



Dorset
Council

**Area Planning Committee
(Western and Southern Area)**

Application to extinguish part of
Bridleway 43, Marshwood at Prime
Coppice

Date of Meeting: 13 August 2020

Lead Member: Cllr Simon Christopher, Dorset Council member for Marshwood
Vale

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and
Infrastructure

Executive Summary: This report considers the proposed extinguishment of part of
Bridleway 43, Marshwood at Prime Coppice as shown on Drawing 19/22/1 and
whether or not an order should be made in light of an objection received.

Equalities Impact Assessment:

The alternative route via a public road and adjoining bridleway is an accessible
route in close proximity whereas the current route of Bridleway 43 cannot be used
between points A and B due to a missing bridge.

Budget:

Dorset Council's Greenspace Management Team has agreed to pay in accordance
with Dorset Council's usual scale of charges and also for the cost of advertising the
order and subsequent notice of confirmation. The law does not permit Dorset
Council to charge for the cost of obtaining confirmation by the Secretary of State if
an order is the subject of an objection.

Risk Assessment:

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

Current Risk: LOW

Residual Risk LOW

Other Implications:

Sustainability – The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car. Use of public rights of way promotes a healthy balanced lifestyle.

Recommendations:

That:

- (a) The proposal to extinguish part of Bridleway 43, Marshwood be accepted and an order made;
- (b) The Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the extinguishment; and
- (c) If the Order is unopposed, it be confirmed by the Council without further reference to the Committee.
- (d) If any objections to the Order are of a similar nature to those already considered by the Committee, the matter be referred to the Secretary of State for confirmation with the Council's support without further reference to the Committee.

Reasons for Recommendation:

- (a) The proposed extinguishment meets the legal criteria set out in the Highways Act 1980.
- (b) The inclusion of these provisions in a public path order means that there is no need for a separate legal event order to modify the definitive map and statement as a result of the extinguishment.
- (c) Accordingly, the absence of objections may be taken as acceptance that the extinguishment is expedient and therefore Dorset Council can itself confirm the order.
- (d) In the event that objections of a similar nature to those already considered are received to the order, the committee will have already considered the objections in the light of the legal criteria and therefore Dorset Council should submit the order to the Secretary of State for confirmation and support the order.

Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a

rights of way improvement plan prepared by the local highway authority. Dorset Council's Rights of Way Improvement Plan sets out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

Appendices:

1. Drawing 19/22/1
2. Letter of objection with attachments
3. Summary of other consultation responses

Background Papers:

The file of the Executive Director, Place (ref. RW/P202).

Officer Contact

Name: Carol McKay, Senior Definitive Map Technical Officer

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1 Background

- 1.1. Dorset Council's Greenspace team submitted an application to extinguish part of Bridleway 43, Marshwood at Prime Coppice, as shown on Drawing 19/22/1 attached as Appendix 1.
- 1.2. This extinguishment is proposed because part of Bridleway 43 is not needed for public use due to the existence of an alternative bridleway and connecting road in close proximity.
- 1.3. The current definitive route of Bridleway 43 has been unavailable on the ground between points A and B for many years and there has never been a bridge across the river at this point.
- 1.4. A private bridge and ford to the east of point B were washed away in 2011 following a storm. The site was assessed by Dorset Council engineers, with advice from land drainage teams, who advised that it was not feasible to install a bridge on the definitive route of Bridleway 43. It was suggested that the private bridge could be replaced, with improvements to prevent it being washed away in the future (including placing gabion baskets in the river to protect its banks) and that a new bridleway be dedicated across it as an alternative route to Bridleway 43.
- 1.5. It was agreed that a shared use bridge be constructed in conjunction with the owners of Prime Coppice and a new bridleway be dedicated across it (Bridleway 76).
- 1.6. The cost of the shared use bridge constructed in 2017 was £13,400. The cost was split between the landowners and Dorset Council, with the council contributing the equivalent cost of a bridleway bridge in the same location. The landowner paid the difference, as the bridge was constructed to carry his vehicles.
- 1.7. A bridge on the existing route of Bridleway 43 would have been required to land onto the crown arch of the existing bridge at point A which links Bridleways 43, 44 and Glebeland Lane making this option unviable as the existing brick bridge could not be used to support a bridleway bridge.
- 1.8. The installation of a shared use bridge with the landowner, dedication of a new bridleway and extinguishment of part of Bridleway 43 Marshwood was deemed the most practical and economical solution for all parties.
- 1.9. The current definitive route of Bridleway 43, Marshwood runs from point A at its junction with Bridleway 44, Marshwood and Glebeland Lane, generally south west across a river to point B as shown on Drawing 19/22/1 and is approximately 25 metres long.

