



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**

PROOF OF EVIDENCE

VANESSA PENNY

DORSET COUNCIL

1. INTRODUCTION

- 1.2 My name is Vanessa Penny. I have worked for Dorset Council on Rights of Way matters since 2000, initially as a Rights of Way Officer, then as a Definitive Map Officer and since 2008 as manager of the Definitive Map Team. I hold a Postgraduate Diploma in Public Rights of Way and Countryside Access Management. I have been a member of the Institute of Public Rights of Way and Access Management since 2009. My duties include overseeing definitive map modification order (DMMO) casework.
- 1.3 In my opinion 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") should be confirmed. The evidence demonstrates, on balance, that the restricted byway proposed by the Order ("the Route") subsists.
- 1.4 I understand my duties as an expert witness and confirm that my evidence is independent, objective, and based on my professional opinion. I have included all material facts relevant to my opinion. The facts in this Proof of Evidence are true to the best of my knowledge and belief.

2. MY INVOLVEMENT WITH THE CASE

- 2.1 The status of Mill Lane has been under discussion for many years. In 2013, Chideock Parish Council requested that Dorset County Council establish the correct status of the route.
- 2.2 The County Council case officer, Phil Hobson, investigated the matter and prepared a joint report with Sarah Meggs, Solicitor, dated 27 February 2015. Both officers have since left the Council.
- 2.3 Chideock Parish Council responded in July 2015.

- 2.4 In 2017 the case was taken over by Anne Brown, Definitive Map Technical Officer who produced a report which was considered by Dorset County Council's Regulatory Committee on 18 October 2018. The Committee report concluded that the documentary evidence demonstrated that the Route should be recorded as a restricted byway. Anne Brown left Dorset Council in 2022.
- 2.5 I have had limited involvement with this case until earlier this year and was not involved in the original investigation.

3 LEGAL FRAMEWORK

- 3.1 Mill Lane, between points B and E on the Order plan is shown on the List of Streets Plan as Highway Maintainable at Public Expense, and on the Definitive Map as a Bridleway (part of Chideock Bridleway 18).
- 3.2 Section 67 of the Natural Environment and Rural Communities Act 2006 states that an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement was shown on the definitive map and statement only as a footpath, bridleway, or restricted byway, subject to certain exceptions.
- 3.3 No relevant exception appears to apply. Accordingly, any unrecorded public motor vehicular rights have been extinguished, and the route should be recorded as a restricted byway.
- 3.4 A restricted byway is a highway over which the public have a right of way on foot, pedal cycle, on horseback or leading a horse, and using any vehicle other than a mechanically propelled vehicle (e.g. horse and cart). The public cannot use motor vehicles on a restricted byway without lawful authority.
- 3.5 The case has been considered under the Wildlife and Countryside Act 1981 ("the 1981 Act"). The purpose of the investigation is to ascertain what rights exist. It does not determine the desirability or suitability of the Route for any given purpose. This is made clear in the *Rights of Way Advice Note 9*, under the heading "Modification orders under Section 53":

6.2.3. It is important to note that the purpose of definitive map modification orders and reclassification orders is to ascertain what rights exist. It is not, for example, to determine the suitability of a way for particular types of traffic or whether use of a way may result in loss of amenity or environmental damage). (“Rights of Way Advice Note 9: General Guidance on Public Rights of Way Matters”, §6.2.3).¹

4 THE EVIDENCE

- 4.1 In summary, the documentary evidence, in particular the length of Mill Lane given in the List of Streets (1974), the List of Streets Plan (1974), the First Edition Ordnance Survey Maps (1887-8 and 1903-4), Finance Act Plan (1910) and supported by the current Definitive Map (sealed 1989) and the Sales Particulars for part of the Chideock Estate (1953) is sufficient to demonstrate, on balance, that Mill Lane, as shown between Duck Street in the north and point E on the Order plan in the south was dedicated as a carriageway under common law.

