

**Document Reference 6:**

**DORSET COUNCIL  
(BRIDLEWAY 8 (PART) CHESELBOURNE AND BRIDLEWAY 18 DEWLISH  
TO BE UPGRADED TO BYWAYS OPEN TO ALL TRAFFIC) DEFINITIVE MAP  
AND STATEMENT MODIFICATION ORDER 2020**

**Statement Containing the Authority's Comments on Objections to the Order**

- 1.1 Following publication of the Order two objections were duly made.
- 1.2 The objections are made by Mr. Graham Plumbe, on behalf of the Green Lanes Protection Group, and Mr. Stephen Dycer. Copies of the objections are included with this submission as **Document Reference 5**.

**Objection from Mr. G. Plumbe, Green Lanes Protection Group:**

- 1.3 Mr. Plumbe submitted an objection in a letter dated 25 August 2020. Mr. Plumbe's reasons for objecting to the Modification Order are as follows.
- 1.4 Mr. Plumbe states that he relies *'in its entirety on my letter of 11 Aug 2018 addressed to Mr Hopkins of Countryside Access Management Ltd. who were at the time representing DCC. (Appendix 1) The essential point was/is that extracts from documentary evidence cannot be relied on to validate an application for exemption under s67 NERCA for the reasons given in my letter. That in turn relies on the best available legal authority and I note that DC has not provided any better legal authority than that which I supplied, namely the Joint Opinion of two Counsel, one being George Laurence QC and both being experts in this field.'*
- 1.5 Mr. Plumbe refers to the Report of the Service Director, Environment, Infrastructure and Economy which was considered by the Council's Regulatory Committee on 21<sup>st</sup> March 2019. **(Document Reference 4, Appendix 4)**. Mr. Plumbe makes the following points within this report which are relevant to his objection:
- 1.6 *'Para 1.3 confirms that the evidence was provided in the form of extracts.'*
- 1.7 *'Para 6.1 summarises the submissions of sundry parties. GLPG's is referred to at end of e-page 9 and starts with reference to the challenge re defective maps. This argument is now withdrawn, strange though the*

*Supreme Court's finding was. Reference is then made to my letter of 11 Aug 2018 and Counsel's opinion as to the validity of the applications for exemption purposes. The Report goes on to say " 'Mr Plumbe concludes by stating that 'The applicant has failed to produce or identify any meaningful evidence which serves to prove the existence of public vehicular rights over the way' ", but the Report does not advise the Committee that this is in the context of the applicant's use of extracts, which underlines why Counsel has advised that extracts do not serve to make applications compliant and therefore to win s67 exemption. The Officer advice concludes with statement 'The documentary evidence and Inclosure Awards are considered in section 8 of this report.' That's as may be, but it is irrelevant to the issue of whether the application satisfied the legal requirements to win exemption from extinguishment under NERCA s67.'*

- 1.8 *'Para 11.8 correctly records the 'extracts' issue.'*
- 1.9 *'Para. 11.9 says 'As noted above, the Council is satisfied that the application has been made in accordance with the requirements of section 53 and Schedule 14.' but this appears to refer to the maps issue which has been withdrawn (see para 6.1 above) but does nothing to address the extracts issue.'*
- 1.10 *'Para 13.15 considers user evidence. As with documentary evidence (para 6.1 above), this is irrelevant if the validity for exemption claim fails.'*
- 1.11 *'Para 13.16 says This application was made prior to 20 January 2005 and is considered to comply with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981 but the Committee was not advised as to the reasons why the GLPG submissions were considered incorrect.'*
- 1.12 *'At Appx 2, para 6.4 the report says The Supreme Court's Order went further and stated that the applications complied with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. The County Council is applying to the Supreme Court for clarification on this point.'*
- 1.13 *'The response to the application was issued by the Registrar on 5 Nov 2019. Given that the report on T339 had been written in March 2019 and the Committee meeting was on 21 March 2019, I am surprised that there is no reference to the outcome of this application, this having been issued 8 months later. Furthermore, the DMMO was made on 6 March 2020 and the invitation to object was dated 6 August 2020.'*
- 1.14 *'As you know, on behalf of GLPG I wrote to PINS in the context of T353 giving very good reasons why the Registrar's response should be disregarded. A similar letter will be written to PINS in support of this objection to the T339 DMMO.'*
- 1.15 *'I have now read the minutes of the Committee meeting which on p14 record that 'Questions have been raised about whether the evidence submitted with the application was sufficient, particularly when in the form of extracts of*

