

PLANNING INSPECTORATE REFERENCE: ROW/3284094

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

**The Dorset Council (Footpath 16, Melcombe Horsey and Footpath 26,
Cheselbourne) Public Path Diversion Order 2014**

Determination by way of written representations, October 2023

**STATEMENT OF CASE ON BEHALF OF THE RAMBLERS'
ASSOCIATION¹**

1. This Statement of Case is prepared by Dr Janet Davis, Advisor to Dorset Ramblers Area Footpath Committee, Mrs Jan Wardell, Ramblers Dorset Area Footpath Secretary, and Ms K Gocher, Ramblers South Dorset Group Footpath Secretary. Dorset Area of the Ramblers' Association (hereafter referred to as the Ramblers) objects to the order and has prepared this statement of case in accordance with the Planning Inspectorate timetable.

The order

2. The effect of this Order, if confirmed, would be 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 ST7515 0123 along a field edge and into a second field along the Parish boundary to its junction with Footpath 26 at ST7477 0146, and extinguishing Footpath 26 from this same junction at ST7477 0146 south into a field and then west southwest along the field boundary, then south south east and west where it

¹ The Ramblers' Association (referred to in this Statement of Case as the Ramblers) is a registered charity (number 1093577) and a company limited by guarantee registered in England and Wales (number 4458492), founded as a voluntary body in 1935. Its registered office is c/o Bates Wells, 10 Queen Street Place, London EC4R 1BE.

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joins Bridleway 19, Cheselbourne at ST7453 0137 (“the Current Route”) as shown by a black line on the plan attached to the Order. The Current Route of the two footpaths form a continuous route that crosses the parish boundary. The Current Route would be replaced by the creation of a public footpath from a junction with Footpath 25, Cheselbourne at ST7515 0123 west south west along an arable field edge to where it joins Bridleway 19, Cheselbourne at ST745 0111 (“the New Route”) as shown by a broken black line on the plan attached to the Order.

Publications, authorities and documents referred to below

3. Here is a list of the publications and authorities to which we will refer in this Statement and which we have provided:

The English Path by Kim Taplin. The Boydell Press (1979). Extract at Ramblers Appendix A.

Report of the Special Committee on Footpaths and Access to the Countryside (Cmd 7207, 1947). Extract at Ramblers Appendix B.

R (Young) v Secretary of State for the Environment, Food and Rural Affairs (QBD) [2002] EWCH 844. Ramblers Appendix C.

Documents provided to the Planning Inspectorate by Dorset Council to which we refer:

Statement of Grounds: Document 4 and its associated Appendices 2 (Report to and Minutes of Dorset County Council Roads and Rights of Way Committee dated 16 January 2014), 3 (Report to and Minutes of Dorset County Council Regulatory Committee dated 29 January 2015) and 4 (Order dated 29th August 2014 including drawing 13/34/2).

Representations and Objections: Document 5.

Copy of the application: Document 6 containing the pre-application consultation documents.

Copy Public Path Diversion Order, Highways Act 1980. *West Dorset District Council (Melcombe Horsey Footpath 16) Public Path Diversion Order 1987* Ramblers Appendix D.

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Website: National Library of Scotland: <https://maps.nls.uk/os/>

Copy Dorset Sheet XXXII.NW Surveyed: 1887, Published: 1887, and extract Ramblers Appendix E.

Background to the order

4. The application for the present order was initiated in 2010, by way of a pre-application consultation, following which a pre-order consultation was carried out in September 2013. One objection was received (that of the Ramblers).

5. The Application was considered by the then Dorset County Council Roads and Rights of Way Committee on 16 January 2014. (See Document 4, Appendix 2 as submitted by Dorset Council.) In the paper presented at that meeting officers made the following points:

- That the diversion was in the interest of the landowner as it allows for better land management.
- The overall effect of the proposed diversion will be to improve accessibility: there being five gates along the current route of Footpath 26, Cheselbourne and one stile and two gates along the current route of Footpath 16, Melcombe Horsey whereas the proposed new route of Footpath 26, Cheselbourne has no path furniture.

The current line of Footpath 16, Melcombe Horsey runs downhill from point A along the edge of the field and then uphill to point B. The proposed new route of Footpath 26, Cheselbourne is a much flatter route with open views to the south.

- The application to divert Footpath 26, Cheselbourne and Footpath, 16 Melcombe Horsey meets the tests set out under the Highways Act 1980 and therefore should be accepted and the public path diversion order made.

The Committee agreed with the officers' recommendation and resolved to make the order. The Order was sealed on 29 August 2014. One objection, that of the Ramblers, was received and remains outstanding.

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6. On 29th January 2015 the matter was taken back to Dorset County Council's Regulatory Committee, for a decision on the future of the Order: three options were considered; to submit the Order to the Secretary of State (maintaining the Council's support for the confirmation of the Order), to submit the Order and take a neutral stance, or to abandon the Order. 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 to continue to support its confirmation. The order now falls to be determined by an Inspector appointed by the Planning Inspectorate by way of an exchange of written representations.

