



Order Decision

Inquiry held on 10 December 2024

by **J Ingram LLB (Hons) MIPROW**

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

Decision date: 13 January 2025

Order Ref: ROW/3323995

- 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 County Council (Footpath from East Lane (D20502) to D20503 Public Road east of Coombe Cottages, Bradford Abbas) Definitive Map and Statement Modification Order 2017.
- The Order is dated 14 August 2017 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown on the Order plan and described in the Order Schedule.
- There were 20 objections 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.

Preliminary Matters

1. I held a public inquiry into the Order at the County Hall, Colliton Park, Dorchester on 10 December 2024, having inspected the route in question the previous afternoon, unaccompanied. After closing the formal proceedings on 10 December I visited the site again the following morning. On this occasion I was accompanied by objectors to the Order, together with a representative of the Order Making Authority (OMA), Dorset County Council. The OMA are supporting the Order.
 2. The objectors raised issues of procedural matters, namely the lack of and incorrect serving of notice on the landowners and occupiers at both the application stage, schedule 14; and following the making of the Order, schedule 15 of the 1981 Act. The OMA stated they had complied with all relevant procedural requirements.
 3. The OMA confirmed at the inquiry that a signed certificate was received from the applicant certifying that the landowners had been notified of the application when it was made in July 2008. Subsequent letters and emails in 2014 and 2017 from the affected landowners and a representative claimed they were not aware of the application. However, in 2008 an officer had spoken to and subsequently faxed the requested documents to an employee of one landowner. In addition, the OMA explained that a file note indicated the other landowner had telephoned the definitive map team at the Authority in 2009, therefore they state the landowner was aware of the application.
 4. If they were not previously aware, it is clear from the solicitor's letter dated 29 July 2014, that both landowners now had knowledge of the application. The application was considered by the OMA's Regulatory Committee in March 2015 with the representative of one landowner in attendance at the meeting. The two landowners involved were organisations with employees, and there may have been difficulty
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with the notice being brought to the attention of the appropriate person within the organisation. However, I am satisfied that the landowners were notified and had the opportunity to comment on the application prior to it being determined by the Authority in 2015.

5. In December 2008 planning permission was granted for the development of an area surrounding part of the Order route. The route now goes through a site containing 16 holiday lodges. Following the making of the Order in August 2017 the OMA gave notice to the two landowners, the owner/occupiers of each holiday lodge and the 2 cottages at the eastern end of the route. The objectors stated that the owners of the holiday lodges are not allowed post, as it is not their permanent address, therefore, they would not have received their notice. Further, as many lodge owners do not live in the local area, they would not have seen the newspaper advert.
6. Twenty objections were received to the Order, many of these were from the lodge owners, including two objectors who attended the inquiry. Therefore, I consider it is reasonable to assume they became aware of the notices. There was discussion at the inquiry regarding the 2 cottages at the eastern end of the route, as there is another cottage of the same name locally. The objectors stated a mistake may have occurred with the delivery of the notice. However, the list of persons notified correctly shows the address and postcode of the cottages adjacent to the Order route. I am satisfied that the OMA has complied with the notice requirements contained in Schedule 15 of the 1981 Act.
7. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

The Main Issues

8. The OMA made the Order under Section 53(2)(b) of the 1981 Act on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
9. Whilst the evidence need only be sufficient to reasonably allege the existence of a public right of way to justify an Order being made, the standard of proof required to warrant confirmation of an Order is higher. In this case, evidence is required which shows, on the balance of probability, that a right of way subsists along the Order route.
10. The evidence in support of the Order is composed of claimed use by the public as a footpath. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980 (the 1980 Act). This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
11. Although the case in support of this footpath rests primarily on the user evidence, some documentary evidence was considered by the OMA and referred to in their submission. With regards to documentary evidence, Section 32 of the 1980 Act

requires that I 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.

Reasons

Documentary Evidence

12. An Ordnance Survey (OS) map dated 1887 shows a route between solid lines between points A and B. From point B there is a route, on a similar alignment to the Order route, shown as double dashed lines indicating it was unfenced. An OS map dated 1903 depicts the route the same as the 1887 edition.
13. An OS map dated 1928 shows the exact alignment of the Order route. Between points A and B, it is again shown between solid lines and going between the farm buildings. Between points B and E, it is shown with a solid line on the northern side and a dashed line to the southern side, indicating it was fenced on one side. There does appear to be lines across the route at points C and E, which may indicate there were gates or barriers at these points. An OS map dated 1930 depicts the route the same as the 1928 edition.
14. In conclusion the documentary evidence in this case is limited. Some weight can be given to the maps submitted; they do show the physical characteristics and that a route existed on the ground at that time. However, as evidence of the status of the route they are limited. They do not show on the balance of probability that a right of way subsists along the Order route. The case therefore rests on the user evidence.

