

Case Number ROW/332995

Wildlife and Countryside Act 1981 – Section 53
Foot path from East Farm Lane (D290502) to D20503 Public Road East of Coombe
cottages, Bradford Abbas,
Definition Map and Statement Modification Order 2017

**Proof of Evidence Mr Patrick J Pearce and Mrs Alison J
Pearce**

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Summary.

1. The Order for DMMO 474 should not be confirmed for the following reasons:

a. The various unexplained delays between the date that the application was made and the date of the inquiry to consider the Order totalling almost 16 years which would render the passing of this Order not to conform with Article 6 of the Human Rights Act 1998 causing stress and uncertainty.

b. The very limited relevant and verifiable user evidence.

c. The total lack of Mapping evidence

d. The lack of evidence of any current use of the claimed route.

e. The inappropriateness of confirming an application for a very short footpath which goes no where and which is not accessed from any other footpath and has no public parking spaces and passes through or close to our gardens and between 2 and 20 metres from the homes.

f. The fact that it is impossible to provide a fenced footpath through the Saxon Maybank second home site whilst allowing access to the homes and a planning condition preventing any internal fencing.

g. Under Article 1 of the Human Rights Act 1998 the confirmation of the Order would deny the adjacent homeowners the peaceful enjoyment of their possessions (including homes).

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Summary (Continued)

h. Under the Human Rights Act 1998 Clause 8(1) the confirmation of the Order would deny the adjacent homeowners their right to respect for their private and family life and their home.

Under Article 8(2) of the Human Rights Act 1998 sets out that there shall no interference by a public authority with the exercise of this right such as in accordance with the law and is necessary in a democratic society in the interests of the National security, public safety, or the well-being of the country, for the prevention of health and morals or for the protection of the rights and freedom of others.

We cannot see how the above criteria have been satisfied, particularly, taking into account the very few verifiable historic users, few if any current users and the effect on the homeowners who had no knowledge of the footpath application when they purchased their homes.

We believe that seeing as The Human Rights Act 1998 is enmeshed in the United Kingdom law these requirements should have at least equal importance to the law as the Wildlife and Countryside Act 1981 has and that it could be presumptuous to take a different view of their importance in Rights of Way cases.

We are victims of the multiple failures to comply with the Human Rights Act 1998 as set out above .

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2. Process failures.

There were failures to post prominent notices without sending copies to the mailing addresses of those who would be affected or to properly notify the landowners (Winchester College and Charteroak Estates Ltd) and we do not recall being made aware of the date of the committee meeting to consider the above application. We also have concern about the efforts of Dorset Council to persuade objectors to withdraw their objections and had understood that it is inappropriate for the OMA to decide whether the objections made were valid, but to only judge whether they were properly made, and that the validity decision should be made by the higher authority which would be conducting an inquiry.

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3. The Delay in this case coming to a Hearing (Inquiry).

The delays in this case were inexplicable and unacceptable. They were as follows:

- a. It took six years and eight months after the application was made to come to a committee meeting for approval.
- b. It took then another two years and seven months to get to the cut-off date for objections.
- c. It then took another six years and seven months before we received notices from the Planning Inspectorate informing us that the Inquiry will take place on 10th December 2024.

This total duration of sixteen years is totally unacceptable and fails to satisfy the requirement of Article 6 of the Human Rights Act 1998 (to ‘have a right to a fair trial within a reasonable time’).

There has been no explanation given for the very long delays and particularly that of six years and seven months between the last date for objections and the notice of this inquiry. It is difficult to imagine what took six and a half years during a period when no further evidence was received, and the file is likely not to have been added to at all during that time. It would be helpful to know what efforts that Dorset Council made to progress this case during this long period after the objections cut-off date.

