

**Case Number ROW/332995**

**Wildlife and Countryside Act 1981 – Section 53  
Foot path from East Farm Lane (D290502) to D20503 Public Road East of Coombe cottages,  
Bradford Abbas,  
Definition Map and Statement Modification Order 2017**

**Statement of Case Mr Patrick J Pearce and Mrs Alison J Pearce**

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Wildlife and Countryside Act 1981 – Section 53

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Section 1 Our objection, as victims, to the above application.

1. During the course of the initial application there was insufficient and inadequate notification to all interested parties as the various notifications were made by means of displaying a copy of the documents relating to the case in a position outside the site that did not make them easily seen by the owners of homes at Saxon Maybank or nearby homes affected by the proposed order. The Order notice was not posted to our postal addresses. I also do not recall receiving notice of the appropriate committee meeting at which the order was to be considered.

We therefore consider that there was insufficient notification and consultation during the time that the above Order was under consideration.

2. The time that has expired between the date that the application for the DMMO was made and the likely ruling by the Inquiry to be held on 10<sup>th</sup> December 2024 set out in Section 4 of this document is unfair on those adversely affected by the proposed order, if confirmed, due to the uncertainty during the passage of time and the effect which that has had on the enjoyment of our homes.

We consider that contrary to our Human Rights under Article 6 of The Human Rights Act 2000 this prolonged passage of time of 16 years could never be regarded as adequate to satisfy the requirement for a fair and public hearing in a reasonable time.

3. The lack of clear and consistent representations from those who have made statements supporting their use of the claimed footpath after discounting those which either have referred to visiting friends and family, those whose use was outside the period under review, those who have used cars or cycles to use the footpath, or have used the track to purchase produce from the farm or were related to farm workers and those which were tenants of the land owner.

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**Section 1 Our objection (continued)**

**We consider therefore that the written representations claiming usage of the claimed route are insufficient to establish that a footpath has existed over the twenty years prior to the above application being made.**

- 4. The extensive mapping evidence over many years referenced in the Report to the committee (Attachment 1.) considering the application does not show any proof that the footpath has been in existence at any time previous to the date of the application.**

**We consider the mapping evidence to be insufficient to demonstrate that the footpath has existed or reasonably alleged to have existed any time prior to the application date.**

- 5. Taking into account paragraphs 3. And 4. above we consider that there is, on balance, insufficient evidence to confirm that the claimed footpath subsists or is reasonably alleged to subsist.**
  
- 6. Taking into account the character of the site set out in Section 2 and 3 the Saxon Maybank site has been wrongly compared to multi-unit sites, usually seen in coastal locations, which are primarily rental sites that are occupied by different users as short-term rentals where the peace, privacy and security of the homes is less important than on a primarily second home site such as Saxon Maybank where most of the homes are owned and occupied by the home owners, their families or friends for peaceful enjoyment and relaxation.**

**We consider that the confirmation of the above order would be contrary our Human Rights under Article 1 and Article 8 of the Human Rights Act of 1998 due to the level of peaceful, secure and safe enjoyment of our homes and lives being insufficiently protected.**

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**Section 2 Ownership of my wife's and my home at Saxon Maybank**

- 1. We have owned our home at Saxon Maybank since June 2010.**
- 2. We selected Saxon Maybank for our second home due to its rural location, its privacy, its quietness, its beautiful views and the lack of traffic.**
- 3. We designed the layout of our home to meet our requirements and to maximise the views from the home over the surrounding countryside whilst using the same finishes as the other homes on site.**
- 4. All homes at Saxon Maybank have full height glazing designed to maximise the view from the site.**
- 5. Our home looks directly on to the main driveway which would form a part of the route of the footpath if granted.**
- 6. We occupy our home under a licence agreement which we entered into in 2010 and the main terms are as follows:**
  - a. The term is 125 years from 2010**
  - b. We have main services such as water, LPG gas, and electricity**
  - c. Drainage is by an on-site facility**
  - d. We pay our share of the local authority rates**
  - e. We are allowed to occupy our home at any time of the year**
  - f. The site has no closed periods**
  - g. Our maximum occupation by any one person is for 10 months in a calendar year**
  - h. We have access to all site facilities including the gardens in the site generally and to the garden area which is adjacent to our home.**
  - i. In the event that we wish to sell our home the remaining term is assignable to the purchaser**
  - j. Should the home become a total loss we are able to replace it with a new home.**

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**Section 3 The nature of the site**

**The overall area of the site is approximately 2.5 Acres and this consists of the following:**

- a. Four stone barns which have been sympathetically converted into homes.**
- b. Ten cedar homes all of which are used by their owners as second homes.**
- c. A former piggery which has been converted into a pair of luxury holiday units for rental.**
- d. The site enables most homes to have direct views over the countryside.**
- e. There is parking for two cars for each home but no additional parking spaces.**
- f. The site has an electrically operated gate at the entrance which is opened by users with a code. The eastern end of the site has a secured gate.**
- g. The main driveway runs the length of the site and is gravelled.**
- h. There is also a store/office used by the site owner who manages the site for the homeowners and the rentals of the two holiday converted barns.**
- i. The site is accessed from East Lane D20502 which is a single width lane with very high sides. This has no passing places as the high banks prevent this. This lane is used by those occupying the site and significantly by large farm vehicles etc. which completely fill the road's width and account for a major proportion of traffic in the lane.**
- j. There are no parking spaces at the top of this lane.**
- k. The title is freehold.**

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**Section 3 The nature of the site**

**Planning comments**

- a. At the time the planning was under consideration (eventually passed on appeal) issues had been raised in connection with the safety of the access road and the risk of vandalism. I believe that the fact that most visitors to the site would be likely to use vehicles to come to the site would have helped the planners to overcome this potential danger to pedestrians on the access lane.**
  
- b. Significantly, the planning permission for the site disapplies the usual permission to erect internal fences.**

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**Section 4 The key dates relating to the progress of the above application**

- |  |   |
|--|---|
| <b>1. 7<sup>th</sup> July 2008</b>                         | <b>Original application for DMMO order</b>  |
| <b>2. 12<sup>th</sup> March 2015</b><br><b>application</b> | <b>Dorset Council Regulatory meeting to consider the</b>  |
| <b>3. 20<sup>th</sup> October 2017</b><br><b>council</b>   | <b>Latest date for objections to be received by the</b>   |
| <b>4<sup>th</sup> June 2024</b>                            | <b>Initial letter from The Planning Inspectorate informing us</b><br><b>that an Inquiry into the Order will be held 10<sup>th</sup> December</b><br><b>2024</b> |

**Notes**

**The time between stage 1 and stage 2 was 6 years and 8 months**

**The time between stage 2 and stage 3 was 2 years and 7 months**

**The time between stage 3 and stage 4 was 6 years and 7 months**

**The total time of this DMMO's passage was therefore almost**  
**16 years.**

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**Section 5 The evidence presented for the DMMO T474**

- 1. The main requirements for evidence for a footpath application under the Wildlife and Countryside Act 1981 are as follows:**
  - a. That a right of way subsists or**
  - b. It is reasonably alleged to subsist.**

**User evidence**

**There were 19 living witness statements. Only 7 of these were willing to give evidence at an inquiry and due to the passage of so much time not all of these will be able to do so.**

**A number of these statements demonstrated inconsistencies which were referred to in a letter from Tracey Merrett of Pardoes Solicitors (Attachment 4) who were engaged by the previous owner of the land at Saxon Maybank site to consider the evidence relating to the application. This letter drew attention to the following misunderstandings or inconsistencies in the evidence but this letter included the following points.**

- (i) One witness referred to the fact that she came to the farm to buy animal feed, milk and eggs. It would seem unlikely that Rachel Fry was the only person coming to buy farm produce but no other statements referred to this. The farm had a dairy and grain mill and sold eggs.**
- (ii) A number of the statements included coming by car or bicycle which would not infer that they were using the proposed route for exercise in the open countryside.**
- (iii) A number of the statements referred to visiting family or friends or were tenants of properties owned by the farm or were employees of the farm.**

**It is unlikely a farmer would close a farm track which customers used to buy produce during the day as that prevent them selling produce etc to local people and was used for farming activities at any time.**

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**(Continued)**

I have spoken a local resident who formerly lived at one of the Coombe Cottages for ten years and worked at the farm within the twenty years user evidence period and they have said that during this time there has been no visual evidence or acceptance that the claimed route was being used by way of a footpath.

**WE consider that the User evidence per the Report to the Regulatory Committee Meeting held on 12<sup>th</sup> March 2015 (Attachment 2) is therefore, on the balance of probabilities, there is insufficient to evidence to uphold the claim that the footpath T474 subsists or can be alleged to exist.**

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**Section 5 - The Evidence (Continued)**

**Mapping Evidence**

Whilst there was reference to thirty items of mapping evidence submitted to the regulatory meeting (Attachment 1) these were not referred to the meetings minutes other than to conclude that the route existed on the ground.

Of the 30 items shown in appendix 3 on pages 18 to 19 of the report to the Regulatory Committee headed “Table of documentary evidence “over a period from 1773 to 1989 these can be summarised as follows:

1. 18 items show that the proposed route was not shown on the maps etc at all.
2. The other mapping evidence demonstrated that the only route that could be proven to exist was one that runs from point B to point E on the application plan but this was marked as ‘Private’ on the 1951 Bradford Abbas Survey map.
3. Whilst the route through the farm was shown on some maps this was never marked as a footpath. It is not surprising that a track existed through the farm as this was the farm’s access route to the various farming activities including the sale of farm products.
4. It is notable that since the introduction of Definitive Maps in 1966/7 the proposed footpath has never been shown.

What is more the report to the Development Control Committee to approve of Application number 1/D/07/001761 (Attachment 3) for the original 11 homes at Saxon Maybank of 14<sup>th</sup> February 2008 states clearly in clause 10.7:

**“Furthermore, there are no public footpaths or bridleways through or close to the site.”**

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**Section 5 - The Evidence (Continued)**

**As Dorset County Council did not disclose DMMO activity in property searches made at that time and therefore, the only information available to purchasers of homes was that in bold and underlined shown above which demonstrates that prior to the application for the footpath being made the local authority did not recognise the existence of a footpath along the route claimed.**

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**Section 6 The effect of the order on our houses**

- 1. The order of 2017 if confirmed would create a right of way running through the main driveway of the Saxon Maybank site.**
- 2. This would entail allowing unknown visitors to freely access the site whereas at present a code number is required to open the gate.**
- 3. The path itself could not be fenced as due to the width of the driveway there is insufficient room to do this whilst leaving adequate for vehicle traffic.**
- 4. Planning permission for the site has withdrawn the normally accepted right to allow the erection any fences, gates or walls within the site allowing users of the claimed route to stray onto all parts of the site.**
- 5. Without any fencing of the claimed footpath this would leave the homes subject to potential trespass, the potential for dog fouling, and a lack of privacy and security. Also there are unfenced hot tubs which could present a danger to children and dogs or contamination.**
- 6. The close proximity of the proposed footpath to the homes allows direct views into the living areas and/or the bedroom areas of most homes including some homes which would be less than two metres away from the proposed route allowing direct views into their living areas.**

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**Section 6 The effect of the order on our houses (Continued)**

- 7. As the proposed footpath is not connected to any other local footpaths it seems likely that some users would choose to drive to the start of the path to commence their walk. This begs the question of where they would park their cars. There is no public parking at the western end of the path which would not either block entrance to the Saxon Maybank site or to the farm which has several gates opening on to the limited space at the top of the lane. There is no public parking area at the eastern end of the route and parking by walkers there could lead to owners of the houses at this end of the route being blocked in or out.**
  
- 8. There have been incidents of waste being fly-tipped in the lane and this is an ongoing problem for rural communities. If there was easy access to the Saxon Maybank site this unlawful tipping could even take place within the site.**

**The confirmation of the DMMO for T474 would be a violation of the homeowners' rights under the Human Rights Act 1998.**

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**Section 7 The Human Rights Act 1998**

**My wife and I are victims of the following violations of the Human rights Act 1998.**

**1. Article 1 of the first protocol - Protection of Property**

**Owners of possessions (including homes) are entitled to enjoy peaceful enjoyment of their possessions which are deemed to include all property and would therefore clearly apply to the homes at Saxon Maybank, as described in Section 3 of this Statement of Case.**

**2. Article 8 - The right to Respect for family Life**

**Clause (1) states “Everyone has the right to respect for his private and family life, his home and his correspondence”**

**Clause (2) goes on state that “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law AND is necessary in a democratic society in the interests of national security, public safety, or the well-being of the country, for the prevention of disorder and crime, for the protection of health and morals’ or for the protection of the rights and freedom of others. I accept that Councils cannot refuse an application made under the Wildlife and Countryside Act 1981 which is lawful but before doing so they need to satisfy the other conditions in the wording of the Article as set out above. The requirement to comply with the above underlined text above has not been satisfied.**

**The key word here is the word “and” in the second line of Clause (2) above.**

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### Section 7 Human Rights Act (Continued)

#### **3. Article 6 – a right to a fair trial within a reasonable time**

Whilst I accept that the excessively long delay in arriving at the stage for an Inquiry may not be solely due to any one party but the excessive delay throughout the process bringing this application to this stage was due to the long time between the deadline for Objections and the sending the case to the Planning Inspectorate. (See Section 4.)

Referring to the Key dates in Section 4 in this document the delay in submitting the file to the Planning Inspectorate after the last objections date was more than six years. It is hard to imagine what input was required during this unduly long period as the factual evidence or the documents relating to the application would not have changed at all during that very long time.

We consider that it was unfair to leave the owners of properties adjacent to the claimed route not knowing whether this footpath application was going to be successful. During the 16 years that this application has been under consideration some of the homes have been sold and therefore the momentum of the objections filed by the previous owners will have been lost and some potential key witnesses (both for and against the Order), will have died and we are aware that some important evidence has been destroyed.

Also during this time the uncertainty will have detracted from the peaceful enjoyment of our homes.

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**Section 8 The current trend in changes in the Right of way laws since the**  
**Countryside and Rights of way Act 2000 came into force.**

**8(i) The Countryside and Rights of way Act 2000**

**This Act very clearly demonstrates that it is now considered inappropriate to allow public access to land which on which there are buildings, golf courses, or parks and land within 20 metres of a dwelling.**

**This is set out in Section 1 of the Act which states that excepted land (defined in subsection (2)) and schedule 1 to the Act) has no right of access whilst it remains of that description.**

**Schedule 1 includes a definition of 'excepted land' which includes Land within 20 metres of a dwelling.**

**The logical follow through of this is that this exception should not only apply to paths granted under the Countryside and Rights of way Act 2000 but also those granted under any other Act such as the that applicable to DMMO T474.**

**It is clear that the law makers have accepted that it is unreasonable to allow public footpaths or similar rights to pass within 20 metres of a dwelling or through a garden.**

**Most, if not all, homes at or close to Saxon Maybank are within 20 metres from the claimed footpath route.**

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**Section 8 The current trends in the Right of way laws (Continued).**

**Section 8(ii) (Highways Act 1980) Clause 118 (1)**

**“Where it appears to a Council as respects a footpath.... In their area ..... that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.”**

**Section 8(ii) (Highways Act 1980) Clause 118 (2)**

**“The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the right of path or way, account being taken of the provisions as to compensation contained in Section 28 above as applied by section 121(2) below.”**

**Section 8(iii) The Wildlife and Countryside Act 1981**

**There are numerous possible changes in the pipeline for this act proposed changes that are coming for this act also which arise from the Deregulation Act 2015 and other Acts. I am not legally trained and would need more time to analyse these further although I did see reference to removing the ‘reasonably alleged to subsist words just leaving the ‘right of way subsists’ requirement in the Wildlife and Countryside Act 1981 but I am not sure whether has happened.**

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**Section 8 The current trends in the Right of way laws (Continued).**

**My comments on the above clauses**

Taken together this would seem that in the event of a footpath which is not needed, for example, because there would be very little likelihood of it being used by the public for leisure or healthy exercise and which by extinguishing the right of way does not have effect on any land served by the path or way, in the case of the claimed route DMMO T474 the order for the extinguishment of this would be likely to be confirmed.

