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## Interim Order Decision

Site visit made on 17 January 2023

by **A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)**

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

Decision date: 27 July 2023

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### Order Ref: ROW/3278538

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Dorset Council (A Byway Open to All Traffic, Beaminster at Crabb's Barn Lane) Definitive Map and Statement Modification Order 2020.
- The Order is dated 24 January 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading a bridleway to a byway open to all traffic and adding lengths of byways open to all traffic as shown in the Order plan and described in the Order Schedule.
- There were three objections outstanding when Dorset Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision that require advertising**

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### Procedural Matters

1. I made an unaccompanied site visit on 17 January 2023.
2. On 21 December 2004 an application was made by the Friends of Dorset Rights of Way (FoDRoW), to upgrade existing bridleways (Bridleway 17 Beaminster and Bridleway 35 Beaminster) to byways open to all traffic (BOAT) and for lengths of BOAT to be added to the Definitive Map and Statement (the DMS) for the area (the Application Route). The application sought to provide a continuous route from its junction with the C102 highway at Beaminster Down to its junction with a road at the Corscombe parish boundary. It was confirmed, on the 4 October 2010, that the Trail Riders Fellowship (the TRF) would be managing the application on behalf of the FoDRoW.
3. On 7 October 2010, the Order Making Authority (the OMA) rejected the application maintaining that the map that accompanied the application was not to the correct scale. The OMA's decision to reject the application on those grounds was subject to judicial review, with the Supreme Court confirming that the map which accompanied the application was in accordance with the relevant legislation. I shall return to this matter below.
4. On 21 March 2019, the Dorset Council Regulatory Committee (the Committee) resolved that an Order be made to modify the DMS to record the route shown C-D-E-F-G-H-I on the Order plan as a BOAT (the Order Route). However, the Committee also resolved that Bridleway 17 Beaminster should remain classified as a bridleway.
5. An objection has been made on the grounds that the application submitted on 21 December 2004 did not comply with the requirements of paragraph 1 of Schedule 14 of the 1981 Act and that, therefore, it was not an application which would preserve a public right of way for mechanically propelled vehicles (MPVs)

- from extinguishment by the operation of section 67 of the Natural Environment and Rural Communities Act 2006 (NERC).
6. Further objections have been made on grounds that there is insufficient evidence to confirm that those sections of the Order Route not currently recorded in the DMS subsist and should be recorded with the status of a BOAT and that that section which is currently recorded as bridleway ought to be upgraded to BOAT status.
  7. The TRF supports the confirmation of the Order with regards to the route shown C-D-E-F-G-H-I on the Order plan. However, further to the Committee's resolution that Bridleway 17 Beaminster should remain classified as a bridleway and therefore should be excluded from the Order, the TRF seeks a modification to the Order so as to include the upgrading of Bridleway 17 Beaminster to a BOAT.
  8. Whilst I shall return to analyse the submitted evidence as below, I must first consider whether it is possible to modify the Order in respect of that part of the application which concerned the upgrading of Bridleway 17 Beaminster to a BOAT.
  9. In respect of Inspectors' powers of modification to modify order maps, I have had regard to the provisions of paragraph 2 of Schedule 2 of Regulation 4 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.
  10. In this instance, given that Bridleway 17 Beaminster is shown in entirety on the Order plan, and by reason of the above legislation and powers conferred upon Inspectors, I can consider a modification to modify the Order plan to include that section of the Application Route. It is acknowledged that no submissions have been provided by the OMA in respect of the evidence submitted in support of the upgrading of Bridleway 17 Beaminster. I have not sought additional submissions from the relevant and interested parties in this instance. In my view, there would be no prejudice to those parties given that in the event that I concluded that the evidence demonstrates that vehicular rights do exist over this section of the Application Route, this decision would be subject to advertisement, with a further opportunity being provided to affected and interested parties to raise objections to that modification as part of the final order decision process.
  11. However, it is noted that whilst the application concerned a single continuous route and referred to grid reference points in that respect, from the evidence before me and from observations made on my visit, Bridleway 17 Beaminster is separated from the remainder of the Application Route, by a public road. The submissions from various parties refer to that road as being known as "Whitesheet Hill". As such, given that separation, I cannot consider the Application Route as being a continuous route. Nonetheless, as noted above, I can consider that separate route as part of this decision, and I shall consider the position and evidence in that regard separately from the Order Route.
  12. With respect to the Order as made, the criteria for confirmation of the Order are contained within sections 53(3)(c)(i) and 53(3)(c)(ii) of the 1981 Act. These require me to consider whether the evidence discovered shows that a BOAT should be recorded in the DMS between points C-D-E-F-G-H-I on the Order plan.
  13. For this to be the case, the evidence must show that those sections of the Order Route not currently recorded in the DMS subsist and should be recorded with the status of a BOAT. Furthermore, the evidence must show that that section which is currently recorded as bridleway ought to be upgraded to BOAT status, with the

