



**WILDLIFE AND COUNTRYSIDE ACT 1981**

**COUNTY OF DORSET  
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNCIL  
(A BYWAY OPEN TO ALL TRAFFIC, BEAMINSTER AT CRABB'S BARN LANE)  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2020**

**STATEMENT OF CASE  
IN RESPONSE TO PROPOSED MODIFICATIONS TO THE ORDER**

**DORSET COUNCIL**

1. This is Dorset Council's Statement of Case in relation to the Inspector's proposed modifications. It should be read together with the Council's original Statement of Case and supporting documents submitted with the order.
2. The Council does not take issue with the Inspector's ultimate conclusion in his Interim Order Decision of 27 July 2023. However, there is an important issue of law which the Council submits that the Inspector should reconsider as set out in the Council's letter from Vanessa Penny to the Planning Inspectorate dated 13 October 2023. In short, the Supreme Court declared that the application had been made in accordance with schedule 14 of the 1981 Act and the Inspector is not entitled to go behind that. The full detail of the Council's position is set out in the 13 October 2023 letter which is at Appendix 1 to this statement along with its enclosures. The Council's submissions on this issue have been accepted by another Inspector in relation to a separate application which was also the subject of the Supreme Court's declaration, and that decision letter is at Appendix 2.
3. In addition, although rendered otiose on this case by the Supreme Court's order, the Council submits that the Inspector has erred in paragraph 26 of his Interim Decision Order. Paragraph 1(b) of schedule 14 to the 1981 Act requires the application to be accompanied by "copies of any documentary evidence ... which the applicant wishes to adduce in support of the application". There is no requirement in this paragraph for the applicant to produce a complete copy of a document on which they rely. Neither, as far as the Council is aware, is there any case law on this point. If the interpretation that copies of complete documents are required is correct, it would mean that an applicant wishing to rely on, for example, the definitive map and statement, or a provisional definitive map and statement, would have had to provide a copy of the complete definitive map for Dorset and the complete statement in order to comply with paragraph 1, which would clearly be an absurd result.
4. The Council does not disagree with the quote in the Interim Decision Order from the objector's counsel's opinion about concerns relating to providing extracts of documents per se. However, those concerns go only to the weight which can be attached to the evidence submitted with the application and not compliance with Schedule 14.

5. The user evidence forms referred to in paragraph 27 and 28 of the Interim Decision Order were not submitted on behalf of the applicant. Therefore, in the Council's submission, the completion of these UEFs and their delivery to the Council by third parties after the application had been made cannot affect whether the application was made in accordance with Schedule 14 of the 1981 Act.
  
6. Finally, the Council would respectfully request the Inspector to reconsider his interpretation of the Ordnance Survey maps because the Council believes that these maps clearly show Crabb's Barn Lane join the highway known as Whitesheet Hill. The Council does not however consider that this finding by the Inspector would affect his overall conclusion in any way.
  
7. In summary, the Council invites the Inspector to revisit his decision in respect of those matters set out in paragraphs 26-31.

April 2024

# Dorset Council Statement of Case

## APPENDIX 1

**Definitive Map Team**

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Ms Helen Sparks  
The Planning Inspectorate

By email:  
[helen.sparks@planninginspectorate.gov.uk](mailto:helen.sparks@planninginspectorate.gov.uk)

**Date:** 13 October 2023

**Your Ref :** ROW/3278588

**Our Ref:** VP RW/T354

**Officer:** Vanessa Penny

📞 01305 224719

✉ [vanessa.penny@dorsetcouncil.gov.uk](mailto:vanessa.penny@dorsetcouncil.gov.uk)

Dear Ms Sparks

**Wildlife and Countryside Act 1981 - Section 53**

**Order Making Authority:** Dorset Council

**Title of Order:** Dorset Council (A Byway Open to All Traffic, Beaminster at Crabb's Barn Lane)  
Definitive Map and Statement Order 2020

With regard to the proposed modifications to the above Order, Dorset Council raises the following points in objection:

1. The Council wishes to address an issue raised by the Inspector in his decision letter regarding the effect of the Supreme Court's Order. It appears to the Council that the Inspector may not have seen the Court's Order and so the Order is attached to assist the Inspector.
2. The judgement of the Supreme Court does indeed focus on the issue of whether the maps submitted with the application were to the prescribed scale (paragraph 1(a) of Schedule 1 of the WCA 1981). However, the Supreme Court's Order includes a declaration that the application was 'made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981' (copy enclosed).
3. The Supreme Court's Order confirms that the application complied with the whole of paragraph 1 of Schedule 14 and not only paragraph 1(a). If there was any doubt about that, it was resolved by Lord Carnwarth's direction sent by email dated 5 November 2019 which followed an application to the Court from the Council (copy enclosed).
4. The Council's position is that neither the Council nor the Inspector can go behind the Supreme Court's Order even if the reported judgement was limited to consideration of compliance with paragraph 1(a). The Council respectfully submits that if the Inspector decides, in line with their conclusion in paragraph 31 of the decision dated 27 July 2023 it will be contrary to the Order of the Supreme Court and so subject to challenge.

5. As a result, the Council considers that the Inspector should reconsider this point before making a final determination.

Enclosure:

Copy of Supreme Court Order 2015

Copy of Registrar's letter 2019

Yours sincerely

*V Penny*

Vanessa Penny  
Definitive Map Team Manager  
Definitive Map Team

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IN THE SUPREME COURT OF THE UNITED KINGDOM

13 April 2015

*Before:*

Lord Neuberger  
Lord Clarke  
Lord Sumption  
Lord Carnwath  
Lord Toulson

**R (on the application of Trail Riders Fellowship and another)  
(Respondents) v Dorset County Council (Appellant)**

AFTER HEARING Counsel for the Appellant, Counsel for the First Respondent and the Intervener on 15 January 2015 and

THE COURT ORDERED THAT

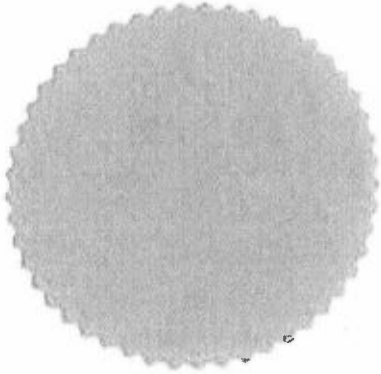
- 1) The appeal be dismissed
- 2) The claim for judicial review of the Appellant's decision of 2 November 2010 succeeds
- 3) By 4.00pm on 15 April 2015 the Appellant will pay the First Respondent's costs of the appeal in the agreed sum of £10,000 (inclusive of VAT) and

IT IS DECLARED that

- 4) The five applications dated 14 July 2004 (ref. T338), 25 September 2004 (ref. T339), 21 December 2004 (ref. 350), 21 December 2004 (ref. 353) and 21 December 2004 (ref. T 354) made to the Appellant under section 53(5) of the Wildlife and Countryside Act 1981 were made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

Louise de Maunby.

Registrar  
13 April 2015





**Registrar's letter to Dorset Council re R app Trail Riders v DorsetCC – 5 November 2019**

**From:** Ian Sewell <[ian.sewell@supremecourt.uk](mailto:ian.sewell@supremecourt.uk)>  
**Sent:** 05 November 2019 10:42  
**To:** Philip Crowther <[p.crowther@dorsetcc.gov.uk](mailto:p.crowther@dorsetcc.gov.uk)>  
**Cc:** UKSC Registry <[registry@supremecourt.uk](mailto:registry@supremecourt.uk)>  
**Subject:** r (app trail riders v dorset cc)

Lord Carnwath has directed me to write to the parties as follows:

“The court sees no reason to vary the terms of the order which was agreed between the parties, and reflected the form of the relief sought in the original claim. Had the council wished to challenge the validity of these applications on other grounds within schedule 14 para 1, they should have done so expressly in these proceedings or reserved their position. That not having been done, it is too late to raise such issues at this stage.”

Kind regards, and thanks for your patience!

Ian

**Ian Sewell**

Deputy Registrar of the Supreme Court of the United Kingdom and Costs Clerk in  
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# Dorset Council Statement of Case

## APPENDIX 2



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## Final Order Decision

Site visit made on 31 January 2023

by **J Burston BSc MA MRTPI AIPROW**

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

Decision date: 8 April 2024

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### Order Ref: ROW/3278588

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

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

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### Procedural Matters

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

## Main Issues

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

## Reasons

### *Whether the 2004 application was a valid application*

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

### *Natural Environment and Rural Communities Act 2006 (NERC)*

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

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

### ***Other Matters***

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

### **Conclusions**

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

### **Formal Decision**

18. I confirm the Order.

*J Burston*

INSPECTOR

