



## Order Decision

Site visit carried out on 3 February 2016

**by Peter Millman BA**

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

**Decision date: 22 February 2016**

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### **Order Ref: FPS/C1245/7/37**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Dorset County Council (Upgrading of part of Bridleway 18, Charminster to Restricted Byway) Definitive Map and Statement Modification Order 2013.
- The Order is dated 28 January 2013 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were two statutory objections outstanding when Dorset County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: I have not confirmed the Order.**

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### **Main issue**

1. The Order states that it is made in consequence of an event specified in Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, i.e. *the discovery of evidence which... shows that a highway shown in the map and statement as a highway of a particular description [i.e. Bridleway in this case] ought to be there shown as a highway of a different description [i.e. a Restricted Byway in this case]*. For the Order to be confirmed the evidence must show, on the balance of probabilities, that at some time in the past, public vehicular rights were either created by law, or dedicated by the landowner, over the Order route.

### **Reasons**

#### *Background*

2. An application was made in 2005 on behalf of the Trail Riders Fellowship to upgrade a longer stretch of bridleway, from the A37 at Ash Hill northwards to point A (see copy of the Order map attached at the end of this decision). The application was to upgrade the route to Byway Open to All Traffic. A Byway Open to All Traffic is a public right of way which includes a right for mechanically propelled vehicles.
  3. It is not disputed that any public rights to use mechanically propelled vehicles over the route which might have existed in 2005 would have been extinguished by section 67 of the Natural Environment and Rural Communities Act 2006, leaving only Restricted Byway rights, i.e. rights for pedestrians, horse riders and users of non-mechanically propelled vehicles, such as pedal cycles or horse-drawn traps.
  4. The County Council considered the relevant evidence and concluded that it showed, on the balance of probabilities, that public vehicular rights existed on
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only the northern part of the claimed route which lies in the parish of Charminster and is known as Bridleway 18 (A to B on the map below). It therefore made this Order to upgrade that part of Bridleway 18 to Restricted Byway. It did not make any order in respect of the continuation of the Order route southwards towards Ash Hill in the Parish of Stratton, where it is known as Bridleway 3.

5. When the County Council published the Order, it received two objections. One did not concern the evidence of whether public vehicular rights existed; it was principally concerned with possible environmental damage. The other objection, from Stratton Parish Council, argued, but without providing details, that there was insufficient evidence of the existence of vehicular rights to justify confirming the Order.
6. If the Order is confirmed, it will result in the recording of vehicular rights over a route which does not join other vehicular routes at either end. I understand, however, that an application to record Bridleway 16 and the part of Bridleway 18 which continues northwards from point A (see map below) as Restricted Byways is currently being processed.

#### *The evidence*

#### Early maps

7. A route similar, if not identical to that now comprising Bridleway 18 Charminster and Bridleway 3 Stratton, has existed since at least as far back as the first half of the 19<sup>th</sup> century. The County Council produced extracts from a number of small-scale commercial maps of Dorset from the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. Some of these show a route which may include all or part of the Order route, but in every case the scale is too small – around an inch to the mile – to be sure.
8. Perhaps the most reputable map of that period, the first edition Ordnance Survey 1 inch to the mile map of 1811, is stated by the County Council in its Committee Report not to show the Order route, although no extract has been produced.

#### Inclosure

9. The earliest map which does undoubtedly show a route in the vicinity of the Order route is the Charminster Inclosure Map of 1837. Inclosure was a process by which agricultural holdings were rationalized; before inclosure, land was typically held in isolated strips in large fields surrounding villages. Where it happened in the 18<sup>th</sup> and early 19<sup>th</sup> centuries it was usually carried out on a parish-wide basis by an Award made under the authority of a local Act of Parliament. Acts usually empowered inclosure commissioners to set out and close roads, public and private, but only in areas of the parish subject to inclosure. If parts of a parish were unaffected by inclosure the road system would remain as it had done before. Maps were produced showing the new allotments of land and routes that were stopped up or set out.
10. The County Council cannot find a copy of the local Act which would have empowered inclosure in Charminster, nor can it locate a full copy of the Charminster Inclosure Map. It does possess, however, a copy of the Award and an extract from the Map which covers the relevant area of the Parish. The Award (of which only the few lines relating to the route in question has been produced in evidence) lists the public carriage roads which were set out in

Charminster, one of which was *One other Public Carriage Road and Highway of the Breadth of Thirty Feet called the Bradford Road and marked C on the said map* [i.e. the Order route] *branching out of the Batcombe and Leigh Road* [i.e. Bridleway 16 and the continuation of Bridleway 18 north of A] *on Charminster Down and extending Southward to Wrackleford Gate leading towards Bradford.*