This would be due to the lack of evidence of current usage, after discounting those related to landowners, tenants or friends, those visiting to buy farm products or travelling by car or bicycle demonstrating that and the availability of more suitable walks from the surrounding area.

In view of the huge upheaval, works required in terms of fencing, security, access provision at both ends and signage of this less than 300 metre path going to nowhere and the effect on the homeowners peaceful, secure and enjoyable occupation of their houses and gardens I believe that it would inappropriate to confirm the current order under consideration requiring much reorganisation and costs only for the path to extinguished later due to continuing lack of use under 118 of the Highways Act 1980.

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**Section 9 Proportionality**

**In this case the following facts should be considered when arriving at a fair decision which is proportionate.**

- 1. The low number of verifiable likely users of the path ascertained from the user statements during the 20 year period of measurement after eliminating those whose use is not for leisure purposes taking account that only seven of these were prepared to support their statements at a hearing. At least seven of those supporting the application had used the route less than 10 times in a year.**
  
- 2. The lack of current users of the claimed footpath. From my discussions with fellow owners of homes it appears to be that a minimal number, if any uses of the route for recreation purposes by those other than home owners or their guests have been seen over the last fifteen years or so despite the path being accessible via the unlocked gate at the Eastern end of the claimed route, passing the next gate which has passing room beside it and a stile-like facility at the Western end of the site. We and other homeowners I have spoken to have seen very few, if any, people using the claimed route.**
  
- 3. There are more attractive and suitable routes accessible locally from Bradford Abbas (e.g. The footpath route from the village passing Mill Farm which follows a lovely countryside route to Thornford, the route to Wyke and ultimately Sherborne from the village and the path going from the Old Mill crossing the river Yeo towards Clifton Maybank).**

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**Section 9 Proportionality (Continued).**

- 4. The number of people who would be adversely affected by use of the claimed route is more than 30 and there would be a potential significant effect on the farming activities due to the increased numbers using the lanes either side of the claimed route and car parking issues.**
- 5. Taking into account the extremely low number of verifiable historic or current users, the availability of more suitable local alternatives and the imbalance between those affected and those likely to use the route we consider that the Order should not be confirmed as such an action would be disproportionate and unfair.**
- 6. The Council's refusal to consider whether the passing of the proposed order would be unfair under the Human Rights Act 1998 and suggesting that objectors may have a case if they went to the European Court of Human Rights is unfair as it puts the burden of proof on the objectors. The costs and time to bring a case in the ECHM would be prohibitive and unfair treatment of objectors.**
- 7. The Planning Inspectorate should be responsible for ensuring that their own decision in this case complies with all laws including the Domestic Human Rights legislation in the UK and in Europe.**
- 8. The statements made by Dorset Council in their responses to objectors including that even having only one user giving evidence of usage without any mapping evidence at all is adequate proof that a claimed path subsists or is reasonably alleged to exist only goes to demonstrate the unfair nature of the legislation or the translation of it.**

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**Section 9 Proportionality (Continued).**

- 9. It is also regrettable that Dorset Council went to so much trouble sending long letters to most objectors attempting to persuade them to withdraw their objections. In retrospect this could have been done in to avoid the case coming before an Inspector as it was possible that Dorset Council were aware that delays in cases referred to The Planning Secretariat and they realised that by the time the case was time-barred due the failure to hear the case in a reasonable time.**

**Patrick John Pearce**

**Alison Jane Pearce**

**28<sup>th</sup> October 2024**

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**Section 10 Attached documents**

**Attachment 1      Report to Regulatory Committee including Definitive Map**

**Attachment 2      Minutes of Regulatory Committee meeting held on 12<sup>th</sup> March 2015**

**Attachment 3      Development Control Committee Report 14<sup>th</sup> February 2008**

**Attachment 4      Letter from Pardoes Solicitors of 7<sup>th</sup> October 2014**

Agenda item:

# Regulatory Committee

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## Dorset County Council



Date of Meeting	12 March 2015
Officer	Director for Environment and the Economy
Subject of Report	<b>Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas</b>
Executive Summary	In response to an application to add a footpath at Bradford Abbas, this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence: The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.</p> <p>A full consultation exercise was carried out in June and July 2014, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.</p> <p>22 user evidence forms from 24 users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.</p>

	<p><b>Budget:</b></p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p>
	<p><b>Risk Assessment:</b></p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p>
	<p><b>Other Implications:</b></p> <p>None</p>
<p><b>Recommendations</b></p>	<p><b>That:</b></p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record a footpath at Bradford Abbas as shown A – B – C – D – E on Drawing 14/18/1; and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p><b>Reasons for Recommendations</b></p>	<p>(a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist;</p> <p>(b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p><b>Enabling Economic Growth</b></p> <ul style="list-style-type: none"> <li>• Ensure good management of our environmental and historic assets and heritage</li> </ul> <p><b>Health, Wellbeing and Safeguarding</b></p> <ul style="list-style-type: none"> <li>• Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset</li> </ul>

	<ul style="list-style-type: none"> <li>• Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live</li> <li>• Enable people to live in safe, healthy and accessible environments and communities</li> </ul>
<p>Appendices</p>	<ol style="list-style-type: none"> <li>1 - Drawing 14/18/1</li> <li>2 - Law</li> <li>3 - Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ 1887 First Edition Ordnance Survey map</li> <li>▪ 1928 Edition Ordnance Survey map</li> <li>▪ 1838 Bradford Abbas Tithe map</li> <li>▪ 1910 Finance Act map</li> <li>▪ 1951 Bradford Abbas Parish Survey map</li> </ul> </li> </ul> </li> <li>4 - User evidence <ul style="list-style-type: none"> <li>• Table of user evidence</li> <li>• Charts to show periods and level of use</li> </ul> </li> </ol>
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/474).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.</p> <p>Copies (or photographs) of the documentary and user evidence can be found on the case file RW/T474, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell  Rights of Way Officer  Tel: (01305) 221670  Email: r.bell@dorsetcc.gov.uk</p>

## 1 **Background**

- 1.1 An application to add a footpath from East Lane to the public road by Coombe Cottages, Bradford Abbas as shown A – A1 – B – C – D – E on Drawing 14/18/1 (Appendix 1) was made by Bradford Abbas Parish Council on 7 July 2008.
- 1.2 The route claimed commences at point A at the junction with the public road known as East Lane, travelling in an easterly direction. The surface of the claimed route is loose, hard stone. At point A1 a wooden field gate across the route displays a notice “Private No Public Right of Way”, which can be seen from users approaching from the west. The claimed route then passes between the buildings of the Saxon Maybank development on both sides. At point B the route changes course to run north easterly. At point C there is a wooden field gate and the route is hard surfaced with hedges on both sides. At point D there is a further field gate and the route widens out with Coombe Cottages to the north western side and cars parked on the south eastern side of the claimed route. It terminates at point E at its junction with the public road D20503.
- 1.3 Between points A and C the claimed route is owned by Mr Shaw of Charteroak Estates and between points C and E by Winchester College.
- 1.4 Its widest point at point E is 10 metres wide and its narrowest point at point B is 3 metres wide.
- 1.5 In October/November 2007 Charteroak Estates erected a gate with the notice across the claimed route at point A1 and it has remained locked, preventing public use.

## 2 **Law**

- 2.1 A summary of the law is contained in Appendix 2.

## 3 **Documentary evidence (Appendix 3)** (copies available in the case file RW/T474)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

## 4 **User evidence (Appendix 4)** (copies available in the case file RW/T474)

- 4.1 A table of user evidence summarised from witness evidence forms, together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

## 5 **Additional evidence in support of the application** (copies available in the case file RW/T474)

- 5.1 Two letters supporting the application were received in response to the consultation exercise.

Name	Comments
Mrs Jan Wardell, The Ramblers	States “until 2008, there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and notes “that the 1902 OS map shows a footpath leading to East Farm from the south, and then onwards north-east to where Coombe Cottages are now situated – part of the claimed route”.
Mr Derek Hayward, Chairman, Bradford Abbas Parish Council	Submitted an extract from a large scale, coloured 1916 map, similar to the 1903 Ordnance Survey map described below at 8.5. East Farm is shown as part of a red edged and pink shaded plot. The routes that are now recorded as roads to the west (including a continuation north from point A), south and east are shown uncoloured. The area including East Farm buildings, the claimed route (partly fenced and partly unfenced – as shown by double solid and double pecked lines) and the path shown with double pecked lines marked ‘F.P.’ (footpath) heading south are all in the land shaded pink.

6 **Evidence opposing the application** (copies available in the case file RW/T474)

6.1 Two letters opposing the application were received in response to the consultation exercise.

Name	Comments
Tracey Merrett, Pardoes Solicitors on behalf of <b>Charteroak Estates</b> (owner) Letter 1	“My principal concern regarding this application is that my clients have not been served with a notice of the application pursuant to Schedule 14 of the above Act.... Mr Shaw has received no notification from the applicant and therefore this is incorrect and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
Tracey Merrett Pardoes Solicitors LLP on behalf of <b>Charteroak Estates</b> (owner) Letter 2	<p>Comments on all the witness statements provided by the applicant in detail including:</p> <ul style="list-style-type: none"> <li>• “Mr and Mrs Wallis live on site in the middle of the route and are tenants of the owner....Evidence of the use of the route as an access to the Wallis’s house is clearly not evidence of use of the route as a public right of way”.</li> <li>• “Only 7 of the 19 witnesses are willing to give evidence at Inquiry and have their evidence tested...”</li> <li>• The site was previously a dairy and before that a feed mill, both of these uses would have entailed the public visiting the site and using the track to buy animal feed or buying milk...”</li> <li>• “The use of the site has clearly been used as a shortcut on bicycle and by car to the village as stated in some of the witness statements...”</li> <li>• “To conclude there is very little usage evidence that is clear and testable and I have been unable to find any historic evidence of a right of way along this route.”</li> </ul> <p>(Full Transcript in the case file RW/T474.)</p>

Name	Comments
Mr Patrick Pearce (owner of lodge at Saxon Maybank)	Raises issues such as: - <ul style="list-style-type: none"> <li>• Safety – including from users with dogs</li> <li>• Pollution</li> <li>• Damage to privacy                             <ul style="list-style-type: none"> <li>▪ Security</li> </ul> </li> <li>• Disruption to residents, wildlife and the natural environment</li> <li>• Noise</li> <li>• Suitability</li> </ul>

7 **Other submissions received** (copies available in the case file RW/T474)

7.1 Another three submissions were received in response to the consultation exercise.

Name	Comments
Mrs Carol Shoopman on behalf of the British Horse Society	"No evidence to support this application."
Claire Pinder Dorset County Council senior Archaeologist	"No recorded archaeological finds or features or historic buildings on or the vicinity of the route affected by this proposal."
Southern Gas Networks	"We have no gas mains in the area of the enquiry."

8 **Analysis of documentary evidence**

8.1 As there is no Inclosure award affecting this area the most important documents in this case are Ordnance Survey maps.

**Ordnance Survey maps**

8.2 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Bradford Abbas parish was completed in 1805 and clearly depicts the public road travelling due north to point A. However, the road continues due north and neither the claimed route nor East Farm is shown.

8.3 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also does not show the claimed route.

- 8.4 The **1887 First Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route with a gate or barrier at point A1. A fenced track on the line of the claimed route leads eastwards to the buildings of East Farm and at the eastern side of East Farm there is a solid line across the route at point B. It continues with double pecked lines (an unfenced track), on the same route as that claimed, to point E. The route is not marked 'F.P.' or 'B.R.' alongside. There is a footpath annotated 'FP' from the farm heading due south to join the road. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.5 The **1903 Second Edition Ordnance Survey map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1887 First Edition, although the larger scale map shows more detail.
- 8.6 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route similarly to the larger scale 1903 Edition.
- 8.7 The **1928 Edition Ordnance Survey Map** at a scale of 25 inches:1 mile (1:2500) shows the claimed route but with no gate at point A1. The unfenced track starts at the western edge of the buildings (slightly west of point B). At point C a solid line is shown across the route, indicating a gate or barrier. Between points C and E the track is shown with a solid line on the north western side, indicating that this boundary was fenced or hedged, and a pecked line on the south western side, indicating that this boundary was unfenced. The footpath due south of East Farm is no longer shown.
- 8.8 The **1930 Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in the same manner as the 1928 Edition Ordnance survey map.
- 8.9 The evidence provided by the **Ordnance Survey maps** adds support to the route claimed and suggests that a gate at point C has been in existence since 1928. Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

### **Other documents**

#### **Tithe map and apportionment**

- 8.10 The **1838 Bradford Abbas Tithe map** shows East Lane continuing north from point A but does not show the track or a farm along the claimed route.
- 8.11 The Tithe 'apportionments' are the numbered parcels that record the state of cultivation and area. The claimed route is not shown and therefore is unapportioned.
- 8.12 By themselves tithe documents rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment. In this case the tithe does not support the claimed route.

### **Finance Act documents**

- 8.13 The 1910 Finance Act map uses the 1903 Ordnance survey base map and shows the claimed route not excluded from taxation but within part of Hereditament 41.
- 8.14 Within the same hereditament a footpath is clearly shown leading due south of the claimed route, clearly annotated 'F.P.' (see paragraph 8.4 above).
- 8.15 However, within the field books detailing the land valuation, Hereditament 41 has no deductions in respect of "Public Rights of Way or User".
- 8.16 Although these records indicate that the owners of this parcel did not acknowledge the existence of any public right of way over it, as members will be aware, this does not necessarily indicate that no public rights existed within them. Whilst it was a criminal offence with severe penalties to falsely claim tax deduction in lieu of the existence of a public highway there were no penalties for not acknowledging the existence of a public highway over the land.

### **Commercial maps**

- 8.17 **Johnston's early 1900s small scale map** shows the current road to East Farm (East Lane) and a track to the farm itself between points A and B. It does not show any connection to the public road at point E.
- 8.18 Various other small scale maps do not depict a route, either completely or partially, on or in the general location of the application route (see table at Appendix 3).

### **Sales particulars**

- 8.19 The **1954 Bradford Abbas Estate** sale did not include East Farm or the claimed route. However, it was included on the plan showing the area for sale at the time. It clearly shows East Lane and the whole of the claimed route, between points A and C through the buildings at East Farm and as an unfenced track between points C and E. Outside of the area of the estate being sold this map shows both public and private routes as unshaded.
- 8.20 The **1966 East Farm Bradford Abbas** sales document and plan shows East Lane and the D20503 road as uncoloured but the claimed route through the farm and north east to point E appears to be coloured pink, which is the colour used in this plan to indicate the area for sale. Between points C and E the route appears to be shown with a solid line (hedged or fenced) on the north western side and with a pecked line (unfenced) on the south eastern side. This plan indicates that if a route is not coloured it is not part of the sale and could be seen as a public route. Therefore, if coloured in it is part of the plot for sale.
- 8.21 The sales documents indicate the claimed route was in existence but do not add to the evidence to support the claim.

