

**HIGHWAYS ACT 1980  
WILDLIFE AND COUNTRYSIDE ACT 1981**

**DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER**

**DORSET COUNCIL (FOOTPATH 16, MELCOMBE HORSEY AND FOOTPATH 26,  
CHESELBOURNE)  
PUBLIC PATH DIVERSION ORDER 2014**

STATEMENT OF GROUNDS  
OF DORSET COUNCIL ("the Council")  
(In Support)

This statement relates to the Dorset Council (Footpath 16, Melcombe Horsey and Footpath 26, Cheselbourne) Public Path Diversion Order 2014 ("the Order") (**Appendix 4**)

**1 Enclosures to this Statement of Grounds**

The following documents are enclosed with this Statement of Grounds:

- 1.1. **Appendix 1:** Photos of the current route of Footpath 16, Melcombe Horsey, and Footpath 26, Cheselbourne.
- 1.2. **Appendix 2:** Report to and Minutes of Dorset County Council Roads and Rights of Way Committee dated 16 January 2014
- 1.3. **Appendix 3:** Report to and Minutes of Dorset County Council Regulatory Committee dated 29 January 2015
- 1.4. **Appendix 4:** Order dated 29<sup>th</sup> August 2014 including drawing 13/34/2

**2 The effect of the Order**

- 2.1 The effect of this Order is to modify the definitive map and statement for the area by diverting Footpath 16, Melcombe Horsey and Footpath 26, Cheselbourne. This will be done by extinguishing Footpath 16 from the Parish boundary at point ST75150123 along a field edge and into a second field along the Parish boundary to its junction with Footpath 26 at ST74770146, and extinguishing Footpath 26 from this same junction at ST74770146 south into a field and then west southwest along the field boundary, then south south east and west where it joins Bridleway 19, Cheselbourne at ST74530137 ("the Current Route") as shown by a black line on the plan attached to the Order. Photos of the Current Route are **Appendix 1** to this statement.
- 2.2 The Current Route of the two footpaths form a continuous route that crosses the parish boundary.

- 2.3 The Current Route will be replaced by the creation of a public footpath from a junction with Footpath 25, Cheselbourne at ST75150123 west south west along an arable field edge to where it joins Bridleway 19, Cheselbourne at ST7450111 (“the New Route”) as shown by a broken black line on the plan attached to the Order.

### 3 Background

- 3.1 The application was submitted in August 2010 (‘the Application’) by Michael Metcalfe, (owner of the property ‘Highdon House’ at the time) (‘the Property’) to divert Footpath 16, Melcombe Horsey and Footpath 26, Cheselbourne as shown on the Order plan reference 13/34/2 (‘the Order Plan’). The Property is now owned by David Sutton and Gay Sutton who indicate their approval of the diversion. Mr Metcalfe remains the applicant for the Application.
- 3.2 The New Route is in the interest of the landowner as it allows for better land management and improves security and privacy.
- 3.3 The adjoining land, over which the New Route runs, is owned by Mark Russell who is in support of the Application.
- 3.4 Following the receipt of the Application, a full consultation exercise was carried out September 2013.
- 3.5 One objection was received from The Ramblers who asserted that the proposed diversion is less convenient to the public as it involves an additional length of tarmac path on Bridleway 19, Cheselbourne between points C and D.
- 3.6 The width of Bridleway 19, Cheselbourne is recorded as 30 feet (approximately 9 metres) and therefore the bridleway surface includes 3 metres of tarmac in the middle, with 3 metres of grass either side. There will be additional walking between points C and D to gain access to the new route of Footpath 26, but for walkers travelling along Bridleway 19, Cheselbourne either south from point D, or north to point D the route is shorter and therefore no less convenient.
- 3.7 As an objection was received to the proposals a report was considered by the Roads and Rights of Way Committee in January 2014 (**Appendix 2**), which resolved that an order should be made as recommended. (The proposed diversion is shown on the Order Plan)
- 3.8 The Order was sealed on 29 August 2014 and notice of the making of the Order was published on 18 September 2014 in the Western Gazette (**Appendix 4**). One objection was received and remains outstanding (see **Document Reference 5**).

#### **Council’s Stance**

- 3.9 On 29th January 2015 the matter was taken back to Dorset County Council’s Regulatory Committee (**‘the Committee’**) to decide on the future of the Order (**Appendix 3**). The Committee considered the three options; to submit the Order to the Secretary of State (maintaining the position of the Council to date, to support the Order), to submit the Order and take a neutral stance or to abandon the Order.

