



**WILDLIFE AND COUNTRYSIDE ACT 1981**

**COUNTY OF DORSET  
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNCIL (PART OF BRIDLEWAY 18, CHIDEOCK AT MILL LANE TO BE  
UPGRADED TO RESTRICTED BYWAY)  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2019**

**STATEMENT OF CASE**

**DORSET COUNCIL**

## 1 **INTRODUCTION**

1.1.1 Dorset Council ('the Council') supports the confirmation of the Dorset Council (Part of Bridleway 18, Chideock at Mill Lane To be upgraded to Restricted Byway) Definitive Map and Statement Modification Order 2019 ("the Order").

1.2 This Statement of Case:

1.2.1 describes the effect of the Order;

1.2.2 sets out the background to making the Order;

1.2.3 sets out the Council's reasons for making the Order; and

1.2.4 sets out the law and evidence to be considered in determining whether to confirm the Order.

1.3 A copy of the Order forms **Appendix 1**.

1.4 A copy of an extract from the definitive map and statement for the area forms **Appendix 2**.

## 2 **CONFIRMATION OF THE ORDER**

2.1 The Council asserts that the evidence submitted in support of the Order is sufficient to establish, on the balance of probabilities, that restricted byway rights exist along part of Bridleway 18 at Chideock at Mill Lane as set out in the Order.

2.2 The Council, therefore, requests that the Inspector confirms the Order as made.

## 3 **DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER**

- 3.1 The proposed route to be upgraded is shown by a broken black line with arrow heads between points B - C - D - E (“the Order Route”) on the plan which forms part of the Order (“the Plan”).
- 3.2 The Order Route runs from the adopted part of Mill Lane, north north west of the entrance to Golden Cap Holiday Park at point B (SY 42339232), south along the concrete surfaced road to point C (SY 42339231), continuing south, via point D (SY 42339224), to the unaffected part of Bridleway 18, west of the holiday park at point E (SY 42339219). The width of the Order Route is 3 metres
- 3.3 Photos of the Order Route can be found at **Appendix 3**.
- 3.4 The land crossed by the Order Route is not registered. Part of the land is affected by a caution at the land registry. The named interested party is West Dorset Leisure Holidays Ltd of The Old School House, Bridge Road, Hunton Bridge, Kings Langley, Herts WD4 8SZ. The email provided is [Martin.Cox@wdlh.co.uk](mailto:Martin.Cox@wdlh.co.uk).
- 3.5 Due to landownership being unknown, dispensation was sought and granted by the secretary of state (**Document Reference 7**).
- 3.6 The effect of the Order, if confirmed, will record the Order Route as a restricted byway on the definitive map. The definitive statement will be amended accordingly.

#### 4 **BACKGROUND**

- 4.1 Section 53 of the Wildlife and Countryside Act 1981 (“WCA 1981”) sets out the duty of an order making authority (OMA) to keep the definitive map and statement under continuous review. The section continues by setting out the requirements for OMAs to make orders when they discover evidence that shows the definitive map and statement of rights of way ought to be modified.

- 4.2 **Appendix 2** is copy of the Definitive Map and Statement for the area.
- 4.3 The status and extent of vehicular rights over Mill Lane have been the subject of discussion for many years. In Sept 2013 Chideock Parish Council (following a planning application) requested Dorset County Council establish the correct extent of the county road and Bridleway 18. This led to the publication of a factual report by Dorset County Council in February 2015. This elicited a responding report from Chideock Parish Council which was presented at a meeting in July 2015. Chideock PC objected to the conclusions of Dorset County Council.
- 4.4 A further investigation was carried out by Dorset County Council. This suggested that a creation order for a bridleway (in 1996) ('the Creation Order') was flawed in that part of the route was already recorded on the list of streets and had carried full vehicular rights. Such a dual recording would have resulted in this part of the route having public mechanically propelled vehicular rights stopped up under Natural Environment and Rural Communities Act 2006 (NERC). Consequently, it was proposed that part of the route be recorded as a restricted byway.
- 4.5 In accordance with paragraph 3(1)(b) of Schedule 14 WCA 1981 the Council carried out the necessary pre-order consultations. 4 objections were received as well as other comments and further information provided (**Document Reference 11**).
- 4.6 All the evidence was considered at a meeting of the Dorset County Council Regulatory Committee ("the Committee") on 18th October 2019 ("the Committee meeting"). The Committee resolved that the available evidence showed, on balance, that higher rights subsisted or were reasonably alleged to subsist along the Order Route and that an order be made to record restricted byway rights (the report ('the Report') and minutes can be found at **Appendix 4**).

4.7 The Order was made on 3<sup>rd</sup> May 2019 and published on 23<sup>rd</sup> May 2019.

4.8 Following the making of the Order 11 objections were duly made (**Document Reference 5**). Please note that some of the objectors made further comments after the statutory objection period. These comments have been added for completeness.

## 5 **REASONS FOR MAKING THE ORDER**

5.1 The Order was made under section 53(2)(b) WCA 1981 by virtue of which the Council (as surveying authority for the purposes of WCA 1981) is required to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3) of the WCA 1981 by order make modifications to the map and statement as appear requisite in consequence of the occurrence of that event. In particular section 53(3)(c)(ii) namely, that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description and section 53(3)(c)(iii) namely, that any other particulars contained in the map and statement require modification.

