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| **Final Order Decision** |
| Site visit made on 17 January 2023 |
| **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: 29 July 2024** |

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| **Order Ref: ROW/3278538** |
| * 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 (A Byway Open to All Traffic, Beaminster at Crabb’s Barn Lane) Definitive Map and Statement Modification Order 2020.
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| * The Order is dated 24 January 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading a bridleway to a byway open to all traffic and adding lengths of byways open to all traffic as shown in the Order plan and described in the Order Schedule.
* The Order was the subject of an Interim Order Decision dated 27 July 2023. In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I gave notice of my proposal to confirm the Order with modifications.
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| * There were two objections and one representation received in response to the notice.
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| **Summary of Decision: The Order (as originally made) is confirmed.**  |
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Background and Procedural Matters

1. This decision should be read in conjunction with the Interim Order Decision (the IOD) of the 27 July 2023, in respect of the Order, and which outlined the main issues to be addressed and my conclusions on those matters.
2. On 21 December 2004 an application was made by the Friends of Dorset Rights of Way (FoDRoW), to upgrade existing bridleways (Bridleway 17 Beaminster and Bridleway 35 Beaminster) to byways open to all traffic (BOAT) and for lengths of BOAT to be added to the Definitive Map and Statement (the DMS) for the area (the Application Route). The application sought to provide a continuous route from its junction with the C102 highway at Beaminster Down to its junction with a road at the Corscombe parish boundary.
3. The effect of the Order, if confirmed with the modifications that I previously proposed within the IOD, would be to confirm that part of the Order in relation to
C-D-E by the addition of a BOAT and not to confirm part of the Order in relation to the upgrade of Bridleway 17 Beaminster or the upgrade of Bridleway 35 Beaminster to a BOAT.

**Main Issue**

1. The main issue in this decision is whether there is any evidence or argument which has a bearing on the modifications proposed in paragraph 84 of the IOD and which might indicate that those modifications should be amended or not pursued.

Reasons

***Whether the application made on the 21 December 2004 was a valid application***

1. Both objections to the modifications proposed within the IOD concern my findings in relation to whether the application made on the 21 December 2004 was valid. As set out in the IOD, section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) came into operation on 2 May 2006 and extinguished any public rights to use mechanically propelled vehicles (MPVs) over a way that was either not shown on the DMS or was shown on the DMS as a footpath, bridleway or restricted byway, subject to certain exceptions.
2. The exception contained within section 67(3)(a) of NERC would preserve MPV rights if an application had been made to record the route as a BOAT before the relevant date, being the 20January 2005. Section 67(6) of NERC provides that, for the purposes of section 67(3) of NERC, “*an application under section 53(5) of
the 1981 Act is made when it is made in accordance with paragraph 1 of
schedule 14 to that Act*”.
3. Paragraph 1 of Schedule 14 to the 1981 Act requires that “*An application shall be made in the prescribed form and shall be accompanied by – (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application*”.
4. Both of the Objectors have brought to my attention that the Supreme Court’s decision of 13 April 2015 in the case of R (on the application of Trail Riders Fellowship & another) v Dorset County Council [2015] UKSC 18, included a declaration that the application made on 21 December 2004 under section 53(5) of the 1981 Act, was made “*in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981*”. As such, that Supreme Court decision confirmed that the application complied with the whole of paragraph 1 of
Schedule 14 to the 1981 Act.
5. Further to the above, and following an application made by the OMA to the Court, Lord Carnwarth provided a direction, dated 5 November 2019, which stated “*The court sees no reason to vary the terms of the order which was agreed between the parties, and reflected the form of the relief sought in the original claim. Had the Council wished to challenge the validity of these applications on other grounds within schedule 14 para 1, they should have done so expressly in these proceedings or reserved their position. That not having been done, it is too late to raise such issues at this stage*”.
6. In objection to the findings of the IOD, the OMA has confirmed that the additional User Evidence Forms (UEFs) that were provided after the application was originally made, were not submitted on behalf of the applicant for the Order, with the evidence before me confirming that such materials were gathered at the request of the OMA when undertaking additional consultation.
7. In conclusion of this matter, it is not open to me to go behind the terms of an Order made by the Supreme Court. The effect of the declaration is to establish conclusively that the application made on 21 December 2004 was compliant with the whole of paragraph 1 of Schedule 14 of the 1981 Act, including in terms of the nature and extent of the copies of documentary evidence which accompanied the application and its accordance with paragraph 1(b) of Schedule 14 of the 1981 Act.

