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## Order Decision

Site visit made on 9 January 2024

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: 13 February 2024

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### Order Ref: ROW/3284094

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Dorset County Council (Footpath 16, Melcombe Horsey and Footpath 26, Cheselbourne) Public Path Diversion Order 2014.
- The Order is dated 29 August 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Dorset County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### Procedural Matters

1. In this decision I have found it useful to refer to the various points annotated on the Order map as attached to this decision.

### The Main Issues

2. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

Test 2: whether the proposed diversion is substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which; (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public 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.

3. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable.
4. Regard must also be had to any material provision contained in a rights of way improvement plan ("ROWIP") for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

## Reasons

### ***Whether it is expedient in the interests of the owner of the land that the path in question should be diverted***

5. The diversion Order has been made following an application by the previous owner of the land over which the existing route passes. The current owners of the land support confirmation of the Order.
6. The existing Footpath 26 Cheselbourne, shown between points B-C on the Order plan, passes to the south of Highdon House, and the front elevation of that house could be viewed from parts of Footpath 26 Cheselbourne. It appeared from observations made on my visit, such as the presence of livestock feeding troughs, that the land, over which the existing footpaths pass, is farmed. The evidence before me indicates that, at certain times and for temporary periods when livestock graze the fields, electric stockproof fencing is erected at the edges of the fields within which the existing footpaths subsist.
7. I accept that the proposed diversion would be in the interests of the landowner with regards to allowing for better land management in terms of the maintenance of electric stockproof fencing. Furthermore, whilst I acknowledge that existing Bridleway 19 Cheselbourne, which passes Highdon House to its west, is also in close proximity to that property, views of the property from that bridleway are largely obscured by a tall hedgerow, and where there are gaps and views of the property, such views are of garages and outbuildings and not towards the front elevation windows of the main house. The proposed diversion would result in the footpath being moved further away from Highdon House and would remove direct views of the front of the house and the garden space located to the east of the main house.
8. I consider that the diversion of the existing footpaths would improve the privacy and security of Highdon House. Furthermore, I consider that the diversion would allow for better land management by the landowner. Consequently, I am satisfied that it is expedient to divert the footpaths in the interests of the landowner.

### ***Whether any new termination point is substantially as convenient to the public***

9. Section 119(2) of the 1980 Act provides that a public path diversion order shall not alter a point of termination of the path— (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
10. At point A on the Order plan, the termination point for the diverted route would be the same as for the existing Footpath 16 Melcombe Horsey. The western termination point of Footpath 26 Cheselbourne at point C, is affected to a degree in that the junction with Bridleway 19 Cheselbourne will move some 269 metres to the south southeast to point D on the Order plan, but whilst remaining on the same bridleway.
11. The Order seeks to divert 793 metres of the existing footpaths onto an alternative 598 metre long route. Taking into consideration the difference in distance between points C-D as described above, when approaching from the north on Bridleway 19 Cheselbourne, users would need to travel a further 74 metres overall

in order to reach point A. Conversely, it would mean the route would be 195 metres shorter if users' approach from the south on Bridleway 19 Cheselbourne.

12. I conclude that the termination points of the proposed diverted route will remain connected to the same highways as the existing footpaths and, whilst noting the difference in distance between the termination points at the western end of the routes, I also conclude that the termination points of the proposed diversion will be substantially as convenient to the public.

***Whether the new path will not be substantially less convenient to the public***

13. The overall effect of the Order would be to relocate the affected footpaths a short distance to the south, changing it from a circuitous route around the edges of fields onto a shorter and more direct route for connections with Bridleway 19 Cheselbourne and Footpath 25 Melcombe Horsey. As noted above, in terms of distance, when taken together the alignment of the existing footpaths is 793 metres in length. The proposed diverted route would have a total length of 598 metres and, as such, would be 195 metres shorter when compared to the current footpaths. The existing route is located within a sparsely populated rural area and, as expressed in the objection, as use is likely to be largely recreational in nature, I conclude that the minor differences in length between the respective existing route and the proposed diverted route, is unlikely to affect convenience for recreational users.
14. Both the existing routes and the proposed diverted route are around the edges of agricultural fields with an uneven grassed surface. The topography of the existing Footpath 26 Cheselbourne, shown between points B-C on the Order plan, and the proposed route, shown between points A-D on the Order plan, is similar with the eastern sections of those routes including a gentle slope and change in gradient, but which are both predominately flat and level for a majority of their respective lengths. Between points A-B on the Order plan, the existing route passes around the edge of a field for which there is a steeper gradient downhill from southwest to northeast. The proposed diverted route would not be over land where there are any such steep changes in gradient and, overall, therefore would be more accessible to the public.
15. Between points A-B on the Order plan, the current route for Footpath 16 Melcombe Horsey has a stile and two field gates for users to negotiate. Furthermore, on the alignment of the existing Footpath 26 Cheselbourne, users currently encounter additional gates when using that path. In contrast, the proposed diverted route between points A-D would be unobstructed by stiles or gates and, as such, I consider that the reduction in the number of structures users would have to negotiate, would mean that the proposed diverted route would be more convenient for all users.
16. Having regard to the above factors, I conclude that the proposed diverted route would not be substantially less convenient to the public and, in various respects, will be more convenient.