5.2 The making of the Order was based upon documentary evidence (see paragraph 7 below).

## 6 **LAW**

6.1 The test to be considered when making an order pursuant to section 53(3)(c)(i) WCA is considered above (paragraph 5.1).

- 6.2 A modification order should be confirmed if, on the balance of probabilities, the evidence shows that a right of way subsists: *Todd v Secretary of State for the Environment, Food and Rural Affairs*.
- 6.3 In considering the evidence, matters such as desirability and suitability, safety and sensitivity should not be taken into account.
- 6.4 Section 32 of the Highways Act 1980 states that a tribunal (which includes a public inquiry) must take into consideration any map, plan or history of the locality. It should give such weight as considered justified by the circumstances, including the antiquity of the document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 6.5 Inclosure Consolidation Act 1801
- 6.5.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.
- 6.5.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.
- 6.5.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.
- 6.5.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.

6.5.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

## 6.6 Finance Act 1910

6.6.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

6.6.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

## 6.7 National Parks and Access to the Countryside Act 1949

6.7.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

## 6.8 NERC 2006

6.8.1 Natural Environment and Rural Communities Act 2006 (‘NERC’) section 67(1) NERC states that an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

- 6.8.2 Section 67(2) NERC states that subsection (1) does not apply to an existing public right of way if an exception applies.
- 6.8.3 The exception in s67(2)(b) states:  
'...which, immediately before commencement, was not shown in a definitive map and statement but was shown in the list of highways maintainable at public expense required to be kept under the Highways Act 1980 s36(6)'
- 6.8.4 Stephen Sauvain KC in his book 'Highway Law' (fifth edition at para 9-158), in relation to this exception writes:
- 6.8.5 'The second exception appears to require not just that the way be shown in a list of publicly maintainable highways kept under s.36(6) of the Highways Act 1980 but also that the way should not be shown on the definitive map immediately prior to commencement. Thus a way, which is recorded (possibly wrongly) on the definitive map as a footpath or bridleway, but which is within the list of publicly maintainable highways, would not appear to fall within this exception.
- 6.8.6 Where it is found that a route was historically a public vehicular route and the rights for mechanically propelled vehicles have been extinguished, the remaining rights for all other types of traffic should be recorded on the definitive map and statement as a restricted byway.
- 6.9 A modification order should be confirmed if, on the balance of probabilities, the evidence shows that a right of way subsists: *Todd v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 1450 at paragraphs 6 to 52. In considering the evidence, matters such as desirability and suitability, safety and sensitivity should not be taken into account.



## 7 DOCUMENTARY EVIDENCE

- 7.1 A table of all the documentary evidence considered during the investigation into the Application, together with extracts from the key documents, is contained within **Appendix 4** (at Appendices 4 and 5 respectively).
- 7.2 Analysis of the documentary evidence can be found within **Appendix 4** (at Appendix 6).

## 8 OBJECTIONS/REPRESENTATIONS TO THE ORDER

- 8.1 There were 11 objections to the Order (**Document Reference 5**). Details of the objections and the Council's comments on the objections can be found at **Document reference 6**.
- 8.2 Please note that 7 of the objectors made further comments after the statutory objection period. These comments have been added for completeness.
- 8.3 No representations were made in support of the Order.

## 9 SUMMARY OF POINTS FOR CONSIDERATION

- 9.1 The Council is satisfied that the documentary evidence supports the existence of restricted byway rights along the Order Route.
- 9.2 The conclusions reached in respect of the evidence provided by the Finance Act 1910 and Ordnance Survey Maps are further supported by the Order Route being recorded on the List of Streets, the plan from which shows the publicly maintainable highway extending as far as point E.
- 9.3 The creation of a public bridleway in 1997 along the Order Route, being an existing part of a publicly maintainable carriageway, known as Mill Lane, is not a unique situation. It is not known what records were consulted in arriving at the termination of the Bridleway at B.

- 9.4 A later creation of a lesser highway does not extinguish a preexisting highway of a higher status. Accordingly, the creation of the public bridleway would have had no effect, at that time, over any existing higher public rights whether or not they had been recorded.
- 9.5 The implementation of NERC led to the extinguishment of any unrecorded mechanically propelled vehicular rights along the route extending south from point E towards Seatown. The Order Route is 'dual recorded', being recorded on both the Definitive Map (as a bridleway) and the List of Streets. The presumption is that it is the Definitive Map that is correct and that the mechanically propelled vehicular rights have been extinguished as the Route does not meet one of the exceptions set out in s67(2) NERC (see para. 6.8.5). Such extinguishment leaves a public vehicular route without rights for mechanically propelled vehicles, thereby a restricted byway.
- 9.6 Subsection 67(5) of NERC provides for a private mechanically propelled vehicular right extending to landowners, occupiers and tenants. This also includes lawful visitors to the person who has an interest in the land, including: business, trade or professional visitors; postal or other deliveries.
- 9.7 The objections raise matters which have already been addressed in the Report and again in **Document Reference 6**. In addition, some objections contain such matters which cannot be taken into consideration when determining whether the Order should be confirmed, such as safety and desirability. The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it.
- 9.8 None of the objections contain any evidence to dissuade the Council's position.

10 **CONCLUSION**

10.1 The Council asserts that on the balance of probabilities, the evidence shows that restricted byway rights subsist along the Order Route.

10.2 The Council requests that the Inspector confirm the Order as made.