

WILDLIFE AND COUNTRYSIDE ACT 1981**Definitive Map and Statement Modification Order
Dorset Council (Footpath from East Lane (D20502) to D20503 Public Road East of
Coombe Cottages, Bradford Abbas) Definitive Map and Statement Modification
Order 2017 (“the Order”)****STATEMENT OF DORSET COUNCIL
CONTAINING COMMENTS ON THE OBJECTIONS****Objections to the Order**

There are 20 objections to the Order.

1. Paul Smith objects to the Order on the grounds of desirability stating that the footpath is pointless because it has no destination, no access to wildlife or the countryside and passes through a built-up area.

2. Gloria Smith submitted the same objections as Paul Smith.

3. Shaun Cripps submitted the same objections as Paul and Gloria Smith.

4. Colin and Carol Martin object to the Order on the grounds of insufficient user evidence and the lack of desirability of the route. They state that because use of the footpath has only been by those connected, working, doing business or tenancing the land from the landowners. It provides no purpose or benefit to locals or visitors, and does not connect to any walking routes or public parking. They also do not feel that that due care and attention to the process was given by the Council when considering whether to make an Order and the user evidence was insufficient to support their decision.

5. Philip Brutton objects to the Order on the grounds of desirability stating that the footpath is pointless because it has no destination, no access to wildlife or the countryside and passes through a built up area.

6. Mr Johnstone objects to the Order on the grounds of desirability because the footpath is not necessary, and also because of concerns about privacy and security.

7. Patrick Pearce objects to the Order on the grounds that there is insufficient user evidence to demonstrate a dedication under the Highways Act 1980 and to conclude that footpath rights exist over the claimed route. In addition, the route has no current purpose, and is inconsistent with Articles 1 and 8 of the Human Rights Act 1998 due to the effect on the property owners along the route of the path. The decision to add the claimed route to the definitive map is contrary to the Council's Corporate Plan objectives as set out in the Regulatory Committee Report to the meeting on 12 March 2015. Further, the pre order public consultation was not adequate as it was not sent to all interested parties. Mr Pearce believes that if the claimed route has been in place for 20 years it would now satisfy the provisions of Section 118 of the Highways Act enabling a Public Path Extinguishment Order to be made.

8. Alison Pearce submitted the same objections as Patrick Pearce.

9. Mrs S A Fiddes objects to the Order on the grounds that during her purchase of 7 Saxon Way the public footpath was not mentioned and queries why it was not raised during the planning process for the site. She also believes that the user evidence is not sufficient and that those using the route were trespassing. Mrs Fiddes also feels that the route serves no purpose and does not benefit the public. She feels the process is wasting time and public money and that it is against her human rights under Article 8 of the Human Rights Act.

10. Chris Fiddes raises the same objections as Mrs S A Fiddes.

11. Mrs S Bracken objects to the Order on the grounds that the documentary evidence does not show the existence of a footpath and that the user evidence is insufficient because previous use of the site was as a dairy and therefore it would be impractical to challenge users of the track, some users were given permission to use the track and the number of witnesses is low with some unwilling to substantiate their claims. She also states that Winchester College, (former owner of part of the track and current owner (in 2017) of another section) does not accept that it is a public right of way and their view should be given weight because of their long involvement with the land. Mrs Bracken also raises safety concerns and suggests an alternative route for the footpath.

12. Susan Jenkin objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order.

13. Neil Jenkin objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order.

14. Paul Howard objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order, stating that 7 alleged users over a 20 year period to 2007 is insufficient to demonstrate public rights. The fact that the documentary evidence was deemed insufficient, seems to support the view that user evidence is insufficient.

