Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002



Report to the Executive Director for Place -Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr Anthony Alford

Executive Director: J Sellgren, Executive Director of Place

Report Author: Carol McKay Title: Senior Definitive Map Technical Officer Tel: 01305 225136 Email: carol.mckay@dorsetcouncil.gov.uk

Report Status: Public

Recommendation:

That:

(a) The Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002 be submitted to the Planning Inspectorate for non-confirmation.

Reasons for Recommendation:

(a) The Order should not be confirmed due to an error on the Definitive Map which is shown on the Order plan

and;

(b) Dorset Council does not have the power to abandon a Definitive Map and Statement Modification Order. Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002

1. Executive Summary

This report considers submission of the Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002 to the Planning Inspectorate for non-confirmation.

2. Financial Implications

Any financial implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.

3. Well-being and Health Implications

Any well-being and health implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.

4. Climate implications

Any climate implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.

5. Other Implications

None

6. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as: Current Risk: LOW

Residual Risk: LOW

7. Equalities Impact Assessment

An Equalities Impact Assessment is not a material consideration in considering this application.

8. Appendices

- 1 Report to the Roads and Rights of Way Committee 17 October 2002 and Minutes of the Meeting
- 2 Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002
- 3 Drawing 11/50

9. Background Papers

The file of the Executive Director, Place (ref. RW/T238).

Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002

1 Background

- 1.1 Following a series of reports from the public between 1982 and 1998 concerning a missing bridge in Cattistock, the Council established that a path in Rampisham was shown on the Definitive Map but omitted from the accompanying written Statement for the parish.
- 1.2 The Definitive Map shows Cattistock Footpaths 17 and 18 joining and extending over the Rampisham parish boundary (and stream) to reach the C38 road. The Cattistock statement describes Footpath 17 ending at the parish boundary. There is no reference to the Rampisham footpath in the Rampisham Definitive Statement.
- 1.3 In accordance with the Wildlife and Countryside Act 1981, the Council has a duty to keep the definitive map and statement of rights of way under continuous review and to modify them if there is evidence that they are incorrect.
- 1.4 The route was researched, and a consultation was carried out in 2001 on the proposed modification to add the footpath to the Definitive Statement.
- 1.5 In October 2002, The Roads and Rights of Way Committee resolved that the Definitive Statement be amended by adding the footpath shown as A – B on the Order plan 01/03/2 (Appendix 1). There is no change to the Definitive Map.
- 1.6 The Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002 (Appendix 1) was sealed on 10 December 2002.
- 1.7 There were two objections to the Order, from Rampisham Parish Council and from the Landowner. The objections were made on the basis that the footpath was included on the Definitive Map in error and therefore the Statement should not be amended.
- 1.8 Subsequently it has come to light that the current Definitive Map shows the route of Footpaths 17 and 18, Rampisham further north west than on the earlier Provisional and Draft Definitive Maps, therefore the Order plan is also incorrect. Drawing 11/50 (Appendix 3) illustrates the error.
- 1.9 This is considered to be a substantive error which cannot be modified.

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- 1.10 It is therefore proposed that the Order be submitted to the Planning Inspectorate for non-confirmation.
- 1.11 A revised proposal to modify the Definitive Map and Statement was consulted on in 2011 as shown on Drawing 11/50 (Appendix 3). Due to the time elapsed, a further consultation will be carried out on this proposed modification, and a new Order will subsequently be made.

2 Law

- 2.1 A summary of the law is contained in the earlier Report to the Roads and Rights of Way Committee (Appendix 1).
- 2.2 Paragraph 7 (i) of Schedule 15, Wildlife and Countryside Act 1981 provides that if any representation or objection duly made to the order is not withdrawn the Council shall submit the order to the Secretary of State for confirmation.

3 Discussion

- 3.1 As objections to the Order have been received, the Council is unable to confirm the Order itself and must submit it to the Secretary of State.
- 3.2 Since it has been established that the Order plan is incorrect due to a drafting error, it is recommended that the Council requests that the Order is not confirmed.
- 3.3 This will enable the Council to consult on and make a new Order which shows the proposed modifications in the correct place.
- 3.4 All original consultees will be reconsulted on the revised proposed modification.

4 Conclusions

4.1 The Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002 be submitted to the Planning Inspectorate for non-confirmation.