*documents. Officers' view was that the application had been made in accordance with the necessary requirements ....' 'That implies that Officers' opinion of the legal implications of using extracts is superior to that of Leading Counsel without any reason being given. That is of particular significance when the extracts demonstrably fail in some respects to identify any directly relevant evidence.'*

## **2      Comments of Dorset Council**

- 2.1      Mr. Plumbe wrote on 11 August 2018 (**Appendix 1**) to *'object to the proposed modification because any pre-existing public vehicular rights have been extinguished'*. Mr. Plumbe makes this assertion because he considers the application to be invalid on the grounds of the evidence submitted in support of the claim. Mr. Plumbe quotes the joint opinion of George Laurence QC and Ross Crail in that: *" Paragraph 1 of Schedule 14 (in conjunction with the 1993 Regulations) clearly requires the applicant to identify (in list form) the particular items of documentary evidence upon which he relies in support of his application, and to provide copies of them. Unless and until the applicant has provided the surveying authority with an itemised list of documents and a set of copies of the listed documents, he cannot in our view be regarded as having complied with the statute."* *"Selected extracts, or summaries, or interpretations, of documents are very different from copies, which give the full picture and enable the reader to form his own impressions of the meaning and significance of the documents."* A copy of the Joint Opinion is at **Appendix 2**.
- 2.2      Mr. Plumbe acknowledges in this letter of 11<sup>th</sup> August 2018 that *'the views expressed by Counsel do not have statutory force and have not been tested in law'*, but adds that *'DCC is obliged to make a decision on issues raised and to that end rely on the best legal authority available'*.
- 2.3      Mr. Plumbe endorses this view that extracts of documents are inadequate. Mr. Plumbe is of the opinion that extracts *'may omit qualifying wording which substantially alters the context, meaning and application of passages which superficially convey rights of way'*.
- 2.4      Mr Plumbe adds to this with reference to the evidence submitted by FoDRoW on the CD accompanying their application in September 2004. Mr. Plumbe believes that the extract from the Piddletrenthide Award itself *'records nothing meaningful, and the attached map sections appear to record nothing but existing main roads, new private roads and 'bridle and foot ways. As to the Dewlish Award, there is a list of 'Public Carriage Roads and Highways' but which of these is relied on for evidence remains unknown, and the maps (which are virtually illegible) do not help. As to Cheselbourne, in the short truncated extract from the Award there is a list of 'Public and Private Carriage Roads Halter Paths and Public and Private Highways' but again no relevant passage has been identified and the 3 map extracts do not help. As to Piddlehinton, the extract from the Award identifies*

*4 'Public Carriage Roads ...' , marked B, C, D and E, albeit C and D are incomplete. In the two map extracts the letters C, G, L(?), P and Q can be deciphered but there is no indication as to the extent of what they relate to.'*

- 2.5 In his letter of 11<sup>th</sup> August 2018 Mr. Plumbe concludes by stating that *'The applicant has failed to produce or identify any meaningful evidence which serves to prove the existence of public vehicular rights over the way. Were that evidence now to be produced by the TRF, it would be far too late (see Maroudas as to late evidence).'*
- 2.6 For purposes of clarification, it is necessary to refer here to the background to Mr. Plumbe's comment on the scale of the maps which accompanied the application for the modification order. On 7 October 2010 Dorset County Council rejected the application on the ground that the map that had accompanied the application had been by computer generated enlargements of Ordnance Survey (OS) maps drawn to a scale of 1:50,000 and not by maps drawn to a scale of not less than 1:25,000. The respondents' application for judicial review was dismissed by the Administrative Court, but the appeal was allowed by the Court of Appeal, Civil Division 23/4/13. In dismissing the authority's appeal, the Supreme Court (heard 15/1/2015) held that a map which accompanied an application, and was presented at a scale of no less than 1:25,000, satisfied the requirement in para1(a) of Sch14 of being 'drawn to the prescribed scale' in circumstances where it had been digitally derived from an original map with a scale of 1:50,000. (Judgment on 18/3/2015). In accordance with its duties under the Wildlife and Countryside Act 1981 the Council investigated the application. A copy of the Supreme Court's decision is at **Appendix 3**.
- 2.7 On 5th November 2019 the Deputy Registrar of the Supreme Court confirmed that it is too late at this stage to raise issues relating to the validity of the application for the Modification Order. (**Appendix 4**)
- 2.8 Mr. Plumbe's objection to the modification order is on the grounds that extracts of documents are insufficient for the purposes of Paragraph 1 of Schedule 14 of the Wildlife and Countryside Act 1981. The details of the application for the Modification Order are set out in full below.
- 2.9 The application to upgrade part of Bridleway 8, Cheselbourne and Bridleway 18, Dewlish to a byway open to all traffic was made by the Friends of Dorset's Rights of Way (FoDRoW) on 25 September 2004. (**Document Reference 4 Appendix 3** contains the application forms and accompanying documents.)
- 2.10 The application was accompanied by a map showing the length of path that is the subject of the application
- 2.11 The form 'Application for Permission to Notify Landowners by Site Notice' (Form 'D') dated 25 September 2004, was also submitted to the Council. A copy of the site notice, dated 18 November 2004, was also included with the application. In a letter dated 20 December 2004 the applicants wrote to the Council confirming the locations at which the site notices were placed.