particulars contained within the DMS being modified as a result of the upgrading, should the Order be confirmed.

14. The criteria for confirmation of the upgrading of Bridleway 17 Beaminster are contained within section 53(3)(c)(ii) of the 1981 Act. This requires me to consider whether the evidence discovered shows that a BOAT should be recorded in the DMS. For this to be the case, the evidence must show that that section which is currently recorded as Bridleway 17 Beaminster ought to be upgraded to BOAT status, with the particulars contained within the DMS being modified as a result of the upgrading.

### **Main Issues**

15. The main issues in this decision are:

- Whether the application made on the 21 December 2004 was a qualifying application which preserved public rights to use MPVs on the Application Route,
- Whether, on the balance of probabilities, the evidence discovered shows that a BOAT subsists on the Order Route and should be recorded in the DMS; and,
- Whether, on the balance of probabilities, the evidence discovered shows that Bridleway 17 Beaminster should be upgraded to a BOAT and recorded as such in the DMS.

### **Reasons**

#### ***Whether the application made on the 21 December 2004 was compliant with the requirements of paragraph 1 of Schedule 14 to the 1981 Act***

16. Section 67 of NERC came into operation on 2 May 2006 and extinguished any public rights to use MPVs over a way that was either not shown on the DMS or was shown on the DMS as a footpath, bridleway or restricted byway, subject to certain exceptions contained within subsections (2) to (8) of section 67 of NERC.
17. The exception contained within section 67(3)(a) of NERC would preserve MPV rights if an application had been made to record the route as a BOAT before the relevant date, being the 20 January 2005. Section 67(6) of NERC provides that, for the purposes of section 67(3) of NERC, “an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of schedule 14 to that Act”.
18. 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”.
19. Objections have been raised on a number of grounds with regards to the validity of the application. The first of those grounds of objection is that, following the Committee’s decision on 21 March 2019 that part of the Application Route which concerned Bridleway 17 Beaminster should not be upgraded to a BOAT, the way that is the subject of the Definitive Map Modification Order is substantially different