***Whether, on the balance of probabilities, the evidence now shows that public vehicular rights subsist over the Application Route***

1. Given that a valid application was made before the relevant date contained within section 67(4)(a) of NERC, it is also necessary to consider whether the evidence now before me shows, on the balance of probabilities, that the Application Route should be recorded as a BOAT.
2. As described within the IOD, I reached the conclusion that whilst the evidence supports the contention that the section of the Application Route, as shown between points C-D-E on the Order plan, should be recorded within the DMS as a BOAT, there was insufficient evidence to demonstrate that the remainder of the route between points E-F-G-H-I should be recorded as a public highway with vehicular rights. It will also be seen from the IOD that I came to the conclusion there was insufficient evidence to confirm that Bridleway 17 Beaminster, ought to be upgraded to BOAT status.
3. In objection to the conclusions of the IOD, I have been provided with a clearer copy of the map from the 1809 Inclosure Award and which shows part of the Application Route between points C-D-E on the Order plan. The Award describes that section of the Application Route as “*one other public carriage road and highway 30 feet wide leading from the north-east end of White Sheet Lane to its usual entrance on Langdon Farm in the Parish of Beaminster and adjoining the south side of the said open and common arable fields called the South Fields the same being part of the public highway towards the village of Hook*”. At point E on the Order plan, there is an annotation with the words “*To* *Hook Village*”. The part of the Application Route between points E-F-G-H-I, is not included within the Award or depicted on the map.
4. I accept that the annotation “*To Hook Village*” likely refers to the settlement of Hooke located southeast of the area that is the subject of the Inclosure Award and map, and adds weight to the view that there was a continuous public highway between points C-D-E-F-G-H-I. I further acknowledge that prior to 1835 the term “*highway*” did not usually include footpaths or bridleways in respect of the details contained within Inclosure Awards.
5. I also accept that the differing references to “*public highway*” or “*public carriage road and highway*” contained within the Inclosure Award are not inconsistent or contradictory, and that those terms further support the contention that the section of the Application Route between points C-D-E-F-G-H-I has a higher status than footpath or bridleway.
6. Further to the above, I also acknowledge that the Inclosure Award map shows a very small section of Bridleway 17 Beaminster, and its junction with Whitesheet Hill. Whilst that small section of Bridleway 17 is depicted on the Inclosure Award map in a similar manner to that which would correspond with part of the Application Route between points C-D-E, there is no other supporting information, details or annotations that confirm that that part of the Application Route which comprises Bridleway 17 was a “*public highway*” or “*public carriage road and highway*”. I shall return to consider that position in light of the other evidence before me, and in respect of the conclusions reached as to whether Bridleway 17 ought to be upgraded to BOAT status.
7. Within the IOD, I concluded that, by reason of its inclusion on the List of Streets immediately before 2 May 2006, part of the Application Route between points
C-D-E would fall within the exemption provided by section 67(2)(b) of NERC and that, consequently, public rights to use MPVs over that section of the Application Route had been preserved.
8. In objection to the IOD, I have been provided with additional highway records. Those records include a copy of the List of Streets map as of May 2006, and which indicates that a section of track which connects the junction of the B3163 road at ‘Dirty Gate’ to point I on the Order plan, was a highway maintainable at public expense. However, it is also noted that the List of Streets refers to map references which indicate that the track between points H-I to ‘Dirty Gate’ was a highway maintainable at public expense. As such, and given the exemption provided by section 67(2)(b) of NERC, public rights to use MPVs between points H-I have also been preserved.
9. In those regards, I acknowledge that the evidence shows that the public would have the right to use with vehicles those sections of the Application Route between points C-D-E and between points H-I. To record such a position would result in two distinct cul-de-sacs for vehicles which would terminate in close proximity to each other. As such and given that the List of Streets shows that sections C-D-E and H-I are highways maintainable at public expense, this adds weight to the contention that the section of the Application Route between points C-D-E-F-G-H-I is a single continuous route.
10. In terms of evidence of use by motorcycle, I continue to consider the frequency of use as reported within User Evidence Forms (UEFs) for the section of the Application Route between points C-D-E-F-G-H-I, to be low. Nonetheless, by reason of the rural location of the route and given the numbers of users and reported extent of use going back to 1973, overall, I accept that the evidence of use adds weight to the conclusion that C-D-E-F-G-H-I should be recorded as a BOAT.
11. Notwithstanding the above, I must also consider the evidence as a whole and in respect of whether Bridleway 17 Beaminster ought to be upgraded to BOAT status. As noted within the IOD, no user evidence was submitted in respect of this section of the Application Route.
12. In objection to the IOD, it has been put to me that Bridleway 17 was part of the same continuous single through-route which also comprised those sections of the Application Route between points C-D-E-F-G-H-I. In that regard, I have been referred to the details shown on the Inclosure Award map as described above, and to the depiction of a way included on the Greenwood Map (1826). The fact that Bridleway 17 intersects with the public highway at Whitesheet Hill, does not mean that that section of the Application Route cannot also form part of a continuous single through-route between the C102 highway at Beaminster Down and the Corscombe parish boundary (shown at point I on the Order plan).
13. I accept that the Greenwood Map shows the whole of the Application Route as a “*cross-road*”, and which supports the contention that the Application Route is a through-route which enjoys the same status. Furthermore, as acknowledged above, the Inclosure Award map shows a very small section of Bridleway 17 Beaminster and its junction with Whitesheet Hill. That section of Bridleway 17 is depicted in a similar manner to that which corresponds with part of the Application Route between points C-D-E which is described as being a “*public highway*” or “*public carriage road and highway”* within the award. The Inclosure Award map therefore adds some, albeit limited, support to the contention that Bridleway 17 was considered to have the same status as the remainder of the Application Route.
14. However, as described within the IOD, the Finance Act 1910 records show the section of the Application Route which corresponds with Bridleway 17 Beaminster, as being included within a hereditament. Given the inclusion of that section of the Application Route which corresponds with Bridleway 17 Beaminster within a hereditament, this supports the conclusion that this section of the Application Route was either a bridleway or footpath, and not a public highway that provided vehicular rights. Furthermore, it is noted that the Finance Act records show the section of the Application Route between points C-D-E as being outside of any hereditament, supporting the contention that that section was a vehicular route.
15. In my view, the differences in how those sections of the Application Route either side of the junction with Whitesheet Hill have been described within the Finance Act records, do not support the contention that the whole of the Application Route was a single continuous through-route from Beaminster Down to the Corscombe parish boundary.

