagh of Charmswell, Cocknowle, Wareham, Dorset BH20 5NX; and Mr R and Mrs A Bond of Whiteway Farm, Wareham, Dorset BH20 5NX. 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, would remove the Existing Route from the definitive map and record the Order Route as a footpath in its place. 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 In accordance with paragraph 3(1)(b) of Schedule 14 WCA 1981 the County Council consulted with Purbeck District Council prior to making the Order. Other consultations were conducted.

- 4.4 The evidence was considered at a meeting of the Dorset County Council Roads and Rights of Way Committee (“the Committee”) on 6 December 2018 (“the Committee meeting”). The Committee resolved that the available evidence showed, on balance, that there was no right of way over the Existing Route and 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**).

- 4.5 The Order was made on 25 October 2019 and published on 7 November 2019.

- 4.6 Following the making of the Order two 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 documentary 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).

7.2 User Evidence

7.2.1 A number of complaints about Footpath 30, Church Knowle were received between 2012 and 2015. No other evidence of use has been discovered or submitted during the course of the investigation.

7.2.2 It should be noted that the Existing Route currently lacks any signage or waymarking and is obstructed at several points along its course.

7.2.3 Although the Existing Route was recorded on the First Definitive Map (1967) and is recorded on the current Definitive Map (1989) no evidence has been

discovered to suggest that the Existing Route has ever been signposted or waymarked throughout this period.

- 7.2.4 Lack of evidence of use is not evidence that the Order Route is not a highway. The Order Route was claimed by the Parish Council during its survey, which was conducted in response to the National Parks and Access to the Countryside Act 1949. The object of this exercise was to record all public rights of way within the parish, evidence for which was normally based on its reputation of 'long user', use predating the 1949 Act.

8 **ANALYSIS OF DOCUMENTARY EVIDENCE**

Inclosure Award & Plan (Dorset History Centre Ref: I.61)

- 8.1 The Church Knowle Inclosure Award and Plan 1856 shows a route corresponding with the route that one of the objectors believes is the correct alignment of Footpath 30.

Tithe Apportionment & Plan (Dorset History Centre Ref: T/CKL)

- 8.2 The Church Knowle Tithe Apportionment & Plan 1843 shows no evidence of the existence of Footpath 30.

Finance Act 1910

- 8.3 The plans and field books, reveals that Charmswell Cottage was located within a large hereditament numbered 21 as shown on the Finance Act Plan reference IR/125/2/595.

Dorset County Council Records - Church Knowle Parish File

- 8.4 In a letter to the County Surveyor dated 23 July 1975, Mrs Baxter of the Dorset Area Ramblers Association complained of overgrowth of thorn and brambles on Church Knowle, Footpath 30, which ran along the ridge from

Steeple Bridleway 4 climbing the slope to meet the County Road opposite Church Knowle, Bridleway 4.

- 8.5 Mrs Baxter stated that she had spoken with the landowner who refused to grant permission to the group to clear the path on the grounds that it had been “closed” so long it was no longer a public path.
- 8.6 The path was inspected on the 13 August 1975 and the County Surveyor responded on the 14 August 1975 stating that his assistant had spoken with the owner and it would be in order for the group to clear the path. The owner had also mentioned that a new plantation at the western end of the path, through which the route may pass, did not belong to him.

Milestones Survey

- 8.7 In 1999 the Ramblers’ Association undertook a survey on behalf of the County Council using Ordnance Survey base maps at a scale of 1:2500.
- 8.8 Church Knowle, Footpath 30 was surveyed on 9 February 1999. The survey suggests that the route commenced from the county road, the C114, along what is now used as the driveway to Charmswell Cottage. The survey notes that there was also a field gate and a metal finger post at the entrance.

Ordnance Survey maps

- 8.9 Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

8.10 **1 Inch Series:**

8.11 The **Revised One Inch Ordnance Survey Map 1898**, **1948 Ordnance Survey New Popular Edition Map** and the **1960 Seventh Series Ordnance Survey Map** show no evidence in respect of Footpath 30.

8.12 **2½ Inch Series (1:25,000)** The **1961 Edition of the Ordnance Survey Map** show no evidence in respect of Footpath 30.

8.13 **6 Inch Series (1:10,560):**

8.14 The **First Edition Ordnance Survey Map 1888** shows a route, defined by two parallel broken lines, which generally corresponds with the northern most section of what is presently recorded as Footpath 30.

8.15 The **Second Edition Ordnance Survey Map 1902** and the **Revised Edition Ordnance Survey Map 1929** provide similar information.

