
Order Decision

First Inquiry held on 5 and 6 November 2014

Second Inquiry held on 4 November 2015

Site visits made on 4 November 2014 and 3 November 2015

by Mrs H D Slade MA FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 December 2015

Order Ref: FPS/C1245/7/36M1

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Dorset County Council (Bridleway 3 (part) and Bridleway 4, Piddlehinton) Definitive Map and Statement Modification Order 2010.
- The Order is dated 19 March 2010 and proposes to modify the Definitive Map and Statement for the area by showing as Restricted Byways routes which are currently recorded as Bridleways; as shown in the Order plans and described in the Order Schedule.
- In accordance with Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order so as to amend the recorded status of one of the Order routes to Byway Open to All Traffic.
- There were eight objections outstanding at the commencement of the second inquiry.

Summary of Decision: The Order is confirmed subject to the modifications I formerly proposed, and revised modifications, set out below in the Formal Decision.

Procedural Matters

1. My interim decision on this matter was issued on 2 December 2014 and resulted in eight objections. Mr A Kind, on behalf of the TRF, requested to be heard. Due to the volume of objections, and the range of issues raised, I held a second inquiry on 4 November 2015 under the provisions of both paragraphs 7 and 8 of Schedule 15 to the Wildlife and Countryside Act 1981.
2. This decision should be read in conjunction with my interim decision.
3. Due to the nature of the evidence on which my interim decision was based it was inevitable that most of the inquiry would consist of legal arguments from the two advocates. Although I heard brief oral evidence from two parties in support of the original applicant (including the original applicant himself), Mr Pavey, on behalf of his client, decided not to call his witnesses in person, relying on their written evidence. All parties were content for this approach to be taken, and I have had regard to all the written evidence (from both inquiries), the statutory objections in each case, and the oral evidence I heard at both inquiries.
4. Dorset County Council ('the County Council') maintained their neutral stance in the matter and took no part in either inquiry.

The Main Issues

5. My interim decision was made on the basis of the documentary evidence which had been submitted. Although user evidence of both routes on motorcycles was presented to the inquiry, the decision did not rely on that evidence.
6. The Order as made proposed that both routes should be recorded as Restricted Byways ('RBs'). I made no modification to the Order in respect of the proposals in relation to Bridleway 4.
7. The principal issue to be examined is whether or not the evidence submitted supported my proposed modification to show Bridleway 3 as a Byway Open to All Traffic ('BOAT') rather than as a Restricted Byway ('RB'), or whether there is new evidence which should cause me to review my interim decision in any way.
8. In this case, due to the inquiry being held under both paragraphs of the Schedule to the 1981 Act, I am also able to consider new evidence in relation to my decision regarding Bridleway 4: in particular (but not restricted to) whether or not I was justified in declining to modify the Order to include a northerly extension of the Order route.
9. I have had regard to the relevant authorities cited, including the recent judgement in the Supreme Court in *R (Trail Riders Fellowship and another) v Dorset County Council (Plumbe intervening)* [2015] UKSC 18.¹ I have also taken into account relevant guidance.

Reasons

The Supreme Court judgement in 'Dorset'

10. Since the issue of my interim decision, the *Dorset* case has been heard in the Supreme Court and judgement given. This was the case in respect of which I was asked by Mr Plumbe to delay my decision and to which I referred in paragraphs 11 to 14 of my interim decision. I did not accede to his request.
11. The judgement was published on 18 March 2015. In short, the Supreme Court confirmed, in a majority decision, that the requirement for definitive map order application maps to be presented at a scale of 1:25000 encompassed maps which were electronically or otherwise adjusted to match that requirement, regardless of their original scale. Also by a majority view (albeit strictly *obiter dicta*) the Court concurred with the decision in the Court of Appeal² in relation to the need for strict interpretation of the requirements of Paragraph 1 of Schedule 14 to the 1981 Act in order to invoke the exemption provided by Section 67(3) of the Natural Environment and Rural Communities Act 2006 ('the NERC Act 2006').
12. Mr Kind urged me to take account of the dissenting opinion of Lord Carnwath in respect of the second question. However, I concur with the view of Mr Pavey that I must properly act in accordance with the majority view; the ground was fully rehearsed before the Court and detailed opinions given by the three consenting Lords: Lord Neuberger, Lord Sumption and Lord Toulson.

