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| **Order Decision** |
| Hearing Held on 15 November 2022Site visit made on 14 November 2022 |
| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 January 2023** |

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| **Order Ref: ROW/3278109** |
| * 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 Council (Part of Footpath 30, Church Knowle at Charmswell) Definitive Map and Statement Modification Order 2019.
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| * The Order is dated 25 October 2019 and proposes to modify the Definitive Map and Statement for the area by deleting a length of footpath and adding a length of footpath as shown in the Order plan and described in the Order Schedule.
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| * There were three objections outstanding at the commencement of the hearing.
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| **Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.** |
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Procedural Matters

1. On the 14 November 2022, I made an unaccompanied inspection of those parts of the paths at issue that were passable, and to the surrounding area. From other vantage points I was able to see the whole area over which the paths at issue are claimed to exist.
2. The case concerns the deletion of part of Footpath 30 Church Knowle at Charmswell, shown as A - B on the Order map (the Existing Route), and for the addition of a length of footpath shown on the Order map as A- C- B (the Proposed Route).
3. Objections have been received from the owners of the property at Charmswell which sought to demonstrate that the Proposed Route should not be confirmed, that the Existing Route should not be recorded on the DMS and that the route described in the definitive statement is another separate route which starts at Bare Cross and reaches Steeple Parish boundary southwest of Bare Cross. The route which it is maintained by this objection is the most likely correct route, is not shown in its entirety on the Order map.
4. Both the objectors and the Order Making Authority (the OMA) were given the opportunity to provide submissions in respect of Inspector’s powers of modification to modify order maps, with reference to paragraph 2 of Schedule 2 of Regulation 4 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 and to the Planning Inspectorate’s ‘Rights of Way Section Advice Note No 20 – Inspector’s Power to Modify Definitive Map Modification Orders (October 2021).
5. At the hearing and having carefully considered the submission of both the objectors and the OMA, it was confirmed that given the route proposed by the objectors could not be shown completely on the Order map, and by reason of the abovementioned legislation, I could not consider a modification to modify the Order map to record that claimed route. Whilst I acknowledge the objectors’ frustration with that decision, I am bound by the cited legislation above. At the hearing the OMA confirmed to the objectors that the OMA would be able to discuss possible procedures for addition of the route that is maintained by these objectors to be the most likely correct route, as a separate matter.

The Main Issues

1. The criteria for confirmation of the Order are contained within the 1981 Act, in this case subsections 53(3)(c)(i) and 53(3)(c)(iii). These require me to consider whether the evidence discovered shows that a footpath should be recorded in the Definitive Map and Statement (the DMS) between points A- C- B. For this to be the case, the evidence must show that that section of the Order route not currently recorded in the DMS subsists and should be recorded as a footpath and, as a consequence, that section of the footpath between points A- B be deleted from the DMS.
2. Section 56(1) of the 1981 Act provides that a "definitive map and statement shall be conclusive evidence as to the particulars contained therein". In the case of Trevelyan v Secretary of State for the Environment, Transport, and the Regions, the Court of Appeal considered the correct approach to be adopted when considering whether a right of way should be deleted and the weight to be given to the DMS.
3. The Court of Appeal held that where the Secretary of State or an Inspector appointed by them has to consider whether a right of way that is marked on a Definitive Map in fact exists, they must start with an initial presumption that it does. If there was no evidence that made it reasonably arguable that such a right of way existed, it should not have been marked on the Map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed.
4. As regards to the documentary evidence adduced in this case, Section 32 of the Highways Act 1980 requires that I take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. My decision is reached on the balance of probability.
5. The OMA has put it to me that there is sufficient evidence to establish that, as a result of a historic drafting error, part of the current recorded route for
Footpath 30 is shown incorrectly in the DMS.
6. The OMA seeks confirmation of the Order subject to two modifications. The first requested modification concerns correction to the wording included in Article 3 of the Order with regards to subsection 53(3)(c)(iii) of the 1981 Act. The second modification sought by the OMA concerns changes to the ‘From’ and ‘To’ grid references included in the definitive statement.

