
Order Decision

On papers on file

by Alan Beckett BA MSc MIPROW

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

Decision date: 05 December 2016

Order Ref: FPS/Y3940/7/19

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wiltshire Council Durnford 4 (Woodrow) Rights of Way Modification Order 2016.
- The Order is dated 15 March 2016 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation; both objections were subsequently withdrawn.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. Two objections were initially made to the Order but both were withdrawn in writing in August 2016. I have therefore considered this case on the basis of the written representations forwarded to me. I am satisfied that I can make an assessment of the evidence against the relevant statutory criteria and reach satisfactory conclusions on the basis of the evidence supplied without the need to undertake a site visit.
2. The way at issue is currently recorded in the Definitive Map and Statement ('DM&S') as a public bridleway and is known as Durnford 4; I have used this term throughout this decision when referring to the route which is the subject of the Order.

The Main Issues

3. The Order was made in consequence of an event specified in section 53 (3) (c) (ii) and (iii) of the 1981 Act which provides that the DM&S should be modified where evidence has been discovered which shows that, when considered with all other relevant evidence available, a highway shown in the map and statement as a highway of one description ought to be there shown as a highway of a different description and that other particulars contained in the map and statement require modification.
 4. It is the Council's case that Durnford 4 carries public vehicular rights and that its currently recorded status as a public bridleway is incorrect. It is the Council's case that Durnford 4 cannot be recorded as a Byway Open to All Traffic ('BOAT') as any right the public had to use the Order route with mechanically propelled vehicles was extinguished on 2 May 2006 by virtue of
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the operation of section 67 (1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act').

Reasons

5. Durnford 4 was awarded as a public carriage road and driftway of 30 feet in width in the Durnford Inclosure Award of 1794 with the awarded road leading out of an ancient lane across the newly inclosed downs to meet the main road between Salisbury and Marlborough.
6. There is documentary evidence of the existence of a road linking Great Durnford with the Salisbury road in 1675 and that this route (shown on a map dated 1773) was retained and formalised by the inclosure commissioners. In addition, the road survived in subsequent records as a road and not a footpath or bridleway; it was recorded as a "wagon road" in a report of a meeting of the British Archaeological Association published in the Salisbury and Winchester Journal of 7 August 1858.
7. The records of the highway authority of 1880 support Durnford 4 as being a publicly maintainable carriageway at that date although the road was considered unnecessary at that time. The Council considers that Durnford 4 was probably little used by the public with vehicles in the 1880s and continued to be little used throughout the late 19th and early 20th centuries as it was recorded as a public bridleway in 1950 when the survey of public rights of way was carried out under the provisions of the National Parks and Access to the Countryside Act 1949.
8. The Council categorises the documentary evidence it has considered as category A to category F evidence, with category A evidence being that to which greatest evidential weight can be attached and category F evidence being user evidence or anecdotal evidence. I have given consideration to the documentary evidence adduced by the Council in support of the confirmation of the order and I place significant weight upon the description of Durnford 4 as a public carriage road and driftway in the 1794 inclosure award as evidence of the existence of public vehicular rights over it.
9. In the absence of any evidence that formal action had been taken to stop up the public vehicular rights confirmed by the inclosure award, it is likely that those public rights remained in existence throughout the nineteenth and twentieth centuries. Those rights appear to have been exercised infrequently if at all during that time, and have only been exercised once again by the public with motorcycles in the relatively recent past. As the awarded public carriageway rights have not been shown to have been formally stopped up, those public rights remain and should be recorded on the definitive map.

The impact of Section 67 of the 2006 Act

10. Section 67 (1) of the 2006 Act extinguished, as of 2 May 2006, any right the public had to use mechanically propelled vehicles over a route that was not shown in the definitive map and statement or over a route that was shown in the map and statement but only as a footpath, bridleway or restricted byway.
11. The general extinguishment provision of section 67 (1) is however subject to a number of exceptions which are set out in section 67 (2) and (3). Section 67 (2) (a) provides that MPV rights are not extinguished on a route "*whose main*

lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles”.