- than that which was applied for. However, the submissions before me indicate that consultations were carried out in respect of the whole length of the route which formed the application and, in my view, the Committee's decision not to upgrade that part of the Application Route and exclude it from the Order, does not result in the application being invalid.
20. The objections further maintain that, by reason of the submission of only extracts of documents and the later submission of user evidence, the application was not made in accordance with requirements of paragraph 1(b) of schedule 14 of the 1981 Act. Paragraph 1(b) of schedule 14 of the 1981 Act provides that an application shall be made in the prescribed form and shall be accompanied by "copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application".
  21. The extent to which an application made under section 53 of the 1981 Act must comply with the requirements of paragraph 1 of schedule 14 of the 1981 Act for it to be a qualifying application under section 67(6) NERC, was considered by the Court of Appeal in *R (oao Warden and Fellows of Winchester College and anor) [2008] (EWCA Civ 431) (the Winchester Case)*.
  22. In the Winchester Case, Lord Justice Dyson held that, "*In my judgement, section 67 (6) requires that, for the purposes of section 67 (3), the application must be made strictly in accordance with paragraph 1. That is not to say that there is no scope for the application of the principle that the law is not concerned with very small things (de minimis non curat lex)... Thus minor departures from paragraph 1 will not invalidate an application. But neither the Tilbury application nor the Fosbury application was accompanied by any copy documents at all, even though it was clear from the face of the applications that both wished to adduce a substantial quantity of documentary evidence in support of their applications. In these circumstances I consider that neither application was made in accordance with paragraph 1.*"
  23. Lord Justice Dyson went on to express the view that, "*The language of the paragraph is clear and unambiguous. The application must be accompanied by copies of any documentary evidence which the applicant wishes to adduce. This must mean any documentary evidence, whether it is already available to the authority or not... The applicant is required to identify and provide copies of all the documentary evidence on which he relies in support of his application*".
  24. The application dated 21 December 2004 was accompanied by a map of the Application Route, and in terms of 'documentary evidence [including statements of witnesses] in support of this application' provided that "see attached report for details of evidence submitted in support of this claim. Copies of documentary evidence has been supplied on CD, viewable on any Windows PC."
  25. The 'attached report' lists a number of documents and maps submitted in support and confirms that "*FoDRoW believes 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 fully researched.*"

26. In terms of the use of document extracts, the objector has provided Counsel's Opinion dated January 2007 and entitled 'In the matter of section 67 of the Natural Environment and Rural Communities Act 2006'. In that regard I share Counsel's concerns that "*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*". In my view, until such time that the OMA has been provided with a set of full copies of the documents, the application cannot be considered to be in accordance with the requirements of paragraph 1(b) of schedule 14 of the 1981 Act.
27. Notwithstanding the above, it is also noted that User Evidence Forms (UEFs) from twenty two users were submitted in support of the application, and that those UEFs were dated between 2008 and 2010. By reason of the abovementioned comments that "Further evidence does exist and may be submitted at a later date" as included in the report that was attached to the application, it is apparent that it was not the case that the applicant was unable to obtain those documents and submit them at the time of the application.
28. Given the significant period of time between the submission of the application and the submission of the UEFs, it cannot be said that the application dated 21 December 2004 complied with the requirements of paragraph 1(b) of schedule 14 of the 1981 Act. In that regard, it is only when the application was accompanied by all the documentary evidence, including copies of all the UEFs, that the application was made in accordance with the requirements of paragraph 1(b) of schedule 14 of the 1981 Act. To my mind, the application only became compliant with those requirements when all the UEFs had been submitted and following the assessment and determination of the OMA in October 2010.
29. I acknowledge the TRF's reference to the Supreme Court's decision of 13 April 2015 in the case of R (on the application of Trail Riders Fellowship & another) v Dorset County Council [2015] UKSC 18 (the Trail Riders Fellowship Judgement), which included a declaration that the application made on 21 December 2004 under section 53(5) of the 1981 Act, was made "in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981".
30. However, it appears that the views of the Supreme Court Judges expressed in the Trail Riders Fellowship Judgement, did not concern the requirements applicable to the submission of supporting documentary evidence. Instead, the Trail Riders Fellowship Judgement focused on whether the application was accompanied by a map drawn to the prescribed scale which showed the way or ways to which the application related, and that in the event that such a map was not to the prescribed scale, whether the application would not be in accordance with paragraph 1(a) of Schedule 14 of the 1981 Act.
31. In summary of the above, for the reasons given I find that the application made on 21 December 2004 did not accord with the requirements of paragraph 1(b) of schedule 14 of the 1981 Act, and that the application only became valid when all UEFs had been submitted and when the application had been assessed, and initially rejected, by the OMA in October 2010. Therefore, in respect of this main issue, the application was made after the relevant date contained within section 67(4)(a) of NERC. Consequently, the application did not benefit from the section 67(3) exemption with regards preservation of MPV rights and, as such, any right



that the public may have had to use the Application Route with MPVs was extinguished on 2 May 2006.