¹ '*Dorset*'

² In the case of *R(oao Warden & Fellows of Winchester College & Anor) v Hampshire County Council* [2008] EWCA Civ 431 ('*Winchester*')

Bridleway 4: Whether there is new evidence which affects my interim decision

Whether the exemption in Section 67(3) of the NERC Act applies

13. In my interim decision I concluded that the application in respect of the Order route A-B-C-D-E had not been completed strictly in accordance with the requirements of Paragraph 1 of Schedule 14 to the 1981 Act because one of the documents referred to on the application form had not been submitted with the application. It was not, in fact, submitted until preparations were underway for my first inquiry, some 10 years after the application was made.
14. Mr Kind made a lengthy legal submission as to why the absence of the missing document should be ignored in this context, and Mr Stuart, the original applicant, gave oral evidence to support this contention. He stated that the document was not relevant to the alleged status of the route, but only assisted with locating the onward route described in the Inclosure Award. In that sense he was not and never had been relying on the property indenture in the context of Paragraph 1 of Schedule 14.
15. Mr Kind took issue with my reasoning in the interim decision and attempted to draw a distinction between the evidence that an applicant wishes to 'adduce' and evidence on which an applicant wishes to 'rely'.
16. I consider that I made myself perfectly clear in my interim decision; that evidence which is 'adduced' is that evidence on which a person wishes to put forward and to rely upon. This is the definition set out in the judgement in *Winchester*, which I have already explained is the relevant case in this context. Mr Pavey considered that my decision in this regard was correct, and commented that Mr Stuart had accepted that the document had not been submitted. He also expressed the opinion that Mr Stuart was clearly awkward about the rather contrived argument being put forward by his advocate.
17. I am satisfied that I set out my reasoning in sufficient detail in my interim decision and correctly addressed the question of whether or not the application in respect of (what was then) Bridleway 4 was a qualifying application in terms of the NERC Act 2006. I concluded then that it was not, and I have not heard any new evidence or legal argument to cause me to depart from that view. Any rights for Mechanically Propelled Vehicles ('MPVs') were extinguished by the NERC Act 2006 because the application was not strictly in compliance with the requirements of Paragraph 1 of Schedule 14 to the 1981 Act.
18. This may appear 'unfair' to some people but interpreting the requirements in this way is in accordance with legal judgements and with government policy in respect of MPV rights, and does not strain the meaning in any way.

The gate at Point E

19. With regard to the length of the Order route shown on the Order plan (A-B-C-D-E) I was addressed by Mr Oickle (in writing) and Mr Greenslade (in person) on the issue of the width of the route at Point E. The evidence presented was that, at some point in the early 1990s, alterations were made to the route at that point and it was narrowed by the insertion of a gate approximately 1.2 metres wide, and the construction of a new bank. At the first inquiry, this suggestion was vigorously denied by the Parish Council representatives.

20. Mr Greenslade was the person who had brought the issue to the attention of the County Council and who pursued it when he got no response. His evidence was very persuasive, in my view, and was not challenged by any other party. In fact he had managed to locate a copy of a letter from Langham Industries Limited, dated 31 May 1994, in which the erection of several hunting gates, including the one at Point E, was acknowledged by the landowner. Mr J M Langham explained in the letter that the gates had been erected in accordance with the status of the route shown on the Definitive Map.
21. I am therefore satisfied that the route has been altered at this location, but it is not strictly relevant to my decision in the matter since the width of the Order route is as set out in the Inclosure Award: 9.1 metres (equivalent to 30 feet). It might become more relevant if I decide to consider the modification of the Order to show the extension of the route north to Drakes Lane.

