

Application accepted

A

Rights of Way Sub-Committee - 14 May 1987

APPLICATION FOR AN ORDER MODIFYING THE DEFINITIVE MAP BY UPGRADING FOOTPATH 1 HOLT (PART), FOOTPATH 3 HOLT AND FOOTPATH 15 HORTON (PART) TO BRIDLEWAY STATUS, AND ADDING A BRIDLEWAY FROM FOOTPATH 15 TO THE HORTON ROAD.

REPORT OF CHIEF EXECUTIVE

1. An application has been received from Miss Hay of the British Horse Society for an Order modifying the Definitive Map. The application is to:

- (a) upgrade part of Footpath 1, Holt, to bridleway status;
- (b) upgrade Footpath 3, Holt, to bridleway status;
- (c) to upgrade part of Footpath 15, Horton, to bridleway status;
- (d) to add a new section of bridleway from Footpath 15, Horton, through Hart's Copse to meet the Horton Road.

The whole of the route concerned is shown on the map attached to the application.

2. The section of Footpath 1 concerned is a partially metalled track either hedged or fenced on both sides with widths varying between 15 feet and 20 feet. This part of the claimed route appears to be an access road to farm and residential properties. On reaching Paradise Cottages an iron gate gives access to Footpath 3. A notice stating "Private Road" is displayed on the gable end of a building. Footpath 3 continues along a double hedged track, and then crosses open fields to Holt Lodge Farm. There are several gates along this section which is about 8 feet wide and covered with loose gravel. The section of Footpath 15 involved is a double hedged track. The section of the claim which has no status on the Definitive Map at present is a wide gravel track which passes through Hart's Copse to meet the Horton Road. A notice stating "Private Road" is attached to a tree on this section.

3. No previous claim has been made for the section of the claimed route which at present has no status on the Definitive Map. However, during the review of the Definitive Map in the 1970's, Footpaths 1, 3 and 15 were claimed to have a higher status. The County Council's Special Review Committee over-ruled the claims in 1973 because of insufficient evidence.

4. The evidence submitted in support of the application consists of evidence forms from people who have used the route, and can be summarised as follows:-

(a) Mr A Coleclough

Used the route as a bridleway between 1950-1985, assuming that his stated date of birth is not 15 July 1985. Mentions the existence of 4 gates and 2 signs but does not mention the wording of the signs or the dates when they were first seen. Regularity of use not stated.

Though not mentioned by Mr Coleclough in his evidence form, the applicant believes he owns Holt Lodge Farm, since Holt Lodge Farm is affected by the application Mr Coleclough cannot have used in a public capacity that part of the route which he owns.

2 private notices along the route

(b) U Hutchison

Used the route as a bridleway and a footpath once a week between 1958 - 1972. Does not mention how regularly she used the route as a bridleway as opposed to a footpath. Mentions the existence of gates, but does not mention the notices.

(c) Miss S Bush

Used the route as a bridleway 6 times a year between 1924 - 1974. Mentions the gates, but not the notices.

(d) Miss Hay

Used the route as a bridleway about twice a month between 1930 - 1966 apart from the war years. Mentions the gates, but not the notices.

(e) J Smith

Used the route as a bridleway, and by car 60+ times a year between 1937 - 1985. Does not specify regularity of use as a bridleway as opposed to by car. Private notice erected 6 or 7 years ago (this evidence form is dated 1985).

(f) Mrs G Barrett

Used the route as a bridleway since 1946. Many of the questions on the evidence form, such as regularity of use, not answered. Mentions a notice saying private road.

(g) S Carne

Used the route as a bridleway for 14 years, once a month but not much during last 2 years. (Her evidence form is dated 1975).

(h) J Wells

Used the route for 25 years as a bridleway once a week. The years of use are not mentioned. Mentions the notice stating "private road". (Her evidence form is dated 1975).

5. Other than Mr Coleclough's evidence form none of the affected landowners have made any representations regarding the application. Knowlton Parish Council believe that Footpath 15 is unsuitable as a bridleway, but it seems the section concerned is not part of the present application. In the early 1970's Holt Parish Council considered that Footpath 3 should remain as a footpath because it was merely a farm access road. Wimborne District Council have made no observations.