### **Parish Survey and County Council rights of way maps and records**

- 8.22 The **1951 Bradford Abbas Parish Survey** map of rights of way shows that no public right of way between points A and E was claimed at the time. Between points C and E there is a hand written annotation marking this part of the claimed route as “Private”.
- 8.23 The claimed route is not shown on the **draft, provisional** or the **first definitive maps** as a public right of way.
- 8.24 The application route was not subject to any investigation or claim during the **1973 Special Review** and therefore is not shown as a public right of way on the **1974 revised draft map** nor is it recorded on the **current definitive map sealed in 1989**. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist over the route.
- 8.25 The Parish Council did not claim the route during the original Parish Survey, or at the Review. However, their current claim indicates that they have evidence that the route has acquired public rights and should be recorded as a footpath.

### **9 Analysis of user evidence supporting the application**

- 9.1 22 forms of evidence were received from 24 users of the claimed route.
- 9.2 Mr and Mrs Balch were given permission to walk and drive their car by the farm manager in 1986. Mrs Fry and Mr & Mrs Wallis are tenants/workers on the farm. Therefore evidence from these users must be given less weight than the other users.
- 9.3 All 24 of the witnesses state that they used the route (17 if use by tenants and those given permission is discounted), either individually or with other users, shown between points A to point E on Drawing 14/18/1 and that this use was on foot.
- 9.4 Mr Bennett and Mr & Mrs Houston used the route on a bicycle. Mr Bennett and Mr Houston also both used a car.
- 9.5 The earliest date of use is 1956 and 2007 is the last date of use.
- 9.6 The heaviest amount of use is between 1997 and 2002 when 23 users state that they used the claimed route (17 if the use by tenants and those given permission is discounted). 21 of the statements claim to have seen others using the route on foot, horseback, bicycle or by car.
- 9.7 18 users state that there were never any gates or stiles until notices “Private No Public Right of Way” and gates were erected at point A1 by the current owner from 31 October 2007. Eight stated that they were never challenged while on the claimed route.

- 9.8 Mr Allwright, Mr Bennett, Mr Coffin, Mr Houston and Mr & Mrs Yeoman all state that they believed that the owners or occupier was aware of public using the claimed route, as they spoke to workers and previous owners while using the route.
- 9.9 The frequency of use ranges from Mrs Down, who used it “every day” to Mr Coffin, who used the route between 3 and 4 times a year.
- 9.10 Nine users state the width of the claimed route, all commenting on the wideness of the track.
- 9.11 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) In comparison with an urban environment, to have 24 users giving evidence of their use in this rural location is considered to be significant.
  - (b) The locked gate and private notice (31 October 2007) is evidence of bringing the use of the route into question. The user evidence before that date is sufficient reasonably to allege that a footpath exists.
  - (c) The application was made on 7 July 2008 and is a further date of bringing that use into question.

## 10 **Analysis of evidence in support of the application**

- 10.1 The Ramblers’ evidence includes the Ordnance Survey Second Edition map as discussed at paragraph 8.6 above. They do not provide any other evidence to back up the statement that “there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and therefore this evidence does not add significantly to support the application.
- 10.2 The Parish Council’s 1916 map shows the route claimed but does not add significantly to the evidence in support.

## 11 **Analysis of evidence opposing the application**

- 11.1 In the first letter from Pardoes Solicitors LLP, on behalf of Charteroak Estates, Tracey Merrett notes that her client did not receive “notification from the applicant and therefore this is and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
- The application indicates that both Charteroak Estates and Winchester College were informed when the application was made in July 2008.
  - Within the case file there is a note dated 5 August 2009 that Mr Michael Shaw of Charteroak Estates had telephoned the Definitive Map Team Manager about the footpath claim. The call from Mr Shaw indicates that the Charteroak Estates have been aware of the application at least since 2009.

- A further file note dated 2 June 2010 records a telephone call representative from Battens Solicitors “representing the landowners, Charteroak”. He was advised that the applicant, Bradford Abbas Parish Council, had sent the Notice of Application (Form B) to them in July 2008 as the County Council had a Certificate of Service of the Notice (Form C) on file, which included Charteroak Estates and Winchester College as having been notified. Copies of the application and user evidence forms were subsequently sent to Battens.
- 11.2 She also states that she had contacted the other owner of the claimed route, Winchester College. The current Estates Bursar, Mr Chute, told her that “Neither I nor anyone else at Winchester College has ever received any communication from Bradford Abbas about this track”.
- Within the same file there is a copy of a Fax dated 17 October 2008 sent from Ms Penny of the Definitive Map Team to Emma Ede of Winchester Collage. The subject is the application at Bradford Abbas and a plan was attached, showing the claimed route with a thick dotted line. This also shows that Winchester College was aware of the application soon after the application was made.
- 11.3 In the second letter from Pardoes Solicitors LLP, Tracey Merrett states that some of the user evidence forms are not reliable because Mr & Mrs Wallis and Rachel Fry had connections with previous and current land owners.
- This is correct and therefore, as previously stated, their statements have been given less weight.
- 11.4 Ms Merrett states that “Three of the witnesses have since died, Mr Lisle, Peter Pepper and Betty Fellows and therefore their evidence cannot be cross examined and tested at an inquiry”.
- Their evidence forms do add to the user evidence to be taken into account even though it cannot be tested should there be a local public inquiry.
- 11.5 Ms Merrett adds that “only 7 of the 19 living witnesses are willing to give evidence at inquiry and have their evidence tested, which should affect the weight to be given to their evidence.”
- This is not the case: these forms have equal weight at this stage of the investigation. Should there be a local public inquiry then this issue may be relevant.
- 11.6 Ms Merrett also states that members of the public were using the track to visit the site to buy animal feed and milk and therefore this use should be discounted.
- Of those who completed user evidence forms only Mrs Fry indicates that her use was to visit the dairy (and her brother) and was therefore by invitation and not as of right. (Mr and Mrs Wallis are also still working for the land owners of A – C.)

11.7 She states that the site has been used as a shortcut on bicycle and by car.

- All the witnesses that used the claimed route on bicycle and by car also state that they have used it on foot.

11.8 The majority of the other submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

## 12 **Analysis of other submissions**

12.1 The other letters contain no evidence to be considered.

## 13 **Conclusions**

13.1 As the claimed route is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

13.2 Although there is documentary evidence showing the claimed route, notably the various Ordnance Survey maps from 1887 onwards, these maps are not strong evidence and only the earliest map carries no disclaimer as to the representation of a route being evidence of a right of way.

13.3 The documentary evidence is therefore insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route.

13.4 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

13.5 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date notices and gates were erected by the current owner on 31 October 2007. However, the notice may not have come to the attention of users from the eastern end of the route.

13.6 The user evidence indicates mainly public use on foot along the claimed route. There is some other use by bicycles and cars but this is not considered sufficient to have established higher rights. The user evidence is considered to be sufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to date of bringing into question, which is 31 October 2007.

13.7 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 or more years use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public footpath rights exist along the whole of the claimed route and an order should be made.

Page 13 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

- 13.8 Therefore it is recommended that an order be made to record the claimed route between points A and E on Drawing 14/18/1 as a footpath.
- 13.9 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

**Mike Harries**

Director for Environment and the Economy

February 2015

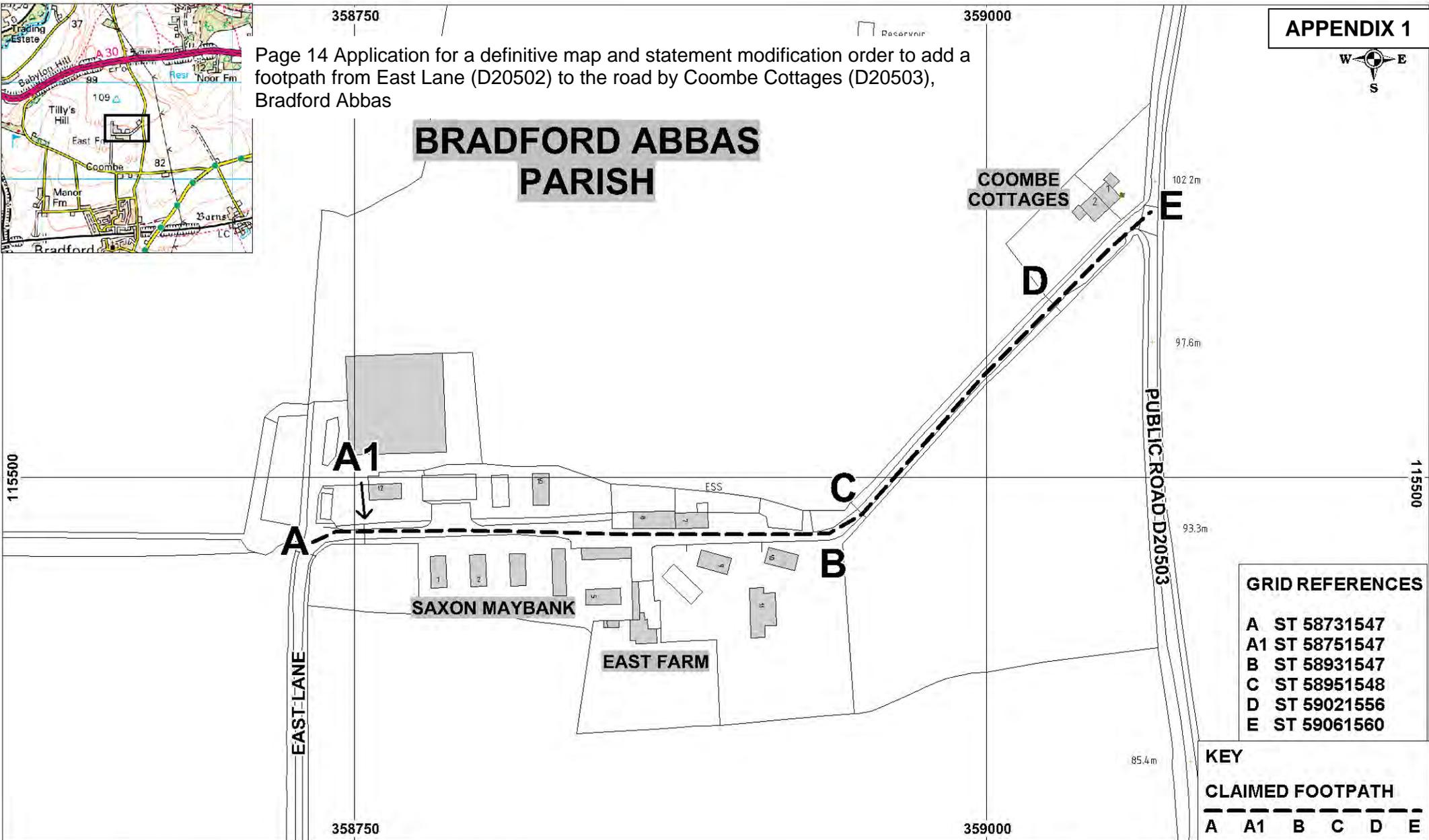


Page 14 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

**APPENDIX 1**



**BRADFORD ABBAS  
PARISH**



**GRID REFERENCES**

A	ST 58731547
A1	ST 58751547
B	ST 58931547
C	ST 58951548
D	ST 59021556
E	ST 59061560

**KEY**

**CLAIMED FOOTPATH**

A	A1	B	C	D	E
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**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**APPLICATION TO ADD A FOOTPATH FROM EAST LANE TO THE PUBLIC ROAD EAST OF COOMBE COTTAGES, BRADFORD ABBAS**

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

**Ref: 14/18/1**  
**Date: 13/024/2015**  
**Scale 1:2000**  
**Drawn By: ACWH**  
**Cent X: 358893**  
**Cent Y: 115521**

GEOGRAPHICAL INFORMATION SYSTEMS

**Dorset County Council**

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## LAW

### General

#### 1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to add a right of way to the definitive map and statement if the balance of evidence shows either:
  - (a) that a right of way subsists or
  - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

#### 2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
  - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
  - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.4 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

### 3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act may bring proceedings against the authority under the Act in the appropriate court or tribunal or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
    - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
    - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

### **Case specific law**

#### 4 Finance Act 1910

4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

#### 5 National Parks and Access to the Countryside Act 1949

5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

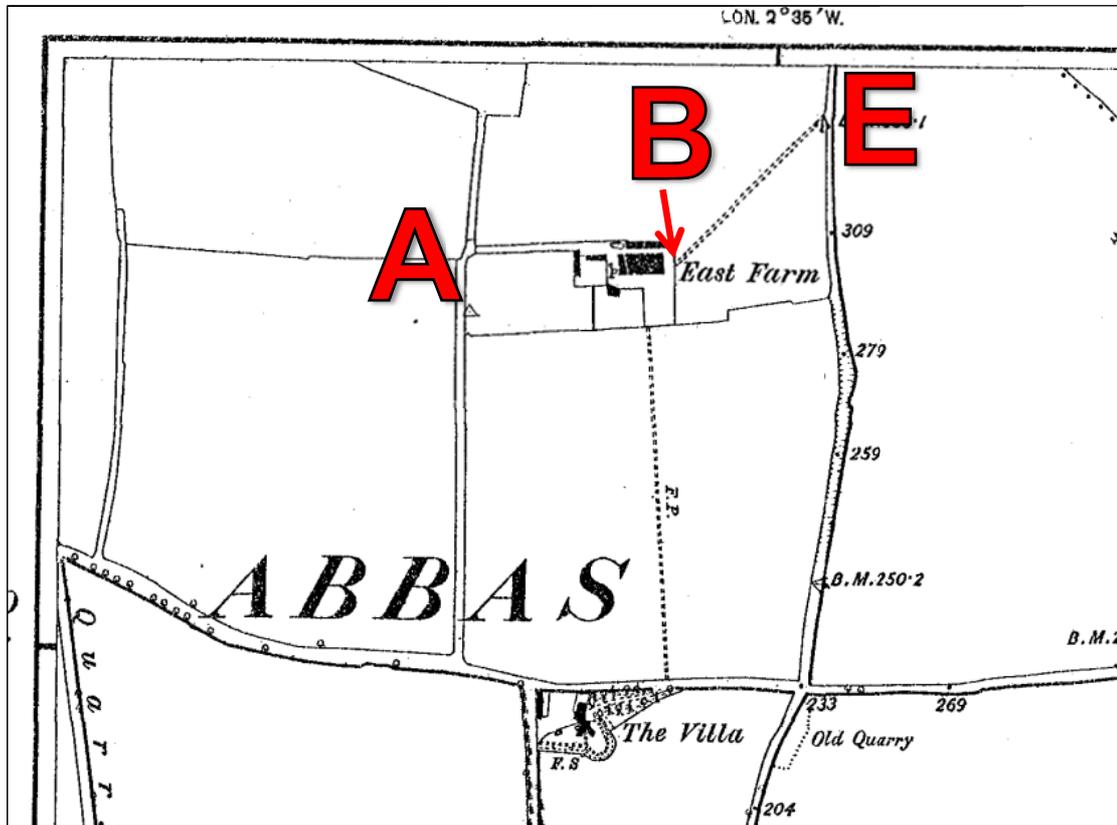
**Table of documentary evidence**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1773	Map of Dorset by J Bayly	Not shown
1796	Isaac Taylor's Map of Dorset	Not shown
1805	Ordnance Survey Drawings	Shows East Lane only, not claimed route.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows East Lane only, not claimed route.
1815	J Arrowsmith's Map of Dorset	Not shown
1826	Greenwood Map of Dorset	Not shown
1839	Bradford Abbas Tithe Map	Shows East Lane only, not claimed route.
1846	Gazetteer Dorset	Not shown
1863	Crutchley's Railway Map of Dorset	Not shown
1887	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1889	NOTE: The statement that “the representation on this map of a road, track or footpath is no evidence of a right of way” has appeared on Ordnance Survey maps since 1889.	
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1900s	W & A K Johnston Map of England scale 3 miles:1 inch	Not Shown
1900s	Bacon's New Revised Map of Dorsetshire	Not shown
1900s	Bacon's Geographical Map of Dorsetshire	Not shown
1900s	Weller Despatch Atlas	Not shown