Whether the Order should be modified to include the extension north to Drakes Lane

22. I addressed this issue in my interim decision in paragraphs 15 to 20 and concluded that it was not appropriate for me to make the modification for the reasons set out there. Mr Oickle has now supplied me with a revised draft schedule with more specific measurements of the onward route, should I now decide otherwise.
23. I was addressed at length by Mr Kind as to why my decision in this respect was flawed, and he attempted to persuade me that it would be 'Wednesbury' unreasonable not to modify the Order in this way. He suggested that failing to make the modification would fetter any further consideration of that part of the originally claimed route and that it would result in a definitive map and statement which was not of the highest accuracy.
24. Mr Pavey disagreed and took the view that other avenues were open to the TRF, or any other person, who might wish to obtain a declaration of the status of that section of the right of way.
25. In coming to my conclusion that it was not appropriate to make such an extensive modification to the Order, my purpose was not to fetter any future attempt to modify the definitive map and statement, but to be fair, open and impartial. The draft schedule prepared most carefully by Mr Oickle amply demonstrates my difficulty. To modify the Order would require the addition of several pages to the Order schedule and three additional maps to cover the extended route. It would also affect at least one other landowner who has not been party to the legal process to date, and may include others (as yet unidentified).
26. I acknowledge the judgement in *Trevelyan v SSETR* [2001] EWCA Civ 266 regarding the view of Lord Phillips that if facts come to light during the course of an inquiry which persuade the inspector that the definitive map should depart from the proposed order (he) should modify it. However, in this case the existing Order map cannot accommodate the proposed modification, and therefore the facts in this case do not persuade me, for the reasons I set out in my interim decision.
27. Furthermore, the procedures set out in Schedules 14 and 15 of the 1981 Act were designed to ensure a fair and inclusive notification and consultation

process prior to the making of a definitive map modification order. I acknowledge that this includes advertising the Order, but this comes late in the process, after the Order has been made. In this case, the landowner or landowners who own the land north of Point E would be directly affected by this proposed addition and have, to date, not been given any chance to engage in the full legal notification and consultation process set out in the relevant schedules.

28. I maintain my view that making such a major and significant alteration to this Order so as to include a substantial additional length of route would be an abuse of the detailed processes set out in the 1981 Act, and would involve practical and administrative alterations and additions that take it outside the scope of a mere modification.

Summary

29. I conclude that there is no new evidence which would cause me to review the conclusion I came to in my interim decision with respect to the Order route between Points A and E.

Bridleway 3: Whether there is new evidence which affects my interim decision

Whether the exemption in the NERC Act 2006 applies to this route

30. Mr Pavey sought to persuade me that I should apply the exemption available in the NERC Act 2006 to Bridleway 3 in addition to Bridleway 4, and thus confirm the route as no more than a Restricted Byway. He took the view that if the applicants were relying on the contents of the Enclosure Award to support their application then a copy of the complete Award was required and not just an excerpt from the Award and the Map.
31. In addition he felt that the statement that accompanied the application made clear that other evidence existed which could be supplied if required at a later stage. He drew my attention to the opinion of George Laurence QC and Ross Crail, dated January 2007, produced in anticipation of the Winchester case. Mr Pavey stressed that the opinion made clear that, in the view of Counsel, the intention of Paragraph 1 of Schedule 14 of the 1981 Act is clear in that the applicant should submit an application prepared to the best of his or her ability and not keep anything in reserve.
32. Mr Stuart was able to confirm at the inquiry that photographs of the relevant extracts of the Piddlehinton Inclosure Award were submitted with the application and that it was those extracts on which he was relying. Whilst not denying that other evidence was available, it was his view that his application did not depend on it.
33. Mr Pavey implied that a degree of 'professionalism' ought to be applied to an applicant who made multiple applications and clearly had some knowledge that, perhaps, the man in the street might not have. Implicit in that view was the expectation that an application would not be submitted until fully researched. Mr Stuart made clear that he had worked closely with the County Council at the time to try to get all the relevant applications in, properly in accordance with the Schedule 14 requirements, because of the potential large number of claims and to try to spread the load.