Date of bringing into question

15. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned. In 2007, shortly after a change in the landownership, a locked gate was installed at point A1, there was also a sign on the gate which stated, 'Private No Public Right of Way'. It is not clear when the locked gate at point C was installed, as this is not mentioned by the witnesses, however, it is likely to have been 2007 or 2008 once planning permission was granted.
16. At the inquiry one objector commented that access was only denied between points A1 and C; the gate at point D, although closed, was never locked and there was a passing place for walkers at the side of the gate. Users of the route believed that the whole route was denied, however, they could have continued to walk from point E to point C. The objector claimed that the route between points C and D was still passable up to 2019, since then it has become overgrown due to lack of use.
17. I consider the 'bringing into question' to be the date the route was blocked by the locked gate. The physical obstruction and sign clearly made users question their right to use the route as a whole and this is what prompted the application. Walkers used the route as a link between two public roads, and some stated they used it as part of a circular route, therefore although it may have been possible to use part of the route from the eastern end, this would have been a cul-de-sac; users were not able to continue to use it as a through route. It follows that I will examine use during the 20-year period prior to the route becoming blocked, 1987 to 2007.

Evidence of use by the public 1987-2007

18. If a presumption of dedication is to be raised, use by the public during the relevant period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full 20 years. Use 'as of right' is use by the public that is not by force, does not take place in secret and is not by permission.
19. Evidence in support of the claimed route is provided in 22 user evidence forms (UEF) they were submitted with the application in 2008. Prior to the inquiry the OMA also submitted 21 signed witness statements. Six of the witnesses who had previously completed a UEF have also submitted a signed statement. There is therefore evidence from 37 witnesses in total.
20. The use of seven of the witnesses cannot be said to be 'as of right', that is because they either had permission from the landowner, were a tenant or working for the landowner and they therefore had a private right of access along the route at the time. Their evidence has not been used to calculate the use of the Order route.
21. The overall period of claimed use is from 1956 to 2007/8. All the witnesses claim use on foot, a few also state use on a bicycle and by car, however, the vast majority of use was on foot only. This was clarified at the inquiry by two of the witnesses. One had stated on their UEF use on foot and bicycle, however at the inquiry they stated 99% of their use was on foot, they stated if their children accompanied them, they would sometimes be on their bicycles. Another witness clarified that they mainly walked the route and only very occasionally cycled. In addition, they would buy chicken feed from the mill at the farm, on those occasions they would drive to collect it, however, that use was separate from them walking the route for exercise.
22. From examining the user evidence forms and the statements there are 10 individuals who claim use of the route on foot for the full 20-year relevant period. A further 16 claim use of less than 20 years but within the relevant period. All the witnesses stated they had not been challenged when using the route nor did they see any notices denying access along the path. There is no suggestion the use was conducted in secret and all the witnesses state permission to use the route was not given.
23. Three witnesses, who had previously completed a UEF, and two witnesses who had submitted a signed statement, attended the inquiry to give evidence in person. All those who gave evidence verbally to the inquiry were submitted to cross-examination and answered all the questions that were put to them. I will give the greatest weight to evidence given in person that has been tested through cross examination.
24. The use of one witness who gave evidence at the inquiry cannot be considered 'as of right' as they were working for the tenant farmer during the relevant period. However, their evidence is useful and is referred to below when considering the landowner's intention.
25. The other four individuals who gave evidence at the inquiry, all stated they had used the claimed route for the full 20-year relevant period. The use was for dog walking, for pleasure and exercise. All four witnesses indicated they were not challenged at any point during their use.

26. The main issue raised regarding the user evidence was whether the use was 'as of right'. The objectors claim that the witnesses' use of the route was with permission or connected to the farm or mill, either to buy produce or chicken feed. They claim that access was granted for these specific purposes. The objectors state the user evidence is not sufficient and the UEF lack detail. They also claim that there was a gate at point A, this was covered by an overgrown hedge and has only recently been found.
27. The witnesses who gave evidence at the inquiry were asked for their reasons for using the route, as stated above, they were given as dog walking, for pleasure and exercise. The UEF and statements all give similar reasons, which would indicate the use was recreational rather than for business or commercial purposes. At the inquiry the witness who had worked at the farm was asked if there was ever a farm shop on the site, to which the reply was no. Witnesses were also asked if they ever bought produce from the farm, they all answered no.
28. As stated above, the evidence of the witnesses that were tenants, worked at the farm or had permission has not been considered when calculating the use. Therefore, the remaining witnesses are those whose use is considered to be 'as of right'.
29. All the witnesses state there were no gates on the route. Two witnesses mention a gate on the road, near to point A, this was temporarily put across the road when moving cattle to stop them from going down the road. An objector has submitted photographs of an old gate at this location, which has since been removed. At the inquiry the OMA produced a map showing what is believed to be publicly maintainable highway. This includes the full width of East Lane, including the verges, up to the point of the gate, just below point A. There is then a narrower section of publicly maintainable highway shown which continues just to the north of point A. One objector disputed this section as this is included in his registered title. It is possible that publicly maintainable highway can be registered to an individual. I am satisfied that point A joins the road. If there was a gate during the relevant period, this was just below point A, and I therefore consider it would not be on the Order route.
30. My conclusion on the user evidence is that the use can be considered to be by the public at large and 'as of right'. The claimed route has been used regularly during the relevant period. I consider the user evidence as a whole to be sufficiently detailed, the majority of questions have been answered in full, all the forms and statements contain a statement of truth and are signed. I am therefore able to place considerable weight on the user evidence.
31. In my view the Order route is a way the character and use of which can give rise to a presumption of dedication. I conclude that the evidence of use is sufficient to raise a presumption of dedication. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowners to demonstrate they had no intention to dedicate the way as a footpath.