Reasons

*Documentary Evidence*

*Early Map*

1. A map published in 1811 shows a building at ‘Cocknowl’ in the vicinity of what is Charmswell today. This map appears to show a route, depicted by parallel broken lines, heading southwest from Bare Cross in the direction of Steeple.

*Plan of the Manor of East Creech*

1. The plan is dated 1768 and shows the area, on the southern edge of the plan, around Bare Cross. That plan depicts several routes branching off from Bare Cross, with one particular route shown heading in a predominantly southwest direction being annotated “to Steeple & Whiteways”. That route could correspond with a route suggested by the objectors heading directly southwest from Bare Cross in the direction of Steeple. However, given the scale of the plan and the initial direction taken by that route south of Bare Cross, the depiction of the route could equally apply to that of the Existing Route.

*Church Knowle Tithe Apportionment and Plan 1843*

1. The Apportionment and Plan does not show either the Existing Route, the Proposed Route or the route suggested by the objectors heading directly southwest from Bare Cross. As such, these documents add nothing to the evidence of the existence of the Order route. It is, however, acknowledged that the plan depicts a parcel of land described as “Cottage & Garden” in the location of what is now known as Charmswell, as well as showing features, aligned predominately east-west, south of the boundary of the aforementioned cottage, which the apportionment describes as “coppice” and “rough banks”.

*Church Knowle Inclosure Award and Plan*

1. The Inclosure plan, dated 1856, shows an area of Church Knowle and Creech Hill. Whilst the plan does not include any buildings at Charmswell, it does show a number of routes branching off at Bare Cross (then shown as ‘Bear Cross’). One such route is shown as a very short section branching off south of Bare Cross. The short section of that route and the annotation ‘from Barnston’ shown on the plan appears to be aligned in a southwest direction from Bare Cross.
2. The buildings at Barnston Farm are located south of Charmswell. As such the short section of a route shown on the Inclosure plan could be depicting part of the Order route from Bare Cross before it turns south southeast. However, the plan also shows the annotation ‘Barnston Farm’ across fields located south of the public highway which connects with Bare Cross located to the east.
3. The details included on the Inclosure plan could be interpreted in a number of ways as above. Whilst the direction of the abovementioned short section of a route could correspond with the route suggested by the objectors, it does not strongly support the existence of either the Existing Route or the Proposed Route.

 *Ordnance Survey (OS) Maps*

1. A series of OS maps dating from 1888 up to 1993 are not consistent in terms of showing ways or paths that correspond with either the Existing Route or the Proposed Route.
2. No evidence to support the existence of either the Existing Route or Proposed Route is included on the 1961 Edition 2 ½ Inch OS map. The 6 Inch OS map published in 1888 shows a route that corresponds with the Proposed Route, heading south southeast from Bare Cross, passing east of the building at Charmswell. That map further depicts a similar feature continuing south of Charmswell, as well as a feature in an east-west alignment on the southern side of the Charmswell boundary which appears as a bank with trees, and which corresponds with the banks and coppices described in the 1843 Tithe plan noted above. It is also acknowledged that the route suggested by the objectors, heading southwest of Bare Cross, is also shown in a similar manner. All of these details are also included on the 6 Inch Series map dated 1890. However, no such routes are shown on the 1963 OS map.
3. Further OS maps from the 6 Inch Series from 1902 and 1929 both show part of the Proposed Route heading south southeast of Bare Cross and passing east of the building at Charmswell. The map published in 1929 also shows the bank and tree line feature on an east-west alignment south of Charmswell.
4. The 25 Inch Series OS maps from 1901 and 1928 depict part of the Proposed Route and features in a similar manner to that included on the 6 Inch 1929 OS map described above. However, the 25 Inch series map from 1889, whilst showing part of the Order route heading south southeast of Bare Cross, passing east of the building at Charmswell and further depicts the abovementioned bank and tree line in an east-west alignment south of Charmswell, that 1889 OS map also depicts a route suggested by the objectors, heading southwest of Bare Cross, in a similar manner by two parallel broken lines. The 25 Inch series OS map from 1954 shows only the bank and tree line feature in an east-west alignment south of Charmswell. The most recent OS map provided in evidence is from 1993 and only shows the route suggested by the objectors, heading southwest of Bare Cross.
5. The OS maps record the physical features, such as the routes described above, present at the time of the survey. Since the late 19th Century, OS maps have carried the disclaimer that tracks and paths shown provide no evidence of the existence of a public right of way. Nonetheless, when considering the OS maps as a whole, a significant portion of those maps show a path heading south southeast from Bare Cross, passing east of Charmswell.