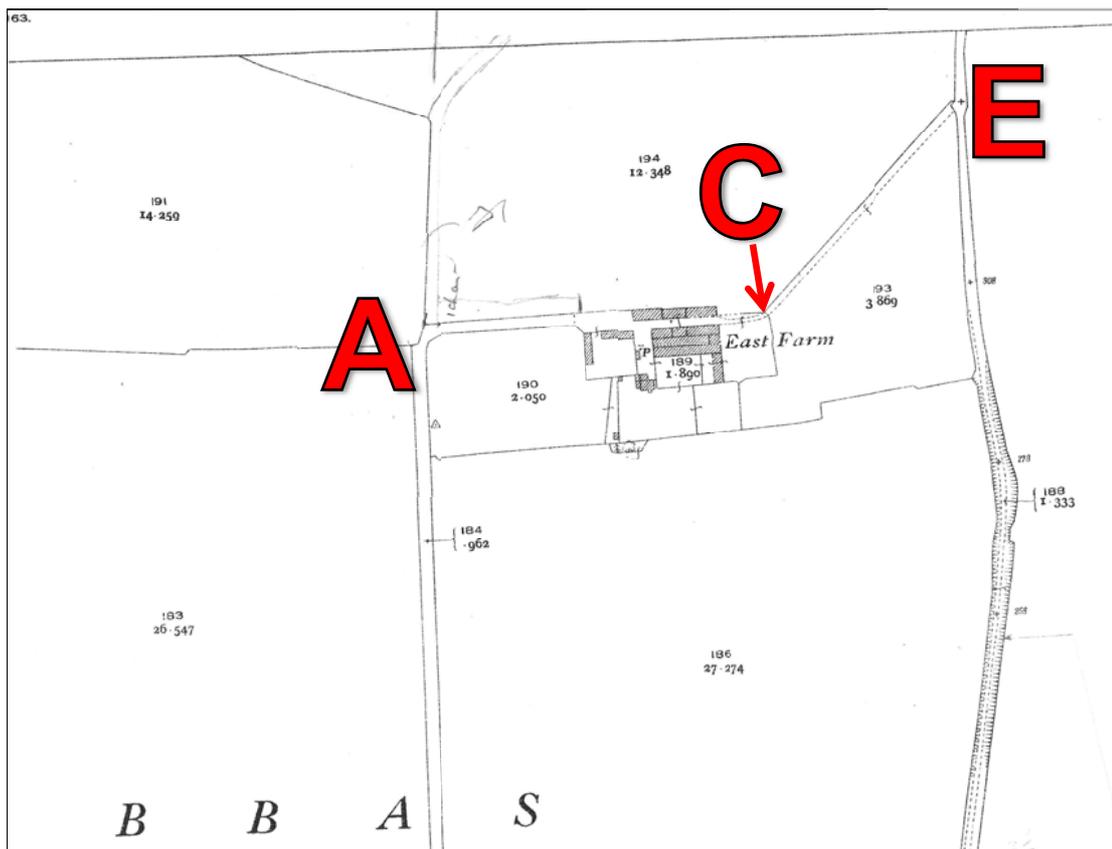
<b>Date</b>	<b>Document</b>	<b>Comment</b>
1910	Finance Act plans	The claimed route is not excluded from taxation. It runs through Hereditament 41 but there are no deductions for public rights of way in this hereditament.
1928	Ordnance Survey Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
1930	Ordnance Survey Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Bradford Abbas Parish Survey	Route not claimed. Between points B and E annotated "Private" alongside.
1959	Draft map for the west area	Not Shown
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1954	Bradford Abbas Estate sales particulars	Shows the claimed route but not part of sale.
1964	Provisional map	Not Shown
1966	Sales Particulars for East Farm	Claimed route in part of land for sale. Claimed route shown fenced and between farm buildings A – C and fenced on north eastern side C – E.
1966/7	First definitive map	Not Shown
1974	Revised draft map	Not Shown
1989	Current definitive map	Not Shown

**Extracts from key documents**  
(See the Director for Environment's file RW/T474 for copies of other documents mentioned)

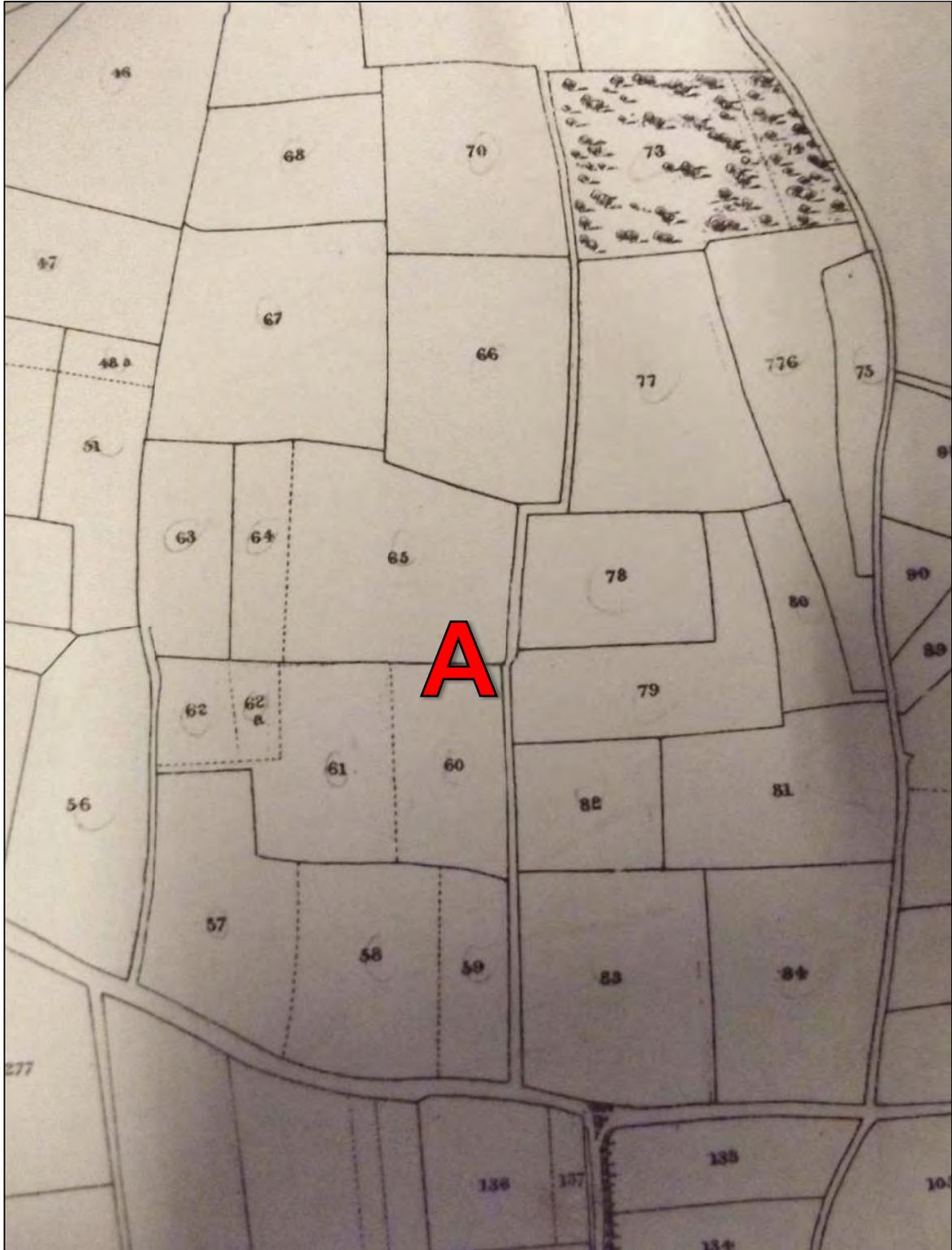
**1887 First Edition Ordnance Survey map**