Whether there is sufficient evidence of a lack of intention to dedicate by the landowners

32. The two landowners from when the application was made no longer have an interest in the land. The owner of the land between points A and B at the time did raise an initial objection, but they did not formally object when the Order was

advertised. The owner of the remaining section of the Order route, was the owner of the whole route during the relevant period, they did initially object, however, did not provide any evidence to support their objection. They later withdrew the objection when they sold the cottages at the eastern end of the route and were no longer affected by the Order. There is therefore no direct evidence from the landowners during the relevant period of what their intention regarding the route was.

33. The current owner of the holiday park, the land affected by the Order route between points A and B, gave evidence at the inquiry. They acquired the site in 2018, and therefore have no knowledge of the route prior to this. They claim that the user evidence shows that the route was used to access the farm and businesses, and those people would have had implied permission to use the route. They stated at the inquiry that the landowner at the time would not have questioned people using the route, as they were not present, there was a tenant farmer at the site. Another objector at the inquiry commented that they accept that not all the use of the route was people visiting the farm for business or commercial reasons, however, they stated that they believed the user evidence to be insufficient.
34. The current landowner of the section between points B and E bought the land in 2019 and has not provided any evidence.
35. The UEF and statements indicate that the witnesses were not challenged in their use of the route during the relevant period, indeed many comment that they saw, spoke to, or passed the time of day with farm workers or the residents of East Farm. The inquiry heard from one witness who was the dairy manager at the farm during the relevant period, they were on the site every day. They confirmed that there was no farm shop and people did not buy groceries at the farm. The witness stated they saw people walking the route for pleasure, sometimes with dogs. They specifically recalled that the tenant farmer gave no instructions regarding public access and never told them to stop people from walking through.
36. A statement was provided by the son of the tenant farmer. He worked on the farm as a teenager between 1975 and 1979, although this is prior to the relevant period, his father remained the tenant farmer during that period. He states he saw people walking the route and was not instructed to stop them. He recalls there were no gates or stiles along the route, but mentions the gate near to point A, which was sometimes closed when moving the cattle. He does not recall any signs along the route.
37. The objectors mentioned at the inquiry that they believe there was a certain amount of good will and the tenant farmer was happy for local people to use the path and it was therefore a permissive path. I consider that this may have been the case, however, those intentions were not communicated to the users of the route. The evidence shows that those working on the farm were not given any instructions regarding access, therefore local people or strangers may have used the route and they were not told to stop them.
38. There is no evidence of any user of the route being challenged at any point during the relevant period, by a landowner or tenant. Furthermore, there is no evidence of any notices on the route. The first sign indicating there was no public right of way was erected in 2007 and any others have appeared on the route after this date. Additionally, there is no evidence that the route between points C and E was

blocked. At some point gates were installed at points C and D, however, it appears the gate at point D was never locked. One of the objectors stated that there is no evidence anyone was ever stopped from using the route between points C and E. I therefore consider that there is insufficient evidence of a lack of intention to dedicate by the landowners.

Widths

39. The objectors comment that the proposed widths recorded in the Order do not accurately describe the claimed route. One objector submitted their own annotated OS map. At a scale of 1:2500 they had taken their own measurements using a PDF measuring tool. These measurements are taken between the dashed lines that are within the solid line boundaries. The dashed lines would normally indicate where there is a change of surface. The objector also measured between the solid lines and although they record a narrower width for some parts of the route, there is not a great variation from the widths recorded in the Order. I agree with the OMA that the width that should be recorded in the Order is the width that was available to the public during the relevant period, as there were no restrictions to the width, this would be the full width of the route including the grass verges and any land up to the boundaries either side. I am satisfied that the widths recorded in the Order accurately record the width of the route that was available to the public during the relevant period.