- 1.10. Bridleway 43 is currently obstructed by fencing and a river between points A and B.
- 1.11. The owners of the affected part of Bridleway 43, Marshwood agreed that a new bridleway be dedicated (Bridleway 76, Marshwood) over the newly installed bridge as part of the alternative route.
- 1.12. It is within Dorset Council's powers to install a bridge on a public right of way within 200 yards (or 183 metres) of the definitive line, although this does not automatically divert the path and a legal order must still be made to reroute the right of way over the new structure.
- 1.13. The part of Bridleway 43, Marshwood between points A and B is not needed due to an alternative route from point A along a short section of Bridleway 43, Marshwood then along Glebeland Lane and returning to point B via Bridleway 76, Marshwood, using the new bridge to cross the river. The alternative route as described is approximately 65 metres.
- 1.14. Whilst the alternative route is longer than the existing bridleway to be extinguished, the new route crosses an existing bridge which is suitable for bridleway users and is a safer and more accessible route.

2 Law

Highways Act 1980

- 2.1 Section 118 of the Highways Act 1980 says that the Council may, by order, extinguish a path when it appears to them to be expedient to do so, on the ground that it is not needed for public use.
- 2.2 A public path extinguishment order cannot be confirmed as an unopposed order unless the Council are satisfied that it is expedient to do so:
 - (a) having regard to the extent (if any) that the path is likely to be used by the public; and
 - (b) having regard to the effect the extinguishment would have on other land served by the bridleway;
- 2.3 Any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- 2.4 Section 29 of the Highways Act 1980, as amended by Section 57 of the Countryside and Rights of Way Act 2000, says that when making extinguishment orders the Council must have regard to the needs of agriculture, forestry and nature conservation and the desirability of conserving flora, fauna and geological and physiographical features. "Agriculture" includes the breeding and keeping of horses.

- 2.5 Dorset Council may itself confirm the order if it is unopposed. If it is opposed it may be sent to the Secretary of State for confirmation.

Wildlife and Countryside Act 1981

- 2.6 Section 53A of the Wildlife and Countryside Act 1981 enables provisions to amend the definitive map and statement required by virtue of a diversion order to be included in the extinguishment order instead of being the subject of a separate legal event order.

Human Rights Act 1998 – Human rights implications

- 2.7 The provisions of the Human Rights Act and principles contained in the Convention of Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols of particular relevance are:

Article 8 - Right to respect for private and family life

The First Protocol, Article 1 - Protection of Property.

- 2.8 When considering whether it is expedient to make the order a council must have due regard of any argument put forward by an adjoining landowner that their rights under Article 8 and Article 1 of the First Protocol would be infringed.
- 2.9 Section 28 of the Highways Act 1980 provides that a person with an interest in land affected by the consequence of the coming into operation of a public path order can make a claim for compensation for the depreciation of land value or damage suffered by being disturbed in his enjoyment of land.