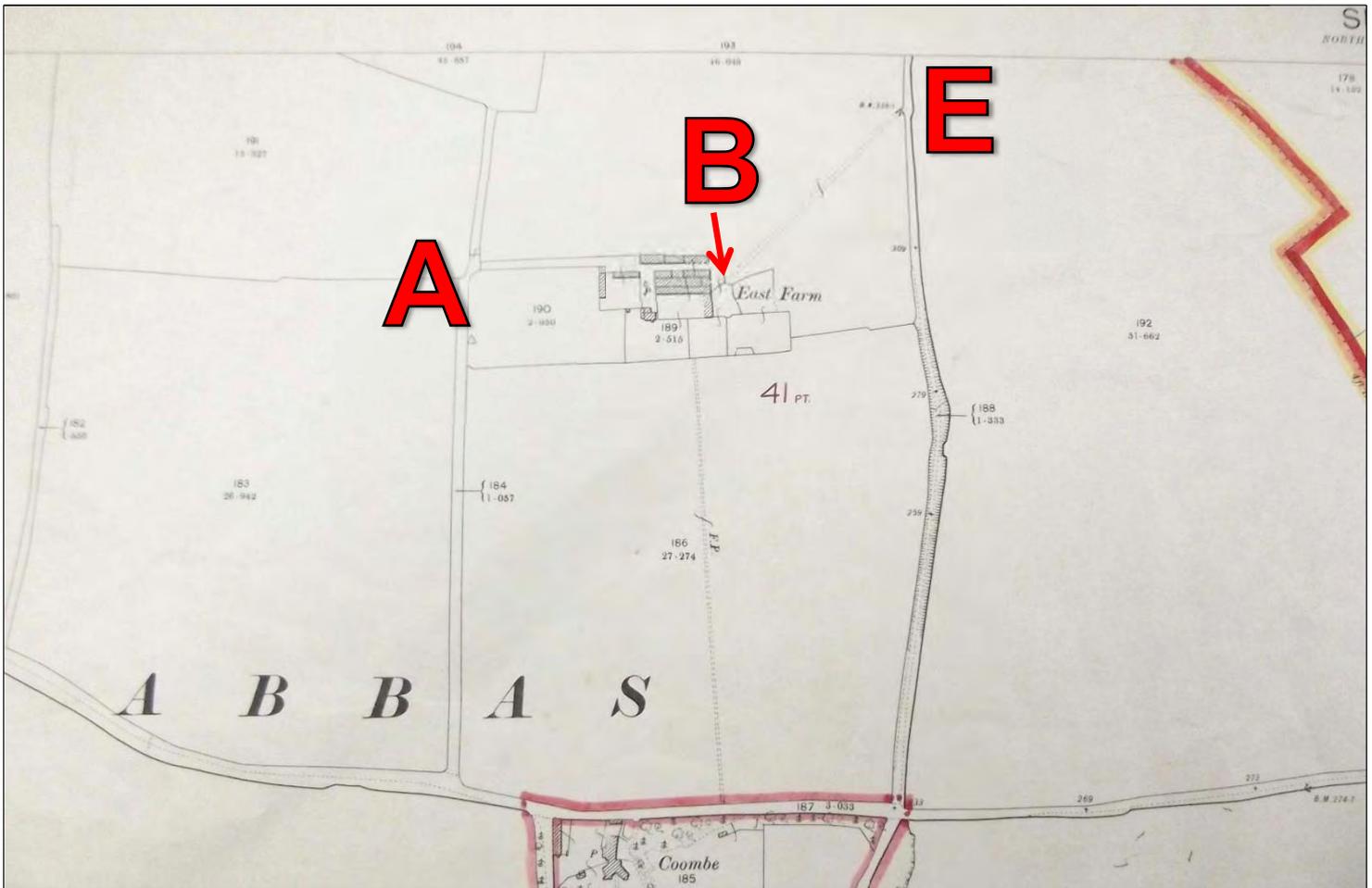
**1928 Edition Ordnance Survey map**



**1838 Bradford Abbas Tithe map**

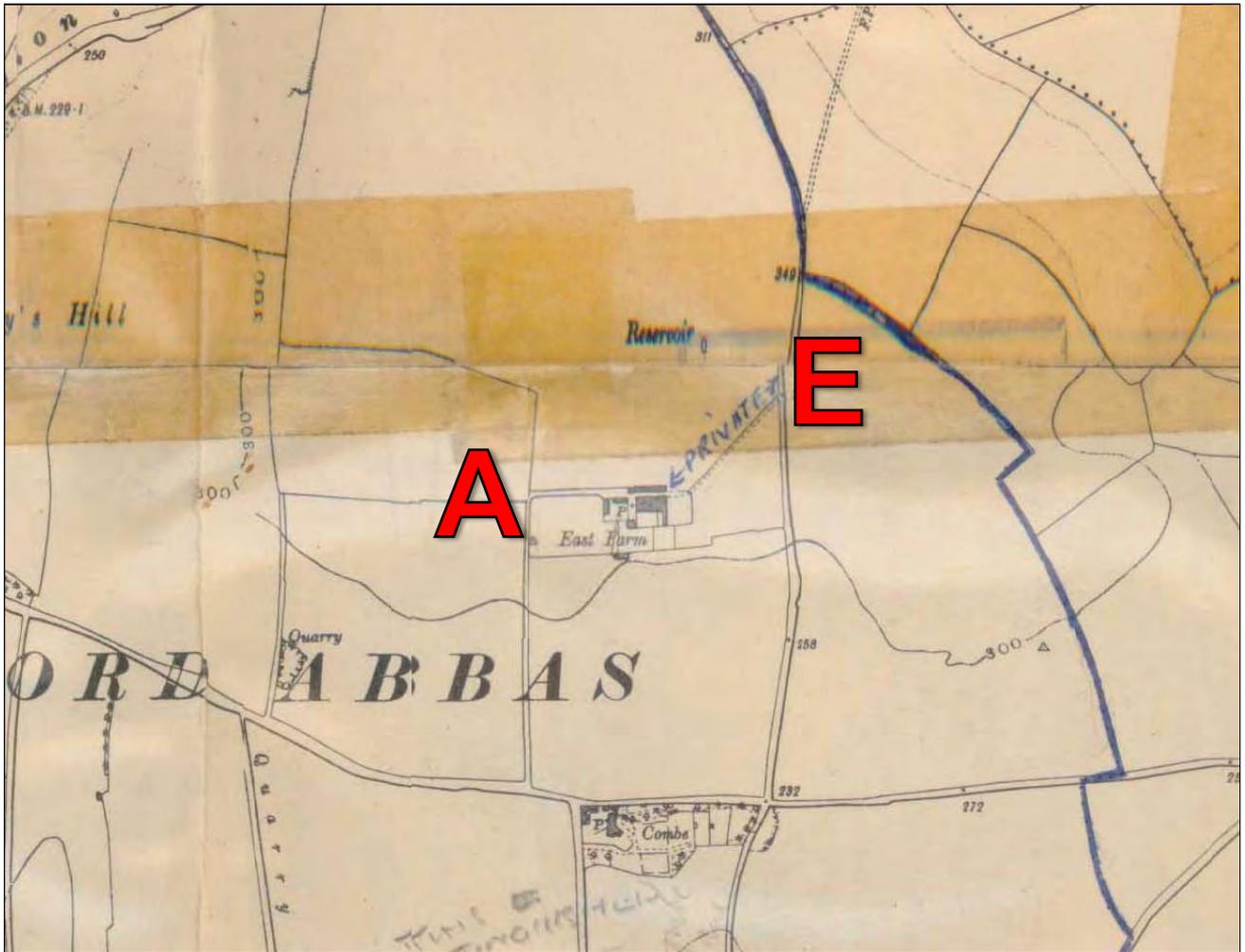


1910 Finance Act map



Page 23 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

**1951 Bradford Abbas Parish Survey map**



**User Evidence**  
**Table summarising user evidence from forms**

**USER EVIDENCE (FROM FORMS COMPLETED IN 2007 & 2008)**

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R E Allwright	1963-2007	About 50 times a year. Less in recent years.	Foot	Also used a few times in private car. Used by others on foot and in farm vehicles. No stiles, gates, notices or other obstructions. Believes the owner or occupier was aware the public was using the way as has met the occupiers and employees on the way. Never challenged.
Mr and Mrs C J Balch	1989-2008 (form actually stated to 1908)	Once a week	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. <b>Obtained permission</b> to use the route by Brian Chant in 1986 who was an ex-employee (farm manager). Did not walk route voluntarily during 90's due to outbreak of foot and mouth. Believes owner/occupier was aware of public using route due to being seen using the route.
Mrs B G Barber	1997-2008	40-50 times a year	Foot	Not used by others. No stiles, gates (until now), notices or other obstructions. Never challenged.
Mr K J Barber	1997-2008	40-50 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr R J Bennett	1983-2008	6 times a year	Foot, car and bicycle	Used by others on foot, car and bicycle. Believed owner/occupier was aware of public using the way as met farmer on many occasions there. Route is full road width.
Mrs A Bowring	1982-2007	24-30 times a year	Foot	Used by others on foot and by farm vehicles. No stiles, notices or other obstructions. Gates present. Prevented from using route by gates and notice 31/10/2007.
Ms E J Chapman	1978-2008	Average 6 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Early Dec 2007 – gates and notices. Notice in 2007 – Private.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R Coast-Smith	1996-2007	Up to 200 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Gates erected across path November 2007. 12 feet width across path and verges.
Mr A M Coffin	1974-2008	3-4 times a year	Foot	Used by others on foot. Gates present (locked and erected 2007) No stiles, notices or other obstructions. Believes owner or occupier was aware the public was using the way as used to see the farmer when it was farmed. Width of a single carriage road.
Mrs D S Coffin	1960-2008	4-10 times a year	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Route used to belong to Winchester College – no restriction. A rough track, possibly two cars wide in most places.
Mrs B Down	1974-2002	Every day	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Other owners have restricted the track. Route is a "2 car width".
Miss B M Fellowes	1956+ 1960+ 1970+	8-10 times a year	Foot	Unlocked gates. No stiles, notices or other obstructions. Far too narrow for extra traffic.
Mrs R Fry*	1978-2005	Regularly	Foot, car and bicycle	Used by others on foot, bicycle, cars and tractors. No stiles, gates, notices or other obstructions. <b>Has been tenant of Winchester college from 1978.</b> Wide enough to drive through.
Mr I S C Houston*	1986-2007	30 times a year	Foot, bicycle and car	Used by others on foot, bicycle and by car. No stiles, gates, notices or other obstructions. 2008 – Several gates and notices prevent access. Believes owner/ occupier was aware the public were using the way as he engaged occupier and farmers in conversation. Wide enough for farm vehicles. Single track.
Mrs K P J A Houston*	1986-2007	Between 12 and 20	Foot and Bicycle	Used by others on foot, horseback and by car. No stiles, gates, notices or other obstructions. Never challenged. Width approx. single track road.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr C J Lisle	1994-2008	Frequently	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Has been greeted cheerily. Never challenged.
Mrs C Parsons	1990-2006	Inter-mittently from 1990, most recently in 2006	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr P A A Pepper	1986-2002	6-10 times a year	Foot	Delivering literature. Used by others on foot. No stiles, gates, notices or other obstructions. Gates only put in place by new owner. Width of the tracks is about 14 feet.
Mrs Pople	1974-2002	Most days	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Never challenged. Lorry width.
Mrs & Mrs R & S Wallis*	1972-2008	365 times a year	Foot, car and bicycle	Used by others on foot, cycle, car and horseback. No stiles, gates, notices (until now) or other obstructions. <b>Working for owner/ occupier of land 1972- present.</b> Never obtained permission to use the route until Charteroak purchased the access road. Friend visiting them was prevented from using it in Nov 2007. Charteroak Estates erected padlocked gates. Notices Autumn 2007 – by Charteroak Estates.
Mr D N Yeoman	1994-2006	35 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner or occupier was aware of public using the way as spoke to occupiers. Track wide enough for vehicle.
Mrs M Yeoman	1993-2007	90 times for last 4 years approx and approx 24 times for previous 10 years	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Spoke to persons using buildings and land. Never challenged.

\*Tenants of Winchester College or Charteroak Estates

Chart of user evidence to show periods of use

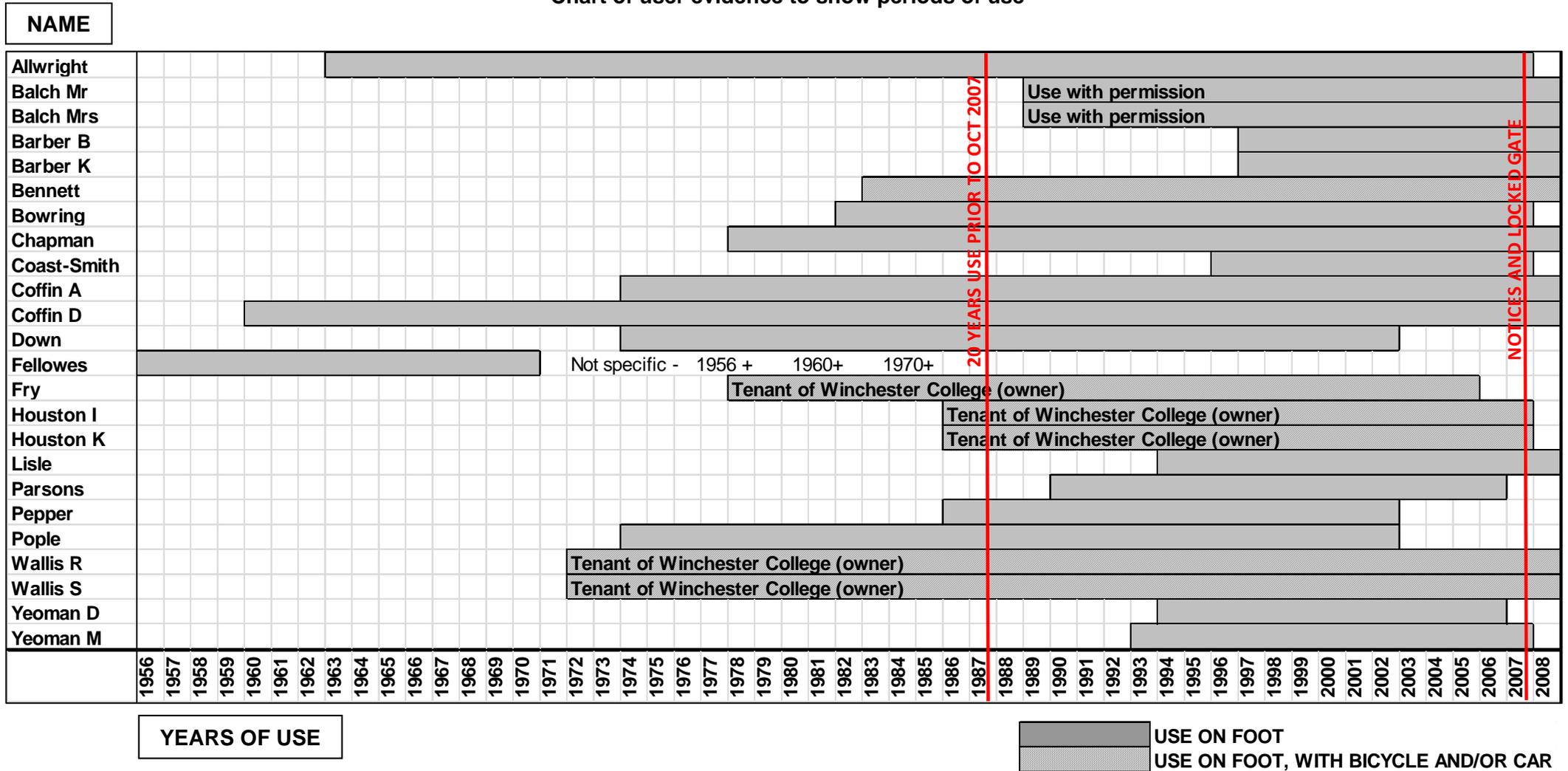
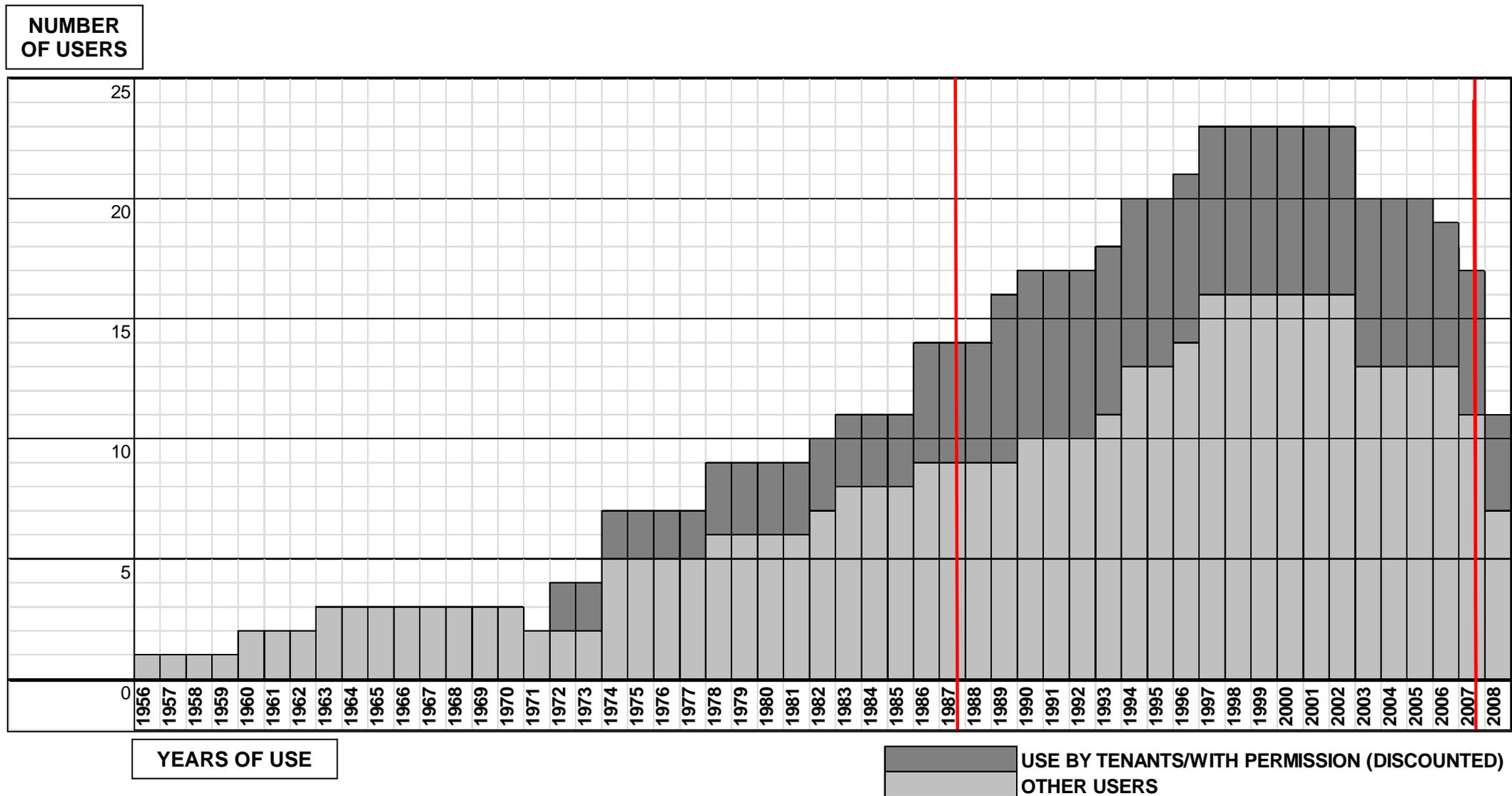


Chart to show level of use



# Regulatory Committee

Minutes of a meeting held at County Hall,  
Colliton Park, Dorchester on 12 March 2015.

## **Present:**

### Councillors

David Jones (Chairman)

Pauline Batstone (Vice-Chairman)

Steve Butler, Barrie Cooper, Beryl Ezzard, Ian Gardner Mike Lovell, David Mannings,  
Margaret Phipps, Daryl Turner and Kate Wheller.

Robert Gould, Leader of the Council attended under Standing Order 54(1).

Robin Cook, Cabinet member for Corporate Development and County Council member for Minster attended the meeting by invitation for minutes 24 to 26.

Deborah Croney, County Council member for Hambledon attended the meeting by invitation for minutes 39 to 41.

### Officers attending:

Matthew Piles (Head of Economy), Andrew Brown (Manager – Traffic Engineering), Roger Bell (Rights of Way Officer), Phil Crowther (Solicitor), Mike Garrity (Team Leader), Carol McKay (Rights of Way Officer), Sarah Meggs (Senior Solicitor), Vanessa Penny (Team Manager – Definitive Map), Huw Williams (Principal Planning Officer) and David Northover (Senior Democratic Services Officer).

### Public Speakers

Ian Speirs, local resident – minutes 24 to 26.

Alan Cosgrove, for the Slocock Trust – minutes 24 to 26.

David Hart, local resident – minutes 24 to 26.

Sandie Hopkins, local resident – minutes 24 to 26.

Tracey Merrett, solicitor - minutes 27 to 29.

Richard Seys, local resident and applicant – minutes 30 to 32.

Andrew Turpin, Chairman of Tatworth and Forton Parish Council – minutes 33 to 35.

Sandra Beattie, local resident – minutes 33 to 35.

George Beattie, local resident – minutes 33 to 35.

Mike Dando local resident – minutes 36 to 38.

Chris Nadin, local resident – minutes 39 to 41.

Paul Le Provest, local resident – minutes 39 to 41.

Nigel Hill, local resident – minutes 42 to 44.

Nick Dunn, for applicant – minutes 42 to 44.