5 COMMENTS ON OBJECTIONS & STATEMENTS OF CASE

Objections to the Order

- 5.1 There are 11 objections to the Order. Detailed comments on each objection are contained in the Council’s Comments on Objections.

Statements of Case

- 5.2 Two Statements of Case objecting to the Order have also been received and are considered below:
- 5.3 **Mrs Lyn Crisp and the Community Group** object to the proposed restricted byway on the grounds that the Order Route is “...a bridleway and NOT part of the County Road.”.

¹ Paragraph 1.3 of the Guidance states “1.3. This Advice Note should only be regarded as a basic guide to, rather than an authoritative interpretation of, the law on public rights of way, it is publicly available but has no legal force”. However, it is commended as an accurate description of the law which the Inspector will (respectfully) be invited to apply.

- 5.3.1 Mrs Crisp disputes Dorset Council's claim that the northern section of Bridleway 18 (between points B - E) is "dual recorded" as both a bridleway and a county road. She argues that this interpretation did not emerge until 2012–2015, despite correspondence dating back to 1996, and only arose after solicitors for West Dorset Leisure acknowledged that their client had no vehicular access rights over this section.

COMMENT: The Route is shown on the Definitive Map as a bridleway and is also shown on the Council's List of Streets. This is a statement of fact.

- 5.3.2 The objection states that it is illogical to classify the route as a road because Point B serves only a field, not a dwelling or farm. The group also notes that when the route was shown as a road on the Dorset Explorer Map, Google Maps directed vehicles, including large lorries, onto the bridleway, causing access problems until the road designation was removed.

COMMENT: The purpose of the investigation is to determine the status of the Route. Access issues cannot be taken in consideration at this time.

- 5.3.3 Mrs Crisp raises two additional concerns:

- 5.3.3.1 First, the width of the Route is not 3m.

COMMENT: The width of Bridleway 18, Chideock is recorded as 3m in the 1996 Public Path Creation Order. The current order under consideration is proposing to amend the status of a section of the bridleway, it is not proposing to amend the width of the route.

- 5.3.3.2 Second, safety has not been considered.

COMMENT: As above, comments about desirability, suitability and safety are not presently relevant. As far as is relevant, the purpose of the investigation is to ascertain what rights exist. It does not determine the desirability or suitability of the Route for any given purpose.

5.4 **Mr Tom Faulkner, Chideock Parish Council** opposes Dorset Council's proposal to classify the northern section of Bridleway 18 as a county road. The Parish Council believes the evidence supports Bridleway 18 remaining a bridleway only and requests that any alleged dual status as a county road be removed from the Definitive Map. The Parish Council raises a number of issues:

5.4.1 Bridleway 18 is the only safe pedestrian route between Chideock and Seatown. Alternative routes are unsuitable or unsafe, particularly for elderly people, disabled users, and families. Increased vehicle use on the route poses a growing safety risk.

COMMENT: Safety is not a matter that can be taken into consideration when confirming an order. See paragraph 5.4.3.2 above.

5.4.2 Historically, the route has always been treated as a bridleway rather than a public vehicular highway.

COMMENT: If the Order for a restricted byway is confirmed there will be no public vehicular rights along the Route.

5.4.3 There is no clear evidence of public vehicular rights, and any unrecorded rights should have been extinguished by the NERC Act 2006.

COMMENT: It is agreed that vehicular rights will have been extinguished.

5.4.4 The route has never been maintained as a county road and was originally a farm track later surfaced during the Second World War.

COMMENT: Lack of maintenance does not affect existing public rights.

5.4.5 Existing properties and the caravan site already have alternative vehicular access.

COMMENT: This is not a relevant consideration as the Order is dealing with public rights of access rather than private rights of access to properties.

6 SUMMARY

- 6.1 The balance of evidence shows that a route shown on the definitive map and statement should be shown as having a different status. For the reasons set out above, officers consider that the evidence supports the proposed modification.
- 6.2 The order to record Mill Lane as shown between points B – C – D – E on the Order plan as a restricted byway should be confirmed.