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3. (Continued) The Delay in this case coming to a Hearing

A letter to interested parties dated 24th January 2023 (more than five years after the close of objections) included in the penultimate paragraph a statement as follows:

‘We hope to be in a position to send the submission to the Planning Inspectorate in the next few months’ but gave no reasons for the serious delay in getting this stage. It was then another 18 months before the Start Date of the Inquiry.’ This extreme delay has made it more difficult for all parties. Several key witnesses (both for supporters and objectors) will have died or become unable to attend the inquiry. These include the farmer and other farm employees who operated East Farm and whose evidence would have been important. Some of the homes at Saxon Maybank and nearby the claimed route have changed ownership and this will have caused a loss momentum in the objections. Some new owners of homes adjacent to the claimed route will have discovered the application for the first time when the first notice was sent out by The Planning Inspectorate in June of this year leaving them little time to fully research the history and facts of the case. It is regretful that the DMMO did not show up in professional property searches made by new homeowners.

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4. The user evidence.

This was analysed by Pardoes, Solicitors employed by the previous landowner and their report is available on the case file. It concludes that the evidence, after eliminating those that do not qualify for various reasons, is very limited and that only seven of these were willing to support their claims at an Inquiry.

What cannot be discounted is that there was retail activity at East farm selling farm produce to local people. Although only one user statement, that of Rachel Fry, referred to the fact that she went there to buy farm produce it is surprising that none of the others referred to this in their statement. It is concerning that the summarised user statements sent to the inquiry failed to include reference to Ms Fry's reference to her buying farm produce.

The number of those making statements that said they used the claimed route sometimes by car or bicycle also suggests that they did not do so for leisure but for some other non-qualifying purposes and indeed these people could have been prosecuted for using motorised transport or cycles on a public footpath if the Order had been confirmed. The fact they were not suggests that the claimed route was a farm track rather than a public footpath.

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5. The mapping evidence.

The thirty maps including the first Definitive Map for the area in 1966 and also the Bradford Abbas survey of 1951 which showed the part of the claimed route as 'PRIVATE' and similar records referred to and summarised in the report to the regulatory committee when considering this application failed to establish any proof that the proposed footpath existed historically.

The committee considering the DMMO Application concluded that the mapping evidence was insufficient to demonstrate that the claimed footpath subsisted at any time and went on to conclude that the mapping evidence only went to show that 'the route existed on the ground' which is not surprising as it was a key farm route enabling access to a large farm's various farming activities.

Dorset Council in their report to the Development Control Committee on 14th February 2008 in connection with a planning application relating to the Saxon Maybank site stated that 'furthermore, there are no public footpaths or bridleways through or close to the site'. The claimed route has never been shown on any Definitive maps since their introduction in 1966.

We believe that, taken together, the User Evidence and Mapping Evidence are insufficient to demonstrate that the proposed route has ever subsisted as a public footpath.

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6. The ownership and use of the homes at Saxon Maybank.

The character and use of the Saxon Maybank site and the nearby homes is that of homes which are owned, not rented, as distinct from the comparison to that used by Dorset Council sometimes where it is regarded in a similar light to the short-term tightly packed holiday rental sites that are found mainly in coastal situations where visitors spend short, one off holidays of normally no more than a week where their privacy, security and right to a peaceful and quiet environment is not the same as homes that are occupied as a second home by the owners, their families and friends as most of the homes at Saxon Maybank are. We believe the reason why property owners at Saxon Maybank purchased their homes was for the quietness, peacefulness, outlook and security and therefore it is wrong to ignore this when considering the footpath claim which would be an open unfenced route passing within two metres of some homes and within 20 metres of most homes. The footpath would be passing through our landscaped gardens. Most homes have unfenced hot tubs.

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7. Human rights Act 1998 (UK)

Article 1

Under this Article we are ‘entitled to peaceful enjoyment of our possessions (including homes)’.

Article 8 (Clause 1)

Under this clause ‘everyone has the right to respect for his private and family life, his home and his correspondence’.

Article 8 (Clause 2)

Clause (2) goes on state that “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law AND is necessary in a democratic society in the interests of national security, public safety, or the well-being of the country, for the prevention of disorder and crime, for the protection of health and morals’ or for the protection of the rights and freedom of others. I accept that Councils cannot refuse an application made under the Wildlife and Countryside Act 1981 which is lawful but before doing so they need to satisfy the other conditions in the wording of the Article 8(2) as set out above.