32. Notwithstanding the above, it is necessary to consider whether the evidence now before me shows, on the balance of probabilities, that the Order Route, and potentially the whole of the Application Route, was a public carriage way. If so, then the routes could attain a higher status than that which currently exist. Those matters are addressed below.

***Whether, on the balance of probabilities, the evidence discovered shows that public vehicular rights subsist over the Application Route***

33. I am required to consider the submitted evidence applicable to the Application Route, and in that respect both documentary and user evidence submissions are before me to consider. The OMA were satisfied that documentary and user evidence supports the existence of a BOAT on the Order Route and, as such, support confirmation of the Order. I shall set out the documentary evidence first then turn to the user evidence in respect of the Order Route, before separately considering the documentary evidence in respect of the potential upgrading of Bridleway 17 Beaminster to a BOAT.
34. In respect of the documentary evidence, Section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
35. Dedication through public use arises either by presumed dedication as set out in Section 31 of the 1980 Act, or by implied dedication under common law. The 1980 Act requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of not less than twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention, during that period, to dedicate a public right of way.
36. At common law a right of way may be created through express or implied dedication and acceptance. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has accepted that dedication. No minimum or fixed user period is required for the dedication of a public right of way at common law.

## **The Order Route**

### *Documentary Evidence*

#### *Early and Commercial Maps*

37. The provided copy of Taylor's Map of 1765 appears to show a feature that corresponds with the Order Route passing by 'Crabs Barn'. However, that plan is not clear, and it appears that some of that route is depicted between solid lines as well as between pecked lines. The later 1796 Taylor's Map shows the Order Route between points C-D-E on the Order plan as bounded between a solid line and a pecked line. For points E-F-G-H-I, that map shows the Order Route bounded by solid lines on either side.

38. I have been provided with a copy of Cary's 'Map of Dorsetshire 1787'. However, I do not agree that this map shows the Order Route but rather depicts other routes located northeast of Beaminster. A copy of Greenwood's Map from 1826, shows the Order Route as a lane or road. Submissions on behalf of the OMA and in objection to the Order, agree that the route shown on the 1826 Greenwood's Map is depicted as a 'cross road'. In that regard, there is some support for the contention that the Order Route was considered to be a public road on which no toll was payable.

#### *Inclosure Award*

39. A map from an 1809 Inclosure Award shows part of the Order Route between points C-D-E on the Order plan. At point E on the Order plan, there is an annotation with the words 'To Hook Village'. The Award describes this section of the Order Route as 'one other public carriage road and highway 30 feet wide leading from the north-east end of White Sheet Lane to its usual entrance on Langdon Farm in the Parish of Beaminster and adjoining the south side of the said open and common arable fields called the South Fields the same being part of the public highway towards the village of Hook'. There is no other plan contained within the Inclosure Award and the remaining part of the Order Route between points E-F-G-H-I is not included within the Award or depicted on the map.

#### *Tithe Map and Apportionment*

40. The Beaminster Tithe map from 1843 shows part of the Order Route between points C-D-E excluded from tithe and coloured sienna. The remainder of the Order Route does not appear separate from land parcels and does not appear excluded from tithe. The OMA suggests that the apportionment records for that part of the Order Route between points E-F-G-H-I do not make any reference to a highway or public way. However, no apportionment records have been provided to me.