***The effect of the diversion on public enjoyment of the path as a whole***

17. The main concerns expressed by the Objector are in respect of the impact on public enjoyment. The Objector contends that the proposed diverted route is inferior to the varied and interesting nature of the existing footpaths, with particular regard to the diverse views, to include views of the deep valley of Open Access Land

located adjacent to the existing footpaths, and undulating changes in land levels. In contrast, the Objector maintains that the proposed diverted route is flat and uninspiring, with a one directional view.

18. Furthermore, reference is made within the objection to the earthworks and ancient fields southeast of Lyscombe Bottom which are included in the Scheduled Monuments List and which, it is maintained, add to the general interest in the history of the area. The Objector submits that the alignment of the original footpaths within this area were previously changed by a legal Order in 1987, and given that the proposed diversion would result in a path that would be even further away from the original alignment of paths, the Objector raises concerns that the more removed paths are from their historic environment, the less likely it is that people understand and appreciate their original purpose.
19. In terms of the more varied gradient of slopes and changes in land levels that users experience on the existing Footpath 16 Melcombe Horsey, whilst I acknowledge that some walkers in the countryside do not necessarily enjoy traversing flat and straight paths, enjoyment derived from the use of a public right of way is to a large extent subjective to the individual user. In this instance, the proposed diversion would remove the opportunity to those walkers who wished to experience the steeper slopes and gradients of the existing footpath between points A-B on the Order plan. However, users would be able to enjoy and explore the varied terrain and steeply sloping land of the adjacent Open Access Land by means of a new point of access that would be provided from an unaffected adjoining footpath as described below.
20. With regards to the views of the surrounding landscape that users would experience, whilst it is noted that the existing footpath between points B-C on the Order plan is at a higher elevation, the panoramic views of the surrounding landscape to the south, would be very similar for users of the diverted route. Furthermore, while views of the adjacent Open Access Land from Footpath 16 Melcombe Horsey would be lost, views of that area would be maintained from the adjoining unaffected footpath.
21. In terms of public enjoyment that could arise from experiencing a historic environment, there is no substantive evidence before me that the original purpose of the routes was for access to the earthworks and ancient fields southeast of Lyscombe Bottom. In any event, it appears that the majority of the abovementioned Scheduled Monument is located to the west of the existing Bridleway 19 Cheselbourne and from which those historic assets could continue to be appreciated by the public. The proposed diverted route would maintain a connection with that bridleway, and I therefore find that the proposed diverted route would not diminish the public's enjoyment or appreciation of the abovementioned historic asset.
22. In summary of the above, the proposed diverted route would be, for a short distance, over land where there are less changes in the gradient of the landscape, and would result in the loss of some views of the adjacent Open Access Land from the existing Footpath 16 Melcombe Horsey. However, the proposed diverted route would be predominantly over more even land as a whole, and would, if the Order is confirmed, provide an additional point of access onto the nearby Open Access Land, whilst continuing to provide extensive panoramic views of the undulating surrounding landscape to the south. My conclusion on the question of public

enjoyment is therefore finely balanced. Nonetheless, I find that, on balance and as a whole, enjoyment for recreational users of the footpaths would not be diminished as a result of the proposed diversion.

***The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created***

23. The existing route is in the ownership of persons who, as noted above, support the application as made by the previous landowner. The proposed diverted route would pass over land in the ownership of a neighbour who has provided, in writing, that they support the proposed diversion and that they shall not be seeking compensation from any person or organisation.
24. From the existing Footpath 16 Melcombe Horsey, and at a location north of point A on the Order plan, there is a field gate linking the agricultural field to an area of Open Access Land. The Order Making Authority's (the OMA) submissions suggest that the existing gate is not an official access point onto the Open Access Land. Nonetheless, in the event that the Order is confirmed, the OMA has confirmed that the Applicant has agreed to install a kissing gate in the field boundary, at a location approximately 12 metres east of point A, and which would provide access onto the Open Access Land from the unaffected Footpath 25 Cheselbourne. That new kissing gate would provide access to those who wished to experience the varied terrain and wooded landscape of the Open Access Land, from the unaffected public right of way.
25. For the above reasons, I conclude that the proposed route would not have any negative effect on land served by the existing or proposed routes.

**Rights of Way Improvement Plan**

26. No contradictory view has been expressed to that of the OMA that the ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

**Conclusions on whether it is expedient to confirm the Order**

27. I have concluded that it is expedient in the interests of the landowner to divert the existing paths, and find the new termination point to be substantially as convenient for the public. The resulting diversion will not be substantially less convenient to the public, and I am satisfied that it is expedient to confirm the Order having regard to its effect both on public enjoyment and land served by the existing route and proposed route. I, therefore, conclude that it is expedient to confirm the Order.

**Overall Conclusions**

28. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

29. I confirm the Order.

*Mr A Spencer-Peet*  
INSPECTOR