15. Jane Howard raises the same objections as Paul Howard.

16. Bob Lanzer objects to the Order on the grounds that the documentary evidence is insufficient to demonstrate that public rights exist along the route and that the user evidence by bicycle and car is not considered sufficient to have established higher rights. Mr Lanzer also queries the route being used as a shortcut as the alternative route by road is a similar length. He states (in Oct 2017) that he has owned a lodge at the site since September 2014 and that he has only seen two non-residents (together at the same time) using the route as a footpath. Mr Lanzer feels that the user evidence does not show a high level of interest in the route but the claimed footpath could impact on his quiet enjoyment of his property and that of his neighbours.

17. Alexia Recurt objects to the Order on the grounds that the user evidence is insufficient and that there is no public benefit in having access through Saxon Maybank. The footpath was not revealed in the Local Authority Searches that were carried out before she bought a property in the area in March 2017. Had the footpath been revealed this may have had an impact on the decision to purchase the property.

18. Sarah McDowall objects to the Order on the grounds of desirability stating that the proposed footpath is unnecessary and detrimental to the interest of property owners on the site. She states that the claimed footpath is a longer route than the alternative way via road, the new path would generate foot traffic through a quiet and private site and create a security concern.

19. Jeremy Hurst objects to the Order on the grounds that there is insufficient user evidence to support the footpath claim. He states in October 2017 that he has owned 2 Coombe Cottages for nearly a year and never seen anyone attempting to use or look for the footpath.

20. Mr and Mrs Park object to the Order on the grounds of desirability and user evidence. NB Their letter of objection dated 1 October 2017 is not on file.

Comments on objections

Desirability, suitability, purpose and safety of the route

Several of the objections cite matters that relate to the desirability of the claimed route including the suggestion that the footpath is pointless because it has no destination, that it provides no access to wildlife or the countryside and passes through a built-up area, and that the notion that it provides a short cut is not true because there is a route via road that is similar in length.

In accepting the application the Council is not able to consider issues such as desirability, suitability or safety. A Modification Order does not seek to create a right of way, it is the process through which an existing right of way, acquired through presumed dedication or which for one reason or another has never been recorded, is recorded on the Definitive Map and Statement. In recording an 'existing' right of way the legislation does not consider whether it is needed or required, that would be something taken into consideration should an application to divert or delete a right of way was made. With a few exceptions, such as Crown Land, private land is not exempt from any presumption of dedication of a public right of way, the act of trespassing when unchallenged can lead to the acquisition of a right of way over said land.

Privacy and Security / Human Rights

A number of the objectors have concerns about privacy and other issues that relate to the Human Rights Act as the location of the claimed route runs in close proximity to their properties.

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. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations. A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

User Evidence

Of the 24 witnesses who provided evidence, it was established that 7 had been given permission to use the route or were tenants of the landowner so their evidence was not used in determining the application. The remaining 17 witnesses were deemed to have used the route 'as of right'. There is no legal definition as to the minimum number of users required only that the use must be by the public. Each case is determined on its own merit and in this instance the rural location of the route has implications for the number of witnesses that is considered sufficient.

Dorset Council considers that the user evidence sufficient to satisfy the legal requirements. There is no legal definition as to the minimum number of users required to

satisfy an application only that the use must be by the public. Each case is determined on its own merit and in this case, bearing in mind its rural location, the number of witnesses is regarded as sufficient to satisfy the requirement of use 'as of right' by the public.

Documentary Evidence

Documentary evidence is not a pre-requisite for a successful application, nor is user evidence as an application can be successful based on either or a combination of both. Whether it is or was impractical to challenge users of the way, if public use went unchallenged then such use would have been 'as of right', without force, secrecy or permission. If the owner felt it impractical to challenge users there are other means by which they could have prevented the accrual of public rights. For example, the erection of notices or the deposit of a statutory declaration, however no evidence of such action was discovered or submitted during the investigation.

Local Authority Searches / Planning Permission

Prior to July 2016 the ongoing DMMO application would not have been revealed in a Land Charge search unless the question was specifically asked. Since July 2016 the question regarding public rights of way became compulsory in Land Charge searches, however some solicitors use personal search companies, who may not reveal the existence of a DMMO.