The Legal Tests

7. ***Section 119 (1) Highways Act 1980***

Where it appears to a council ... that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted ...

At paragraph 3.2 of its Statement of Case (Document Reference 4), Dorset Council states that "*The New Route is in the interest of the landowner as it allows for better land management and improves security and privacy.*

And at paragraph 4.1 of its Statement of Case Dorset Council states that "*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.*

We are puzzled by this statement, as the footpath(s) run adjacent to the hedge lines/boundaries, and there are no cross-field sections. Footpath 26 does cross the access road to the house, and from a site visit on October 16th 2023, we observed that there was an electric fence up to the pedestrian gates, but not across them.

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The previous stated reasons for the diversion did not mention 'security and privacy' and we would draw attention to the fact that at its closest footpath 26 (S15/26) is some 130 metres away from Highdon House, and south of the hedge. [Whereas bridleway 19 (S15/19) is less than 100 metres from the house in places, and less than 30 metres from the tennis court.] Land management is addressed below.

The Ramblers does not agree that it is expedient in the interests of the landowner that these paths be diverted.

Section 119(2) Highways Act 1980

A public path diversion order shall not alter a point of termination of the path or way—

(a) if that point is not on a highway; or

(b)(where it is on a highway) otherwise than to a point which is on the same highway or a highway connected with it, and which is substantially as convenient to the public.

The Ramblers accepts Dorset Council's position that the test set out in section 119 (2) has been met.

8. ***Section 119(6) Highways Act 1980***

The Secretary of State shall not confirm a public path diversion order ... unless (s)he ... is satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of its diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path or way as a whole;

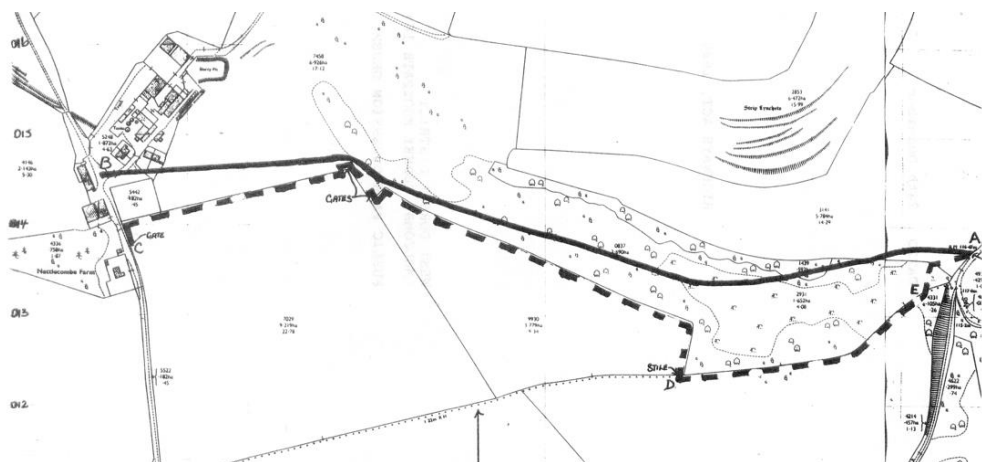
(b) the coming into operation of the order would have as respects other land served by the existing right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

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It is the view of the Ramblers that the diversion proposed in the order would have a detrimental impact on public enjoyment of the path as a whole, and that therefore the test set out at section 119 (6) (a) has not been met. We set out our reasoning below (see paragraphs 9 and 10).

9. From historic Ordnance Survey (OS) maps, freely accessible via the National Library of Scotland's website (<https://maps.nls.uk/os/>) it can be seen on the 1887 OS 6 inch map (Dorset Sheet XXXII.NW Surveyed: 1887, Published: 1887) available here <https://maps.nls.uk/view/101446676#zoom=3&lat=4075&lon=4350&layers=BT> and at Ramblers Appendix E, that a footpath ran eastwards towards the road, from a point just south-west of what was then the 'New Barn' – the closest named building to the current dwelling that is Highdon House. This footpath is also shown on the 1902 map (Dorset Sheet XXXII.NW Revised: 1900 to 1901, Published: 1902) and subsequent maps up until 1987, when it was diverted by legal Order (see Ramblers Appendix D) and extract of that Order map below.



It is understood that Highdon House was completed in 2004.

For many people, the history of a path and its context in the local environment is an important and integral part of the enjoyment they gain from using it. The landscape character of this area (Upper Piddle Valley – Chalk Valley and Downland) is described as having an 'enclosed intimate character defined by a V shaped profile and dry rounded coombes' and 'a landscape of subtle colours and historical associations.'