#### *Finance Act 1910 Records*

41. The valuation map shows part of the Order Route between point C and to a point northwest of point D as land which is separate from the adjacent hereditaments. The 1910 Finance Act required that all land be valued. Where a route is shown uncoloured and unnumbered so that it is outside of hereditaments, it is suggestive of a public highway. The depiction of this part of the Order Route on the valuation map being outside of hereditaments, provides supporting evidence of a possible vehicular route given that footpaths and bridleways were usually dealt with by way of deductions recorded in accompanying field books.
42. However, from that point northwest of point D to point I on the Order plan, the route is shown crossing hereditaments numbered 304 and 342. The field book entry for hereditament 304 does not record any deduction for 'Public Right of Way or User'. However, the field book entry for hereditament 342 records a deduction for such a 'Public Right of Way or User'.
43. Nonetheless, it appears from the information provided that whilst the field book entry for hereditament 342 records a deduction for 'Public Right of Way or User', there are a number of other public routes crossing that land. Therefore, it cannot be said with any certainty that the deduction made concerned this part of the Order Route rather than applying to one of the other public rights of way that crossed that land.

### *Ordnance Survey (OS) Maps*

44. An OS 1<sup>st</sup> series map of 1811 shows the Order Route. On that OS map, between points D-E-F-G-H-I the Order Route is depicted bounded by a solid line to one side and a pecked line on the opposite side of the route. The OS maps dated 1888 and 1904 show part of the Order Route between points H-I as an enclosed lane or track, with that section of the Order Route between points E-H being depicted as an unfenced or unenclosed lane or track. Whilst part of the Order Route between points C-D-E is shown on the 1888 and 1904 OS maps in the form of an enclosed lane or trackway, the maps provided do not show where Crabb's Barn Lane joins the highway known as Whitesheet Hill.

### *Definitive Map Process*

45. The OMA has provided details in respect of the Parish Survey, Draft Map, Provisional Draft Map, First Definitive Map, Revised Draft Map and details from the Special Review, within their submissions. The OMA has put it to me that the process of the drawing up of the definitive map provides no indication that an error was made in recording Bridleway 35 Beaminster. However, I have only been provided with a copy of the 1989 Sealed Definitive Map and which only shows Bridleway 35 Beaminster subsisting over the Order Route between points E-F on the Order Plan.

### *Highways Records*

46. The OMA's statement of case confirmed that, within the County Council's current highway records, part of the Application Route depicted between points C-D-E on the Order plan is shown as being a highway maintainable at public expense. Following my request for further information and clarification on those submissions, the OMA have confirmed that that part of the Application Route is shown on the current List of Streets, which was created in 1974 as a result of Local Government reorganisation.
47. As noted above, section 67 of NERC came into operation on 2 May 2006 and extinguished any public rights to use MPVs over a way that was either not shown on the DMS or was shown on the DMS as a footpath, bridleway or restricted byway, subject to certain exceptions. Section 67(2)(b) NERC provides that public rights for MPVs will not have been extinguished if, immediately before 2 May 2006, it was not shown in DMS as a public right of way but was shown in a list required to be kept under section 36(6) of the Highways Act 1980.
48. By reason of that inclusion on the List of Streets immediately before the relevant date, part of the Order Route between points C-D-E on the Order plan would fall within the exemption provided by section 67(2)(b) of NERC. As such, public rights to use MPVs over that part of the Order Route have been preserved.

### *Other Documentary Evidence*

49. I have been provided with a sketch plan, from circa 1800, which is described as a 'Plan of roads in neighbourhood of Beaminster'. Whilst that sketch plan is not entirely clear, it does appear that the Order Route is depicted by double pecked lines and passing by a feature with the wording 'Crabs Barn'. The sketch plan does not appear to be drawn to a specific scale, and while it may show the existence of a route at this location, it is not known for what purpose that plan was created.