*Definitive Map Process*

1. The National Parks and Access to the Countryside Act 1949 required surveys to be undertaken and then prepare a draft map showing those routes that were considered to be public rights of way.
2. The Parish of Church Knowle survey map was produced in 1951 and includes handwritten highlights showing rights of way within the area. Rights of way are shown approaching Bare Cross from the north, then from Bare Cross heading south southeast and to the east of Charmswell before encountering what the key describes as a ‘Wire or Other Obstruction’. That right of way is annotated with number ‘27’.
3. A further right of way is depicted in an east-west alignment south of Charmswell and is annotated with number ‘29’. That right of way is shown closely following a boundary between parcels of land for most of its length. However, between what are Points C-B on the Order map, the line of the right of way is clearly shown passing through the garden at Charmswell and to the north of the boundary between that parcel of land and another separate land parcel located south of Charmswell.
4. The Draft Definitive Map shows both Footpath 27 and Footpath 29, as described above, and along a similar alignment to that of the Proposed route. The map is not entirely clear with regards to buildings at Charmswell, those features being obscured by thickly drawn lines. I have not been provided with a rights of way schedule for the draft map in respect of Footpath 29. However, the schedule for Footpath 27 states that that footpath was from “Barnston Farm” to “Road N (East of East Creech Farm)”, and was obstructed at Cocknowle.
5. Extracts from Church Knowle Parish Council minutes indicate that following publication of the Draft Map, a number of objections were received. Minutes from a Parish Council meeting held in November 1957 show that, following receipt and consideration of those objections, the Parish Council accepted an objection in respect of Footpath 27. No objection appears in those records with regards to Footpath 29. Amongst other identified footpaths within the area, the Parish Council minutes for December 1958 then states that footpath number “27 (part)” was to be deleted from the Draft Map.
6. The Provisional Map is then published in 1964, with a route corresponding to part of Footpath 27 from Charmswell to Bare Cross and then on in the direction of East Creech, as well as the route previously identified as Footpath 29, now being combined into what is shown as being Footpath 30. Part of the route previously identified as Footpath 27 is shown heading south from Charmswell in the direction of buildings at Barnston Farm on the Draft Map, is not shown on the Provisional Map. By reason of the thickness of drawn lines on the Provisional Map, it is not clear whether the route passes to the east or west of the cottage at Charmswell.
7. The OMA maintain that the reference to the objection for footpath number “27 (part)” contained within the Parish Council minutes, only concerns that part of Footpath 27 heading south from Charmswell in the direction of buildings at Barnston Farm and, consequently, that part of that path had been deleted when the Provisional Map was published in 1964. However, the objectors have put it to me that the reference to footpath number “27 (part)” concerns all that part of that path which is located south of Bare Cross.
8. At the hearing, the OMA provided a copy of an undated record of objection made by representatives of Col. A. Bond MBE, and which refers to Footpath 27 and which is described as from “Barnston Farm” to “Road North. (East of East Creech Farm)”. That record provides that the objection is made to the “portion South of Bare Cross”, that the “Path used only by cottage tenant working on Barnston Farm” and was not a public right of way. Attached to that record is a handwritten note for observations of the Parish Council which provides that the objection is accepted and suggests deletion from the Draft Map.
