



WILDLIFE AND COUNTRYSIDE ACT 1981

**COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNTY COUNCIL
(FOOTPATH FROM EAST LANE (D20502) TO D20503
PUBLIC ROAD EAST OF COOMBE COTTAGES,
BRADFORD ABBAS) DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2017**

**SUMMARY
PROOF OF EVIDENCE**

VANESSA PENNY PGDip MIPROW

DORSET COUNCIL

1 **INTRODUCTION**

1.1 My name is Vanessa Penny, and I am the manager of the Definitive Map Team at Dorset Council. This is a summary of my proof of evidence.

1.2 I consider that the Dorset County 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**”) should be confirmed. The evidence demonstrates, on balance, that the footpath proposed to be added to the definitive map and statement by the Order (‘the **Route**’) subsists.

2 **THE EVIDENCE**

2.1 The investigation of the application revealed documentary evidence which supports the physical existence of at least part of the Route since 1887, notably various Ordnance Survey maps. Although the Ordnance Survey maps provide evidence in support of the Application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

2.2 User evidence shows that there has been deemed dedication in accordance with Section 31 Highway Act 1980.

2.3 The use of the Route appears to have been brought into question when a gate was erected on 31 October 2007 together with notices stating, “Private No Public Right of Way”. Many witnesses refer to the erection of the gate and sign at that time.

- 2.4 There has clearly been, at least, a 20 year period of use by the public as of right before the use of the Route was brought into question in 2007, i.e. from 1987 to 2007, and there is nothing to indicate (in the Statements of Case or otherwise) that the Route is a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication.
- 2.5 The main use of the Route was on foot with some use by bicycle and car.
- 2.6 Evidence was provided in the form of user evidence forms, and witness statements which are included in the Council's bundle of evidence at pages 187 and 288 respectively. If all the user evidence is combined is combined, it can be seen that there are **25** users of the Route who have provided evidence of use as of right during the relevant period. I have excluded those whose user was by permission (or of right), but their evidence confirms the use of the Route by others as of right. I refer to the Table summarising the user evidence which is included on page 10 of my proof of evidence.
- 2.7 Many of the witnesses say that they saw other people using the Route and it is reasonable to assume that the users who have completed evidence forms represent a proportion of the actual use. This demonstrates that there has been significant use of the Route by the general public over many years, and in particular over the period of 1987 to 2007.
- 2.8 Nothing in the user evidence suggests that the use was by permission, by force or in secret.

Evidence of lack of intention to dedicate

- 2.9 I have seen no evidence of actions on the part of the landowner between 1987 and 2007 that indicated a lack of intention to dedicate a public right of way. Neither landowners during that period currently object, or have put forward evidence to suggest they did not intend to dedicate that right of way.

Inferred dedication

- 2.10 If the inspector is not persuaded that the evidence indicates a deemed dedication of the Route, I suggest that it can be inferred from the evidence available that past landowners have dedicated the Route for use by the public.

3 COMMENTS ON OBJECTIONS & STATEMENTS OF CASE

- 3.1 There are 20 objections to the Order. Objectors are primarily concerned about desirability, suitability, purpose and safety. However, considerations such as these are not presently relevant for the reasons I explain in my proof of evidence.
- 3.2 A number of the objectors have concerns about privacy and other issues that relate to the Human Rights Act 1998. I understand that PINS' guidance is to turn away representations on these grounds, and I invite the Inspector to do the same.
- 3.3 Some objections complain of the passage of time since the Application. Such objections often expressly recognise that they have no evidence to rebut the evidence put forward by the Council. It is not accepted that the proceedings are unfair.
- 3.4 Some of the objectors also consider that the user evidence is insufficient to lead to the accrual of public rights. I do not accept this for the reasons given in my proof of evidence and summarised above.

- 3.5 Ten Statements of Case have been received objecting to the Application. The same overall cross-cutting points made above are repeated.
- 3.6 Concerns were also raised that there was a lack of proper notification and communication with landowners. It is not accepted that there were procedural flaws.
- 3.7 Other points raised include the potential for adverse legal and financial impact, planning matters and perceived matters of proportionality. These issues are not relevant under the legal tests.
- 3.8 The Council considers the Statements of Case disclose no reason to refuse to confirm the Order.

4 **SUMMARY**

- 4.1 The extent of user evidence available clearly demonstrates that the Route has been used by members of the public at large, on foot, as of right and without interruption for 20 years before being called into question.
- 4.2 There is no sufficient evidence of an intention not to dedicate on the part of the landowners during that 20 year period.
- 4.3 Alternatively, I consider that use of the Route is sufficient at common law for the acquisition of public footpath rights.