(Note: These minutes have been prepared by officers as a record of the meeting and of any decisions reached. They are to be considered and confirmed at the next meeting of the Regulatory Committee to be held on **30 April 2015**).

### **Apologies for Absence**

19. Apologies for absence were received from Mervyn Jeffery, Peter Richardson, Mark Tewkesbury and David Walsh.

### **Code of Conduct**

20.1 There were no declarations by members of disclosable pecuniary interests under the Code of Conduct.

20.2 Pauline Batstone confirmed that as she had previously been instrumental in supporting the waiting restrictions proposals for Duck Lane, Stalbridge she would play no part in the discussion of this item and leave the Committee Room when the voting took place.

### **Minutes**

21. The minutes of the meeting held on 29 January 2015 were confirmed and signed.

### **Appointment of Vice-Chairman**

#### **Resolved**

22. That Pauline Batstone be appointed Vice-Chairman for the remainder of the year 2014 -15.

### **Public Participation**

#### **Public Speaking**

23.1 There were no public questions received at the meeting in accordance with Standing Order 21(1).

23.2 There were no public statements received at the meeting in accordance with Standing Order 21(2).

#### **Petitions**

23.3 There was one petition received in accordance with the County Council's petition scheme at this meeting, minutes 39 to 41 refers.

## **Rights of Way Matters**

### **Application to add footpaths and a proposal to add a restricted byway to the Definitive Map and Statement from Mill Lane, Wimborne Minster in the town centre.**

24.1 The Committee considered a report by the Director for Environment and the Economy on an application to add footpaths and a proposal to add a restricted byway to the Definitive Map and Statement from Mill Lane, Wimborne Minster in the town centre.

24.2 The Senior Solicitor took the opportunity to set the scene and remind members that the County Council had a duty to make a Modification Order to add a route to the Definitive Map and Statement when it discovered evidence which showed that a right of way not currently shown subsisted or was reasonably alleged to subsist. A reasonable allegation existed when there was an arguable case. To confirm an Order, the County Council, or an Inspector, must be satisfied, on balance, that the rights existed. In this case as the evidence was in dispute and there were conflicting accounts and additional evidence which had recently been submitted, it was considered that part (b) of the recommendation could not now be recommended and the Committee would be asked to consider making an Order only on part (a) of the recommendation, subject to the amended lettering which had been sent to members.

24.3 The Chairman confirmed that the process for determining the existence of routes was two staged, the first being was there a prima facie case made that rights existed and the second being that, on balance, did they exist. What the Committee was being asked to consider in coming to their decision was that "was it reasonable to allege that, on balance, claimed rights existed".

24.4 Members were reminded that consideration of the application had been deferred from their meeting held on 27 November 2014 owing to the receipt of a

considerable amount of late documentary evidence submitted on behalf of the landowner so as to provide the opportunity for these to be meaningfully considered by officers. Consequently, the report which had been due to be considered by the Committee at their meeting on 27 November, which contained the substantive documentary and user evidence on which the officers recommendation was based, was appended. Subsequently officers had the opportunity to analyse the documentary evidence received and to take that into consideration in their recommendation.

24.5 With the aid of a visual presentation officers explained the background to the application and how it had arisen. Photographs and plans were shown to the Committee by way of illustration, demonstrating the direction in which the application routes ran and what they connected, their relationship to each other and their character within the context of the townscape. A comprehensive explanation of the relationship between the routes, their purpose and how they were used was provided. The Committee were informed of the ownership of the routes, where known, and were provided with evidence of the signage which had been erected.

24.6 Members were informed that the original applicant had since left the area and had not been traced and had not pursued the application. However it had been kept active by Sandie Hopkins, a local resident and retail owner, who had since actively sponsored and coordinated evidence in its support. The Director's report had taken into consideration both documentary evidence and user evidence relating to the status of two of the routes. In addition, during the investigation process, evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen.

24.7 The Update Sheet provided prior to the meeting set out a summary of further late supplementary evidence received in opposition to the application, principally on behalf of the Sloccock Trust. This included the offer by the Trust of providing the routes A - A1 - B - B1 - B2 and B - F which they considered to be in their ownership as permissive routes, by way of compromise. Officers explained that whilst the spirit in which this offer had been made was appreciated, the County Council had an obligation to fulfil its statutory duty and properly investigate the application based on its merits and were not able to accept the offer made.

24.8 The Committee were informed that there had been a substantial number of submissions, representations and objections in respect of the application, with the vast majority of these being made on behalf of the landowner, the Sloccock Trust. The landowner had a vested interest in the land over which those parts of the route ran, as shown A - X, A - B1 and B - E - F on the plans accompanying the report. The provisions of the Natural Environment and Rural Communities Act 2006 (NERC Act) were explained and the bearing that this had on, and the consequences for, the application.

24.9 The Director's report took into account analysis of documentary evidence including:-

- Finance Act 1910
- Inclosure and Tithe Awards,
- Highway Board and Wimborne Urban District Council minutes,
- List of Streets,
- estate maps and town plans,
- Ordnance Survey and commercial maps, and
- aerial photographs.

24.10 Analysis of user evidence, both in support and opposed to the application, was also summarised in the report. The Committee were informed that no objections had been received from the landowners or interested parties in respect of the routes shown from F - G or B2 - D.

24.11 Of the user evidence reviewed, witnesses claimed to have used all or parts of the claimed routes which were still being used today, subject to the restrictions which had led to the application being made.

24.12 With respect to the documentary evidence examined, of particular importance in respect of that part of the route shown from A – B – B1 and B - E and the additional route from A - X was the Finance Act 1910. This demonstrated that those routes had been excluded from valuation which indicated that they were considered to be public vehicular highways. In respect of the route A - B - B1 and B - E, this conclusion was further supported with the evidence provided by the Wimborne Tithe Apportionment 1846, Ordnance Survey Maps and the estate and town plans. In respect of the route A - X, supporting evidence was provided by the Wimborne Highway Board and District Council minutes, Ordnance Survey maps and estate and town plans. It was explained that the land over which route A - X ran was not in the ownership of Mr Slocock.

24.13 Given the documentary and user evidence available, the routes between F-G and B1 – D were determined to be available for public use and there was little evidence to suggest that this was not the case. However in respect of those routes A - X, A - B - B1 and B – E - F, the landowner had taken significant measures to prevent the accrual of public rights over those lengths by virtue of the erection of signs, bollards and barriers and the locking of a gate as a means of challenging vehicular and pedestrian rights. The dates associated with the challenges made to public rights were drawn to the attention of the Committee.

24.14 With the exception of the route shown from A - X, the analysis of user evidence and the graphs of periods of use contained in Appendix 1 accompanying the Director's report was considered sufficient by officers to demonstrate that a presumed dedication under Section 31 of the Highways Act 1980 was satisfied and that a public right on foot could be reasonably alleged to exist along the claimed routes.

24.15 In addition, it was considered that the documentary evidence demonstrated that, on balance, public vehicular rights existed along the routes as shown from A - X and A – B - B1 and B – E. However there appeared to be no exception to the provisions of Section 67 of the NERC Act and those public mechanically propelled vehicular rights had since been extinguished.

24.16 Officers had therefore concluded that the available evidence relating to the routes E - G and B1 - D proposed to be recorded as footpaths showed, on balance, that the right of way as claimed subsisted or was reasonably alleged to subsist; the evidence relating to the routes A – B – B1, B - E and A – X showed, on balance, that public vehicular rights subsisted or were reasonably alleged to subsist. As there was no evidence that exceptions applied, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an Order should be made for restricted byways over those routes.

24.17 Consequently, officers were now asking the Committee to determine whether they considered there was a reasonable allegation that claimed rights existed and accordingly it was recommended that an Order should be made in accordance with the provisions of paragraph 4.4 of the Director's report, subject to the inclusion of route B-E in

(a). Part (b) of the recommendation as set out in the Director's report was not, now, recommended.

24.18 The opportunity was given for those wishing to speak under public participation to address the Committee. Ian Speirs considered that the user evidence regarding the route between B1-B2 should be discredited principally as the applicant no longer had an interest in matters and that there was evidence to suggest that given the measures taken to challenge the route, the 20 year period of use claimed could not have been fulfilled. He also questioned the validity of the process in how the application had been managed by the County Council.

24.19 On that point, the Chairman stipulated that any issue about how the process had been managed should have no bearing on the Committee's consideration of the application and should be taken up with him outside of the meeting. Mr Speirs also considered that the documentary evidence relating to maps claiming rights was questionable. He asserted that there was no possibility of rights of way existing over routes in the ownership of Mr Slocock, particularly as they culminated in a brewery yard.

24.20 Alan Cosgrove considered that it was incorrect to believe that public rights existed along those routes being claimed. He maintained that the Slocock Trust was not averse to public access over the routes in order that access might be gained to the retail units on his land. However given the condition of some of the buildings along Mill Lane in his ownership, it was the owner's long term ambition to redevelop the site. Accordingly, an acceptance of the assertion of public rights would seriously prejudice the viability of any redevelopment and compromise the ability to achieve this.

24.21 In his evidence against the claim, Mr Cosgrove suggested that with regard to the Finance Act hereditaments, it might well have been in the landowner's best interest that the status of the routes were recorded in the way they were. He also asserted that there were discrepancies in what had been recorded in the documentary evidence and the way in which this was depicted in the Finance Act 1910. Accordingly, he considered that, on balance, there was no conclusive evidence that public rights existed.

24.22 David Hart was surprised at the conclusion reached by officers and considered that the rights of the landowner should be protected. He considered that the way the process to claim the rights had been managed had little value and would damage the landowner's scope to be able to undertake future development. He testified that the owner had challenged use of the route by closing and locking gates across the route which was complemented by the erection of notices. He suggested that the offer of a permissive route could be accepted in the circumstances.

24.23 Sandie Hopkins explained how she had become involved in sponsoring the application and the interest she had in seeing that the claims were upheld, particularly in gaining access to Millbank House. She considered Mill Lane to be an important link in the footpath network of the town centre and, in her experience, the route had been used over numerous decades. She considered that the locking of gates was detrimental to business interests, particularly as this habitually occurred at bank holidays when the retail units were closed but other retail facilities remained open. She considered that the opportunity should remain for the public to be able to walk freely and unimpeded over those routes as had been the case for some considerable time.

24.24 The County Council member for Minster commented that whilst it was recognised that the routes provided a convenient link though that part of the town which otherwise would be more tortuous, the area around Crown Mead was commonly

acknowledged to be privately owned. Likewise his attention had been drawn to the route A-C being in private ownership by virtue of the strategically placed, conspicuous notices to that effect. He considered that it would be in the Slocock Trust's interest to maintain the vitality of the retail premises on or adjoining Mill Lane and that retaining access over it went a considerable way towards this. Nevertheless, it was somewhat understandable that the measures which had been taken were a means to reinforce their ownership rights, with signs having been erected between A-B1. As there were no such signs between B1-D he could see no reason for this length being disputed. He also referred to a copy of a letter from the then County Surveyor, Mr Vizard, in 1987 in which inference was given that no public footpaths or bridleways existed over that route which was disputed according to the then Definitive Map.

24.25 The Committee then asked questions of the officer's presentation and of the issues raised by the speakers. Officers provided clarification in respect of the points raised, particularly in respect of the routes and what was considered to be their status, having taken into account the documentary and user evidence submitted. Officers provided clarification that the letter from Mr Vizard referred to by the local member did not confirm existing rights, but rather public rights which were recorded at the time.

24.26 The Committee acknowledged the need for access over that length of Mill Lane to gain access to the retail businesses which operated in that vicinity but recognised the principle of ownership and where access rights lay. Some members considered that as the routes were clearly defined and provided necessary access and had operated in the way they had over some considerable time, there was no need to formally establish claimed rights, considering that the way in which they had always operated could well continue in perpetuity.

24.27 The Committee were reminded that what they were being asked to decide was not whether rights did exist but rather could it reasonably be alleged that the rights existed and, if it could be agreed that it was reasonable to argue that rights existed, given the documentary and user evidence submitted, then there could well be an acceptance of the Director's recommendations.

24.28 To this end, the recommendation was clarified, given that from their discussion, some members were inclined to agree to some routes and not agree to others. It was confirmed that if the rights over a length already existed, those rights were not affected by the erection of notices, which only prevented the acquisition of public rights through subsequent use. One member considered that it was worth noting that whilst a sign existed at A -X, this had since been conceded to be a right of way by the landowner.

24.29 In the course of debate, a proposal was made to delete A - B1 and B - E from being considered further. Other members considered that given that they were only being asked to establish that, on balance, it could be reasonably alleged that rights existed, were satisfied to proceed on the basis that the orders be made as set out in paragraph 4.4 of the report, with the inclusion of B-E in (a). Consideration could subsequently be given to the issue again if there was a need to confirm the Order.

24.30 In an effort to manage their own understanding of where claimed rights were in dispute and where they were not, the Committee determined that it could be ascertained that B1-D was accepted to be a claimed route but that the other routes remained unable to be determined. Consequently, these were the lengths on which they would focus their attention.

24.31 Once again the Committee were reminded that they were not being asked to establish that rights existed, but rather that was it reasonable to allege that rights existed. To this end the Chairman considered that, in agreement with officers, the Finance Act 1910 was extremely compelling evidence that this was the case. He considered that the weight which should be given to such documentary evidence should be borne in mind in the Committee's decision making process and how that evidence should be applied when coming to their decision.

24.32 The Chairman considered that to say that it was not even reasonable to allege that rights existed would in itself be an unreasonable judgement to make. He considered that the provisions of the Finance Act evidence was strong and an important strand of evidence on which such judgements should be based. This course of action would constitute a reasonable allegation and used as a basis to progress to the next stage to establish rights. Conversely if the claims were disregarded at this stage, there would be no subsequent opportunity to progress any further and would serve to undermine the strength of the Finance Act which was used to underpin so many claims.

24.33 The Committee took the opportunity to clarify the current proposal as being as set out in (b), (c) (F - G only) and (d) in paragraph 4.4 of the report, refusing to make an Order for A - B1, B - E and E - F. On being put to the vote there was an equality of votes. In the circumstances the Chairman used his casting vote to vote against the proposal, which consequently fell.

24.34 The Committee then voted on the recommendation set out in paragraph 4.4 of the report, with the inclusion of B - E in (a). On being put to the vote there was once again an equality of votes for and against. The Chairman used his casting vote to vote for the recommendation contained in paragraph 4.4 of the report, that the Order be made.

### **Resolved**

25.1 That an Order be made to record the route as shown on Drawing 14/07/3 between points A – A1 – B – B1 and B - E as a restricted byway.

25.2 That an Order be made to record the route as shown on Drawing 14/07/3 between points A – X as a restricted byway.

25.3 That an Order be made to record the route as shown on Drawing 14/07/3 between points E – F – G as a footpath.

25.4 That an Order be made to record the route as shown on Drawing 14/07/3 between points B1 – B2 – B3 – C – C1 – C2 – C3 – D as a footpath.

### **Reasons for Decisions**

26.1 The available evidence for the route as shown between A - A1 - B - B1 and B - E showed, on balance, that public vehicular rights were reasonably alleged to subsist. As there was no evidence that exceptions applied, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an Order should be made for restricted byways over those routes.

26.2 The available evidence for the route as shown between A – X showed, on balance, that public vehicular rights were reasonably alleged to subsist. As there was no evidence that exceptions applied, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an Order should be made for restricted byways over those routes.

