



WILDLIFE AND COUNTRYSIDE ACT 1981

**COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNCIL
(PART OF BRIDLEWAY 33, STOURTON CAUNDLE)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2023**

STATEMENT OF CASE

DORSET COUNCIL

1 **INTRODUCTION**

1.1.1 Dorset Council ('the Council') supports the confirmation of the Dorset Council (Part of Bridleway 33, Stourton Caundle) Definitive Map and Statement Modification Order 2023 ("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 a section of Bridleway 33, Stourton Caundle was omitted in error during the sealing of the Definitive Map in 1989. Consequently this should be corrected on both the Dorset Definitive Map and Statement.

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

- 3.1 The proposed addition starts from the existing part of Bridleway 33, Stourton Caundle, at its junction with Bridleway 6, at point A (ST 71161348) north east along a tarmac surfaced track to its junction with Rowden Mill Lane at point B (ST 71181355). The width of this part of Bridleway 33 is 3 metres ('the Order Route').
- 3.2 Photos of the Order Route can be found at **Appendix 3**.
- 3.3 The land crossed by the Order Route is owned by: Mr Michael Young of 5 Hazel Grove, Locks Heath, Southampton SO31 6SH; and Mr Anthony Young of Little Orchard, East Mill Lane, Sherborne, Dorset DT9 3PD.
- 3.4 The effect of the Order, if confirmed, would add the Order Route to 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 Council consulted with Stourton Caundle Parish Council prior to making the Order. Other consultations were conducted (consultation responses and be found at **Document Ref 9** of the Council's submission bundle).
- 4.4 The evidence was set out in a report to the Executive Director for Place and signed off in line with the officer scheme of delegation on the 21 December 2022. It was decided that the available evidence showed, on balance, that the Order Route

subsisted or was reasonably alleged to subsist and that an order be made (the report can be found at **Appendix 4**).

4.5 The Order was made on 28 April 2023 and published on 25 May 2023.

4.6 Following the making of the Order one objection was duly made (see **Document Reference 4**).

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)(i) WCA 1981 refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

5.2 The making of the Order was based upon documentary evidence which demonstrates a reasonable allegation that bridleway rights subsist over the Order Route.

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 National Parks and Access to the Countryside Act 1949

6.5.1 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.

7 **EVIDENCE**

7.1 Extracts from the key documents, are contained within **Appendix 4** (appendix 3). References to point C relate to plan T721/22/2 which is contained in **Appendix 4** (appendix 1).

8 **ANALYSIS OF DOCUMENTARY EVIDENCE**

8.1 **Ordnance Survey Maps**

8.1.1 The Ordnance Survey Map Second Edition Map 1903 (scale 1:2500 or 25 inches to the mile) shows two routes in the area of Bridleway 33, Stourton Caundle. A double pecked line labelled as a footpath is shown travelling directly from the footbridge to Rowden Mill Lane, and another double pecked line that became Bridleway 33 is shown leaving the footbridge westwards to meet a four way cross of pecked lines and then heading north to meet Rowden Mill Lane. This second route was later recorded as Bridleway 33 during the 1950's Parish Survey.

8.1.2 Although not conclusive as to status, Ordnance Survey maps do provide evidence as to the physical existence of ways on the ground at the time of the survey.

8.2 **Dorset Council Records**

8.2.1 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. The District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

8.2.2 The 1953 Parish Survey map shows the route of Bridleway 33, Stourton Caundle.

8.2.3 The depicted route is ambiguous in its recording as there are two routes each numbered 33. One route labelled 33 has an arrow pointing to the diagonal double pecked line from the footbridge to meet Rowden Mill Lane. The second route labelled 33 has an arrow pointing to the double pecked line heading north from Rowden Mill Farm at the junction with Bridleway 6, Stourton Caundle, to meet Rowden Mill Lane.

- 8.2.4 The Parish Survey for Stourton Caundle was substantively completed in 1953 along with the associated route descriptions. Bridleway 33, Stourton Caundle was annotated on both map and survey description as being added for continuity in 1957.
- 8.2.5 The 1959 Draft Map for the North Dorset Area shows the route of Bridleway 33, Stourton Caundle as starting from the footbridge at the Parish Boundary of Holwell heading west to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane.
- 8.2.6 The 1964 Provisional Map and 1967 First Definitive Map show Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell heading east to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane.
- 8.2.7 The 1974 Revised Draft Map shows Bridleway 33, Stourton Caundle following the same route as previous maps.
- 8.2.8 The current Definitive Map which was sealed in 1989 shows Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell heading east to meet the start of Bridleway 6, Stourton Caundle at which point it terminates.
- 8.2.9 The current Definitive Statement describes Bridleway 33 as “Path No 6 at footbridge to county road (Bowden Mill Lane)”.

8.3 **Aerial Photograph**

8.3.1 The aerial photograph of 2014 shows the tarmac track from within the grounds of Rowden Mill Farm to the end of Rowden Mill Lane. It is along this track that it is believed the drafting error on the definitive map has arisen as shown on drawing T721/22/2.

8.3.2 The digital line of Bridleway 33 from Point C to Point A has been overlaid to illustrate the currently recorded route and that Bridleway 33 ends at the junction with Bridleway 6, Stourton Caundle.

9 **Summary of Documentary Evidence**

9.1 The Parish Survey for Stourton Caundle was substantively completed in 1953 along with the associated route descriptions. Bridleway 33, Stourton Caundle was annotated on both map and survey description as being added for continuity in 1957. The 1959 Draft Map for the North Dorset Area shows the route of Bridleway 33, Stourton Caundle as starting from the footbridge at the Parish Boundary of Holwell heading west to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane.

9.2 The 1964 Provisional Map and 1967 First Definitive Map show Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell heading east to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane. The 1974 Revised Draft Map shows Bridleway 33, Stourton Caundle following the same route as previous maps. The current Definitive Map which was sealed in 1989 shows Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell heading east to meet the start of Bridleway 6, Stourton Caundle at which point it terminates.

9.3 Dorset Council records indicate that the route of Bridleway 33, Stourton Caundle shown C-A-B was the path as recorded from the Parish Survey Map in 1957 to the Revised Draft Map in 1974. The current definitive map was badly drafted prior to being sealed in 1989 resulting in the error which records the route from points C-A only and omits section A-B as shown on drawing T721/22/2. The definitive statement describes the route as “path number 6 at footbridge to county road (Bowden Mill Lane)” and this should be corrected to accurately record the route C-A-B as per Part II of the Order.

10 **OBJECTIONS TO THE ORDER**

10.1 There was objection to the Order (**Document Reference 4**). Details of the objections and the Council’s comments on the objections can be found at **Document reference 5**.

11 **SUMMARY OF POINTS FOR CONSIDERATION**

11.1 The Council is satisfied that the evidence supports the existence of a drafting error on the definitive map and that the content of the map and statement require modification.

11.2 The objection raises the matter of depreciation of land value which cannot be taken into consideration when determining whether the Order should be confirmed.

11.3 The objection does not contain any evidence to dissuade the Council’s position.

12 **CONCLUSION**

12.1 The Council asserts that the documentary evidence supports the existence of public bridleway rights along the Order Route.

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