



Final Order Decision

Site visit made on 31 January 2023

by **J Burston BSc MA MRTPI AIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 8 April 2024

Order Ref: ROW/3278588

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Dorset Council (Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish to be upgraded to Byways Open to All Traffic) Definitive Map and Modification Order 2020.
- Dorset Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 06 March 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading of 2 (1 in part) existing bridleways forming a continuous route as shown in the Order plan and described in the Order Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the 1981 Act, notice has been given of my proposal to confirm the Order with modifications.
- There were 3 objections received in response to the notice.

Summary of Decision: The Order (as originally made) is confirmed.

Procedural Matters

1. This decision should be read in conjunction with my interim decision (ID) of 15 June 2023, in respect of the Order, which outlined the main issues to be addressed and my findings on these matters.
2. The effect of the Order, if confirmed with the modifications that were previously proposed would be to:
 - In Part I delete “To be numbered Byway 18, Dewlish” and substitute “To be numbered Restricted Byway 18, Dewlish”.
 - In Part I delete “To be numbered Byway 28, Cheselbourne” and substitute “To be numbered Restricted Byway 28, Cheselbourne”.
 - In Part II delete “Byway Open to All Traffic, 18, Dewlish” and substitute “Restricted Byway, 18, Dewlish”.
3. These would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications.

Main Issues

4. With regard to the modifications proposed in the ID, the main issues that now require consideration are:
 - i) whether the modifications proposed were justified, and
 - ii) whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.

Reasons

Whether the 2004 application was a valid application

5. Two of the objections to the modifications relate to my findings in relation to whether the 2004 application was valid. As set out in my ID an application for Byway Open to All Traffic (BOAT) status is made under s53(5) of the 1981 Act. To be valid, it must comply with paragraph 1 of Schedule 14 of the same Act.
6. Paragraph 1 of Schedule 14 to the 1981 Act requires that “*An application shall be made in the prescribed form and shall be accompanied by – (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application*”.
7. The objectors’ have brought to my attention that the Supreme Court’s Order included a declaration that the application was ‘*made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981*’. This Order confirmed that the application complied with the whole of paragraph 1 of Schedule 14 and, not solely paragraph 1(a).
8. Furthermore, following an enquiry into this matter from the Council, Lord Carnwarth set out a direction, dated 5 November 2019, which stated “*The court sees no reason to vary the terms of the order which was agreed between the parties, and reflected the form of the relief sought in the original claim. Had the Council wished to challenge the validity of these applications on other grounds within schedule 14 para 1, they should have done so expressly in these proceedings or reserved their position. That not having been done, it is too late to raise such issues at this stage*”.
9. In these circumstances it is not open to me to go behind the terms of an Order made by the Supreme Court. The effect of the declaration is to establish conclusively that the application in this case made on 14 July 2004 was compliant with the whole of paragraph 1 of Schedule 14 of the 1981 Act. There has been no evidence before me of a material change in circumstance.
10. Moreover, as now brought to my attention and confirmed by the Council the additional evidence I considered in my ID was submitted by the TRF rather than the original applicant and at the request of the OMA when undertaking additional consultation.

Natural Environment and Rural Communities Act 2006 (NERC)

11. I have concluded in my ID that the evidence demonstrates, on a balance of probability, that the Order route is a vehicular highway.

12. Section 67(1) of NERC provides that an existing public right of way for mechanically propelled vehicles is extinguished, subject to subsections (2) to (8). However, Section 67(3)(a) indicates that Subsection 1 does not apply to an existing public right of way over a way if, before the relevant date, an application was made under section 53(5) of the 1981 Act for an order making modifications to the definitive map and statement so as to show a byway open to all traffic. The relevant date is stated at Section 67(4) of the 2006 Act as being 20 January 2005, and Section 67(6) indicates that the application must be in accordance with paragraph 1 of Schedule 14 of the 1981 Act.
13. The application was made on 25 September 2004, thus prior to the 'relevant date', and was found valid by the Supreme Court. As such, pre-existing unrecorded rights for MPVs to use the Order route were not extinguished.

Other Matters

14. References have been made to the integrity of a high-pressure gas main which crosses the Order route and any access to it for maintenance. I understand the points made but, as they concern matters which lie outside the criteria set out in the relevant legislation, I have not given them any weight in reaching my decision.

Conclusions

15. As set out in my ID the documentary and user evidence submitted provides a persuasive case for the existence of public vehicular rights over the claimed route. In the absence of any evidence to show that the public carriageway rights over the route have been formally stopped up the rights remain in existence.
16. Given the new evidence received following the advertisement of my modifications I have found that the application was valid and made prior to the relevant date stated at Section 67(4) of the 2006 Act as being 20 January 2005. Accordingly, in relation to the NERC Act, public vehicular rights have not been extinguished and the Order route should be recorded as a Byway Open to All Traffic.
17. Having had regard to these and all other matters raised in the written representations, I conclude that the Order, as originally made, should be confirmed.

Formal Decision

18. I confirm the Order.

J Burston

INSPECTOR