26.3 The available evidence for the route as shown E – F – G showed, on balance, that public footpath rights were reasonably alleged to subsist.

26.4 The available evidence for the route as shown B1 - D showed, on balance, that public footpath rights were reasonably alleged to subsist.

26.5 Decisions on applications and proposals for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieved the Corporate Plan objectives of:

- Enabling Economic Growth
  - Ensure good management of our environmental and historic assets and heritage.
- Health, Wellbeing and Safeguarding
  - Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset.
  - Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live.
  - Enable people to live in safe, healthy and accessible environments and communities.

#### **Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas**

27.1 The Committee considered a report by the Director for Environment and the Economy which set out details of an application to add a footpath from East Lane (D20502) to the road at Coombe Cottages (D20503), Bradford Abbas and a response in consideration of the evidence relating to the status of the route.

27.2 With the aid of a visual presentation, the basis for the application was explained and what it entailed. Photographs and plans were shown to the Committee by way of illustration. These showed the claimed route, its character and setting within the countryside and the points between which it ran. The documentary and user evidence contained in the report was also referred to in detail. The weight to be afforded to the documentary evidence was explained, especially regarding the ordnance survey maps. Conversely, in this case, the user evidence was considered to be sufficient to fulfil the requirement of 20 years or more use by the public as of right and without interruption, prior to the relevant date of challenge.

27.3 Officers reported that the available evidence showed that, on balance, the claimed right of way subsisted or was reasonably alleged to subsist. Consequently they were satisfied that the route claimed should be recorded as footpath as described in the report, as shown on drawing 14/18/1.

27.4 Tracey Merritt opposed the claim as she considered that the user evidence was of marginal value given that a number of those who had submitted evidence could be discounted for varying reasons, but particularly because they appeared unwilling to substantiate their claims. This was particularly relevant if the issue was to result in a Public Inquiry, which the landowner would be seeking if an Order was made as proposed. Consequently she considered that there was now little evidence remaining which could be considered substantive. She felt there was insufficient user evidence available to uphold any claim.

27.5 However the Senior Solicitor confirmed that the written evidence already submitted, whilst not being necessarily afforded the same weight by an Inspector as personal evidence submitted at a hearing, would still constitute evidence which should be taken into account, carried a degree of weight and was still considered to be credible.

27.6 Whilst some members considered that there was little evidence to suggest

this was a footpath rather than just a farm track, based on the way in which the fields were fenced and managed, the majority of the Committee agreed with the Director's recommendation based on the user evidence available. On being put to the vote, the Committee agreed that the Order should be made.

### **Resolved**

28.1 That an Order be made to modify the definitive map and statement of rights of way to record a footpath at Bradford Abbas as shown A – B – C – D – E on Drawing 14/18/1.

28.2 That if the Order was unopposed, or if any objections were withdrawn, it be confirmed by the County Council without further reference to this Committee.

### **Reasons for Decisions**

29.1 The available evidence showed, on balance, that the claimed right of way subsisted or was reasonably alleged to subsist;

29.2 The evidence showed, on balance, that the route claimed should be recorded as a footpath as described.

29.3 Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

29.4 Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:

- Enabling Economic Growth
  - Ensure good management of our environmental and historic assets and heritage.
- Health, Wellbeing and Safeguarding
  - Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset.
  - Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live.
  - Enable people to live in safe, healthy and accessible environments and communities.

### **Application for a Definitive Map and Statement Modification Order to add a Footpath from Old Granary Close to Footpath 15, Weymouth at Preston**

30.1 The Committee considered a report by the Director for Environment and the Economy which set out details of an application for a definitive map and statement modification order to add a footpath from Old Granary Close to Footpath 15, Weymouth at Preston and a response considering the evidence relating to the status of the route.

30.2 With the aid of a visual presentation officers explained the background to the application, the basis on which it was made and what it entailed. Photographs and plans were used to illustrate the claimed route, its character and setting within the countryside and the points between which it ran. The documentary and user evidence contained in the report was also referred to in detail. The weight to be afforded to the documentary evidence was explained. The development of the estate was also described and the implications of this on the route.

30.3 Officers explained that there had been a need to vary the application route which had been originally submitted so that this would accord with the aerial and physical evidence on the ground. This variation had been accepted by the applicant.

30.4 The Committee's attention was drawn to what was known of land ownership and the part the Crown Estate played in this application; to Common Law and to its significance, as well as the physical features which supported the conclusion officers had come to and how the Committee should take this into account in any decision made. Aerial photographic evidence, documentary evidence and user evidence were all described in detail and the significance of each. The weighting which should be given in respect of each of these was outlined.

30.5 Officers had concluded that the evidence of use, together with the aerial photographic evidence was considered to be, on balance, sufficient to raise an inference of dedication of a public right on foot, either under the Highways Act 1980 or under the Common Law. It was therefore recommended that an Order should be made to record the route A – B -F- G -H as a footpath and that consequently, if there were no objections to a Modification Order, the Order should be confirmed.

30.6 Richard Seys explained the principles behind the application which had been made, primarily to provide a basis for the public to maintain their use of the route and to provide the means by which to encourage those of all ages to maintain their ability to be active. He considered that prior to 2008 there had been no evidence which existed to suggest that the owner had challenged the route previously.

30.7 The County Council member for Lodmoor agreed with the sentiments of the applicant and with the Director's recommendation. The Committee considered that the application should be supported and the Order made.

### **Resolved**

31.1 That the application to add a footpath on the route as claimed and shown A – B – C – D – E on Drawing 14/15 be refused in part.

31.2 That an Order be made to modify the definitive map and statement of rights of way by adding a footpath from Old Granary Close to Footpath 15, Weymouth at Preston as shown A – B – F – G – H on Drawing 14/15/1

31.3 That if the Order was unopposed, or if any objections were withdrawn, it be confirmed by the County Council without further reference to this Committee.

### **Reasons for Decisions**

32.1 Part of the footpath claimed does not subsist nor can be reasonably alleged to subsist.

32.2 The available evidence does show, on balance, that the footpath as shown A – B – F – G – H subsists or was reasonably alleged to subsist

32.3 The evidence showed, on balance, that the route A – B – F – G – H should be recorded as a footpath as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.

32.4 Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:

- Enabling Economic Growth
  - Ensure good management of our environmental and historic assets and heritage.
- Health, Wellbeing and Safeguarding
  - Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset.

- Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live.
- Enable people to live in safe, healthy and accessible environments and communities.

### **Dorset County Council (Part of Footpath 60, Thorncombe at Westford Mill) Public Path Diversion Order 2009**

33.1 The Committee considered a report by the Director for Environment and the Economy which reconsidered objections to the Dorset County Council (Part of Footpath 60, Thorncombe at Westford Mill) Public Path Diversion Order 2009 in light of the subsequent riverbank erosion on the proposed route, together with budget cuts and which consequently recommended that the Order be abandoned.

33.2 With the aid of a visual presentation, officers explained the background to the Order and how the recommendation now being made had arisen. Photographs and plans were shown to the Committee by way of illustration showing the proposed diversion and the characteristics of the crossing. Reference was made to the comments set out in the Update Sheet provided for members prior to the meeting setting out the views of Thorncombe Parish Council. They expressed concern that the Director's recommendation was to abandon the Order and requesting that an alternative solution be found to reopen the footpath as a valuable asset to the tourism economy.

33.3 Objections to the Order had meant that the County Council could not confirm the Order itself so consequently it had been agreed at a previous Roads and Rights of Way Committee meeting that it should be sent to the Secretary of State for Environment, Food and Rural Affairs for confirmation. The objections were from South Somerset District Council and Tatworth and Forton Parish Council who both considered that the proposed means of crossing the river by stepping stones was inappropriate on health and safety grounds and accessibility. They both considered a footbridge to be a more appropriate means of crossing the river.

33.4 Officers explained that the intention to originally send the Order to the Secretary of State for confirmation had been held in abeyance to see whether there was any possibility of an alternative solution to the proposed stepping stones being found. However subsequent river bank erosion on the proposed new route owing to several episodes of severe wet weather had meant that the river banks had since eroded significantly and a bridge or other engineering solution was not now viable due to the increased width at the crossing point. Furthermore, the cost of providing any crossing would now be prohibitive, particularly given the decrease in the County Council's budget for bridges.

33.5 Officers confirmed that there was currently a Temporary Traffic Regulation Order (TRO) imposed on the current route of Footpath 60 on the grounds of public safety, which would expire in October 2016. The likelihood was that the County Council would need to apply for a permanent TRO.

33.6 The Committee heard from Andrew Turpin who considered that every effort should be made to maintain a crossing across the Mill Race, which was a tributary of the River Axe, as it provided an important strategic link between Devon and Dorset and was one of historical importance and part of the Stop Line Way National Trail. He considered that the economic benefits which this brought in terms of tourism to that part of the county should not be underestimated. He was disappointed that Dorset was seemingly allowing this vital link to lapse, particularly given that Devon had contributed to ensuring that their stretch of the Stop Line National Route was maintained to a good standard. As Dorset was represented on the

Stop Line Steering Group which looked at the benefits which this route brought, he considered that it was in Dorset's interests to play its part to ensure the route remained a key part of the Stop Line National Route.

33.7 Sandra Beattie expressed her disappointment that Dorset was seemingly abandoning any prospect of a solution and whilst understanding that budget cuts were a constraint, considered that the importance of a tourist route should override this. She urged the County Council to reconsider its position as a matter of urgency.

33.8 George Beattie considered that as the issue had taken some considerable time to find a solution that was deliverable, the physical situation had deteriorated so markedly that Dorset now found itself in the position it did. He implored the Committee to do all it could to find a solution to crossing the river at that point as it had important strategic links.

33.9 Whilst the logistics of how the river might be crossed had understandably generated great interest, the Chairman reminded the Committee that it was obliged to give consideration to how the Diversion Order should be dealt with.

33.10 Officers provided clarification on the status of the original route and the proposed diverted route, the legalities associated with these and what technical engineering options had been considered.

33.11 Some members considered that despite the decrease in the budget for bridges, the County Council were obliged to make every effort to maintain a crossing irrespective of the cost of any engineering solution and should see what might be done to achieve this. This was particularly the case given the strategic and economic importance of the route as a vital link between the two counties. As such they did not think the Order should be abandoned but instead the link should be made viable.

33.12 Officers reminded the Committee that this link had been unavailable for many years and the Diversion Order had been made to resolve the issue. They acknowledged that it was in the interests of everyone that the issue was resolved as soon as practicable and a route reopened and usable as soon as it could be. However the physical challenges which presented themselves on the existing and proposed diverted route had meant that such a solution was untenable as it stood. Whilst not ideal, the stepping stones option was a means to achieve some form of crossing but it was acknowledged that these posed accessibility constraints.

33.13 Officers clarified that whilst they were seeking to abandon the Order they were still committed to actively seeking the means of providing another diversion for another route.

33.14 Some of the Committee considered that funding should not be an obstacle to the County Council fulfilling its obligation as a highway authority in maintaining rights of way. It would set a precedent if this was a consideration. Whilst they accepted that the costs of the engineering solution which were being looked at were prohibitive as it stood, this should not mean that the means by which the river could be crossed should be not pursued. They considered that officers should revisit the issue and look again at what might be achievable to ensure that a link was maintained, bearing in mind the economic and social benefits this would bring. They considered that alternative sources of funding should be explored, with partnership contributions being sought where practicable.

33.15 Other members reluctantly accepted the situation in which the County Council found itself given the circumstances. Ordinarily a practical solution would be sought but in the absence of any viable alternative, there seemed to be little option other than to abandon the Order as they considered that there was little point in sending something to the Secretary of State which was clearly unachievable.

33.16 However other members did not accept that there were limitations to resolving this and considered that, with a fresh look, something could be achieved to maintain an historically significant and national asset.

33.17 At this point there was a proposal made that the Order should be submitted to the Secretary of State for confirmation.

33.18 A procedural motion was made to defer further consideration of the item until such time that officers had the opportunity to review the options they had and revisit the possibilities of what alternative engineering solution might be achievable that was safe, reasonable and manageable, bearing in mind the strategic significance of this link. On being put to the vote, the procedural motion fell.

33.19 The Committee then voted on the proposal referred to in minute 33.17 above. On being put to the vote, it was agreed

#### **Resolved**

34.1 That the Diversion Order should be submitted to the Secretary of State for confirmation.

34.2 That alternative sources of funding for the construction of a bridge should be sought with the intention of maintaining a link on a strategically important route.

#### **Reason for Decisions**

35. To provide the opportunity for all practical solutions and funding options to be considered exhaustively.

### **Traffic Regulation Matters**

#### **Proposed Waiting Restrictions in Duck Lane, Stalbridge**

*(Pauline Batstone confirmed that as she had previously been instrumental in supporting the waiting restrictions proposals for Duck Lane, Stalbridge she would play no part in the discussion of this item and left the Committee Room when the voting took place).*

36.1 The Committee considered a report by the Head of Highways explaining that following the advertising of proposed changes to parking restriction arrangements in Stalbridge, objections had been received to the proposals for Duck Lane. Consequently, the Committee was now being asked to give consideration to those objections and decide whether the proposals in Duck Lane should be implemented as advertised.

36.2 With the aid of a visual presentation, officers explained the reasoning behind the need to change the waiting restriction arrangements and the basis of the objections received. They explained that as there were several competing demands for parking spaces in Duck Lane, the proposals were seen to be a reasonable and practicable compromise between those differing views and were designed to meet the needs of residents in the Duck Lane area and sought to address their parking needs.

36.3 The new arrangements would also address the parking problems which Duck Lane had experienced over many years between local residents and those working in the town and the availability of spaces. Access for emergency vehicles or refuse lorries was also

being compromised by the current parking situation.

36.4 The characteristics of the road were explained, what facilities it served and its setting within the townscape. Members were informed that the road provided access to Stalbridge Primary School, which generated its own parking congestion issues, particularly around the start and end of the school day. Officers also detailed what parking provision was available both on street and off street.

36.5 Objections received considered that the proposed arrangements would be detrimental to their parking needs and access would be compromised. Those in support of the proposals were from Duck Lane residents who asked for a variation of the proposals so that the restrictions applied for a longer period of time.

36.6 However officers considered that the proposals were, on balance, the best achievable in meeting competing needs and, whilst they would only partly remove the problems being experienced with access into the road, they were preferable to leaving the situation as it currently existed.

36.7 Mike Dando addressed the Committee in support of the proposals which he considered would go some considerable way to addressing the parking problems which had been experienced. This was particularly true of long term parking in the road, which did not allow others the opportunity to park if necessary. Nevertheless, he asked that the restrictions should apply for longer as he was concerned that some advantage would be taken of the limits as they stood. He considered that the need for enforcement was critical in their success.

36.8 The County Council member for Blackmore Vale supported the proposals, considering them to be a responsible and sensible compromise and confirmed that Stalbridge Town Council were supportive too. She left the meeting while the issues were debated.

36.9 Having had a series of questions about the arrangements answered satisfactorily, the Committee agreed that the proposals should be implemented as advertised as set out in drawing number 2189/1/15A at Appendix 2 of the Head of Highway's report.

#### **Recommended**

37. That having considered the objections received, the proposed waiting restrictions in Duck Lane, Stalbridge be approved as originally advertised and as set out in drawing number 2189/1/15A at Appendix 2 in the Head of Highway's report.