9. This record of objection was only found by the OMA just prior to the hearing date. Whilst I acknowledge that the objectors had not previously had chance to see that document, opportunity was given to the objectors at the hearing for submissions regarding its acceptability at this stage and with regard to the details it contained. The objectors submitted that that record of objection supports the case that all of the claimed footpath number 27 south of Bare Cross was to be deleted. The OMA maintain that that part of footpath number 27 that was deleted following the Draft Map, would also be described as a path south of Bare Cross.
10. In my view, both the OMA and the objector’s interpretation of the details contained on that document, could be correct. However, looking at the wider evidence, it appears, given the numbers of objections received and recorded in the Parish Council minutes for paths within the area, that the public consultation following publication of the Draft Map was effective. No objections appear to have been raised in respect of footpath number 29 and in objecting to part of footpath number 27 following publication of the Draft Map, it is likely that the landowner at the time would have been also aware of footpath number 29. If the objection to part of footpath 27 concerned all that part of the path south of Bare Cross, then this would have resulted in footpath number 29 crossing the garden at Charmswell and terminating in a cul-de-sac with no particular onward destination.
11. Furthermore, it appears from the abovementioned record of objection that the landowner at the time was professionally represented and, as such, it would have been likely that if an objection was made to all that part of footpath number 27 south of Bare Cross, a further objection to inclusion of footpath 29 would also have been made. Whilst some of the evidence is contradictory, on the balance of probabilities I find that it is likely that the objection to footpath number “27 (part)” referred to in Parish Council minutes, concerned only that part of Footpath 27 located south of Charmswell.
12. The First Definitive Map, published 1967, shows Footpath 30 in the same manner as shown on the Provisional Map, with the thickness of the hand drawn line obscuring Charmswell Cottage. In 1973, as part of a Special Review, it was shown that that part of Footpath 30 north of Bare Cross and in the direction of East Creech Farm, was a public carriageway. The Revised Draft Map published in 1974 then clearly depicts the route from Bare Cross, heading south southeast, before passing northwest of the buildings at Charmswell. Following no objections to inclusion of Footpath 30, the Current Definitive Map (1989) shows the footpath along the same alignment as included on the Revised Draft Map.
13. The objectors maintain that the wording given in the statement to the DMS does not describe the Order route, but rather refers to the alternative suggested route heading directly southwest of Bare Cross as described above. The objectors further raise concerns regarding the procedure where the former Footpaths 27 and 29 were combined and allocated the description Footpath 30.
14. Whilst I acknowledge the objectors’ submissions, it appears from the definitive statements that Footpaths 27 and 29 were combined to form Footpath 30 as part of an administrative process. Whilst there are entries which include details of where certain paths join others, it is clear that the renumbering of footpaths was part of an administrative process, with the statement including other examples in addition to the details provided for Footpath 30 shown on the Provisional and Definitive Maps, such as for the details concerning Footpaths 31, 32 and 34 being combined into what became Footpath 32.
15. Furthermore, whilst it is noted that some of the entries on the statement include specific details of directions with reference to features and compass points, not all entries for paths on the Definitive Statement contain such details. This includes instances where paths are shown changing direction to a significant degree on the map, but for which there are no entries regarding a particular direction or reference to a specific feature are included. I also acknowledge that the wording of the Definitive Statement that Footpath 30 is from “County road, north of Cocknowle, via Bare Cross” to “Steeple Parish boundary” could describe the route suggested by the objectors heading directly southwest of Bare Cross to the Steeple Parish boundary, that description would also apply to both the Existing Route and the Proposed Route.

