

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

**DORSET COUNCIL (PART OF BRIDLEWAY 80, BEAMINSTER AT CHANTRY FARM)  
PUBLIC PATH DIVERSION ORDER 2023**

**AND**

**DORSET COUNCIL (PART OF FOOTPATH 79, BEAMINSTER AT CHANTRY FARM)  
PUBLIC PATH EXTINGUISHMENT ORDER 2023**

STATEMENT OF CASE  
OF DORSET COUNCIL

1. This statement relates to the Dorset Council (Part of Bridleway 80, Beaminster at Chantry Farm) Public Path Diversion Order 2023 ("the Diversion Order") and Dorset Council (Part of Footpath 79, Beaminster at Chantry Farm) Public Path Extinguishment Order 2023 (the Extinguishment Order'), referred to collectively at 'the Orders'.
2. The Orders both contain the same plan, drawing reference P226/23/2, ("the Plan"). The Orders, including the Plan, make up **Appendix 1**.
3. The effect of the Orders will divert part of Bridleway 80, Beaminster and extinguish part of Footpath 79, Beaminster improving privacy and security for the landowners by moving the bridleway away from the working farmyard, outbuildings and house and enable better land management.
4. Photos of the routes affected by the Orders, as shown on the Plan, are included at **Appendix 2**.

**5. Background**

- 5.1 An application was submitted in April 2021 by Mr and Mrs Hazlehurst ('the Applicants') of Chantry Farm to extinguish part of Footpath 79 and divert part of Bridleway 80, Beaminster at Chantry Farm.

**First Pre-order consultation**

- 5.2 In December 2022 a pre-order consultation was carried out on a proposal to extinguish Footpath 79 between A – B and divert Bridleway 80 from C – D – E – F to G – H – I – J – K – L – B – M – N – F as shown on Drawing P226/22/2 (appendix 2 to the Report to the Strategic and Technical Planning Committee ('the Committee') dated 26 July 2023 ('the July 2023 Report') which is included at Appendix 3).
- 5.3 27 objections were received to the first consultation with a number of these indicating a preference for walking alongside a stream within the woodland rather than along the proposed new bridleway through an open field as shown J – K – L on Drawing P226/22/2 (appendix 2 to July 2023 Report at **Appendix 3**).

- 5.3.1 *"...we don't have many stream side woodland paths in Dorset and this route is particularly beautiful"*

- 5.3.2 *“We think that the extinguishment of Footpath 79 from A-B and the proposed diverted route of the Footpath along with the diversion of Bridleway Way 80 will negatively effect the enjoyment of the walk which we so regularly enjoy as nearby neighbours. It will be sad for local people (especially our children) to no longer have access to enjoy the woodland, stream and nature ponds that this footpath meanders through.”*
- 5.3.3 *“I have enjoyed walking through the little woodland and stream for many years”*
- 5.3.4 *“Generations of my family have enjoyed this walk by the stream especially in spring when the wild flowers are out.”*
- 5.3.5 *“It was always a joy to walk along by the brook”.*
- 5.3.6 *“The existing route A-B is a delightful brookside / woodland walk”*
- 5.3.7 *“The change proposed will stop public access to a charming brookside walk.”*
- 5.3.8 *“I oppose [...the original proposal...] as this would make the enjoyment of the walk less enjoyable as the woodland / brookside is a special section of the walk.”*
- 5.3.9 *“I gain great pleasure from the current route which contains a great diversity of indigenous flora. The pretty stream is one of the many that forms the River Brit in town.”*
- 5.4 The consultation responses suggested that many walkers had been walking an unrecorded route along the stream instead of the definitive path. As a result of these objections the Applicants agreed to amend the proposal following site meetings and discussions with officers.
- 5.5 The proposed diversion was amended so that the new route of Bridleway 80 runs along the unrecorded route alongside the stream (O – Q) instead of through the field. The proposed extinguishment of Footpath 79 was revised from A – B to A – Q to correspond with the new diverted route (references are to points on the Plan).
- 5.6 A second consultation on the amended proposals was carried out in March 2023 and was sent to all original consultees as well as all respondents to the December 2022 consultation (see Drawing P226/23/2 - appendix 1 to the July 2023 Report at **Appendix 3**).
- 5.7 Significantly fewer objections were received to the revised proposals (5 compared with 27 to the first consultation).
- 5.8 7 letters of support were received outside of the consultation period. Since they were received before the committee date and the pre-order consultation is not a statutory process, they were taken into account.
- 5.9 The following issues were raised during the second pre-order consultation and were considered by the Committee.
- 5.10 Second Pre-order consultation**
- 5.11 Proposed extinguishment of Footpath 79**

- 5.11.1 The Open Spaces Society object to the Extinguishment Order on the basis there is no evidence to show that the current route of FP79 is not needed for public use, that the provision of a diverted bridleway is not a substitute for the section of footpath to be extinguished, that Sections 118 and 119 should be considered separately, and that the extinguishment would lead to inconvenience for walkers who would be sharing the new bridleway with horse riders.
- 5.11.2 All 5 objectors were concerned that the proposed new route of Bridleway 80, which would serve as replacement for the extinguished section of Footpath 79, would be inconvenient or unsafe for walkers.

