

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY**

**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')**

**STATEMENT OF DORSET COUNCIL  
CONTAINING COMMENTS ON THE OBJECTIONS**

**Dorset Council (Part of Bridleway 80, Beaminster at Chantry Farm) Public Path Diversion Order 2023**

There is one objection to the Diversion Order from the Open Spaces Society (OSS). They object to the Diversion Order on the grounds that:

- 1) Proposed diversion of BW80 only more convenient than the existing route because current way obstructed, boggy etc, due to unlawful obstructions and Council failing in statutory duties to keep way clear of obstruction and in repair; Closure of existing route of BW80 will be major loss to public of their right to enjoy the way, including the holloway.
- 2) Reason given for the proposed diversion of BW80 is "the current bridleway is obstructed by vegetation and impassable due to wet and boggy ground". Not mentioned by the Council are the other physical obstructions to BW80 including barbed wire and fencing, all of which have previously been reported to the Council with no action or no meaningful action being taken.
- 3) Failure by landowners and the Council to discharge their legal obligations over BW80, has led to the current condition of BW80; had the way been properly maintained these proposals would not have been thought necessary save perhaps by the landowner. Current state of BW80 is a 'temporary circumstance'. Diversion is an excessive and disproportionate response when the Council has and had other available statutory powers.
- 4) Note the advice of PINS in Advice Note No. 9 - any temporary circumstances preventing or diminishing its use by the public shall be disregarded...the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.
- 5) If the proposed diversion was effected, the public would still have a right to use the adopted highway to point C, whether by vehicle or otherwise.
- 6) For a large part of its length BW80 constitutes a holloway or sunken lane and of historical and environmental/ecological interest; but not currently protected by any statutory or local designation, nor has any ecological and/or archaeological evidence of any weight been produced by the Council to justify its failure to reinstate BW80 to a usable condition.
- 7) Although the holloway status and associated flora, fauna, geology and physiographical

features of BW80 are relevant considerations such status can only be a subsidiary issue to the more important highway status of BW80 as a bridleway.

8) Closure of the existing route of BW80 to public access will be a major loss to the public of their right to enjoy the holloway and the way as a whole for the purposes of passage including the ability to view its historic and natural features.

9) The Council seem to be using the holloway as an excuse to do nothing to maintain it as an accessible bridleway. It is quite wrong to talk of the reopening of BW80 when it has not been lawfully closed in the first place.

10) The majority (50%+) of the proposed diversion of BW80 is onto an existing footpath, leading to a significant loss of the footpath status.

11) The Council is arguing the expediency test on grounds that result from its own failings. It is submitted that the wider amenity interests of the public at large in relation to the holloway are of much greater weight than the interests of the landowner in this case.

Dorset Council's comments on the OSS's objection are as follows:

### **Convenience**

- The OSS state that the proposed diversion of Bridleway 80 is only more convenient than the existing route because the current way is obstructed and the Council has failed in statutory duties to keep it clear of obstruction and in repair.
- Regardless of whether the current obstructions along Bridleway 80 are viewed as temporary circumstances or not (this issue is discussed below), the diversion would not result in a path that is substantially less convenient to the public.
- Footpath 79 and Bridleway 80 are rural paths used primarily for recreational use, due to their location and the type of terrain. There is no indication of damage to the path, or conflict between users since the proposed new route of Bridleway 80 was made available on a permissive basis in early 2023 and no evidence that the proposed diversion of Bridleway 80 will cause inconvenience to pedestrian users.
- The OSS focuses on inconvenience to pedestrian users, however the convenience of the route for all bridleway users have been taken into account by the Council when considering the legal tests for the diversion.
- The current route of Bridleway 80 between points C – D – E – F is approximately 607 metres long and the proposed new route between points G – H – I – J – P – O – Q – B – M – N – F is approximately 956 metres long. This will result in an increased route length of approximately 349 metres, which increases provision for horseriders by increasing the overall length of recorded bridleway.
- The new route is longer, but not substantially so, and as it is in a rural location, the route is most likely to be used as a recreational route and therefore increase in length may be deemed a positive change.
- The surface and gradient of the new bridleway are more accessible than the current route.