Other matters

40. I made clear at the inquiry that neither the benefits nor the disadvantages of public access along the Order route are at issue here. There have been many arguments put forward regarding the current use of the land as a holiday park and the difficulties that public access through the site would bring. Although I understand the concerns expressed by the objectors over the potential impact of the footpath on their land, or land immediately adjacent to their property or holiday lodge, these are not matters I can take into account when determining an Order of this nature.
41. Similarly, comments made regarding private vehicular access at the eastern end of the route, including access required by trades and services to the properties; and farm vehicles for maintenance and access into adjacent fields, are not relevant matters. Private rights would not be affected by the Order and any blocking of the route by a vehicle is unlikely to prevent pedestrian access and would be temporary.
42. At the inquiry two short videos were played, this was evidence submitted by one of the objectors. The videos showed a large farm vehicle heading south along East Lane to the junction with Underdown Hollow. The large vehicle was occupying the full width of the road. The objector raises safety concerns as there is no safe refuge area for pedestrians. The objector refers to East Lane being a vehicular access to a working farm and states it was never intended for pedestrian use. However, East Lane is a public highway, and it is recorded on the List of Streets maintained by Dorset Council. Accordingly, pedestrians and all classes of vehicle are currently able to use East Lane up to and including point A. Although I understand the safety concerns expressed by the objectors, this is not a matter I can take into account when determining the Order.
43. There have also been many comments made in written submissions and at the inquiry regarding the length of time it has taken to determine the application. I note

the objectors' comments that the delay has had an impact on them accessing relevant evidence and getting statements from the previous landowners. Whilst the delay is regrettable for all parties concerned, I am satisfied that the previous landowners did have the opportunity to submit evidence. Although a statement from them may have helped to establish more details, I am satisfied from the evidence I heard at the inquiry and the written statement from the son of the tenant farmer, that on balance, the use of the route was not sufficiently challenged.

44. Comments were raised at the inquiry and in the written submissions regarding human rights. A definitive map modification order seeks to record a public right of way which already exists under the law, personal considerations are not relevant to the decision. The effect of the route on individuals and their human rights is therefore not a matter for my consideration.

Conclusions

45. I have concluded above that I consider use of the Order route has been enjoyed as of right, without interruption, and has been continuous throughout the twenty-year relevant period. I therefore consider that the user evidence meets the tests set out in the 1980 Act and is sufficient to raise a presumption of dedication as a public footpath.
46. The evidence shows that the use of the route on foot has not been sufficiently challenged. There is no mention from the users of any challenges by the landowner or occupier during the relevant period. The users were not prevented from using the route until the locked gate was installed in 2007. There is no evidence of any notices during the relevant period. I consider this does not amount to sufficient evidence of a lack of intention to dedicate.
47. I conclude that the user evidence is sufficient to show, on the balance of probabilities, that the route between point A and point E on the Order plan is a public footpath.
48. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

49. I confirm the Order.

J Ingram

INSPECTOR

APPEARANCES

In support of the Order

Mr M Rhimes Counsel, representing Dorset County Council

Who called

Miss V Penny Dorset County Council

Mr A Coffin

Mr B Chant

Mr I Houston

Mr R Bennett

Mrs L Bennett

Opposing the Order

Mr B Lanzer

Mr P Pearce

Mrs P Bayfield

Mr N Funnell

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the statutory objections
3. 22 User evidence forms
4. Statement of Case submitted by Dorset County Council
5. Proof of Evidence of Miss V Penny for the OMA
6. Summary of Proof of Evidence of Miss V Penny
7. OMA rebuttal statement
8. 21 signed witness statements

Statements of Case (including documents) submitted by:

9. Mr D Ash
10. Mr and Mrs Oakley
11. Mrs K Mitchell
12. Mr P Pearce
13. Mr N Funnell
14. Mr and Mrs Bayfield
15. Ms S Bracken
16. Ms S Humphreys
17. Mr S Cripps
18. Mr R Lanzer

Proofs of Evidence submitted by:

19. Mr J Wright
20. Mr D Ash
21. Mr and Mrs Oakley
22. Mr P Pearce
23. Mr and Mrs Bayfield

Additional evidence submitted by Mr and Mrs Bayfield:

24. Photographs taken from outside Coombe Cottages and showing the width of the route
25. Letter from a search provider
26. Map showing width measurements

Additional evidence submitted by Mr Funnell:

27. Summary of evidence including photos of farm machinery and farm gate
28. Email document points for the Inspector to note on the site visit

Submitted at the inquiry

29. Copy of OMA opening statement
30. List of people who were notified of the making of the Order
31. Map produced by the OMA to show the extent of the highway
32. Two short videos showing large farm vehicle using East Lane
33. Copy of Mrs Bayfield's closing submissions
34. Copy of OMA closing submissions

