



8 July 2021

By email

Dear Ms Sparks

ROW/3243919

Notice of Order, Wildlife and Countryside Act 1981 – Section 53

I would be grateful if you could forward to the Inspector this response to Dorset County Council's Statement of Case in relation to the Order to make a footpath from Verlands Road to the A353 Preston Road, Weymouth.

We have previously submitted representations to Dorset County Council for their consideration in making the Order and which form part of the documentation provided to the Inspector. Our comments on the Statement of Case by Dorset County Council are set out below and referenced by paragraph number.

Paragraph 3.2: We assume that this paragraph is an error as it refers to an Order Route at Weston Street, Portland.

Paragraph 3.4: To clarify, the photos provided of the Order Route can only be used for orientation purposes, particularly from Point C they do not indicate a route that is in use or evidence of such.

Paragraph 7.1.1: This paragraph references the Documentary Evidence in Appendix 6 which includes the Council's Report to the Regulatory Committee of 30 July 2015. We would like to reiterate that we bought the land in 2003 having held a tenancy since 1989. Prior to that the land was owned by Miss J Pitman who purchased the land in 1975 for the purposes of the keeping and grazing of horses associated with the riding stables that she ran in Sutton Poyntz.

Section 8 of the Statement of Case provides a summary of the documentary evidence which coincidentally is also numbered section 8 in the Regulatory Committee Report. Our comments refer to the paragraph numbers in the Regulatory Report with the Statement of Case paragraph numbers in brackets.

Analysis of the documentary evidence commences with a review of Ordnance Survey maps. The evidence submitted relies heavily on these maps. From paragraph 8.1(8.2.1) (the second 8.1 as a typo exists in the numbering) to 8.14 (8.2.8) various OS maps are referenced. In paragraph 8.16 of the Council's Committee Report the Council conclude that the OS map submissions do not provide sufficient evidence into the status of the route. We would add that the identification of no track,

part of a track or full track on an OS map does not indicate public use. The intimation in paragraph 8.15 (8.2.8) that this is the case is misplaced.

At a point in time there had been a chalet style building located at the end of the track close to the eastern field boundary and proximate to the Council's Point C of their Order. This building is still shown on smaller scale OS maps but not on the larger scale maps and indeed is present on the Council's drawing 14/16/1.

The building has not been present for at least 30 years. This building had been accessed direct from the gated entrance to the field and was associated with the use of the field. It is our contention that any recorded track on OS maps was not a result of public use but of the private use of the field by the owners and the Council is incorrect to intimate a public use.

Turning to the photographic evidence referenced in paragraphs 8.17 (8.2.9) to 8.23 (8.2.15) this represents only the 5 year period between 2004-2009. It does not come close to supporting a 20 year continuous use of a track. Paragraph 8.18 (8.2.10) references the picture from January 2004 and states that the fence and hedge line are still in place and a stile or kissing gate can be seen at point C. We purchased the land in 2003 and erected a new fence that year. Prior to this during our tenancy since 1989 there had been an old barb wired fence that had fallen into disrepair associated with the private access to the chalet at the top of the field between Points B and C. We had had some issues with a small number of dog walkers using our field to relieve their dogs and not clearing up their mess. As you may know dog faeces are poisonous to other animals resulting in potential fatalities. So, when we purchased the land in 2003 we erected the fence as a means to keep dogs and their owners out of the main field and to hopefully divert them elsewhere. However, this proved futile and while the track was occasionally used the problem continued. We finally decided to remove the track and attempt to bar all access to protect the health and well-being of our horses and to remove irresponsible dog owners from our land.

So, while we do not dispute that there was indeed an access between Points B and C this was only between 2004 and 2009 and no photographic evidence prior to these dates has been provided to support the claim that there has been public use for 20 years.

From paragraph 8.24 (8.2.16) to 8.29 (8.2.21) there is a description of the aerial photography submitted as evidence. The Council's report acknowledges that all the images are very unclear between points A and C and therefore the analysis has concentrated on the route across Winslow Hill between points C and D.