September 2021

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

Agenda Item:

Roads and Rights of Way Committee – 17 October 2002

PROPOSED DEFINITIVE STATEMENT MODIFICATION ORDER – RAMPISHAM

REPORT OF THE DIRECTOR OF ENVIRONMENTAL SERVICES

Service Head: Andrew Price, Head of Planning

- 1. PURPOSE OF REPORT
- 1.1 To consider evidence to show that a public footpath in Rampisham already shown on the definitive map of rights of way should be added to the definitive statement. See Drawing No. 01/03/1 attached as an Appendix.
- 2. RECOMMENDATION
- 2.1 It is recommended that the definitive statement for Rampisham be modified to record the public footpath shown on the definitive map from the river at the Cattistock parish boundary to the classified road C38.
- 3. BACKGROUND
- 3.1 Footpaths 17 and 18 in Cattistock lead to the bank of a stream forming the parish boundary with Rampisham where, according to the Parish Survey for Cattistock conducted in 1952, there was a derelict footbridge by the Mill. However, there was no corresponding entry in Rampisham.
- 3.2 The route of the path does not now exist on the ground, having been obstructed by barbed wire fences and the disappearance of the bridge about which there have been occasional complaints from users over many years. People have been using a nearby route on a permissive basis where the owners provided a stile etc. Discussions have been taking place with the owners of the estate through their Agent with a view to either opening up the definitive path or diverting it onto the permissive route or a similar route.
- 3.3 It has now come to light that there is an anomaly in recording the footpath as the section within Rampisham parish is recorded on the definitive map but not the statement.
- 3.4 The owners of the Rampisham Manor Estate through their solicitors now say that this section of the path has never existed as a public footpath, that it should not have been put on the definitive map, and that it should now be removed from it.
- 4. LAW
- 4.1 Section 31(6) of the Highways Act 1980 (the Act) says that an owner of land may at any time deposit with the County Council a map of the land and a statement indicating what ways he admits to having been dedicated as highways. For this purpose "owner" is defined by Section 31(7) of the Act as a person who is entitled to sell the land.

- 4.2 Section 31(9) of the Act preserves the possibility of dedication at Common Law. The efforts of the County Council to open up the route for public use constitute acceptance of the dedication on behalf of the public.
- 4.3 Sections 53(2) and (3) of the Wildlife and Countryside Act 1981 give the County Council a duty to modify the definitive map and statement:
 - On the coming into operation of any enactment or instrument or any other event whereby a new right of way has been created as a public path; or
 - On the discovery of evidence that a right of way not shown on the statement subsists or is reasonably alleged to subsist; or
 - If any other particulars contained in the map and statement require modification.
- 4.4 Section 56 (1)(e) of the Wildlife and Countryside Act 1981 as summarised by the Planning Inspectorate's Advice Note No 5 is that the definitive map is conclusive evidence as to the existence and status of any right of way shown, whilst the statement is conclusive evidence as to the position, width, and limitations or conditions.
- 4.5 As the route was not claimed by Rampisham Parish Council in 1952, it could be argued, following the recent case of Trevelyan v Secretary of State for the Environment, Transport and the Regions, that there had been no evidence of any public right of way in Rampisham and that showing it on the definitive map had been a mistake.
- 4.6 Following the legal maxim "once a highway, always a highway", an admitted footpath cannot be 'undedicated' by a later change of mind of the landowner.
- 5. EVIDENCE TO BE CONSIDERED
- 5.1 The path was claimed in 1952 by Cattistock Parish Council, which described it as leading to the Corn Mill, which is in Rampisham Parish. They provided no evidence of use.
- 5.2 A number of people over many years have complained that the route is obstructed, principally by the lack of a bridge over the stream, which is fairly deep at this point. The owners have, for a number of years, allowed people to use an alternative route close by where the stream is shallower and can usually be easily forded. The definitive route passes close to the springs that are the source of the village water supply and they do not encourage people to use it.
- 5.2.1 A visit to the site before the foot and mouth epidemic in 2001 showed that the alternative route was well used for a country path. These users would have walked the definitive path if it had been available.
- 5.3 The Estate is managed by Messrs Greenslade Taylor Hunt incorporating R B Taylor & Sons, Chartered Surveyors. In 1992 R B Taylor & Sons made a deposit with the County Council under Section 31 (6) of the Highways Act 1980 including a statement, "Attached is a plan of the estate and also a plan showing the public rights of way on the Rampisham Manor Estate which we acknowledge." The plan shows the footpath meeting the road.