11. The extract from the Inclosure Map shows the small part of this road which is in Charminster, labelled 'C' where it leaves the Batcombe and Leigh Road, and annotated 'To Bradford' where it crosses the Parish Boundary into Stratton.
12. It might have been possible to conclude, from the inclosure evidence alone, that public vehicular rights had been created on the route shown on the Inclosure Map had the local Act been found and produced, and had fuller details of the Award been provided. As it is, without evidence of any other possibly necessary procedures which would have had to be complied with before a public right of way came into existence, such as the production of a Justice's Certificate, this evidence can only be given limited weight.
13. There are differences between the position of the Order route as shown on the Order map, and the position of the route shown on the Inclosure Award Map. The Order map (see below) shows Bridleway 18 running in a straight line for about 250 metres from A before making a turn and running in a straight line again for about 20 metres to the Parish boundary at B. On the Award Map the Bradford Road in Charminster is shown curving gradually for more than half its length, rather than turning through a corner in a matter of 10 metres or so just before its southern end. Even if the routes coincide at their southern and northern ends, they do not appear to do so throughout the greater part of their lengths.
14. The Award Map shows the Bradford Road bounded by a pair of solid lines, indicating that it was, or was intended to be, fenced. If the local Act of Parliament had incorporated the provisions of the General Inclosure Act of 1801, there would have been a requirement to fence the road. No map of the area, before or after 1837, shows a fenced route corresponding with that shown on the Award Map or any route between A and B. All show a pair of pecked lines, indicating that there was no physical boundary to the route.
15. Had there been any sign today on the ground, such as a slight hollowing, or traces of hedges or banks, which might have indicated the route shown on the 1837 Award Map, it could have been possible to take a view of where the route shown on it ran, but there is no trace of an old road visible to the eye. All that can be seen is a line, no more than about 60 centimetres wide, through the grass of Charminster Down where present day walkers and riders have trodden it down.
16. The County Council submits that: "under the legal 'presumption of regularity' it is considered reasonable, without any evidence to the contrary, to conclude that everything required of the Charminster Inclosure Commissioners was completed in accordance with the law." Since, however, neither a copy of the local Act, nor a full copy of the Award has been produced, it is not clear what was required of the Commissioners, and so I can give this submission very little weight.
17. I conclude from this evidence that even if a public vehicular road was properly created and set out in 1837 it probably did not run on the same route as that taken by Bridleway 18, although their routes possibly coincided at some points.

### Tithe maps

18. Tithe maps and apportionments were produced parish by parish following the Tithe Commutation Act of 1836, to show areas of productive land on which a tithe rent-charge was payable. Numbers on land parcels on the maps relate to a schedule of apportionment. Although the purpose of maps was not to show public rights of way, roads were usually shown, but unnumbered and not recorded in the apportionment, since they were unproductive land. They were often left uncoloured, or coloured ochre, a usual convention at the time for depicting roads.
19. The Charminster Tithe Map of 1839 shows a route corresponding more or less with the Order route by a pair of parallel pecked lines, indicating that it was unfenced, but it does not appear, from the extract provided, to be distinguished otherwise, for example by colour, from the parcels of land through which it passes.
20. The Stratton Tithe Map of the same year shows a route projecting a short way into Charminster roughly on the line of the Order route. In neither case, however, has the County Council provided any information about the provenance of the map, or whether it was certified by the Commissioners as first class and therefore accurate; tithe surveyors often used existing parish maps for their purposes, rather than commissioning new ones.
21. It may be concluded from the Tithe evidence that in the 1830s there was probably a route on the ground corresponding at least roughly with the Order route, but it does not assist a determination of the existence or otherwise of public rights on it.

### Later maps

22. I have considered the later map evidence. It is clear from it that after the 1830s there existed a route, running from Ash Hill in a roughly northerly direction, a part of which is very similar to the route shown on the Inclosure Map and almost identical with the Order route. Large-scale Ordnance Survey maps annotate it as 'B.R.' for bridle road, while the keys to smaller-scale maps refer to it as a minor road. Bartholomew's maps, derived from Ordnance Survey data, classify this route in the various editions as an 'inferior road', a 'secondary road' or a 'serviceable road'. Both publishers, however, include the disclaimer that the depiction of a route on their maps is not an indication of status. This evidence is consistent with the physical existence of a route, but does not assist in determining its status.

### *Conclusions from the evidence*

23. None of evidence considered from paragraph 7 onwards is sufficient, on its own or taken as a whole, to show on the balance of probabilities that public vehicular rights have been created or dedicated on the Order route. Had a complete record of the Inclosure process in Charminster been available, the conclusion might have been different.

### **Conclusion**

24. Having regard to these and all other matters raised in written representations I conclude that the Order should not be confirmed.

**Formal Decision**

25. I do not confirm the Order.

*Peter Millman*

**Inspector**