12. The application to upgrade Durnford 4 to BOAT was supported by 26 user evidence forms whose authors claimed use of the way with MPVs. Twenty-four of these respondents claimed to have ridden or driven the way during 2001 to 2006 with 7 of them having used the route for all 5 years. The frequency of use was around 3 or 4 times per year per person.
13. The application to upgrade Durnford 4 occurred at the same time as the Council was considering four other applications to record footpaths and bridleways over other routes in Durnford which would have required pedestrians and equestrians to use significant parts of Durnford 4 as part of the other claimed routes. In support of one application, 16 witnesses said they had used part of Durnford 4 on foot during 2001 to 2006 with some users walking it daily or weekly. In support of another application, 27 witnesses had walked, ridden or cycled over part of Durnford 4 during 2001 to 2006 with a frequency which ranged from daily to 8 times a year with most witnesses walking the route at least once per month.
14. On the basis of the user evidence adduced, I concur with the Council that it is more likely than not that the predominant use of Durnford 4 during the period 2001 to 2006 was by the public on foot or on horseback. Consequently, the exception to the extinguishment of MPV rights under section 67 (1) found in section 67 (2) (a) is not engaged.
15. It has not been argued by any party that any of the exceptions found in section 67 (2) (b to e) apply in this case. As the application to upgrade Durnford 4 to a BOAT was made on 6 May 2005 the exception found in section 67 (3) (a) is not engaged as the application was made after 20 January 2005.
16. The Order route cannot be recorded as a BOAT as the public's right to use MPVs rights were statutorily extinguished on the commencement of Section 67 (1) of the 2006 Act and none of the exceptions found in section 67 (2) or 67 (3) are applicable. Accordingly, to record the public non-mechanically propelled vehicular rights which remain over Durnford 4, I conclude that this route ought to be shown in the definitive map and statement as a Restricted Byway.