- 5.3.1 It is not known if R B Taylor & Sons were owners of the property at the time in the terms of Section 31(7) of the Highways Act 1980. The Head of Legal Services has written to Solicitors acting for the Estate saying, "The validity of the 1992 deposit made by agents on behalf of your client must stand in the absence of proof that the agent acted without the consent of the landowner. The onus of providing this proof rests with your client."
- 5.4 Another deposit was made in 1995, this time by the Trustees themselves. They refer to the previous deposit and confirm that they have dedicated no additional routes since then. They also provide a fresh map, statement and statutory declaration. Their map shows public footpaths coloured purple and the line of this footpath is very clearly shown as reaching the road in the same way as the definitive map does. The Trustees stated that since 12 April 1988 they had been the owners (within the meaning of S.31 (6) of the Highways Act 1980) of the land in the parishes of Rampisham and Cattistock. The Statement says, "The ways coloured purple on the said plan have been dedicated as footpaths."
- 5.4.1 The document was signed by the trustee Ernest William Jowett c/o R B Taylor & Sons and witnessed by Mrs K Clarke, Solicitor of Allen & Overy, London and also by the trustee Sir Michael Farquhar Bt. of Chippenham and his signature was witnessed by Mrs J H Gough, Solicitor, of Chipping Sodbury.

6. CONCLUSION

6.1 The initial depiction of this path on the definitive map might be open to challenge on the grounds of a possible error half a century ago. However, the recent deposits made by the owners leave no doubt that this is legally a public footpath and should be recorded on the definitive map and statement.

MILES BUTLER Director of Environmental Services

October 2002

Appendix: - - Drawing No.03/01/1

Background Papers: -

The file of the Director of Environmental Services.

Letter dated 8 March 2002 from Thring Townsend, Solicitors on behalf of the Trustees of the Rampisham Manor Estate.

The deposits referred to in Paragraphs 5.3 and 5.4 are in the County Record Office.

If you have any queries on this report please contact Chris Slade on (01305) 224778 or e-mail c.j.slade@dorsetcc.gov.uk.



ROADS AND RIGHTS OF WAY COMMITTEE

Minutes of meeting held on 17 October 2002

The Roads and Rights of Way Committee met at County Hall, Colliton Park, Dorchester on 17 October 2002.

Present:-

Mr P D L Gaussen (Chairman)

Capt M L Shakesby MBE (Vice-Chairman) Mr D A Budd, Col G J Brierley OBE, Mr H Burden, Mr P C Duffy and Capt R W Mason RN.

Sgt N Gallichan of the Dorset Police also attended.

(Note: **<u>RECOMMENDED</u>** in this type denotes that the approval of the County Council is required).

Apologies for Absence

84. Apologies for absence were received from Mr G E Hine.

Minutes

85. The minutes of the meeting held on 5 September 2002, having been circulated, were taken as read, and were confirmed and signed.

Speed Limit Review - Winterborne Whitechurch

86.1 Following consideration of a report by the Director of Environmental Services at their meeting on 25 July 2002, the Committee considered a further report by the Director on an objection received to the proposed 30 mph speed limit on the A354 at Winterborne Whitechurch following re-advertisement.

86.2 Officers explained that following consideration at the meeting in July, the proposal had been re-advertised because of a technical error. As a result of this a further objection had been received as outlined in the report. The original objection from the Dorset Police remained.

86.3 Sgt Gallichan stated that the speed survey undertaken revealed that the majority of motorists complied with the existing speed limit. It would be difficult for the Police to enforce the proposal which did not meet the criteria for the introduction of a portable or static speed camera. He also pointed out that there had been only one serious, and two slight, accidents on the A354 and that the speed limit was likely to be disregarded.

86.4 Members were reminded of the comments made at the July meeting by the County Council member for Winterborne and were generally of the view that the majority of motorists would obey the reduced speed limit, even if there was minimal enforcement, and that the proposal should be implemented.

86.5 Consideration was then given to extending the 30 mph speed limit to the end of the proposed 40 mph buffer zones. Officers explained that such a change would require re-advertisement and further consultation. Members did not think that this would achieve any more than the introduction of the proposed 40 mph buffer zones. They also thought it possible that more motorists would ignore the speed limit because it was unreasonable. They also noted that this option was against current policy.

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86.6 Having considered all the information, the Committee decided that the Director's recommendation should be adopted.

Resolved

87. That the speed limit proposals for Winterborne Whitechurch be implemented as re-advertised (as shown on Drawing No. 2255/2/7C attached to the Director's report).

30 mph Speed Limit, Netherbury

88.1 The Committee considered a report by the Director which asked them to consider objections to the proposed 30 mph speed limit through Netherbury.