***Conclusions on the Evidence***

1. In light of the above and taking into consideration all of the evidence before me in respect of the entire Application Route, I conclude that, on the balance of probabilities, a public highway with vehicular rights should be recorded between points C-D-E-F-G-H-I as shown on the Order plan. As such and given the above conclusions regarding the validity of the application, I therefore agree that the modifications proposed within the IOD are unnecessary, and that the Order as made to record a BOAT between points C-D-E-F-G-H-I should be confirmed.
2. The evidence, when taken as whole in respect of the entire Application Route, is conflicting in terms of whether that section of the Application Route which corresponds with Bridleway 17 Beaminster, is a public highway with vehicular rights. However, whilst I acknowledge that the Finance Act’s primary purpose was not the identification of public rights or the status of highways, the Finance Act 1910 required that all land be valued. Given that it was a criminal offence for any false statements to be made for the purposes of reducing tax liability, and which came with severe sanctions, it would have been in the landowners’ interests that any public highways were correctly recorded.
3. As such and on the balance of probability, I find that there is insufficient evidence before me to conclude that the entire Application Route was a single continuous route of the same status and that Bridleway 17 Beaminster ought to be upgraded to a BOAT. Consequently, I do not propose to modify the Order in that regard.

**Overall Conclusion**

1. For the above reasons, I conclude that the Order as originally made by the OMA and which proposes that the section of the Application Route between points
C-D-E-F-G-H-I be recorded within the DMS as a BOAT, should be confirmed.
2. However, I find that there is insufficient evidence to support the contention that, on the balance of probabilities, the section of the Application Route which corresponds with Bridleway 17 Beaminster ought to be upgraded to a BOAT. As such, I do not propose to modify the Order to upgrade Bridleway 17 Beaminster to BOAT status.
3. Having regard to the above and all other matters raised in the written representations, I conclude that the Order, as originally made, should be confirmed.

**Formal Decision**

1. I confirm the Order.

Mr A Spencer-Peet

INSPECTOR

 