5.12 Dorset Council considered that:

- 5.12.1 The proposed extinguishment and diversion are being considered separately with regards to legal tests, with the Orders made concurrently.
- 5.12.2 Objectors' concerns over sharing the proposed new route of Bridleway 80 are contradictory to their stated preference to walk the current route of Bridleway 80 which would also be shared with horse riders along its length.
- 5.12.3 There is no evidence that the proposed new route of Bridleway 80, which will serve as the alternative route for the extinguished part of Footpath 79, would become unsafe and unusable for walkers by horses using the new route. Officers believe the new bridleway would be safer and more accessible than the current route of Bridleway 80.
- 5.12.4 The part of Footpath 79 to be extinguished between points A and Q (on the Plan) is often wet underfoot due to a seasonal stream and both walkers and horseriders are already using the proposed bridleway including the section P – O – Q on a permissive basis with no reported problems.

**5.13 Proposed diversion of Bridleway 80**

- 5.13.1 The 5 objections received to the second consultation all stated that they would prefer to walk the current route of Bridleway 80, as it would be more enjoyable than the proposed new route.
- 5.13.2 The objectors felt that the current bridleway has great historical and educational value as a "Holloway" and therefore should be opened up for public use.
- 5.13.3 The proposed route is believed to be lacking in historic and ecological features. There is a preference to separating walkers from livestock, in particular in the field north of N on the Plan.
- 5.13.4 There is a concern that sharing the new route with horseriders would be less enjoyable for walkers as the path would be unsafe and unusable.
- 5.13.5 The diversion is perceived as setting a precedent for allowing diversion of public rights of way that have been obstructed for a long time.
- 5.13.6 One objector requested estimates of levels of equestrian and cycling use, and evidence that Bridleway 80 cannot be reinstated, with a cost analysis of the revised proposal versus reopening Bridleway 80.

- 5.13.7 It is also noted by objectors that public access would remain along the public road to point C.
- 5.13.8 The Ramblers are in support of the diversion but raised concerns regarding potential flooding of the diverted route B – Q – O alongside the stream and query if a culvert is needed between points O and P where the new route crosses a seasonal stream.
- 5.14 Dorset Council considered that:
- 5.14.1 The reduction in number of objections from 27 (received to the first consultation) to 5 received to the second consultation is a strong indicator that the revised proposals are acceptable to the majority of footpath and bridleway users. The revised proposals were sent to all original consultees plus anyone who sent in a representation to the first consultation and notices were put up on site.
- 5.14.2 Significantly, the Ramblers, British Horse Society and Beaminster Town Council and several local walkers and horse riders all support the current proposals.
- 5.14.3 The proposed diversion of Bridleway 80 would give bridleway users access to open fields with extensive views to the south as well as a pleasant path through woodland, along a safer and more accessible route.
- 5.14.4 There is no evidence that the proposed new route would become unsafe and unusable for walkers by horses using the new route. The current route is considered to be unsuitable for bridleway users due to the heavy flow of water, narrow gullies, and an unstable surface.
- 5.14.5 The ecological and historical value of the current bridleway is acknowledged, however views of the current bridleway are available along the proposed new bridleway where it adjoins the current bridleway at point F and also at a point to the north of point B.
- 5.14.6 Every diversion application is considered on its own merits against the legal tests, so this application does not set a precedent as careful consideration is given to each individual proposal.
- 5.14.7 With regards to estimated levels of equestrian and cycle use, Dorset Council does not have data on this but there is equestrian use of the proposed new route evidenced by the letters of support which have been received from local horse riders.
- 5.14.8 With regards to the costs of reopening Bridleway 80 versus the costs of the diversion, this is not relevant to the legal tests. However, since a request was made by one objector, the Greenspace Team have provided an estimate for the cost of opening Bridleway 80 between points C and F which is approximately £50,000 – £80,000.
- 5.14.9 Public access would remain along the public road to point C but use of this section of the road by walkers and horse riders is likely to be much reduced by the diversion since the route would become a dead end.
- 5.14.10 As the Orders have been made concurrently, if they are confirmed by the Secretary of State, any necessary works will be carried out to ensure the surface of the new route of Bridleway 80 is usable, before the orders come into effect.