50. Within the submissions there is a copy a plan in respect of the Langdon Estate, and which is based on a 1903 OS map. That plan shows part of the Order Route that corresponds with south-eastern end of Crabb's Barn Lane between a point southeast of point C to point D on the Order plan, and which depicts that part of the route bounded by double pecked lines and between solid lines separating parcels of land. That plan also shows that for a section of the Order Route from point E on the Order plan and towards point F, the route is bounded by double pecked lines and within a land parcel.
51. In objection to confirmation of the Order, I have been supplied with copies of conveyancing plans from 1925 and 1939 relating to the Langdon Estate. These plans depict part of the Order Route between points E-F-G-H-I in a similar manner to that included on the 1904 OS Map described above. It has also been put to me that the Langdon Estate was split between Langdon Farm and Higher Langdon Farm in 1980 and that there were private access and repair agreements included when the land was separated. It is maintained that if that part of the Order Route between points E-F-G-H-I were subject to such agreements then it is unlikely that the Order Route as a whole would have been dedicated to the public for use with vehicles.
52. Whilst I note the submissions in those respects, I have not been provided with copies of the conveyance deeds and so cannot confirm the details as have been put to me. In any event, conveyance documents note and record the granting of private rights, and it was not the purpose of such documents to record public rights of way.
53. Within the OMA's submissions there are references to other documents that have been considered, including additional early maps and later commercial atlas and road maps. However, these documents are not before me and, as such, I am unable to confirm whether these add any weight in the assessment and determination of this matter, and with regards to the Order as made.

#### *User Evidence*

54. I have concluded above that the application made in December 2004 only became valid for the purposes of paragraph 1(b) of schedule 14 of the 1981 Act and NERC once the OMA had been provided with all the relevant documentary and user evidence. Notwithstanding that position, I am of the view that public use of the Order Route was brought into question when the application was originally submitted in December 2004. Consequently, in respect of Section 31(2) of the 1980 Act, the relevant twenty-year period is from 1984 to 2004.
55. There are some minor variances in terms of the grid references provided for start and end points. However, it is clear that all the UEFs only report use on the Order Route between points C-D-E-F-G-H-I.
56. As noted, the UEFs were submitted after the original application had been made and were dated between 2008 and 2010. In total, twenty two UEFs were provided and which describe use of the Order Route between 1973 and 2010. Most use is reported as being between 1990 and 2008. However, two users report use from 2004, with only four users reporting use prior to 1985 and which span the full twenty year period.

57. All the submitted UEFs state that use was on motorcycles, with two users also reporting use on foot. Frequency of use varies from once a year up to twenty five times a year. Overall, a majority of the UEFs report use on motorcycle between twice and six times a year.
58. None of the UEFs report users having been challenged whilst using the Order Route, nor mention seeing any signs or obstructions that would discourage or prevent use of the claimed route. None state that use was with permission. All users report having seen others on foot, on motorcycle or horses, whilst using the route. Some of the UEFs confirm the belief that relevant landowners would have known about the usage by reason of tyre tracks.
59. In consideration of the above, it is my view that, overall and during the relevant period, the number of users and the frequency of use is low. As such, I do not find that the user evidence is sufficient to raise the presumption that the Order Route has been dedicated as a public highway with vehicular rights.

*Conclusions on the documentary and user evidence*

60. Those parties who support confirmation of the Order maintain that the description within the Inclosure Award of a 'public highway towards the village of Hook' and the annotation on the map which states 'To Hook Village', supports the contention that the awarded carriageway, between points C-D-E, was part of a route that continued towards Hook.
61. However, as put to me by those objecting to confirmation of the Order, it cannot be ignored that for between points C-D-E on the Order plan, the Award describes that part of the Order Route as 'public carriage road and highway', whereas from the 'usual entrance to Langdon Farm' and 'towards the village of Hook', the same Award describes that part of the Order Route as being part of a 'public highway'. On their own, these records only provide supporting evidence of the public carriageway status of part of the Order Route between points C-D-E. Nonetheless, the differences in the description of the rest of the Order Route will need to be considered with all of the other available evidence before me.
62. Tithe maps were prepared to indicate productive land rather than to indicate rights of way. From such records, it is normally only possible to infer that the routes existed on the ground at the time, and to determine whether or not it was considered to be productive in terms of tithe. However, in this instance the Tithe records do provide some support to the contention that a public carriageway existed between points C-D-E on the Order plan, but that no such public carriageway existed between points E-F-G-H-I.
63. As noted above, the Finance Act records support the contention that part of the Order Route between point C and to a point northwest of point D was a public highway with vehicular rights. However, for the remainder of the Order Route, the records do not strongly support the existence of a public highway along that part of the claimed route.
64. The OS maps record the physical features present at the time of the survey. Since the late 19<sup>th</sup> Century, OS maps have carried the disclaimer that tracks and paths shown provide no evidence of the existence of a public right of way. The map of the Langdon Estate is based on OS mapping from 1903. Overall, whilst the OS maps