*Other Documentary Evidence*

1. Both the OMA and the objectors have referred me to a letter from a Mary Baxter on behalf of the Ramblers Association, dated July 1975, which concerns overgrowth of thorn and brambles on Footpath 30, with that letter describing that footpath as running “along the base of the Ridge from Steeple Br.4 in an easterly direction and then climbs the slope to join the County Road opposite the end of Church Knowle Br. 4”.
2. Whilst the details contained in that letter refers to the route climbing the slope after travelling along the base of the ridge, it is unclear whether the slope referred to was in fact the incline on the route suggested by the objectors directly southwest of Bare Cross in the direction of Steeple, or whether that slope refers to the incline that the Order route follows as it passes east of Charmswell. Consequently, the details in this letter could be interpreted in a number of different ways and therefore does not strongly support either the objectors’ or the OMA’s case.
3. A letter on behalf of the Ramblers East Dorset Group, dated March 2015, maintains that, by reason of the feature shown on several maps and given that signposts encourage users to head southwest from Bare Cross, it is their view that the alignment of Footpath 30 should be altered to correspond with the route suggested by the objectors heading directly southwest of Bare Cross towards Steeple.
4. I have been provided with copies of conveyancing documents dated 1965, 1966, 1967 and 1988 and which concern the property at Charmswell, surrounding land and to an area of Barnston Farm.
5. The conveyance dated 1965 relates to the sale of the cottage at Charmswell and the accompanying plan shows rights of access to the dwelling as well as showing part of the Order route south southeast of Bare Cross and passing east of Charmswell, and depicts the feature in an east-west alignment south of Charmswell, as included on the OS maps and described above. A conveyance from 1966 concerns the sale of Charmswell, and that document does not appear to refer to any public rights of way.
6. The 1967 conveyance concerns the buildings and land at Barnston Farm and refers to a “public right of way over the footpath running along the North side of Compartments Numbered 7, 10 and 11” on the accompanying plan. Compartments 7 and 10 are located south and west of Point B on the Order map. Compartment 11 is located south of Charmswell. Whilst the conveyance refers to a footpath along the northern side of those land parcels, and which would indicate that the path followed an east west route south of the boundary between Charmswell and Barnston Farm, there does not appear to be any marking on the accompanying map that depicts a path in the position described within the wording of the conveyance. The 1988 conveyance for the land to the northeast of Charmswell does not appear to refer to any public footpaths.
7. Private rights of way, such as the right of access to Charmswell described above, are contained within conveyancing documents, as rights of way for the purchaser to use that route must be granted by those who own the land. However, public rights of way are rarely shown given that the public would already have a right to use them.
8. Further to the above, I have been provided with an aerial photograph from 1947 showing the area surrounding Bare Cross. Whilst there does appear to be a track which would correspond with the route suggested by the objectors directly southwest of Bare Cross, there appears to be little indication of a path or track heading south southeast from Bare Cross, nor any indication of a path heading westward towards Steeple from Charmswell. The photograph does provide some support for the route suggested by the objectors. However, the lack of a visible path or track along the Order route could be the result of lack of recent use rather than evidence to confirm that such a route never existed. I shall return to consider user evidence below.
9. In terms of waymarks, as I observed on my site visit, whilst there are such markers which appear to indicate a route that would follow that as suggested by the objectors in a direct line between Bare Cross and Steeple, there did not appear to be any particular signage or waymarks that indicated a direction of travel past Charmswell from either direction. As such the existing waymarks provide some, albeit limited, support for the existence of a route as suggested by the objectors.
10. The reply to a Local Land Charges search from 1988 and in relation to Charmswell, confirms that a public footpath was in existence at the property. The accompanying plan shows a public footpath heading south southeast of Bare Cross, passing to the east of Charmswell before continuing westwards in the direction of Steeple. Where the path is shown in an east-west alignment, the plan appears to depict that the right of way was to the south of the boundary between Charmswell and the adjacent parcel of land.

*Other Evidence*

1. A number of letters from previous occupants of Charmswell have been provided. Those letters, including a letter presented at the hearing from a previous owner of the cottage, confirm that occupants at Charmswell have not, since the early 1960s, seen anyone using the Order route. Whilst the details contained within those letters is acknowledged, lack of evidence of use since the 1960s is not evidence that the route was not a highway at the time of the Parish Survey in 1951 or that by lack of use that the route does not continue to be a highway.