6. The application must be determined on the available evidence, not on the absence of representations. The Sub-Committee is reminded that the application should only be accepted if the route has been used by the public as a bridleway without interruption for a full period of 20 years or more, unless there is sufficient evidence of an intention not to dedicate during the period concerned. The two private notices are probably sufficient to indicate an intention not to dedicate, but this is not entirely beyond doubt since the wording "private road" might only be indicative of an intention not to dedicate a public vehicular route. However, since the earliest date mentioned for a notice is 1975, and

since the majority of the evidence of use relates to a period before 1975, it is not necessary to determine the precise meaning of the notices. The period of 20 years with the most evidence appears to be between 1950 - 1970. 5 people cover the whole of that period, and 3 others cover part of it. However, of those 5, Mr Coleclough appears to own at least some of the land across which the claimed route runs, and therefore his use for at least some of the claimed route cannot be in a public capacity. Bearing in mind that several of the other users do not state how regularly they used the route as a bridleway it is doubtful whether the evidence on the balance of probabilities establishes that the presumption of dedication as a bridleway has arisen.

RECOMMENDED that the application be refused because of insufficient evidence of public use.

The following documents are attached for the Sub-Committee's attention:-

- (a) the application and accompanying map;
- (b) evidence form of Mr A Coleclough dated 25 June 1985;
- (c) evidence form of U Hutchison dated 26 July 1984;
- (d) evidence form of S Bush dated 11 December 1984;
- (e) evidence form of Miss N Hay dated 14 February 1985;
- (f) evidence form of Mr J Smith dated 17 April 1985;
- (g) evidence form of Mrs G Barrett dated 4 June 1985;
- (h) evidence form of Miss S Carne dated 22 January 1975;
- (i) evidence form of Mrs J Wells dated 16 January 1975;
- (j) letter from Knowlton Parish Council dated 12 December 1985.

K A ABEL
Chief Executive

May 1987

APPLICATION FOR MODIFICATION ORDER
 WILDLIFE AND COUNTRYSIDE ACT 1981
 COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

To: Dorset County Council
 Chief Executive
 County Hall
 Dorchester
 Dorset
 DT1 1XJ

I/we NANCY ELLINOR HAY... of COMMON FARM, HAZELBURY, BRYAN
 hereby apply for an order under section 53(2) of the Wildlife and Countryside
 Act 1981 modifying the definitive map and statement for the area by:

~~deleting the footpath/bridleway/byway open to all traffic from~~
~~..... to~~
~~adding the footpath/bridleway/byway open to all traffic from~~
~~..... to~~
 upgrading/downgrading to a footpath/bridleway/byway open to all traffic the
 footpath/bridleway/byway open to all traffic from 043047 Lower Row to Paradise
House, Holt F.P.1 (part) F.P.3 to Holt Lodge to OS 5065. Holt Road, via Farm Road.
 varying/adding to the particulars relating to the footpath/bridleway/byway open
 to all traffic from to
 by providing that
 and shown on the map annexed hereto.

I/We attach copies of the following documentary evidence (including statements
 of witnesses) in support of this application:

Holt F.P.1 Lower Row to Paradise House then north by
 F.P.3 to Holt Lodge Farm then unnumbered farm road to
 join Holt Road. All gravel roads.

Mr Hutchison Mr Smith Mrs Caroe
 Miss Bush Mr Barrett Mr Wells
 Miss Hay Mr Colebatch

Please note Mr Colebatch
 is the owner of Holt
 Lodge Farm

Dated July 6. 1985
 Signed SIGNATURE REMOVED

(Name) NANCY ELLINOR HAY
 (Address) COMMON FARM
HAZELBURY, BRYAN
STURMINSTER, NEWTON

Note: The map accompanying this application must be on a scale of not
 less than 2 1/2 inches to one mile or 1/25000.

-----DELETE AS APPROPRIATE-----