1. The objection from Paul Smith solely relates to desirability which is dealt with in the paragraph above.
2. Comments on objection from Gloria Smith - See comments on objection from Paul Smith (1) above.
3. Comments on objection from Shaun Cripps - See comments on objection from Paul Smith (1) above.
4. The objection from Colin and Carol Martin concerns desirability and user evidence which are dealt with in the paragraphs above.
5. The objection from Philip Brutton solely relates to desirability which is dealt with in the paragraph above.
6. The objection from Mr Johnstone solely relates to desirability which is dealt with in the paragraph above.
7. The objection from Mr Pearce raises a number of issues including user evidence, desirability of the route and matters relating to the Human Rights Act all of which are dealt with in the paragraphs above.

Regarding the Council's Corporate objective, as the processing of Modification Orders is a legal 'statutory' requirement their investigation does not have to comply with all or any of the Council's Corporate objectives. However, those objectives that their investigation may be relevant to are generally related to Enabling Economic Growth and Health, Wellbeing and Safeguarding.

Concerning the consultation exercise, the Council made every effort to contact all owners and occupiers, when it became apparent that contacting the occupiers/owners of the individual properties was presenting difficulties, the contact details of the owners were requested from Charteroak. Charteroak would not provide these details and therefore details of the application addressed to each property were provided to Charteroak with the request that they be forwarded to the individuals concerned, and at no time have we been informed that this had not been completed. In addition notices had been placed on site and the Order was advertised within a local

newspaper. It is therefore believed that all of the occupiers are aware of the Order and have been given the opportunity to respond.

With respect to the suggestion that the route could be extinguished, this is not something that can be taken into consideration when determining the application.

8. Comments on objection from Alison Pearce - See comments on objection from Patrick Pearce above.

9. The objection from Mrs S A Fiddes raises matters concerning Local Authority Searches / Planning permission, user evidence, desirability and the Human Rights Act which are all dealt with in the paragraphs above.

10. Comments on objection from Mr C Fiddes - See comments on objection from Mrs S A Fiddes above.

11. The objection from Mrs S Bracken raises a number of issues. Her comments about documentary evidence and user evidence are dealt with in the paragraph above. With regard to Winchester College's objection, it is not unusual for affected landowners to object to an Order to add a public right of way on their land. However, after consideration of the arguments Winchester College (landowner of part of the route at the time the Order was made) subsequently withdrew their objection. The alternative route proposed by Mrs Bracken is not something that can be taken into consideration with regard to the proposed modification.

12. The objection from Susan Jenkin raises the issue of user evidence which is dealt with in the paragraph above.

13. Comments on objection from Neil Jenkin - See comments on objection from Susan Jenkin above.

14. The objection from Paul Howard discusses user and documentary evidence which are dealt with in the paragraphs above.

15. Comments on objection from Jane Howard - See comments on objection from Paul Howard above.

16. The objection from Bob Lanzer covers user and documentary evidence, the desirability of the route and its effect on his privacy all of which are dealt with in the paragraphs above.

17. The objection from Ms Recurt raises the issue of user evidence, desirability of the route and Local Authority Searches which are dealt with in the paragraphs above. With particular regard to Ms Recurt's property purchase, Ms Recurt has provided a copy of the search that was undertaken when she bought the property. It has been clarified that the questions relating to public rights of way were correctly answered, i.e. the relevant question "Are there any pending applications to record a public right of way that abuts, or crosses the property, on a definitive map or revised definitive map?" was answered "none" which was correct because the application route does not abut Ms Recurt's property as there is a parcel of land in between the claimed footpath and Mr Recurt's property.

18. The objection from Sarah McDowall raises issues concerning the desirability of the route and matters relating to security and privacy. These are dealt with in the paragraphs above.

19. The objection from Jeremy Hurst raises the issue of user evidence which is dealt with

in the paragraph above.

20. The objection from Mr and Mrs Park raise the issues of desirability and user evidence which are dealt with in the paragraphs above.