- 3.10 The Committee considered that the proposed diversion would be beneficial and provided for greater accessibility along the route without unnecessarily compromising its convenience to the public and resolved to submit the Order to the Secretary of State for determination and will continue to support the Order in future proceedings.
- 3.11 On the 1<sup>st</sup> April 2019 Dorset County Council ceased to exist, and the new unitary authority of Dorset Council was created by statutory instrument assuming all of the former sovereign councils' responsibilities and agreements within its area.
- 3.12 The Council cannot confirm an opposed order and the therefore submits the Order to the Secretary of State for confirmation. The Council proposes that the Order is suitable for consideration through the written representation procedure.

## **4 Compliance with the Law**

### **Highways Act 1980**

- 4.1 The Order was made under section 119 of the Highways Act 1980 on the basis that, in the interests of the owner of the land crossed by the path, it is expedient that the line of Footpath 16, Melcombe Horsey, and Footpath 26, Cheselbourne should be diverted (s119(1)). In particular, the diversion moves the path away from Highdon House and allows better land management, specifically the location and maintenance of electric fences and hedges.
- 4.2 The Order was made in response to the Application by the former Landowner and is supported by the current Landowner.
- 4.3 Section 119(2) Highways Act 1980 provides that a diversion order should not alter a point of termination of a path unless the new termination point is on a highway and (where it is on a highway) only to another point which is on the same highway or a highway connected with it and which is substantially as convenient to the public.
  - 4.2.1. Taken as a continuous route, the eastern termination point is the same for the Current Route and the New Route.
  - 4.2.2. The western termination point will be moved from its junction with Bridleway 19, Cheselbourne at point C, 269 metres south southeast along the same bridleway to point D.
- 4.4 In accordance with section 119(3) Highways Act 1980, the Order provides that the extinguishment of the Current Route will not be effected until the Council has certified that the New Route has been brought into a fit condition for use by the public.
- 4.5 Section 121 Highways Act 1980 provides that section 29 applies to diversion orders and accordingly, imposes a duty on the Council to have due regard to;
  - 4.4.1 the needs of agriculture (which includes the breeding or keeping of horses) and forestry, and

- 4.4.2 the desirability of conserving flora, fauna and geological and physiographical features.
- 4.6 There is no suggestion that the diversion will have an adverse effect on agriculture, forestry, fauna and geological and physiographical features.
- 4.7 Section 119(6) Highways Act 1980 provides that the Secretary of State shall not confirm a public path diversion order unless she is satisfied that;
- 4.2.1 the diversion to be effected by it is expedient as mentioned in section 119(1) Highways Act 1980; and further
- 4.6.2 that the path or way will not be substantially less convenient to the public in consequence of the diversion; and
- 4.6.3 that it is expedient to confirm the order having regard to the effect which;
- 4.6.3.1 the diversion would have on public enjoyment of the path or way as a whole;
- 4.6.3.2 the coming into operation of the order would have as respects other land served by the existing public right of way; and
- 4.6.3.3 any new public right of way would have as respects the land over which the right is so created and any land held with it.
- 4.8 Expedient as mentioned in section 119(1)
- 4.7.1 Please see paragraph 4.1 above.
- 4.9 Not substantially less convenient to the public in consequence of the diversion:
- 4.8.1 The Council submits that the New Route will not be substantially less convenient to the public.
- 4.8.2 The lengths of the footpaths will be affected as shown in the table below.
- 4.8.3 The overall effect of the proposed diversion is to decrease the combined length of the affected footpaths by 195 metres.
- 4.8.4 However, the western termination point of Footpath 26, Cheselbourne has moved 269 metres south south west therefore, to reach point C via the proposed route of Footpath 26 Cheselbourne and Bridleway 19, Cheselbourne would be 867 metres which is an increase of 74 metres.

Path	Length of Current Route (affected section)	Length of New Route (affected section)	+/- Length
Footpath 26	B – C 290 metres	A – D 598 metres	+ 308 metres
Footpath 16	A – B 503 metres		-503 metres

<b>All Footpaths</b>	<b>793 metres</b>	<b>598 metres</b>	<b>-195 metres</b>
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4.10 Expedient to confirm the order having regard to the effect on public enjoyment of the path as a whole.

4.9.1 The matters listed under paragraph 4.8 are relevant to the public enjoyment of the path.

4.9.2 Taking into account the extensive and panoramic views to the south and the increased accessibility along the new footpath, the Order would result in a route that is as enjoyable as the current footpaths.

4.11 Expedient to confirm the order having regard to the effect as respects other land served by the existing public right of way and as respects the land over which the new right is created and any land held with it.

4.10.1 The Current Route is in the ownership of David Sutton and Gay Sutton who support the Application. The New Route runs along a neighbouring landowner's land. He has agreed to the proposed diversion, and has stated, in writing, that he will not be seeking compensation. Therefore, it is unlikely that a claim for compensation would be made. The applicant has agreed to defray any compensation that becomes payable in consequence of the coming into force of this order. The diversion does not inhibit or otherwise affect access to any other land.