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(Taken from Dorset AONB <https://www.dorsetaonb.org.uk/resource/upper-piddle-valley/>)

We also understand that since 2008, with the installation of the new drive and ha-ha at Highdon House, there has been a watching brief on the site, recorded in the Dorset Historic Environment Record (HER) as part of the Scheduled Monument List – that is the earthwork and ancient fields south east of Lyscombe Bottom. (List Entry Number: 1002456). This all adds to the general interest in the history of the area, and the more removed paths are from their historic environment, the less likely it is that people understand and appreciate their original purpose.

Notwithstanding that the current line of footpath 26 Melcombe Horsey/footpath 15 Cheselbourne does not follow the route that it had at the turn of the 20th century, it is closer than the proposed alternative. Paths have been described as ‘some of man’s oldest inscriptions upon the landscape’; and as ‘evidence of the wedding between men and their environment’. (Ramblers Appendix A; page 3), and there is no doubt that one of the most pleasurable perceptions of walking comes from walking a path which in itself is of age and antiquity. Indeed, the conclusion of the report of the Special Committee, Footpaths and Access to the Countryside (Ramblers Appendix B) which set out the framework for the recording of public rights of way on definitive maps later enacted in the National Parks and Access to the Countryside Act 1949, reads:

“If our proposals are accepted, and pass into law, they will confer upon the public a precious gift of greater rights and privileges. They will protect and preserve, more simply and more adequately than in the past, the footpaths engraved on the face of the land by the footsteps of our ancestors.”

The Ramblers is of the view that the line of the alternative route between points A and D on the Order plan is inferior to the varied and interesting route in existence, with its diverse views, in particular to the north east, and its undulations. The proposed alternative route is flat and uninspiring – albeit without furniture. That the existing route is more enjoyable than the proposed diversion is only apparent on a site visit as the plan and photographs do not capture the ambient experience.

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10. Further to the question of public enjoyment, in *R(Young) v Secretary of State for the Environment, Food and Rural Affairs (2002)* (Ramblers Appendix C) it was held that convenience was distinct from enjoyment in the tests under subsection (6). We submit therefore that concerns about the inconvenience of using the existing route, with path furniture, are separate from the enjoyment of the route. A route which avoids the furniture may be argued to increase the convenience of the route but not necessarily the enjoyment of it. It is noted that since it has been possible to report 'problems' on Dorset Explorer ([DorsetExplorer \(geowessex.com\)](http://DorsetExplorer.geowessex.com)), there has only been one in respect of the stile at point A on the Order map, in 2012 relating to a broken footboard. Furthermore, the 'inconvenience' of the stile could easily be remedied by replacement with a pedestrian gate.

These paths are not close to the settlements of the surrounding parishes and their primary use will be recreational. Minor differences in length between the existing and proposed routes are immaterial in the context of recreational walks.

Comments on the observations of other parties (see Document Reference 6)

11. The Applicant: It is asserted in the Annex to Form 119/A dated 22 August 2010 that a Ramblers representative:

'stated that they "had no objections" to the new path. The possibility of an objection was raised only after the applicant declined to agree immediately to dedicate a new footpath'.

We dispute this interpretation: our then East Dorset Group Footpath Secretary responded to the pre-application consultation, and wrote (to the applicant) in a letter dated 19 July 2010 (reproduced in the council's Document reference 6):

"...Subsequently, on 4th July 2010, I visited you at Highdon House to discuss the issues, in the course of which I made a proposal to you that you might consider dedicating a new footpath on the east side of Highdon Hill to link two areas of open access land which would be of benefit to the public at large. I made this proposal on the basis that I did not see any real benefit to users of the new path in your proposal." (our underlining).

As far as we are aware, there was no response to that suggestion. (The East Dorset Group volunteer has since died.)

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When consulted on the application itself in September 2013, the case went to the South Dorset Group footpath secretary, who responded that the Ramblers could not agree to the diversion of footpath 16 Melcombe Horsey, or the extinguishment of footpath 26 Cheselbourne, commenting on the additional length of tarmac path, and the loss of access onto Open Access land. By the time that the Order was made in 2014, it was for the diversion of both footpaths. At that time the Area Footpath Secretary made a site visit with the South Dorset Group Footpath Secretary, and with the subsequent agreement of the Dorset Area Footpath Committee, an objection to the Order was submitted on 15 October 2014 (reproduced in council's document reference 5). The decision to maintain the Ramblers' objection was based on the existing route (A-B-C) being far more pleasant and enjoyable than the proposed diversion.

Conclusion

12. In conclusion, the Ramblers submits that this order should not be confirmed because (i) it has not been shown that it is expedient in the interests of the owner of the land crossed by the paths that they be diverted and (ii) the requirements of one of the tests set out in section 119(6) of the Highways Act 1980 has not been met. The diversion would have a negative impact on the public enjoyment of the path as a whole, it is therefore not expedient that it should be confirmed.

Janet Davis (Advisor to Dorset Ramblers Area Footpath Committee)
Jan Wardell (Area Footpath Secretary, Dorset Ramblers)
Kate Gocher (Group Footpath Secretary, South Dorset)