- 5.14.11 The applicants have confirmed that, in their experience, the stream alongside O – Q does not break its banks. With regards to the seasonal stream across the new route O – P, this will be stopped up near to point B, so no culvert will be required.
- 5.15 The application was accepted by the Strategic and Technical Planning Committee on 26 July 2023.
- 5.16 A Diversion Order and an Extinguishment Order were sealed on 29 September 2023 and published in the Bridport & Lyme Regis News on 5 October 2023
- 5.17 The Orders received one objection each during the statutory period.

## 6. The Law

### Highways Act 1980

- 6.1 The Diversion Order was made under section 119 of the Highways Act 1980 on the basis that, in the interests of the owner of the land crossed by the bridleway, it is expedient that route be diverted (s119(1)). In particular, the diversion will allow for better land management by diverting the bridleway away from the working farmyard, outbuildings and house.

#### Interest of the landowners

- 6.1.1 The proposed diversion is in the interest of the landowners as the new route will significantly improve privacy and security by moving the bridleway away from the applicants' house and outbuildings.
- 6.1.2 Chantry Farm is a working farm with domestic and farm animals, heavy farm machinery and other vehicles in constant use. There are health and safety concerns and a security risk for the landowners.
- 6.1.3 The watercourse which runs down the current route of Bridleway 80 runs under the applicants' house. Works to reopen Bridleway 80 could increase the risk of flooding, so the diversion is in the interest of the landowners in terms of managing the watercourse.
- 6.1.4 The two additional affected landowners, who own the land over which the proposed new route runs N – F, and a section of the new route between points G and H have no objection to the proposed diversion which will have the effect of upgrading the footpath over their land to bridleway.
- 6.1.5 Given the route of the proposed diversion it is unlikely that compensation would be payable under Section 28 of the Highways Act 1980.
- 6.1.6 A section of the current route of Bridleway 80 running from just south of point E to point F is unregistered. Dispensation was obtained from the Secretary of State before the Diversion Order was made (see Document Reference 4).
- 6.2 The Extinguishment Order was made under section 118 of the Highways Act 1980 on the basis that the footpath is no longer needed for public use.

### Not needed for public use

- 6.2.1 The proposed extinguishment is considered expedient as the part of Footpath 79 between points A and Q on the Plan is not needed for public use due to the close proximity of the proposed diverted route of Bridleway 80.
- 6.2.2 As discussed above, the proposed diversion and extinguishment were revised following the initial consultation to provide an alternative route to the extinguished footpath that would be more acceptable to the public.
- 6.2.3 The alternative route provided by the proposed new bridleway is already available on a permissive basis and is close in proximity to the footpath to be extinguished. It is in the same area of woodland, with a similar character, but along drier ground, and runs alongside a small stream between points O – Q on the Plan.

### Concurrent orders

- 6.3 As provision is made in section 118(5) of the Highways Act 1980 for public path extinguishment orders to be dealt with concurrently with creation and diversion orders, the orders have been made concurrently although the legal tests have been considered separately on its own merits and the decisions made for each order have specifically covered matters relevant to the consideration of whether it should be confirmed.
- 6.4 In accordance with the advice given in Rights of way circular (1/09) the diversion order is made in association with the extinguishment order. The diverted route has been taken into consideration as an alternative route for the extinguished footpath.

### **Legal Tests**

- 6.5 Section 119(2) Highways Act 1980 provides that a diversion order should not alter a point of termination of a path unless the new termination point is on a highway and (where it is on a highway) only to another point which is on the same highway or a highway connected with it and which is substantially as convenient to the public.
- 6.6 The northern termination point of Bridleway 80 will be unaffected. The southern termination point of Bridleway 80 will be moved from point C approximately 78 metres to point G. The new termination point meets the same highway as the current one (Chantry Lane) and is therefore substantially as convenient to the public.
- 6.7 In accordance with section 119(3) Highways Act 1980, the Diversion Order provides that the extinguishment of the existing route will not be effected until the County Council has certified that the New Route has been brought into a fit condition for use by the public.
- 6.8 Section 121 Highways Act 1980 provides that section 29 applies to diversion orders and accordingly, imposes a duty on the County Council to have due regard to:
  - 6.8.1 the needs of agriculture (which includes the breeding or keeping of horses) and forestry, and
  - 6.8.2 the desirability of conserving flora, fauna and geological and physiographical features.