- 2.12 The applicant provided Dorset County Council with the 'Certificate of Notice of Application for Modification Order' (Form 'C'), dated 11 December 2004, certifying that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act have been complied with.
- 2.13 The following evidence was submitted with the application form in support of the application for the modification order:
- (i). Cheselbourne Inclosure Award and Plan of 1844
  - (ii). Dewlish Inclosure Award and Plan of 1819
  - (iii). Piddlehinton Inclosure Award and Plan of 1835
  - (iv). Piddletrenthide Inclosure Award and Plan of 1835.
- 2.14 A compact disc, containing electronic copies of the documents submitted in support of the claim was sent to the Council. A note from the applicants explains that this CD is entitled 'FoDRoW Evidence, 25 Sept. 2004'. A list of the items contained on this CD was also provided by the applicants. The CD contains a number of Finance Act (1910) maps in addition to the inclosure award and plans noted above. None of the Finance Act maps on the CD cover the area in which the claimed byway runs.
- 2.15 Accompanying the application is a note from FoDRoW making the following points in support of the application:
- 'No evidence has been found to indicate this road has ever been stopped-up. Thus on the basis of the evidence presented below FODROW believes the route should today be a byway.'*
- 2.16 *'FoDRoW believes that enough evidence is being submitted to justify this claim. Further evidence does exist and may be submitted at a later date. However, having considered the volume of claims likely to be submitted in the coming years this claim is being submitted now to avoid a future flood of claims when they are all fully researched.'*
- 2.17 Further documentary evidence was supplied on 13th September 2006 by the Trail Riders Fellowship on behalf of FoDROW. Eighteen completed Public Rights of Way Evidence Forms (Form WCA 8) were sent to the Council in February and April 2010.
- 2.18 In order for mechanically-propelled vehicular rights to be preserved, the evidence submitted must be sufficient to raise a 'prima facie' case that vehicular rights exist. For the reasons set out in paragraphs 8.6 to 8.10 and considered in 8.13 of the Council's Statement of Case (**Document Reference 4**) the Council's view is that it does. The extracts of the Dewlish and Cheselbourne Inclosure Awards provided with the application are considered sufficient for the purpose of showing that the exemptions contained in section 67 of the Natural Environment and Rural Communities Act do not apply. Extracts are considered themselves to raise a prima facie case and the full documentation does not contradict that position.

- 2.19 The Council's view is that the statement of the applicants contained in the note accompanying the application described in paragraph 2.19 above (*'Further evidence does exist and may be submitted at a later date'*) does not prevent the statutory exception from applying if the evidence listed on the application form is supplied with the application and is sufficient on its own to raise a 'prima facie' case that the route should be recorded as a byway open to all traffic.

### **3 Objection from Mr. S. Dycer**

- 3.1 Mr. Dycer has objected to the Modification Order in an e mail of 20<sup>th</sup> August 2020. Mr. Dycer's objection does not contain any information or evidence which relates to the status of the route. The points raised by Mr. Dycer cannot be considered in determining whether the Order should be confirmed.

### **4 Concluding Remarks**

- 4.1 Dorset Council is satisfied that the application for the Modification Order has been made in accordance with the requirements of section 53 of the Wildlife and Countryside Act 1981. The objection from Mr. Plumbe does not provide any evidence to the contrary nor information to indicate otherwise.
- 4.2 Mr. Dycer has not provided any information that assists in determining the status of the way subject to the Order.
- 4.3 The Council concludes that the objections should be dismissed and the Order confirmed.

### **Appendix**

1. Letter from Mr. G. Plumbe, Green Lanes Protection Group, 11 August 2018
2. Joint Opinion, Laurence/Quail
3. Supreme Court Judgement, 2015
4. Registrar's Letter, 5 November 2019