### **Equality Act 2010**

4.12 The Equality Act 2010 requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do, or to show that there are good reasons for not doing so.

4.13 The New Route is more accessible than the Current Route as it is flatter and there are no stiles, gates or electric fences. The diversion would therefore improve accessibility for footpath users.

### **Rights of Way Improvement Plan**

4.14 Dorset Council's Rights of Way Improvement Plan (ROWIP) is a statutory document setting out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

4.15 Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority.

4.16 The ROWIP is not discussed in either committee report. However, one of the five themes which have been identified for improving access in Dorset is particularly relevant to the present case and should be considered in relation to this Order:

#### **Theme 1: The ROWIP's links with other strategies**

- Theme 1.6 Improve accessibility of the network

4.17 This is due to the character of the New route, which is more accessible than the Current Route.

## 5 Objections and other representations

- 5.1. An objection was received from The Ramblers.
- 5.2. The Ramblers object to the Order on the grounds that the New Route is less enjoyable for footpath users than the Current Route.
- 5.3. They consider that the Current Route offers a more interesting and varied route in terms of scenery, surface type and elevation than the proposed route.
- 5.4. In particular they highlight the following features along the Current Route:

Valleys and inclines

A variety of directional views, including the deep valley of Open Access land, sheep grazing pastures and arable land

Added height along B – C

- 5.5. The Ramblers describe the New Route is described as a “flat, level path with one-directional view”.
- 5.6. The Ramblers acknowledge that the proposed diversion has no furniture but feel that easy access is not needed in this rural location as it would be in a more urban or village setting.
- 5.7. In addition, the proposed diversion is 195 metres shorter than the current footpath.
- 5.8. The Ramblers consider the views from the New Route A – D to be the same as the Current Route between B – C but prefer the higher aspect from B – C, which also has views of pasture.
- 5.9. Following points raised by the applicant at the Roads and Rights of Way Committee meeting on 16 January 2014, The Ramblers comment that:
  - 5.9.1. The proposed diversion applies to a footpath and two of the groups supporting the application (British Horse Society and Friends of Dorset’s Rights of Way) do not have user rights on the affected route.
  - 5.9.2. The Current Route follows field headland paths and uses existing gates and a gap and one stile so the claim for better land management is “puzzling”.
  - 5.9.3. The electric fences along the route do not cause any problems for footpath users providing there are warning signs and hand grips.
  - 5.9.4. Any route is straightforward providing it is well signed.

## **The Council's comments**

- 5.10. Although the Current Route offers more variety in terms of gradient and type of landscape, the New Route is more accessible, which is relevant to public enjoyment.
- 5.11. The Current Route of Footpath 26, Cheselbourne has five gates, with a further two gates and stile on the Current Route of Footpath 16, Melcombe Horsey. The New Route will have no furniture.
- 5.12. The Current Route runs downhill from point A along the edge of the field, and then uphill to point B. The New Route will be much flatter.
- 5.13. Dorset's ROWIP identifies improving accessibility of the network as one of its themes and this should be taken into account.
- 5.14. The overall effect of the proposed diversion will be to improve accessibility.
- 5.15. In addition, the views from the New Route are extensive and panoramic, adding to public enjoyment.
- 5.16. With regards to the reduction in length, this is discussed above at 4.8.4.

### **Open Access Link**

- 5.17. There is a field gate north of point A from Footpath 16, Melcombe Horsey linking to the Open Access Land shown on Drawing 13/34/2 attached to the Order **Appendix 4**. This is not an official access point, so the applicant has agreed to install a kissing gate in the field boundary approximately 12 metres east of point A, which will provide access from Footpath 25, Cheselbourne.
- 5.18. This is in response to the comments made by The Ramblers and is conditional upon the successful diversion of Footpath 26, Cheselbourne.
- 5.19. The proposal is supported by Cheselbourne Parish Council and Melcombe Horsey Parish Council.
- 5.20. Melcombe Horsey Parish Council states that "the new route would be a great improvement on the original section".
- 5.21. The termination points maintain connection with the public rights of way network in the area, and are substantially as convenient to the public.
- 5.22. Taking into account the extensive and panoramic views to the south and the increased accessibility along the new footpath, the Order would result in a route that is as enjoyable as the current footpaths.

## **6 Summary**

- 6.1. The Council submits that the diversion of Footpath 16 Melcombe Horsey and Footpath 26, Cheselbourne, from the Current Route to the New Route is expedient in the interests of the landowner; is not substantially less convenient to

the public and has an overall positive effect on public enjoyment of the path as a whole.

- 6.2. The Council is of the opinion that the objections do not contain any grounds to warrant the non-confirmation of the Order.

## **7 Conclusion**

- 7.1 The Council considers that the requirements of section 119(6) Highways Act 1980 are satisfied and submits that the Order should be confirmed as made.