Conclusions

17. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

18. I confirm the Order.

Alan Beckett

Inspector

Where everybody matters

Restricted byway to be upgraded A^V-V₁-V₂-V₃-V₄-V₅-V₆-V₇-V₈-V₉-V₁₀-V₁₁-V₁₂-V₁₃-V₁₄-V₁₅-V₁₆-V₁₇-V₁₈-V₁₉-V₂₀-V₂₁-V₂₂-V₂₃-V₂₄-V₂₅-V₂₆-V₂₇-V₂₈-V₂₉-V₃₀-V₃₁-V₃₂-V₃₃-V₃₄-V₃₅-V₃₆-V₃₇-V₃₈-V₃₉-V₄₀-V₄₁-V₄₂-V₄₃-V₄₄-V₄₅-V₄₆-V₄₇-V₄₈-V₄₉-V₅₀-V₅₁-V₅₂-V₅₃-V₅₄-V₅₅-V₅₆-V₅₇-V₅₈-V₅₉-V₆₀-V₆₁-V₆₂-V₆₃-V₆₄-V₆₅-V₆₆-V₆₇-V₆₈-V₆₉-V₇₀-V₇₁-V₇₂-V₇₃-V₇₄-V₇₅-V₇₆-V₇₇-V₇₈-V₇₉-V₈₀-V₈₁-V₈₂-V₈₃-V₈₄-V₈₅-V₈₆-V₈₇-V₈₈-V₈₉-V₉₀-V₉₁-V₉₂-V₉₃-V₉₄-V₉₅-V₉₆-V₉₇-V₉₈-V₉₉-V₁₀₀-V₁₀₁-V₁₀₂-V₁₀₃-V₁₀₄-V₁₀₅-V₁₀₆-V₁₀₇-V₁₀₈-V₁₀₉-V₁₁₀-V₁₁₁-V₁₁₂-V₁₁₃-V₁₁₄-V₁₁₅-V₁₁₆-V₁₁₇-V₁₁₈-V₁₁₉-V₁₂₀-V₁₂₁-V₁₂₂-V₁₂₃-V₁₂₄-V₁₂₅-V₁₂₆-V₁₂₇-V₁₂₈-V₁₂₉-V₁₃₀-V₁₃₁-V₁₃₂-V₁₃₃-V₁₃₄-V₁₃₅-V₁₃₆-V₁₃₇-V₁₃₈-V₁₃₉-V₁₄₀-V₁₄₁-V₁₄₂-V₁₄₃-V₁₄₄-V₁₄₅-V₁₄₆-V₁₄₇-V₁₄₈-V₁₄₉-V₁₅₀-V₁₅₁-V₁₅₂-V₁₅₃-V₁₅₄-V₁₅₅-V₁₅₆-V₁₅₇-V₁₅₈-V₁₅₉-V₁₆₀-V₁₆₁-V₁₆₂-V₁₆₃-V₁₆₄-V₁₆₅-V₁₆₆-V₁₆₇-V₁₆₈-V₁₆₉-V₁₇₀-V₁₇₁-V₁₇₂-V₁₇₃-V₁₇₄-V₁₇₅-V₁₇₆-V₁₇₇-V₁₇₈-V₁₇₉-V₁₈₀-V₁₈₁-V₁₈₂-V₁₈₃-V₁₈₄-V₁₈₅-V₁₈₆-V₁₈₇-V₁₈₈-V₁₈₉-V₁₉₀-V₁₉₁-V₁₉₂-V₁₉₃-V₁₉₄-V₁₉₅-V₁₉₆-V₁₉₇-V₁₉₈-V₁₉₉-V₂₀₀-V₂₀₁-V₂₀₂-V₂₀₃-V₂₀₄-V₂₀₅-V₂₀₆-V₂₀₇-V₂₀₈-V₂₀₉-V₂₁₀-V₂₁₁-V₂₁₂-V₂₁₃-V₂₁₄-V₂₁₅-V₂₁₆-V₂₁₇-V₂₁₈-V₂₁₉-V₂₂₀-V₂₂₁-V₂₂₂-V₂₂₃-V₂₂₄-V₂₂₅-V₂₂₆-V₂₂₇-V₂₂₈-V₂₂₉-V₂₃₀-V₂₃₁-V₂₃₂-V₂₃₃-V₂₃₄-V₂₃₅-V₂₃₆-V₂₃₇-V₂₃₈-V₂₃₉-V₂₄₀-V₂₄₁-V₂₄₂-V₂₄₃-V₂₄₄-V₂₄₅-V₂₄₆-V₂₄₇-V₂₄₈-V₂₄₉-V₂₅₀-V₂₅₁-V₂₅₂-V₂₅₃-V₂₅₄-V₂₅₅-V₂₅₆-V₂₅₇-V₂₅₈-V₂₅₉-V₂₆₀-V₂₆₁-V₂₆₂-V₂₆₃-V₂₆₄-V₂₆₅-V₂₆₆-V₂₆₇-V₂₆₈-V₂₆₉-V₂₇₀-V₂₇₁-V₂₇₂-V₂₇₃-V₂₇₄-V₂₇₅-V₂₇₆-V₂₇₇-V₂₇₈-V₂₇₉-V₂₈₀-V₂₈₁-V₂₈₂-V₂₈₃-V₂₈₄-V₂₈₅-V₂₈₆-V₂₈₇-V₂₈₈-V₂₈₉-V₂₉₀-V₂₉₁-V₂₉₂-V₂₉₃-V₂₉₄-V₂₉₅-V₂₉₆-V₂₉₇-V₂₉₈-V₂₉₉-V₃₀₀-V₃₀₁-V₃₀₂-V₃₀₃-V₃₀₄-V₃₀₅-V₃₀₆-V₃₀₇-V₃₀₈-V₃₀₉-V₃₁₀-V₃₁₁-V₃₁₂-V₃₁₃-V₃₁₄-V₃₁₅-V₃₁₆-V₃₁₇-V₃₁₈-V₃₁₉-V₃₂₀-V₃₂₁-V₃₂₂-V₃₂₃-V₃₂₄-V₃₂₅-V₃₂₆-V₃₂₇-V₃₂₈-V₃₂₉-V₃₃₀-V₃₃₁-V₃₃₂-V₃₃₃-V₃₃₄-V₃₃₅-V₃₃₆-V₃₃₇-V₃₃₈-V₃₃₉-V₃₄₀-V₃₄₁-V₃₄₂-V₃₄₃-V₃₄₄-V₃₄₅-V₃₄₆-V₃₄₇-V₃₄₈-V₃₄₉-V₃₅₀-V₃₅₁-V₃₅₂-V₃₅₃-V₃₅₄-V₃₅₅-V₃₅₆-V₃₅₇-V₃₅₈-V₃₅₉-V₃₆₀-V₃₆₁-V₃₆₂-V₃₆₃-V₃₆₄-V₃₆₅-V₃₆₆-V₃₆₇-V₃₆₈-V₃₆₉-V₃₇₀-V₃₇₁-V₃₇₂-V₃₇₃-V₃₇₄-V₃₇₅-V₃₇₆-V₃₇₇-V₃₇₈-V₃₇₉-V₃₈₀-V₃₈₁-V₃₈₂-V₃₈₃-V₃₈₄-V₃₈₅-V₃₈₆-V₃₈₇-V₃₈₈-V₃₈₉-V₃₉₀-V₃₉₁-V₃₉₂-V₃₉₃-V₃₉₄-V₃₉₅-V₃₉₆-V₃₉₇-V₃₉₈-V₃₉₉-V₄₀₀-V₄₀₁-V₄₀₂-V₄₀₃-V₄₀₄-V₄₀₅-V₄₀₆-V₄₀₇-V₄₀₈-V₄₀₉-V₄₁₀-V₄₁₁-V₄₁₂-V₄₁₃-V₄₁₄-V₄₁₅-V₄₁₆-V₄₁₇-V₄₁₈-V

Unaffected rights of way

[illegible]

Date: 08/03/2014