We consider that the requirement to comply with the above underlined text above has not been satisfied.

We also consider that any footpath proposal should comply with Human Rights Act 1998 which forms a part of UK law.

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7. The Human Rights Act 1998 (Continued)

Article 6

This article states that everyone has a right to a fair trial in a reasonable time.

This has definitely not been satisfied and no reasons for the abnormal delay have been given.

We believe that the opportunity of confirming the Order has passed several years ago and therefore we believe that the Order should be remain unconfirmed.

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8. The Law

Under the provisions of the Countryside and Rights of Way Act 2000 it was considered inappropriate to allow public access to land ‘on which there are buildings, golf courses, parks and were on land within 20 metres of a dwelling.’

Whilst this Act was primarily related to open access (or right to roam) it clearly establishes that, using the same measure, it is regarded as inappropriate to create footpaths which are within 20 metres of a dwelling.

Most of the dwellings along the route of the claimed route are within 20 metres of the route.

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8. The Law (Continued)

Clauses now added to the Highways Act 1980 include the following:

Section 8(ii) (Highways Act 1980) Clause 118 (1)

“Where it appears to a Council as respects a footpath.... In their area that it is expedient that the path or way should be stopped up on the grounds that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.”

Section 8(ii) (Highways Act 1980) Clause 118 (2)

“The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed 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 right of path or way, account being taken of the provisions as to compensation contained in Section 28 above as applied by section 121(2) below.”

These above two clauses would allow Dorset Council itself to pass a public path extinguishment order due to it not being needed for public use and this would apply to the proposed footpath. The low, if any, current user numbers and alternative more suitable and safer nearby routes being available would seem to be sufficient a reason to do so.

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8. The Law (Continued)

The Wildlife and Countryside Act 1981

There are numerous possible changes in the pipeline for this act that could be made to this act. We are not legally trained and would need more time to analyse these further complex changes and although we did see reference to removing the ‘reasonably alleged to subsist’ words just leaving the ‘right of way subsists’ requirement in the Wildlife and Countryside Act 1981 but we are not sure whether this has happened. This appears to be focusing on the actual subsistence of the footpath rather than the user evidence.

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9. Proportionality

In this case the following facts should be considered when arriving at a decision which is fair and proportionate taking into account the numbers of relevant verifiable user statements and the number of those that would be affected by the order being confirmed.

1. The low number of verifiable qualifying likely users of the path ascertained from the user statements during the 20 year period of measurement after eliminating those whose use was not for leisure purposes taking account that only seven of these were prepared to support their statements at an inquiry.

2. The lack of current users of the claimed footpath despite the path being accessible, prior to becoming overgrown due to lack of use, via the unlocked gate at the Eastern end of the claimed route, passing the next gate which had passing room beside it and a stile-like facility at the Western end of the site. We and other homeowners that we have spoken to have seen very few, if any, people using the claimed route during their ownership. Those using the route as a footpath would be easily identified as they would not have the gate code whereas owners or their guests would have this. Even if we accept the seven people who made statements in support of their use and were willing to verify them at an inquiry this would need to be balanced against the more than 30 people who are likely to be affected by passing of the order.

3. There are more attractive, safer and suitable routes accessible locally and with nearby parking from Bradford Abbas (e.g. The footpath route from the village centre passing Mill Farm which follows a lovely countryside route to Thornford, the route to Wyke and ultimately Sherborne from the village and the path going from the Old Mill crossing the river Yeo towards Clifton Maybank).

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9.Proportionality (Continued)

4. There are more attractive, safer and suitable routes accessible locally and with nearby parking from Bradford Abbas (e.g. The footpath route from the village centre passing Mill Farm which follows a lovely countryside route to Thornford, the route to Wyke and ultimately Sherborne from the village and the path going from the Old Mill crossing the river Yeo towards Clifton Maybank).

Mr Patrick Pearce

Mrs Alison Pearce

13th November 2024