Rights of Way Improvement Plan

- 2.10 Dorset Council's Rights of Way Improvement Plan (ROWIP) is a statutory document setting out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.
- 2.11 Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority.
- 2.12 Five themes have been identified for improving access in Dorset of which the following are particularly relevant to the present case and should be considered in relation to this application:

Theme 1: The ROWIP's links with other strategies

- Theme 1.6 Improve accessibility of the network

3 Consultation

- 3.1 The Council carried out a wide consultation in February / March 2020 and one letter of objection was received from a neighbouring landowner.
- 3.2 As a result of some inaccurate information provided in the application form, a follow-up letter was sent to consultees to rectify errors in the consultation documentation.
- 3.3 The Dorset Council member for Marshwood Vale, Cllr Simon Christopher was consulted on the application and made no comment.
- 3.4 The objection to the consultation is included in Appendix 2 with all other consultation responses summarised in Appendix 3.

4 Objections

- 4.1 One objection was received to the consultation which is included in full in Appendix 2.
- 4.2 The objector raised concerns over the accuracy of the definitive map and the information shown on the consultation plan.
- 4.3 Officers' comments; All of the rights of way illustrated on the consultation plan have been checked against the definitive map and historic plans and it has been verified that the rights of way are correctly shown.
- 4.4 In addition to these points, the objector also raises issues about the definitive line of a section of Bridleway 43, Marshwood at Prime Farm and the northern end of Bridleway 42, Marshwood, and the obstruction of Bridleway 42, Marshwood.
- 4.5 Officers' comments; These concerns are beyond the scope of the proposed extinguishment and therefore are not a relevant consideration. Any queries about the correct recording of public rights of way can be referred to the Definitive Map Team. Issues with maintenance or enforcement of a public rights of way are dealt with by the Council's greenspace management team who have been made aware of the issues raised by the objector.
- 4.6 The objector challenges the validity of the proposed extinguishment stating that there is no need to extinguish the bridleway and that "Bridleway 43 has never run between points A and B".
- 4.7 Officers' comments; The existence of the bridleway on the ground is not a prerequisite for extinguishment as the law states that any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

- 4.8 The Planning Inspectorate's guidance on procedures for considering objections to definitive map and public path orders (<https://www.gov.uk/government/publications/rights-of-way-guidance-booklet>) advises that "the Inspector normally ignores any obstructions blocking the way and considers how much more the path would be used if the obstructions were not there."
- 4.9 Although it has been established that it is not possible to install a bridge on the current route of Bridleway 43, if it is considered as if it were unobstructed i.e. with a bridge across the river, the application would still fulfil the legal requirements for an extinguishment order, since the alternative route is in close proximity, adds very little additional length to the bridleway, and the provision of two routes so close together renders Bridleway 43 not needed for public use.
- 4.10 Significantly, no other objections have been received, including from the British Horse Society and The Ramblers who raised no objection to the proposed extinguishment.

5 Discussion

- 5.1 The proposed extinguishment is expedient as the bridleway is not needed for public use.
- 5.2 The extinguishment will have no adverse effect on agriculture, forestry, flora, fauna and geological and physiographical features.
- 5.3 Land served by the bridleway is not adversely affected by the removal of the public right of way.
- 5.4 The proposal affects the land belonging to Christopher Vaughan and Ruth Fuller, who fully support the proposals and have agreed to the extinguishment in writing therefore it is unlikely that compensation would be payable under Section 28 of the Highways Act 1980.
- 5.5 If the order is unopposed the order should be confirmed as the extinguished route is expedient.
- 5.6 When considered together with the newly installed bridge and associated bridleway dedication of Bridleway 76, Marshwood, the extinguishment order fulfils the following objectives in the Rights of Way Improvement Plan to improve Dorset's network of Public Rights of Way, wider access and outdoor public space: Theme 1.6 Improve accessibility of the network.

6 Conclusions

- 6.1 The proposed extinguishment of part of Bridleway 43, Marshwood meets the tests set out under the Highways Act 1980 and therefore should be accepted and an order made.
- 6.2 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the extinguishment.
- 6.3 If there are no objections to a public path order, as the criteria for confirmation have been met the order should be confirmed.
- 6.4 In the event that objections of a similar nature to those already considered are received to the order, the committee will have already considered the objections in the light of the legal criteria and therefore the order should be submitted to the Secretary of State without further reference to the committee.