- The termination points are substantially as convenient to the public as discussed below.
- The diversion would not result in a path that is substantially less convenient to the public.

### **Public enjoyment of bridleway**

- The OSS suggest that public enjoyment would be decreased by the diversion of BR80 away from the Holloway and onto the existing public footpath.
- However the proposed diversion is supported by the Ramblers, the British Horse Society and Beaminster Town Council as well as numerous local walkers and horseriders who indicate a preference for the proposed new bridleway which challenges the OSS's suggestion that the diversion would be a major loss to the public.
- Local walkers and horseriders describe the new bridleway as enjoyable, safer and accessible whilst the current bridleway is dangerous and would require major works which would have a negative impact on wildlife, the landscape and historic features.
- The proposed new bridleway runs through open fields and woodland and offers a safer and more accessible path in terms of surface, with extensive views. The contrast between the woodland section, which includes a length alongside a small stream, and open fields fulfils the wishes of the majority of those who objected to the first consultation, which is evidenced by the reduced number of objections to the revised proposals.
- The landowners have replanted the field through which the proposed bridleway runs J – P with wildflowers and herbal leys for environmental and biodiversity reasons, which adds to the public enjoyment of the new route.
- One local horserider describes the current bridleway as “extremely narrow and quite treacherous in places” and that it “would be difficult and perhaps an environmental risk to reopen”. They describe the proposed new bridleway as “a fantastic option for me as a horseman and lover of the countryside and I believe for walkers. I have ridden through this permissive section and it really is a more beautiful option and a wonderful passage with minimal impact to the flora and fauna where one can really take pleasure in the beautiful Dorset Countryside.”
- Other local residents who walk and ride in the area describe the current bridleway as “unsafe for horses and dangerous on foot”, “impassable and very boggy”, whilst the proposed diversion is described as a “great improvement” which would “open up a whole new route for us as walkers, riders and nature lovers”.
- A “dog walker, horse rider and countryside loving local resident” supports the proposals on the basis that the new route is through a beautiful field of wild flowers and a bluebell wood, whilst the current bridleway has overhanging trees, jagged rocks, boulders and very deep muddy sections and would be “suicidal to a horse and rider”. They feel that “nature has taken over this section of the bridleway and it should stay that way”.
- One regular user of footpaths and bridleways in the area for over 30 years, welcomes the new bridleway route as it is an enjoyable, safer and more accessible route for horseriders and walkers. In particular, the new bridleway would provide better access for horse riders to Buckham and Beaminster downs as the two alternative routes that

connect to the downs from the south are both difficult to use as they are rocky, washed out, steep and slippery.

- Dorset Council's Greenspace Team have indicated that the reinstatement of Bridleway 80 would require substantial works including:
  - Removal of trees
  - Removal of sediments
  - Drainage of path
  - New channel for stream
  - Raising current path height to prevent flooding
  - Digging out large amounts of soil to find suitable sub base and widen narrowed paths.
  - Surfacing the path
- The current route of Bridleway 80, which has not been enjoyed by the public for many years (as discussed below) would be less enjoyable to the public than the proposed route if opened up. The works needed to reopen Bridleway 80 which are listed above, would have a negative impact on wildlife, the landscape and historic features, which are the characteristics that the OSS values along the current route.
- In addition to support for the diversion from user groups and local walkers and horseriders, Dorset Council's Senior Archaeologist has indicated no objection to the diversion. The Senior Archaeologist carried out a site visit to assess the status of the current bridleway as a Holloway, following a request from the case officer.
- Their opinion is that the upper part of the route between F and E appears to be a route of historic origin - a Holloway, possibly medieval in origin. However the route becomes much less distinct as it continues south from E as it is cut deeply into a narrow passage and it is difficult to distinguish a historic routeway here as it seems to have been altered by the persistent and heavy flow of water down the slope. Around point Q there are substantial banks that appear to be historic and may have been attempts to manage the flow of water down the slope to avoid the farmyard.
- They note medieval or post medieval drainage ditches are recorded in an adjacent field to the west which may indicate further attempts at managing the flow of water from springs further up the slope.
- The Senior Archaeologist states that although they welcome the conservation and continuation of archaeological and historic features in their original use, the amount of work needed to open up the route is such that it would be in danger of having a detrimental effect on the historic fabric and impinge on the integrity of the monument.
- Their opinion is that even if there was a moderate gain in archaeological terms, which seems unlikely in view of the amount of work required to bring the bridleway up to standard, this would not outweigh the ecological impact.
- The OSS consider that the diversion of Bridleway 80 partly into the existing route of Footpath 79 would lead to the significant loss of the footpath status.
- The legislation allows the diversion of a bridleway onto a footpath in part. It is considered that the small loss in overall length of public paths for walkers is balanced by the improvement in provision for horseriders who would gain a longer bridleway.