In paragraph 8.26 (8.2.17) and reference to the 1972 black and white photograph it states that it clearly shows the track between points A and C and a worn line between points C and D. Firstly, at 8.24 the Council has stated that all the images are very unclear between points C and D and yet considers that this photograph to be sufficiently clear to pick up the track. We have studied this photograph closely and can only conclude that the Council is incorrect in coming to this conclusion. The track between A and B is visible but beyond the gated boundary we cannot identify any footpath line. There is a field boundary line but no more. Therefore, the Council is incorrect to reach this conclusion. We do agree that there is a line down Winslow Hill from close to point C to point D. However, to our eyes this does not originate from point C but appears to connect with a north-south running line on the eastern side of the field boundary that derives from the footpath that originates at the top of Winslow Close. It is relatively clear that there is a worn line that runs east-west from Winslow Close (FP27), crosses the field boundary and then turns south through 90 degrees, heads south and then arches away from near point C down the hill to point D.

The Council make the same mistake with their interpretation of the 1986 photograph referenced at 8.27 (8.2.18). We cannot see any evidence of a track between points B and C. We can see the track very close to Point C but again this appears related to the same worn line running north-south of the eastern side of the field boundary and which derives from Winslow Road (FP27).

The 2002 photograph referenced at 8.28 (8.2.19) is clearer. We again disagree with the Council's assertion that a track can be seen between points A and C. There is nothing between points B and C in the photograph that indicates there is a track. Also, it is now much clearer that there is indeed a worn route emanating from the top of Winslow Road, crosses through the field boundary and then turns southward. It continues on the eastern side of the field boundary before curving eastwards but rather than heading to point D appears to be a circular route that links back to the track coming from Winslow Road. There appears no route through from our field into Winslow Hill at point C. We would like to make the point that the photograph is from 2002 only 7 years before the application for a footpath.

With reference to the 2005 photograph at paragraph 8.29 (8.2.20) this was taken after we erected the fence to keep dog walkers out of our field. This fence line is just visible but we note that the path itself is not worn and particularly note that there is no worn track of any sort leaving our field at point C and entering the adjoining field. The north-south route is highly visible as are various tracks in that field but nothing to suggest that there is any use originating from our field at point C.

We contend that scrutiny of the images does not in any way indicate that there may have been a track before 2005. The Council's position IS that the photographs do not provide any conclusive evidence of a track. We believe the photographs provide evidence of no track.

In the remainder of Section 8 of the Regulatory Committee Report the Council consider other sources of possible evidence all of which do not promote a path from point B to C. All the potential evidence considered up to this point of the report does not support a public footpath through our field.

The final body of evidence that the Council consider is user evidence. Of the submissions there are 38 who claim that they used the route before 1989. The occurrence of use is intermittent and does not indicate a continuous use. The visits are patchy and inconsistent. To our mind while there are clearly a number of people who claim to have walked the route it does not indicate a continuous and on-going use sufficient to justify the making of the Order.

Section 8.5 of the Statement of Case summarises the Council's position. At 8.5.1 it is stated that the documentary evidence is insufficient alone to demonstrate that rights exist but that the aerial photography, several OS maps and photographic evidence supports the application. We disagree and have stated our views above. The only additional point to be made here is that the Council appear to be elevating the weight they are attaching to OS maps and aerial photography to a level above that which they applied in their Regulatory Committee Report where they clearly stated that both sources did not provide sufficient evidence to substantiate the Order being made.

Conclusion

When considered together we believe that the evidence falls short of that required to enable the Order to be made. Of all the evidence considered only the user evidence offers any support for the Order. All other evidence acts against it. Indeed, close scrutiny of the aerial photographs indicate no route rather than a possible route. This certainly being the case before we erected fencing in 2003 to keep people out of our field.

Mr and Mrs P Rookes