- indicate the existence of the Order Route at the time the survey was carried out, those maps do not confirm the status of the route.
65. It is not known for what purpose the sketch 'Plan of roads' was produced and I therefore cannot be sure whether this was a record which shows whether the depicted way carried any vehicular rights. Other documents such as the sketch 'Plan of roads' and conveyance plans are of neutral weight in determining the status of the claimed route.
66. Between points C-D-E, that part of the Order Route has been included within the List of Streets as described above. This adds weight to the conclusion that this section of the Order Route is a public highway with vehicular rights. Nonetheless, by reason of its inclusion on a list of highways maintainable at public expense prior to the relevant date, and in light of the provisions of section 67(2)(b) of NERC, public rights to use MPVs over that part of the Order Route have been preserved.
67. I have concluded that the user evidence is insufficient to raise the presumption that the Order Route has been dedicated as a public highway with vehicular rights. Furthermore, in light of the above analysis of the user evidence and by reason of the infrequent nature and low numbers of use, I find that dedication of the Order Route as public vehicular highway cannot be inferred at common law.
68. For the above reasons, I conclude that for between points C-D-E on the Order plan, that part of the Order Route should be recorded as a BOAT within the DMS. However, I find that on the balance of probabilities, there is insufficient documentary and user evidence to support confirmation that the remainder of the Order Route, between points E-F-G-H-I, should be recorded as a Restricted Byway. As such, I do not propose to confirm the Order in respect of upgrading Bridleway 35 Beaminster to a Restricted Byway, nor do I propose to confirm the Order with regards to the addition of a Restricted Byway between points F-G-H-I on the Order plan.
69. I acknowledge that the effect of this decision would be to record a cul-de-sac for vehicles between points C-D-E on the Order plan. However, my conclusions must be based on the evidence that is before me and, for the reasons given above, in my view there is currently insufficient evidence to suggest that the remainder of the Order Route should be upgraded from a bridleway or recorded as a public carriageway.

### **Bridleway 17 Beaminster**

70. In terms of this section of the Application Route, no user evidence has been submitted. As such, this part of my decision only concerns the documentary evidence as submitted.

### *Early and Commercial Maps*

71. The 1765 Taylor's Map show this part of Application Route bounded between solid lines or between solid and pecked lines. The later 1796 Taylor's Map clearly shows this part of the Application Route as being bounded between a solid line and a pecked line. Greenwoods Map of 1826 is not entirely clear for this section of the Application Route by reason of wording being included across this area of the map. However, this map does appear to show this part of the Application Route bounded

by either solid or pecked lines. Cary's 1787 Map of Dorsetshire does not appear to show this section of the Application Route.

#### *OS Maps*

72. The 1881 OS map shows this part of the Application Route bounded between solid and pecked lines. The 1904 OS map depicts this part of the Application Route in a similar manner to that shown on the 1881 OS map.

#### *Tithe Map and Apportionment*

73. The Beaminster 1843 Tithe map shows this part of the Application Route excluded from tithe. I have not been provided with any Apportionment records for this section of the Application Route.

#### *Finance Act 1910 Records*

74. The submitted records appear to show that this section of the Application Route is shown as included within a hereditament. The valuation map provided does not show the whole of the applicable hereditament number. Nonetheless, given its inclusion within a hereditament, these records do not support the contention that this section of the Application Route was a public highway that provided vehicular rights.