88.2 Members were informed that Netherbury was a substantial village and the criteria for the introduction of a 30 mph speed limit were met. The proposal was supported by the Parish and District Councils.

88.3 The County Council member for Beaminster's support for the recommendation was reported.

88.4 A member drew attention to the fact that it was difficult in this instance to be able to identify where the built up area of the village began and he expressed concern that the extent of the speed limit might stretch out into the countryside. Officers explained that the southern limit extended as far as a property near the south bend and that other terminal points were determined by physical features such as hedges.

88.5 Having considered the objections, the Committee agreed that the speed limit be implemented as advertised, since the proposed restriction fulfilled the criteria for a 30 mph speed limit and there were no compelling reasons to depart from the policy.

Resolved

89. That the speed limit proposals for Netherbury (as shown on Drawing No. 2151/2/6 attached to the Director's report) be implemented as advertised.

7.5 Tonne Weight Restriction Iron Bridge, Frome Vauchurch

90.1 The Committee considered a report by the Director on an objection received to the proposed 7.5 tonne weight restriction on the Iron Bridge at Frome Vauchurch.

90.2 Officers explained the reason for the proposals and the nature of the objection received. Officers had recently contacted the objector who had confirmed that the proposed alternative route could be used for delivery of fuel to his property, although this would require some manoeuvring on the part of the driver. Other options outlined in the report were highlighted.

90.3 With regard to the possibility of a dispensation being granted for the delivery of fuel, officers explained that in this instance no such dispensation could be granted, since this could result in physical damage to the bridge structure.

90.4 Having considered all the information, the Committee decided that the weight restriction be implemented.

Resolved

91. That the 7.5 tonne weight restriction on the Iron Bridge, Frome Vauchurch, be implemented in line with National Guidance for the Management of Highway Structures found to be substandard following a load assessment.

Application for Definitive Map Modification Order Toller Porcorum

92.1 The Committee considered a report by the Director on an application to modify the definitive map and statement by adding a footpath running from Frogmore Lane to Lower Road, Toller Porcorum.

92.2 Officers explained the Parish Council's application and the detailed evidence which had led to their recommendation that only part of the application be accepted.

92.3 The Committee, having heard the evidence, decided that the application be accepted in part.

Resolved

93.1 That a footpath be added across the route of the dismantled railway between points B and C on Drawing No. 02/20/1 attached to the Director's report.

93.2 That the remaining parts between points A and B and points C and D on Drawing No. 02/20/1 be recorded as a byway open to all traffic.

Proposed Definitive Map Modification Order Hooke, Mapperton and North Poorton

94.1 The Committee considered a report by the Director asking them to review the route of the bridleway at Hooke Park formed by parts of Bridleway 4 Mapperton, Bridleway 6 Hooke and Bridleway 11 North Poorton.

94.2 Officers outlined the report highlighting the fact that the route as shown on the definitive map was difficult to walk and that evidence of use corroborated that the public had always used a parallel route instead.

94.3 The support of the County Council member for Beaminster for the Director's recommendation was reported.

Resolved

95. That the definitive map and statement be modified to adjust the route to that set out on the ground and used by the public (as shown A-B on Drawing No. 02/21 attached to the Director's report).

Proposed Definitive Statement Modification Order Rampisham

96.1 The Committee considered a report by the Director asking them to consider evidence to show that a public footpath in Rampisham already shown on the definitive map of rights of way should be added to the definitive statement.

96.2 Officers outlined the report highlighting the fact that the footpath had been included on the definitive map for the area but was not included on the statement of rights of way. They further drew attention to the Section 31 deposits made in 1992 and in 1995 by the Estate which included the footpath in question as a public right of way. Officers,

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therefore, recommended the inclusion of the footpath on the statement of rights of way to bring this in line with the definitive map.

96.3 Officers then reminded the Committee that they need only concern themselves with the legality of the case. In reality the footpath was difficult to walk and the present owner allowed a permissive route as a diversion for public use.

96.4 Members discussed the need for the footpath as the bridge crossing the stream no longer existed. Officers explained that the permissive diverted route provided an alternative means of fording the stream. If the footpath was not added to the statement, and the permissive route withdrawn, the route would be lost.

96.5 The Solicitor drew attention to the fact that officers recommended the inclusion of the footpath on the statement and advised the Committee that they should disregard any additional costs, for example the cost of a new bridge.

96.6 Members then questioned the value of adding a footpath which did not allow access across the stream. Officers explained that if the route was lost there would be no route from Footpath 17, Cattistock to the C38 road.