- The diversion order route reflects feedback from user groups and local users of the paths so officers believe that public enjoyment of the path will be improved by the diversion.

### **Temporary circumstances and the history of Bridleway 80**

- The OSS feels that the diversion of Bridleway 80 is only necessary due to the lack of action taken to maintain the route and that the diversion could have been avoided. They also believe that the current state of Bridleway 80 is a 'temporary circumstance' and that diversion is an excessive and disproportionate response when the Council has had other available statutory powers.
- Rights of way circular (1/09) states that Section 119 of the 1980 Act does not specifically entitle an authority to disregard temporary circumstances, preventing or diminishing the use of the existing way in considering whether or not to make or confirm a diversion order.
- The Planning Inspectorate Advice Note 9 22 (s28) advises that the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.
- Temporary circumstances do not include land slips, major damage to surface or major flooding, running water etc. Therefore the current state of Bridleway 80 is regarded as a temporary circumstance in respect of the vegetation and barbed wire across the route but not with regard to surface and drainage.
- Dorset Council does not require applicants to open up routes that have been historically obstructed before applying for a diversion and it is not a prerequisite in law to do so.
- There is evidence that Bridleway 80 has been unavailable on the ground for over 70 years due to both overgrowth and obstruction by barbed wire (which may be regarded as temporary circumstances) as well as being "fallen in" and flooded which may be regarded as permanent issues.
- The National Parks and Access to the Countryside Act 1949 required that for each parish, a survey be carried out of public rights of way in preparation for the publication of the Draft Map. Surveys were carried out by the parish or town council for the area, who produced an annotated map and survey notes indicating the status of each route and comments on the condition.
- The process varied from parish to parish as different source materials were used to identify ways to be included in the survey. Routes were included for a variety of reasons including those in regular use, indicated by path furniture, known to local users, shown in earlier path surveys, described in historical documents or shown on Ordnance Survey maps.
- Beaminster Town Council duly carried out a survey for Beaminster in 1951 and produced a survey map (see extract included as Appendix 5 to the Report to the Strategic and Technical Planning Committee - 26 July 2023) with accompanying notes. The parish survey notes for Bridleway 80 state:-

*“131B.R<sup>1</sup>. Chantry Farm to Beaminster Down Rd.*

*Continue past Chantry Farm up lane (10’) which is blocked by R<sup>2</sup>. 2 From this point the original B.R<sup>3</sup>.3 is completely overgrown and fallen in and there is also a B.W<sup>4</sup>.4 obstruction at the top end. Note: A F.G<sup>5</sup> on left just before reaching the lower obstruction (R) leads to F.P 12 and this path can be used instead of the correct B.R. as far as the GAP. This Gap is also obstructed by B.W. Although marked F.P. on map (6” Ordnance Sheet) the track directly up the field with hedge on left is recognised as the original B.R. leading through F.G<sup>5</sup>. into Beaminster Down Rd. immediately opposite B.R. 23<sup>6</sup> to S. Perrott etc”*

- The Ordnance Survey base map used for the 1951 survey shows a double pecked line annotated F.P. and a single / double solid line marked B.R.
- Therefore, it seems that Bridleway 80 was claimed on the basis of historical evidence rather than public use at the time of the 1951 survey.
- In 1999 the Ramblers carried out a condition survey (known as ‘Milestones’) of all public rights of way for Dorset Council. The Ramblers walked every recorded path in Dorset and prepared a report which included details of the condition of path furniture and surface, plus obstructions, offline paths and missing items such as bridges, or signposts.
- The following issues were noted in respect of the part of Bridleway 80 to be diverted:

“This bridleway is overgrown, flooded and is to all intents impassable. FP79 is the preferred route!”