Matthew Piles

Corporate Director for Economic Growth and Infrastructure

July 2010

Objection to P202 redacted.txt

From: REDACTED
Sent: 23 February 2020 01:17
To: Carol Mckay
Cc: Russell Goff; James Stagg; NAME REDACTED
Subject: Fwd: CAM RW/P202 - Partial Extinction of Bridleway 43
Attachments: Prime Lane-BR42 Green.jpg; Prime Lane-BR42 Red.jpg; Prime Lane BR42 Green.pdf; Prime Lane BR42 Red.pdf

SENT AGAIN WITH ATTACHMENTS THIS TIME

Dear Miss McKay

Thank you for your letter of the 4th of February informing me that Dorset Council is proposing to extinguish part of Bridleway 43. I regret to inform you that the definitive map is not only incorrect, but statements made in your letter are also incorrect.

You are correct in stating that the old bridge with its decking of railway sleepers was private and that there was no public right to cross it. It was built by Mr Alan Pitfield shortly after the Second World War to provide him with private vehicular access to Prime Coppices. In any event the bridge no longer exists. A new concrete bridge has been constructed slightly upstream of where the old bridge once stood. This is largely academic as a new Bridleway 76 has been dedicated across the new bridge. Having said that, Bridleway 43 has never run between points A and B marked on the map enclosed with your letter. Furthermore there has never been a bridge crossing the river between points A and B. I can tell you this with some conviction. I have lived at Prime Farm since 1981 and I knew my neighbour the late Mr Pitfield extremely well. Neither he nor I were aware of any right of way passing between points A and B across a bridge, if indeed any bridge ever existed which is extremely doubtful, or by walking or riding a horse across the bed of the river.

The route of BR 43 has not changed in the last ~70 years and I fail to see why there is any need to extinguish any part of it or attempt to do so. Furthermore, it is legally and physically impossible to extinguish something which does not exist nor indeed ever existed. This makes the proposed extinction of a section of BR43 ridiculous and a total waste of public expense.

The route of the northern section of BR43 is not correctly indicated on your map. I also note that another public right of way (a BOAT) is not marked on the map enclosed with your letter.

The actual route of the bridleway connecting the two parts of BR43 as shown on your map passed through and still passes through the river immediately downstream of where Mr Pitfield's wooden bridge once stood. It involves getting your feet wet as you need to walk

across the bed of the river. I therefore formally object to the proposed extinction on the grounds that you cannot extinguish something that does not exist. Consequently there is absolutely no need to make an application to extinguish an imaginary section of a bridleway under Section 118 of the Highways Act 1980.

The money would be better spent rerouting BR43 in the vicinity of NAME REDACTED's barns adjacent to Prime Farm and correcting the route of the northern end of BR42 (a continuation of Prime Lane) which is actually another BOAT.

The correct route of BR42 is depicted by the red line in one of the attached maps. The green line depicts what is shown incorrectly on the definitive map. Incidentally, there is an obstruction to BR42 at point D which needs to be removed. A trench dug across the track needs to be replaced by a culvert. I have discussed these matters with James Stagg on a number of occasions in the last 2-3 years. May I therefore respectfully suggest that you ask James Stagg to visit me so that I can show him on the ground where the actual route of BR43 still lies.

Yours sincerely

REDACTED

APPENDIX 3

Summary of other consultation responses received:

| Name | Comments |
|--------------------------------------|---|
| British Horse Society | No objection in principle |
| The Ramblers | No objection to the proposed extinguishment |
| Southern Gas Networks | No objection |
| Wessex Water | No objection (no apparatus affected) |
| Western Power Distribution | No objection |
| Senior Archaeologist, Dorset Council | There are at present no recorded archaeological finds or features or historic buildings on or in the vicinity of the route affected by this proposal. Historic environment considerations do not constitute a constraint in the context of this proposal. |