- 6.9 An ecological report was prepared by Dorset Council's Natural Environment Team in April 2023 who carried out a survey to identify important habitats and features and the likelihood of protected species being present associated with the existing W21/80 Bridleway.
- 6.10 The survey found records of several bat species, hazel dormice, badgers, and otters within 1km of the bridleway, as well as suitable nesting and foraging habitat for breeding birds. It was confirmed by the ecologist that the current bridleway was a suitable commuting habitat for bats, badgers and otters.
- 6.11 Taking into account Section 29 of the Highways Act, officers believe that the diversion of Bridleway 80 would conserve flora and fauna that is present along the current bridleway with minimal impact on wildlife along the proposed new route.
- 6.12 The effect of the diversion on geological and physiographical features is discussed above, in relation to the 'Holloway' status of the current route.
- 6.13 Overall, the diversion will have a positive effect on agriculture, flora, fauna and geological and physiographical features as it enables better land management by moving the bridleway away from the farmyard and protects wildlife and historic monuments that are present along the current bridleway.
- 6.14 Section 119(6) Highways Act 1980 provides that the Secretary of State shall not confirm a public path diversion order unless she is satisfied that:
- 6.14.1 the diversion to be effected by it is expedient as mentioned in section 119(1) Highways Act 1980; and further
  - 6.14.2 that the path or way will not be substantially less convenient to the public in consequence of the diversion; and
  - 6.14.3 that it is expedient to confirm the order having regard to the effect which:
    - 6.14.3.1 the diversion would have on public enjoyment of the path or way as a whole;
    - 6.14.3.2 the coming into operation of the order would have as respects other land served by the existing public right of way; and
    - 6.14.3.3 any new public right of way would have as respects the land over which the right is so created and any land held with it.
- 6.15 Expedient as mentioned in section 119(1)
- 6.15.1 Please see paragraph 6.1 above.
- 6.16 Not substantially less convenient to the public in consequence of the diversion:
- 6.16.1 The Council submits that the proposed diversion will not be substantially less convenient to the public.
- 6.17 Expedient to confirm the order having regard to the effect on public enjoyment of the path as a whole.
- 6.17.1 The proposed diversion offers a much safer and more accessible bridleway which is already being used on a permissive basis.

6.18 Expedient to confirm the order having regard to the effect as respects other land served by the existing public right of way and as respects the land over which the new right is created and any land held with it.

6.18.1 The diversion would have no material effect on the land served by the current route or over which the new route runs.

6.19 Section 118(2) of the Highways Act 1980 provides that the Secretary of State shall not confirm a public path extinguishment order unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28.

#### Not needed for public use

6.19.1 The part of Footpath 79 between points A and Q is not needed for public use due to the close proximity of the proposed diverted route of Bridleway 80.

#### Extent path is likely to be used by the public

6.19.2 The current footpath to be extinguished between points A and Q runs along wet and muddy ground.

6.19.3 Since the proposed new bridleway has been made available on a permissive basis there is evidence that the new path is already being used in preference to the length of footpath to be extinguished.

#### Effect extinguishment would have on other land served by footpath

6.19.4 The extinguishment would have no material effect on other land served by the footpath;

### **Rights of Way Improvement Plan**

6.20 Sections 118(6A) and 119(6A) of the Highways Act 1980 provide the considerations to which the Secretary of State is to have regard in determining whether or not to confirm public path orders, and include any material provision of a rights of way improvement plan (ROWIP).

6.21 The proposed diversion fulfils two objectives in the Dorset ROWIP to improve the network of public rights of way, wider access and outdoor public space.

6.22 The proposed diversion improves accessibility by diverting Bridleway 80 onto a safer and more accessible route, meeting the objective of the Dorset ROWIP with regard to improving accessibility of the network.

6.23 The proposed diversion also increases provision for horseriders by increasing the length of the bridleway by 349 metres which meets the objective of the Dorset ROWIP with regard to increasing bridleway networks.



## **Equality Act 2010**

- 6.24 The Equality Act 2010 requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do, or to show that there are good reasons for not doing so.
- 6.25 Diversion Order - The furniture on the diversion route meets the requirements of British Standard BS5709:2018. The surface and gradient of the proposed new bridleway are more accessible than the current route.
- 6.26 Extinguishment Order - The alternative route provided by the proposed new bridleway is more accessible than the section of footpath to be extinguished.

## **7. Objections and other representations**

- 7.1 The Orders received one objection each. Copies of the objections can be found at **Document Reference 5**.
- 7.2 The Council's comments on the objections are **Document Reference 6**.

## **8. Summary**

- 8.1 The Council submits that the Diversion Order is in the interests of the landowners; is not substantially less convenient to the public and has an overall positive effect on the public enjoyment of the path as a whole.
- 8.2 The Council is of the opinion that the objection to the Diversion Order does not contain any grounds to warrant the non-confirmation of the Diversion Order.
- 8.3 The Council submits that part of footpath 79 is not longer needed for public use and therefore can be extinguished.
- 8.4 The Council is of the opinion that the objection to the Extinguishment Order does not contain any grounds to warrant the non-confirmation of the Extinguishment Order.

## **9. Conclusion**

- 9.1 The Council considers that the requirements of sections 118 and 119 of the Highways Act 1980 are satisfied and submits that the Orders should be confirmed as made.