34. My view is that an applicant, whoever that may be, is entitled to determine what evidence he or she wishes to adduce (i.e. to put forward and to rely upon) and that as long as that evidence is submitted with the application, the requirements of Paragraph 1 of the Schedule are met. Of course it may be, as I said in my interim decision, that the evidence so relied upon turns out not to be enough to carry the day, but that is not the point (see paragraph 39 of my interim decision).
35. Having reviewed the chronological 'facts' submitted by Mr Pavey which he obtained through consultation with Dorset County Council, and heard Mr Stuart's evidence in person, I am satisfied that the scanned photographic extracts he supplied of the Inclosure Award were appended to his application, and those were the documents he wished to adduce. Any subsequent evidence submitted was put in following requests from the County Council as part of their investigation of the application. I maintain my view, in accordance with the reasoning expressed in paragraph 40 of my interim decision, that the application was compliant with the relevant requirements, and that the exemption in Section 67(3)(a) therefore applies to this route: the rights for MPVs have been saved.

The existence of the through route beyond the scope of the Inclosure Award

36. It was argued by Mr Pavey that the reliance that has been placed on the inference of a through route beyond the limit of the Inclosure Award route (referred to in my interim decision as Carriage Road C) is misplaced or at least not supported to the degree argued by the applicants. He considered that the exact route followed by any onward route to the south (i.e. between Point X and H) was far from certain, and that other routes existed with which it might have been confused.
37. Mr Pavey suggested that the presence of what is now Bridleway 24 might suggest that a different route was involved, but I am satisfied that Bridleway 24 is the vestige of a route which is shown on the earlier OS maps as branching out of what is now the Order route. This is shown clearly on the 1805 OS drawing and there is no doubt in my mind that the Order route is the westerly route shown on that map. The easterly route in the adjoining Puddletown parish did not follow the line now taken by the present Bridleway 5 Puddletown, which runs parallel to the Order route. There is no possibility in my mind that the two routes could have been confused in the evidence. Furthermore, it is a fact that the other route is now, and was then, in a different parish, and Carriage Road C, shown in the Piddlehinton Award, therefore could not have been the present easterly route.
38. I have studied again the available mapping evidence, but I can find nothing to displace my confidence in the OS mapping in particular. Mr Kind argued that such consistency of depiction in both the route and the topographical features on successive editions of mapping is very strong evidence in support of the Order route having always existed on its present line.
39. In my interim decision I acknowledged that there were maps which were ambiguous or less well executed, but that the OS mapping was reliable. When all the evidence is taken together, the consistent pattern is very clear. I have been presented with no new evidence which would lead me to conclude that the Order route as a whole did not exist at the time of the Piddlehinton Inclosure Award.

40. I do accept that, over time, the pattern of use of the way may have altered. The development of better, alternative highways is likely to have resulted in less use of the route as a through route by the public in carriages and carts and, further, that agricultural use of the route will probably have become the predominant use, given the development of farming practices in the area. This is consistent with the claim by the Parish Council in the 1950s that its status was a CRB³. Although the status of the onward route beyond the limit of the Inclosure can only be inferred from the other evidence, no new evidence has been submitted which causes me to depart from the conclusion I reached in my interim decision on the status of the route as a whole.

The width of the route beyond the Inclosure Award limit

41. Towards the end of the Inquiry, Mr Pavey raised the issue of the width of the route as quoted in the Order and, quite correctly, pointed out that the only part of the Order route whose width could be ascribed to the Inclosure Award was that between Points B and X. The Order as made describes the whole length of the Order route as being the same width – 9.1 metres (equivalent to 30 feet as set out in the Piddlehinton Inclosure Award).

42. Mr Kind appeared to concede the point, and indicated that in the absence of any evidence of the width in these circumstances the guidance⁴ suggests that the width shown in the 1:2500 OS County Series mapping should be used.

43. I agree with Mr Pavey that I should not rely on the width quoted in the Piddlehinton Inclosure Award to define the width of the onward route to the south. The earliest County Series 1:2500 map of the area available to me is that of 1902, and this does show a route of varying width south of the equivalent of Point X on the Order plan. It includes a significant narrowing, or pinch point, immediately south of that location, and a general narrowing of the width between Points G and H. The OS 6-inch map of the same area, but dated 1887, shows the same pinch point and general narrowing. This suggests that the width of the route had remained reasonably consistent over the ensuing 15 years or so and that the 1902 edition of the OS 1:2500 County Series is a reliable indication of the width of the highway.