- In recent years, the Council has not taken action to remove the barbed wire and fencing because works to repair the surface and improve drainage on the rest of the bridleway would be required at the same time, or bridleway users would be exposed to a bridleway that is not suitable for public use.
- Whilst the application to divert Bridleway 80 is in progress, the Council is not taking action to reopen Bridleway 80. Applicants are expected (and encouraged) not to obstruct the definitive route during the diversion order process, but where a route is historically obstructed it is not required to carry out works to open up the route if those works are of a substantial nature. If the Order is not confirmed, enforcement and maintenance of the bridleway will be managed by the Council’s Greenspace Team.

### **Adopted highway**

- The OSS states that the public would still have access to point C via the public road.
- It is not disputed that the public would still have a right to use the adopted highway to point C, nevertheless it would be reasonable to expect a reduction in numbers of walkers and horseriders along the section of Chantry Lane north of point G if the Orders are confirmed as the lane will become dead-end route.

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<sup>1</sup> Now Bridleway 80

<sup>2</sup> R - rails or bar

<sup>3</sup> B.R - bridleway

<sup>4</sup> B.W. – barbed wire

<sup>5</sup> F.G. – field gate

<sup>6</sup> Bridleway 23 is now part of Bridleway 80

## **Dorset Council (Part of Footpath 79, Beaminster at Chantry Farm) Public Path Extinguishment Order 2023**

There is one objection to the above Order from the Open Spaces Society (OSS). They object to the Extinguishment Order on the grounds that:

- 1) No evidence current route of FP79 not needed for public use - if unobstructed public would use it.
- 2) Alternative route along proposed new route of Bridleway 80 inconvenient to pedestrian users

Dorset Council considers that:

### Not needed for public use

- The proposed extinguishment is considered expedient as 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.
- Contrary to the OSS's view, there is evidence to show that the current route of Footpath 79 is not needed for public use and there is strong evidence that the majority of walkers prefer to use the alternative route to Footpath 79 in preference to the definitive route as they have already been doing so. This is demonstrated by the consultation responses received to the first consultation.
- Two reports were received from the public in 2022 stating that Footpath 79 had been blocked by branches placed across the route. The branches were subsequently removed but it was later established that the branches were not on not the definitive line of Footpath 79. Two reports in 2021 also refer to Footpath 79 running alongside the stream:-  
  
"Footpath by stream is getting overgrown and clogged with Himalya Balsam" and "the footpath.....[in] the woods by the stream"
- It is understood that these reports relate to the proposed new route of Bridleway 80 between points O and Q rather than the definitive route, indicating that the current route is not being used along this section.

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

- The current footpath to be extinguished between points A and Q runs along wet and muddy ground.
- The alternative route for the extinguished part of Footpath 79 is the proposed new route of Bridleway 80. This includes a section through the woodland between points P – O – Q which was acceptable to the majority of consultees, which is evidenced by the significant reduction in objections received to the second consultation.
- There is no evidence of deliberate obstruction of Footpath 79 between points A and Q as stated by the OSS. Since the proposed new route of Bridleway 80 was made available on a permissive basis in early 2023, it has been observed by officers that Footpath 79 has become overgrown with vegetation between points A and Q at times,

apparently through lack of use, since many walkers prefer to use the proposed new route of Bridleway 80 in preference to the length of footpath to be extinguished. For example, it was noted during a site visit in July 2023 the definitive route of Footpath 79 was overgrown between A and Q.

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

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

#### Other considerations

- Dorset Council must have regard to the needs of agriculture, forestry and nature conservation and the desirability of conserving flora, fauna and geological and physiographical features.
- In the area of the part of Footpath 79 to be extinguished, there is a stopcock and water supply works for three houses, as well as a manhole which is in regular use for filling farm machinery and troughs.
- The extinguishment will therefore have a positive impact on agriculture as it will allow better management of the water supply