96.7 The support of the County Council member for Beaminster for the Director's recommendation was reported.

96.8 Having considered all the information, the Committee decided that the footpath be added to the definitive statement for Rampisham.

Resolved

97. That the definitive statement for Rampisham be modified to record the public footpath (shown as A-B on Drawing No. 01/03/1 attached to the Director's report) and shown on the definitive map from the river at the Cattistock parish boundary to the classified road C38.

Proposed Diversions and Extinguishments Affecting Footpaths 21 and 22, Chideock and Proposed Variation of the South West Coast Path National Trail

98.1 Following consideration of a report by the Director at their meeting on 5 September 2002, and a site visit that morning, the Committee considered a further report by the Director on proposals to extinguish part of Footpath 22, Chideock, affected by landslips; extinguish part of Footpath 21, Chideock from a line to which it was legally diverted in 1969, but which was never implemented; divert part of Footpath 21, Chideock from the definitive route to the route used by the public; and to request the Countryside Agency to recommend to the Secretary of State that she make a varying order to move part of the South West Coast Path National Trail to follow the diverted Footpath 21.

98.2 Officers outlined the report and referred to the morning's site visit when members had walked Footpath 21 and part of 22, had seen the part of Footpath 22 which the Director recommended be extinguished, and had met with interested parties.

98.3 Members were reminded that this part of the coast path was constantly moving and at times dangerous. It required continual maintenance to ensure it was usable in safety by the public.

98.4 Members were provided with a copy of a report by Professor Brunsden, a leading geomorphologist, on this particular section of the coast which concluded that the

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footpath would continue to move, that parts of the path would be lost to landslips, that fissures would open and deepen, that parts of the footpath would need to be realigned following slips, and that these in turn would need realignment because of further slips.

98.5 Photographs of members of the public putting themselves at risk by ignoring safety warnings were provided for members.

98.6 Members discussed the proposals and alternatives. Whilst recognising the importance of the coast path to tourism and the fact that the public wanted to walk the coast path, this had to be balanced with public safety and the cost of maintaining the footpath which was under constant threat of slippage. They also recognised that if the footpath was moved inland, some members of the public would continue to use the present path and put themselves at risk.

98.7 Officers explained that the present path could be maintained but questioned whether this could be done safely when the path was continually on the move. The County Council had a duty of care to footpath users and the cost of maintenance was highlighted. They also drew attention to the fact that if part of Footpath 22 was diverted compulsorily onto a new line compensation would be payable to the landowner.

98.8 The Solicitor advised the Committee that the Council could close the existing footpath on the grounds that it was no longer needed for public use because an alternative was available. The Council was also able to purchase any land it required to form a footpath by compulsory purchase where there is a need for a public footpath, but compensation would be payable.

98.9 Having considered all the available information, the Committee

Resolved

99. That the decision be deferred to allow officers to investigate safer alternative routes, nearer to the sea than those set out in the report.

APPENDIX 2



416/02

WILDLIFE AND COUNTRYSIDE ACT 1981

COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

DORSET COUNTY COUNCIL (FOOTPATH AT RAMPISHAM) DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2002

This Order is made by Dorset County Council under section 53(2)(b) of the Wildlife and Countrys the Actil 1981 ("the Act") because it appears to that authority that the County of Dorset definitive statement requires modification in consequence of the occurrence of an event specified in section 53(3)(c)(i), namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Dorset County Council hereby order that:

- 1. For the purposes of this order the relevant date is 6 December 2002.
- The County of Dorset definitive statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
- This order shall take effect on the date it is confirmed and may be cited as the "Dorset County Council (Footpath at Rampisham) Definitive Statement Modification Order 2002".

SCHEDULE

PARTI

Modification of Definitive Map

There are no alterations to the definitive map.

Part II <u>Modification of the Definitive Statement</u> Variation of particulars of path or way

A footpath at Rampisham, Dorset to be added from its junction with Footpath 17, Cattistock at the parish boundary at the river at approximate National Grid Reference ST 56440203 running south westerly to its junction with the classified road C38 at approximate National Grid Reference ST 56440200, a distance of approximately 45 metres.

Dated this 10th day of December 2002.

THE COMMON SEAL of THE DORSET COUNTY COUNCIL was affixed in the presence of:-

Eloie May

Director of Corporate Services



APPENDIX 3



Dorset County Council (Footpath at Rampisham) Definitive Map and Statement Modification Order 2002

Recommendations accepted:

Signed:

...V Penny.....

Date:.....29 Sept 2021.....

Vanessa Penny Definitive Map Team Manager Spatial Planning