44. In the absence of any earlier OS mapping at 1:2500 scale, I must therefore rely on the Second Edition. I intend to modify the width of the route given in the Order to indicate that south of Point X the width ought to be determined by reference to the 1902 OS County Series 1:2500 map. It would seem to me that this is unlikely to result in any part of the route being wider than 9.1 metres, and therefore there is no need to advertise such a modification, since it will not affect land not affected by the Order as made.

Both Routes:

Whether any gates should be recorded as limitations

45. This question was not addressed at my earlier inquiry. The Order as made carried one limitation referring to a gate on Bridleway 3 at Grid Reference SY 73519760 (Point X), described in Part II of the Order Schedule as being a limitation across the route when it was dedicated by the Inclosure Award.

³ Cart or Carriage road used as a bridleway – a non-statutory description

⁴ Defra's non-statutory guidance to Order Making Authorities 12 February 2007 and Planning Inspectorate Advice Note 16 – Widths on Orders (5th revision September 2009)

46. As part of his submissions, Mr Pavey asked for certain gates along both routes to be included in the Order as limitations to the public's use. He considered that the OS map of 1902 showed gates at the equivalents of Points B, F, and H, and at a Point between Points F and X. He considered that the 1887 6-inch OS map showed gates at Points B and G.
47. Mr Kind expressed the view that the only gates, if any, that should be included in the Order as limitations were those shown to have been present at the time of dedication.
48. I agree with Mr Kind's view, as there can be no certainty that gates erected after that time were authorised in any way and they may therefore be unlawful obstructions.
49. At the time of the 1835 Piddlehinton Inclosure Award, the route of Carriage Road C was described as leaving the Milbourne and Blandford Road and extending to a gate at the entrance of Bourne Lane leading to Higher Waterson and Dorchester (see paragraph 50 of my interim decision). The map itself does not indicate any feature across the line of the Carriage Road 3, and what is now known as Bourne Farm is some distance to the west of the awarded route. I consider it more likely that 'Bourne Lane' was the lane to Bourne Farm, and there may have been a gate across the entrance to it, separating it from the Order route, and not a gate across the actual carriage road. No gates are shown across the Order route on the slightly later 1840 Tithe map of Piddlehinton.
50. The Tithe Map for Puddletown (1842) does show a line across the northern and southern extremity of the section of the Order route it covers, but this may relate simply to the fact that those are the extremities of the map coverage which represent the parish boundaries in each case. There is no actual evidence that there were gates at those points.
51. The map of the Piddlehinton Boundary Survey (1885) does not indicate any gates across the route at all – including the stretch formerly lying within Puddletown – although rather ambiguously it does not depict the route actually linking to what is now Bridleway 4. Despite this, it otherwise depicts an open route down to the parish boundary in the south, which lies beyond what is now known as Snowdrop Corner. In fact this map interestingly does not even show the present route of the B3143 – the junction shown is the junction of the road to Lower Waterson branching out of the road to Dorchester well beyond Snowdrop Corner.
52. I acknowledge that later mapping does indicate that there may have been changes made to priorities along the route (see in particular the 1887 6-inch OS map which suggests gates and a change of principal route to Bourne Farm). However, I am satisfied that there is no evidence to show that, on the balance of probabilities, any gates existed across the line of this route (i.e. Bridleway 3) before that time, and certainly not at the time of inferred dedication in 1835. Furthermore, I am not satisfied that the evidence supports that there was a gate at the grid reference given in the Order for the location of a limitation.
53. With respect to Bridleway 4, this is described as Carriage Road B in the 1835 Award and the associated plan shows no features at all which could be representative of a gate across the line of the route.

54. I therefore decline to modify the Order to record any additional limitations in the form of gates, and intend to remove the reference to a limitation at SY 73519760.

Whether the routes had ever been 'made up'

55. There was some discussion at the Inquiry about the extent to which Mr Oickle may have trespassed in his actions to ascertain whether or not there was any indication of surfacing on Bridleway 4. This was in relation to the question of whether or not the route had ever been made up in accordance with the terms of the Inclosure Act and Award. Mr Oickle confirmed at the Inquiry that he had only undertaken any excavation within the highway, and that the photographs he had submitted had been taken between Points D and E.