#### *Definitive Map Process*

75. The 1989 Sealed Definitive Map shows this part of the Application Route as Bridleway 17. Further to the details described above in relation to the Order Route, whilst I have only been provided with a copy of the Sealed Definitive Map, the OMA maintains that the process of the drawing up of the definitive map provides no indication that an error was made in recording Bridleway 17 Beaminster.

#### *Conclusions on the evidence for Bridleway 17 Beaminster*

76. As noted above, Tithe Maps and Apportionments were not for the purpose of recording public rights of way but rather to identify productive titheable land. On their own such records do not strongly indicate the status of routes.

77. The Finance Act Records show this part of the Application Route included within a hereditament. Whilst I have not been provided with details from the field book, the details provided on the valuation map do not support the contention that this section of the Application Route was a public highway with vehicular rights.

78. The OS, early and commercial maps provide evidence of the physical features as at the relevant survey date, but not the status of the route. Nonetheless, the submitted maps have provided some context which confirms the physical existence of a way over a significant period of time.

79. The provided sketch 'Plan of roads in neighbourhood of Beaminster' described above in relation to the Order Route, is unclear and not to scale. However, it appears to show Bridleway 17 Beaminster as pecked line or bounded by double pecked line. Whilst that may indicate that a way existed on the ground at the time, it is not known for what purpose the plan was produced. The sketch document does not provide any evidence of the status of this part of the Application Route and is therefore neutral in the determination of this Definitive Map Modification Order.

80. I have been referred to a tenancy agreement for Beaminster Down from 1986, and which, it has been put to me, provides exclusive occupation for a named tenant. I have not been provided with any copy of that tenancy. Nonetheless, whilst that tenancy may indicate that there was no intention to dedicate that section of the Application Route on behalf of the relevant landowner, the claim for this section does not rely on user evidence, but rather historic documentary evidence. As such, the details do not provide evidence in support or undermine a conclusion that this section of the Application Route carried public highway rights.
81. For the above reasons, I find that there is insufficient evidence to support the contention that this section of the Application Route should be upgraded from a bridleway to a restricted byway. I therefore do not propose to modify the Order in that respect.

### **Other Matters**

82. Additional objections to confirmation of the Order have been made on the grounds of safety and environmental concerns. However, the law is quite clear that matters such as desirability, privacy, health and safety, security or otherwise of routes, are not considerations before me in terms of a Definitive Map Modification.

### **Conclusion**

83. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to modifications.

### **Formal Decision**

84. I propose to confirm the Order subject to the following modifications:

- Delete the text after “*From its junction with the C67 Road at Whitesheet Hill, opposite Bridleways 10 and 17 at point C (ST 49560299), east south east along a stone/earth surfaced track (known as Crabb’s Barn Lane) hedged on both sides, to its junction with Footpath 28 at point D (ST 50060270) and continuing east south east along the track to its junction with Bridleway 84 and the current Bridleway 35 at point E (ST 50150264). Width: 9.14 metres (30 feet) (as indicated in the Beaminster Inclosure Award 1809).*” in Part I of the Order Schedule.
- Delete the text after “Add:” in Part II of the Order Schedule and insert:

*“From: ST 49560299            To: ST 50150264*

*From its junction with the C67 Road at Whitesheet Hill, opposite Bridleways 10 and 17, east south east along a stone/earth surfaced track (known as Crabb’s Barn Lane) hedged on both sides, to its junction with Footpath 28 at ST 50060270 and continuing east south east to its junction with Bridleway 84 at ST 50150264.”*
- On the Order plan delete the section of the proposed byway open to all traffic between points E-F-G-H-I.
- In the key to the Order plan delete the letters F, G, H and I beneath the text “Proposed Byway Open to All Traffic”



85. Since the confirmed Order would not show part of a way shown in the Order as made, I am required, by reason of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mr A Spencer-Peet*

INSPECTOR