8.16 **25 Inch Series (1:2500):**

8.17 The **Second Edition Ordnance Survey Map 1901** and the **Revised Edition Ordnance Survey Map 1928** generally provide similar information to that provided by the 6 Inch series maps with a route generally corresponding to that of Footpath 30 (A – C).

8.18 **Commercial maps**

8.19 Samples from the large number of small-scale maps of Dorset, including Bartholomew's Maps, available for analysis have been examined. Due to their small scale and the relatively small size of the features of interest shown upon them, it is considered that they provide no evidence in support of or against the proposed modification.

8.20 **National Parks and Access to the Countryside Act 1949 (DCC Records)**
Parish Survey

8.21 According to the Parish Council Minutes, the **Parish of Church Knowle Survey** of rights of way was completed by the end of 1950 and the completed maps deposited for inspection by the public in 1951.

8.22 The **Parish Survey map** indicates that Footpath 30 (then Footpath 27 / 29) was recorded from A – C – B.

8.23 **Draft Definitive Map**

8.24 The Draft Map for the Southeast area, including Church Knowle, demonstrates that at this time both Footpath 27 and Footpath 29, as claimed by the Parish, were recorded on the map. The Draft Map shows Footpath 30 (then Footpath 27 / 29) along the same alignment as the Parish Survey A – C – B.

8.25 **Provisional Definitive Map**

8.26 The **Provisional Map**, published in 1964, shows Footpath 30 to the west of Charmswell Cottage, rather than on the alignment A – C - B as on the **Draft Map**.

8.27 **First Definitive Map**

8.28 The **First Definitive Map** depicts Footpath 30 as it is shown on the Provisional Map.

8.29 **Special Review – Revised Draft Map**

8.30 During 1973 a **Special Review Committee** considered the status of many routes in order to determine how they should be recorded in light of legislative

changes and previously unconsidered evidence. Following their deliberations, the **Revised Draft Map** was published in 1974. Footpath 30 was subject to review and that part of it from Bare Cross to the east of East Creech Farm was proposed to be removed from the map as it had been demonstrated that it was in fact a public carriageway.

8.31 The **1974 Revised Draft Map**, shows Footpath 30 leading south southwest from Bare Cross then turning westward to the north of the property. It then continues along a more northerly route before realigning itself to the north side of the field boundary.

8.32 **Current Definitive Map**

8.33 As no objections in respect of the depiction of Footpath 30 on the Revised Draft Map were received, the **Current Definitive Map**, sealed in 1989, depicts the path in the same position as it was shown on the Revised Draft Map.

8.34 **Summary of Documentary Evidence**

8.35 The Parish Survey Map and its accompanying statements are poor quality. However, the routes shown on it and claimed by the Parish Council received no objections when they were presented for public comment locally.

8.36 Following the publication of the Draft Map the inclusion of the southern section of what was recorded as Footpath 27 was objected to and that objection was upheld, and this part of Footpath 27 was not recorded on the Provisional Map. This demonstrates that the public consultation was effective. However, it should be noted that there were no objections to the inclusion of the remaining sections of Footpath 27 or to Footpath 29.

- 8.37 As there were no objections to the retained parts of Footpaths 27 and 29 the Provisional Map ought to have recorded them in exactly the same position. However, having renumbered the remaining sections of Footpaths 27 and 29 as Footpath 30 the route is now shown to pass the cottage to the western side rather than the eastern side.
- 8.38 Reference to the Ordnance Survey base map indicates that the route of Footpath 30 westward from Charmswell Cottage towards Steeple is shown to be located to the north of the field boundary.
- 8.39 The First Definitive Map repeats the introduced error first recorded on the Provisional Map.
- 8.40 The Revised Draft Map appears to compound the earlier error further now showing the route to be further north and west of its originally recorded position. The Current Definitive Map repeats the error introduced on the publication of the Provisional Map and further compounded on the publication of the Revised Draft Map.

9 **OBJECTIONS TO THE ORDER**

- 9.1 There were 2 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 **SUMMARY OF POINTS FOR CONSIDERATION**

- 10.1 The Council is satisfied that the evidence supports the existence of a drafting error on the definitive map and that the content of the map and statement require modification.

- 10.2 The objections contain matters such as desirability which cannot be taken into consideration when determining whether the Order should be confirmed.
- 10.3 Neither objection contain any evidence to dissuade the Council's position.
- 10.4 The first page of the order requires modification as shown in red on a copy order at **Document Reference 2b**.

11 **CONCLUSION**

- 11.1 The Council asserts that the documentary evidence supports the existence of public footpath rights along the Order Route.
- 11.2 The Order requires modification as described in paragraph 2.2 and shown specifically in **Document Reference 2b**.
- 11.3 The Council requests that the Inspector confirm the Order with the modifications requested.