56. I have already discussed in my interim decision the standards of maintenance and the lower expectations of the public in those days (i.e. the mid 1800s). I also considered the situation on Bridleway 4 where there has been encroachment of vegetation onto the awarded route (see paragraphs 70 of my interim decision). No additional evidence has been submitted which causes me to review my conclusions in this matter, and I am satisfied that the evidence supports that the Award was effectively and legally executed in relation to the both the Order routes in question.

Other Matters

57. A number of the objections, representations and written witness statements addressed matters which were not new evidence, and which related to matters I had considered in coming to my interim decision. Included in this category are observations on the use of the Order routes by motorcyclists, the erection of notices and gates, and the occasional apprehending of motorcyclists, principally occurring after the date of the applications. This information was available to me at the first inquiry, and I took it into account. None of the information provided in the written statements or objections to my modifications amplifies the information I have already considered sufficient to cause me to reconsider my decision on that basis.

58. Some of the other matters raised in the submissions were not relevant to my decision at all. These included the concerns expressed regarding bio-security, vandalism and fly-tipping. It is not appropriate for me to take these issues into account, and I have not done so.

Conclusions

59. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with the modifications I previously proposed and with further revised modifications, none of which require advertising.

Formal Decision

60. I confirm the Order subject to the following modifications:

In Part 1 of the Schedule:

- In the third line of the heading delete the letter 's' from the word 'Bridleways';

- Delete the word 'restricted' and add after the word 'byway' the words 'open to all traffic' in the third line of the same heading;
- Amend the description of the width by deleting the word 'Restricted' and inserting after the word 'Byway' the words 'Open to All Traffic';
- In the same description of the width, insert after the words 'Byway Open to All Traffic' the words 'between Points B and X';
- At the end of the description of the width, after the bracket closure, insert the words 'Between Points X and H the width is as defined on the 1902 Ordnance Survey 1:2500 map.'
- Above the description of Bridleway 4 insert an underlined title 'Bridleway at Piddlehinton in the West Dorset District to be upgraded to restricted byway -';

In Part II of the Schedule:

- Below the description of the remaining part of Bridleway 3 Piddlehinton amend the title of the description of the upgraded section by deleting the word 'Restricted' and adding after the word 'Byway' the words 'Open to All Traffic';
- Amend the description of the width by deleting the word 'Restricted' and inserting after the word 'Byway' the words 'Open to All Traffic';
- In the same description of the width, insert after the words 'Byway Open to All Traffic' the words 'between Points B and X';
- At the end of the description of the width, after the bracket closure, insert the words 'Between Points X and H the width is as defined on the 1902 Ordnance Survey 1:2500 map.'
- Delete entirely the entry relating to the limitation of a gate at SY 73519760
- On Plan Reference 10/13 amend the notation of the claimed route to that of a Byway Open to All Traffic and alter the key and the title accordingly.

Helen Slade

Inspector

APPEARANCES

FOR APPLICANT:

Mr Alan Kind

Hodology Ltd on behalf of the Trail Riders
Fellowship

He called
Mr David Oickle

Mr Jonathan Stuart

Mr David Greenslade

FOR THE OBJECTORS:

Mr James Pavey

Thomas Eggar LLP instructed by Allen (Hanford)
Ltd

DOCUMENTS

1	Statement and appendices	Mr A Kind
2	Supplementary bundle of statements and opinions and authorities	Mr A Kind
3	Statement and proof with appendices	Mr D Oickle
4	Revised Draft Order for northern extension	Mr D Oickle
5	Statement and appendix	Mr J Stuart
6	Correspondence relating to gate obstructions	Mr D Greenslade
7	Statement	Mr P Studley
8	Statement and annexes	Mr J Pavey
9	Proof of evidence and witness statements	Mr J Pavey
10	Introductory Submission	Mr J Pavey
11	Two files of authorities	Mr J Pavey
12	Statement/proof	Mr C Ebdon
13	Letter of 6 July 2015	Rt Hon Oliver Letwin MP
14	Email dated 28 October 2015	Mr and Mrs Dimmock