*Conclusions on the Evidence*

1. Whilst it could be shown that there is an unrecorded right of way along the route suggested by the objectors heading directly southwest of Bare Cross towards Steeple, as noted above such matters fall outside the scope of this Order Decision.
2. As noted above, some of the submitted evidence, such as the results of the Local Land Charges Search, contradicts the existence of a public footpath on the entire Proposed Route. Nonetheless, whilst the plans and maps provided and described above do not consistently show either the Existing Route or the Proposed Route, the evidence confirms that the Parish Survey in 1951 claimed the Proposed Route as a public right of way and that no objection was made to the inclusion of that route within the DMS. It appears from the evidence that, following drafting errors in the preparation of plans during the Definitive Map process, the alignment of the route changed from the Proposed Route to the Existing Route. Consequently, the DMS should be modified to show the Order route as being between Points A-C-B on the Order map.
3. At the hearing further requests for modifications to the Order were made. The “From” description contained within the definitive statement includes the wording “via Bare Cross” and that appears to be a remnant left over following the 1973 Special Review which reclassified what was previously part of Footpath 30 located north of Bare Cross. Following the Special Review, Footpath 30 is located entirely south of Bare Cross and, as such the route of the path would not be ‘via Bare Cross’. I therefore propose to modify the definitive statement to remove this text.
4. Furthermore, it appears that following that Special Review, the grid reference given in the definitive statement for the first end point was also not amended to reflect the change. The grid reference included on the definitive statement appears to relate to an area north of Bare Cross. As such the OMA has requested that the grid reference contained within the definitive statement be amended for that first end point and that, as a consequence of now allocating an eight figure grid reference and in the interests of consistency, that the grid reference description for the other end point of the route also be modified to an eight figure reference.
5. I conclude that the OMA has provided sufficient evidence to displace the presumption that the DMS is correct, by reason of drafting errors in the preparation of the Revised Draft Map, and that as a result of those errors and omissions regarding amendment to the definitive statement following the Special Review, the DMS requires the modifications outlined below. I further conclude that whilst the omission of all the wording of subsection 53(3)(c)(iii) of the 1981 Act included in Article 3 of the Order does not materially affect the validity of the Order, for completeness I shall propose a modification that inserts the missing wording from the relevant legislation.

**Other Matters**

1. A second landowner has raised an objection to the addition of the footpath between points A- C- B, maintaining that the proposed modification would enable public access to a water treatment facility and nearby spring and that the location of the path would increase the possibility of the water source being contaminated by passing members of the public. However, matters such as the desirability of the proposals in the Order, and environmental concerns, fall outside the criteria set out in the relevant legislation. Accordingly, whilst I acknowledge the concerns raised, these matters cannot be taken into account in reaching my decision.
2. I saw on my visit that part of the Proposed Route located to the north of Charmswell was overgrown with vegetation. I also observed from vantage points that part of the Proposed Route close to Charmswell appeared to be steeply inclined with significant changes in land levels that would prove challenging for users of the route in making their journey. Whilst those conditions were noted, circumstances can change over time and the existing condition of the Order route is not evidence that that route was not previously used as a public right of way.

**Overall Conclusion**

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

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* Delete the text “*that any other particulars contained in the map and statement require modification.”* included on the Article 3 document and insert: “*that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.*”
* Delete the reference “*SY 930821*” contained within Part II of the Order Schedule and insert “*SY 93088207*”.
* Delete the reference “*SY 921816*” contained within Part II of the Order Schedule and insert “*SY 92128163*”.
* Delete the text “*via Bare Cross*” contained within the description of the path to be added in Part II of the Order Schedule.

Mr A Spencer-Peet

INSPECTOR

**APPEARANCES**

**For the Order Making Authority:**

Mr P Crowther Senior Solicitor

Mrs V Penny Definitive Map Team Manager

**For the Objectors:**

Mr T Kavanagh

Dr R Kavanagh

**Others who spoke against the Order:**

Mrs M Hemsley

**Documents Submitted at Hearing:**

1. Grid Square 930821 Map dated 9 November 2022,
2. Letter dated 25 August 2022 from Alan C Fry,
3. Letter dated 23 July 1975 from Mary Baxter,
4. Undated Record of Objection made by representatives of Col. A. Bond MBE.