#### **Reason for Recommendation**

38. The proposals should improve the movement of vehicles along Duck Lane and give priority for parking to residents and visitors, and to parents dropping off and picking up at the Primary School, rather than all-day parking by employees in the town centre.

### **Procedure for Petitions - Petition requesting the imposition of a 20 mph speed limit in Iwerne Minster**

39.1 The Committee considered a report by the Head of Highways on the receipt of a petition containing 56 signatures requesting the imposition of a 20 speed limit in Higher Street and Tower Hill, Iwerne Minster to address the excessive speeds along those roads and driving behaviour on road safety grounds. The petition was organised and approved by Iwerne Minster Parish Council and supported by the local County Council member.

39.2 With the aid of a visual presentation, officers explained that the petition was asking for a reduction in the speed limit from the current 30 mph to complement the “20 is Plenty” campaign organised by village residents which monitored speeds and driver behaviour and encouraged motorists to reduce their speeds. This initiative was supported by Dorset Police.

39.3 Plans and photographs were shown to the Committee which provided an understanding of the context of the road, its characteristics and its setting and relationship with development and facilities in the village, including where the Clayesmore School art block was situated. The report provided the Committee with a series of options on how they might consider responding to the petition.

39.4 Officer's explained that the 20 mph Speed Limit Policy allowed parishes to fund such limits subject to meeting the criteria laid out in the Policy. Alternatively, the request could be assessed and prioritised against criteria for future funds.

39.5 Members were informed about the available personal accident statistics for those lengths of road, which showed that none had been reported in the latest available 5 year period. Officers explained that if the Committee was minded to agree to the petition request being progressed, the site and suitability of the request should be assessed and prioritised against other proposals to establish if it was appropriate and met the necessary criteria.

39.6 Chris Nadin explained how the survey undertaken by the Parish Council to ascertain the level of support for a 20 mph speed limit had been undertaken and what results had been determined. As a consequence of this, he considered that a 20 mph speed limit was justified and should be supported, not only in terms of inhibiting vehicle speeds but in improved driver behaviour and awareness.

39.7 Paul le Provest echoed the views expressed by the previous speaker in that he considered that the imposition of a 20 mph limit would improve how drivers behaved and should be supported on the grounds of road safety and the safety of residents along the roads. Whilst there were no official accidents that had been recorded, he was aware of some incidents that bore out the justification for the lowering of the limit.

39.8 The County Council member for Hambledon confirmed that she was wholly supportive of the “20 is plenty” campaign and what it was trying to achieve and that the lowering of the limit would complement that significantly. Along with the local MP for North Dorset, Robert Walter, and the Police and Crime Commissioner, Martyn Underhill, she commended the petition to the Committee and hoped that there was scope for further research into the feasibility of meeting the petitioner's request. She confirmed that the Parish Council was willing to support the funding of any investigative work if necessary.

39.9 The Committee considered that the principles of the petition and what it was designed to achieved to be of considerable merit and should be supported. They recognised that if it were to be implemented then it was necessary for it to be properly enforced to ensure that it was successful. Whilst some members considered that the most appropriate way to progress it would be for it to be properly assessed in accordance with the relevant criteria and prioritised against other competing proposals, other members considered that the request to implement the limit should be acceded to without further delay, given that the Parish Council was willing to fund it.

39.10 On being put to the vote, the Committee decided that the request should be assessed and prioritised in the usual way. Given the equality of votes, the Chairman used

his casting vote in that regard.

**Resolved**

40. That the petition be noted and the petition organiser be informed that further research should be undertaken into the merits of a 20 mph speed limit in Iwerne Minster with the application then being assessed in the usual way to determine if it met the necessary criteria and prioritised accordingly in being ranked against other such competing schemes.

**Reason for Decision**

41. To facilitate the democratic process and to provide the ability to engage with local councils.

**Planning Matter**

**Planning Application 6/2013/0577 - Phased Restoration and Continued Use of Land for Inert Waste Recycling and Retention of Waste Storage and Treatment Building at Redbridge Road Quarry, Redbridge Road Crossways**

42.1 The Committee considered a report by the Head of Economy on planning application 6/2013/0577 for the further restoration of Redbridge Road Quarry to include the importation of inert materials to achieve a mixture of agriculture, woodlands and nature conservation use, together with time extensions for:-

- a previous scheme of restoration for land at the western end of the quarry approved under Decision Notice 6/2008/0810;
- the continued use of land for inert waste recycling; and
- the retention of the waste storage and treatment building.

42.2 The application raised a number of environmental, social and economic considerations, but was considered to be in general conformity with the development plan. Accordingly, officers recommended a grant of conditional planning permission.

42.3 With the aid of a visual presentation, officers explained what the application was designed to achieve. Arrangements for the way in which the restoration was to be phased, its progression and the relationship between each phase was described. The materials to be used in this process, where they would be stockpiled, what would be recycled and the arrangements for where it would be stored were explained, together with the timescales associated with these and how they would be managed. Officers confirmed that the restoration process relied on the importation of inert material. The way in which this was processed and the amounts of material required to achieve what was necessary were described.

42.4 Photographs and plans were shown to the Committee by way of illustration showing the character of the site, its land form and its context within the surrounding landscape. Views from within and around the site, what activities were being undertaken, how the restoration was being managed and what operations were taking place were all described in detail by officers. This included reference to the mineral working at the quarry and the ecological value of an area of wetland heath.

42.5 As part of the officer's presentation, a short dvd illustrating noise levels experienced in late 2014 was shown on behalf of, and at the request of the objector, Nigel Hill, together with photographs showing activities carried out by the applicant on site.

42.6 The attention of the Committee was drawn to the receipt of late representations from Mr Hill concerned at how the restoration and operations were to be managed. Details of this were set out in the Update Sheet. Reference was also made to comments received from Affpuddle and Turnerspuddle Parish Council. Whilst they raised no objection to the operations being carried out on site, they did raise some concern at the amount and type of traffic using the B3390 in connection with this.

42.7 Officers drew the attention of the Committee to the concerns which had been expressed by local residents on how the site and its operations were being managed and provided details of the monitoring and enforcement processes which were available and at their disposal.

42.8 The speed with which the restoration process was taking place and the reasons for why it had exceeded its timetable was described, together with the mitigating measures which had been put in place to ameliorate the situation.

42.9 Officer's drew the Committee's attention to the alleged lack of compliance with the conditions of the existing permission. These would be addressed by strengthening the conditions through the current application and the requirement for the County Council to monitor this and take appropriate action if necessary.

42.10 The Committee heard from Nigel Hill expressing his concern at the way in which the operations were being managed, particularly in respect of the agreed noise levels being exceeded, the way in which materials were being stockpiled, stored and processed and how the timescales associated with the operations were being flouted. He doubted the delay was caused by the lack of waste material. He considered that there should be stricter enforcement of the conditions covering the operations and that monitoring should be more stringent.

42.11 The Chairman indicated that he and the Vice-Chairman should be contacted if it was felt that there were significant breaches of planning control which required enforcement action.

42.12 Nick Dunn, on the applicant's behalf, explained how the operations were managed and the need for the level of material which was being imported. He considered that the judgement made by the operator as to what was necessary to ensure that operations were viable should be recognised. The amount of inert waste being imported was necessary to guarantee the ecological and agricultural after use of the site. The operations provided for sustained employment and the way in which the restoration was being managed provided an acceptable means of delivering what was required. He confirmed that all the activities being carried out on the site were necessary in complementing the operations and that the application which the Committee was now being asked to approve complied with planning policy and he could see no technical reason for it not being agreed.

42.13 Officers responded to a series of questions from members about how the operations were being conducted. They acknowledged that certain compliance issues had come to their attention in the past but that these had been addressed and monitoring of the situation would hopefully ensure that these were not repeated.

42.14 Whilst they also recognised that the timescales had not been observed in recent years, they confirmed that the timeframe now being recommended should allow sufficient time for restoration of the site to be achieved. This was considered to be in the best interest of achieving a good quality restoration.

42.15 The Committee asked what opportunities there were for penalties to be imposed if conditions were not complied with. Officers confirmed the options that were open to them and the part the Environment Agency played in the control of what waste was being imported. They confirmed that where any breaches had been brought to their attention, they had sought the applicant to undertake the necessary remedial action.

42.16 Members expressed concern at the way in which the conditions had seemingly been flouted and not adhered to and considered that the monitoring had proven to be unsatisfactory. They had sympathy with the local residents in having to endure years of excessive operations when they might have otherwise expected the works to have been since completed.

42.17 However they reluctantly understood the pragmatic approach which was now being taken to ensure that the situation would be resolved properly and in a realistic timeframe based on the ability for the applicant to source the required inert material to achieve what was necessary. Nevertheless a view was expressed that the way in which the applicant had performed in delivering on this application left much to be desired and would no doubt be borne in mind when consideration of any future application was being made.

42.18 Other members considered that given the way in which the operator had performed in the past there was little evidence to suggest that there would be any improvement and therefore were minded to refuse the application.

42.19 On being put to the vote, the Committee agreed that planning permission should be granted in accordance with the conditions set out in paragraph 8 of the report. Given the equality of votes, the Chairman used his casting vote in that regard.

**Resolved**

43. That planning permission be granted subject to the conditions set out in paragraph 8.2 of the report.

**Reason for decision**

44. The reasons for granting planning permission were summarised in paragraphs 6.55 to 6.59 of the Head of Economy's report.

**Navitus Bay Wind Park - Section 106 Obligation**

45. The attention of the Committee was drawn to the arrangements involving the County Council in a Section 106 Obligation in respect of Navitus Bay Wind Park application process, as set out in the Update Sheet. The Committee were provided with an opportunity to comment.

**Noted**

**Questions for County Councillors**

46. No questions were asked by members under Standing Order 20(2).

Meeting duration  
10:00am – 2.45 pm



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**Application Number: 1/D/07/001761 Change of Use**

**MINOR**

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**Registration Date:** 1 November, 2007

**Application Site:** EAST FARM MILLS, EAST FARM ACCESS LANE,  
BRADFORD ABBAS, SHERBORNE, DT9 6JN

**Proposal:** Change of use from redundant grain mill to 7No sustainably  
built timber holiday lodges and 4No holiday barn conversions

**Applicant:** Charteroak Estates

**Ward Members:** Cllr Mrs W Melish

**Case Officer:** Robert Burden

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**1. Summary Recommendation**

1.1 Approve with conditions

**2. Description of development**

2.1 The site comprises a range of existing former agricultural buildings, accessed along a narrow (c. 3m wide) lane. Three existing barns would be renovated and converted for use as 4 holiday units, with a further low barn used for ancillary storage. Several buildings would be demolished and replaced by 7 timber holiday caravans (with the appearance of lodges). Three of the barns retained are mainly of natural stone and tiles. The remainder of the buildings - largely to be demolished - are of reddish brick/natural stone or concrete block construction under asbestos sheet roofs.

2.2 Immediately to the north of the site are relatively modern unused farm buildings in separate ownership - possibly former dairy buildings. Adjacent to the southern edge of the site is a white painted natural stone cottage under a slate roof (East Farmhouse and its garden) - again in separate ownership. There is also a largely unmade but usable vehicular gated trackway to the north-east, connecting to a county lane further to the east.

**3. Main planning issues**

- Relationship to current Development Plan Policies.
- Relationship to the extant planning permission for conversion of existing buildings to 5 holiday units, 4 office units and 2 storage units.
- Effect on visual amenity of area.
- Highway safety.

**4. Statutory Consultations**

**Bradford Abbas Parish Council**

- 4.1 Recommend refusal:**
- original application more sympathetic to surrounding countryside; more the appearance of a farm. This scheme more appropriate to a coastal holiday environment than an agricultural one.
  - selling off units appears it would be more of a housing development than a holiday one;
  - not felt this development would ease affordability difficulties for locals;
  - prefer "old" planning approval which included business units;
  - limited social and community benefit from scheme;
  - vandalism risk to unoccupied units;
  - lack of public transport available / or convenient;
  - proposed employment level considered over-estimated.
- A full copy of the Parish Councils objections can be viewed at [www.dorsetforyou.com](http://www.dorsetforyou.com)*

**Highway Authority**

- 4.2** No objection

**5. Other Consultees**

**Environment Agency**

- 5.1** No objection subject to conditions

**Natural England**

- 5.2** No objection subject to conditions

**6. Other representations**

- 6.1** 3 letters of objections received including one from the Local Member and one from the County Councillor, which include the following main points: -
- Contrary to Local Plan Policies SS3 and SS4, including, for example, well outside village and inconvenient access to local facilities other than by car.
  - Visual harm to the countryside, detrimental to residential amenity of East Farmhouse. Original permission would provide employment and opportunities for local people. Unoccupied units may attract criminal activity.
  - Surprised original permission not considered viable.
- Full copies of the letters of representations and of the applicants supporting statement are available at [www.dorsetforyou.com](http://www.dorsetforyou.com) and in the Members Room.*

**7. Human Rights**

- 7.1** Article 6 - Right to a fair trial.
- 7.2** Article 8 - Right to respect for private and family life and home.
- 7.3** The first protocol of Article 1 Protection of property

**8. Relevant Planning History**

<b>App. Ref.</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Decision &amp; Date</b>
1/E/05/2333	Winchester College	Make alterations to convert existing redundant farm buildings into 5No self-catering holiday units, office units and storage	Approved 13/02/2006

**9. The Development Plan**

**The Bournemouth, Dorset and Poole Structure Plan (adopted 13 July 2000)**  
 Tourism Policies A and D  
 Environment Policy F

### **The West Dorset District Local Plan (adopted July 2006)**

SS3	Development outside defined development boundaries
SS4	Conversion and adaptation of rural buildings
SA3	Landscape character areas
SA12	Species protection
SA15	Groundwater source protection
AH2	Surface water drainage
AH14	Road safety
TRAN5	Parking
ET9	Built holiday accommodation
ET10	Development of new camping, caravan or chalet sites
DA2	Landscaping
DA5	The scale and positioning of buildings
DA6	Privacy, daylight and general amenity
DA7	Detailed design and materials

## **10. Planning issues**

**10.1** In February 2006, under the policies of the former Local Plan, planning permission was granted for the conversion of farm buildings on the site to 5 holiday units, 4 office units and 3 storage units. That permission has not been implemented but is extant and 'live' until 12 February 2009 (PA 1/E/05/2223).

**10.2** However, in June 2006 the "old" Local Plan was replaced by the current adopted Local Plan. This Local Plan takes a more restrictive stance in relation to conversion of rural buildings.

**10.3** It is now proposed to demolish 2 of the natural stone/brick barns previously proposed for conversion, to convert 2 barns (previously approved for office use) now to be used as 3 units of holiday accommodation, with a further natural stone/rendered barn proposed for conversion with replacement extension - for a holiday unit - in principle similar to the extant permission. Policy ET9 now permits new holiday accommodation by conversion of existing buildings, but is subject to the criteria of SS4 (conversion of rural buildings). This proposal does not comply with this policy since it is not for local needs housing, is not part of a farm diversification scheme, nor is it located on the edge of a village with a defined development boundary (DDB). (Whilst Bradford Abbas has a DDB the site is about 0.4 miles from it).

**10.4** Whilst this element of the scheme does not meet this policy, regard must be had to the extant permission which establishes the principle of converting existing buildings on the site to holiday accommodation until February 2009, albeit in part in different buildings to those now proposed for conversion.

**10.5** The applicant has viability concerns over part of the extant permission and has stated:

*"The income that may be received from converting the stone barns to office use in such a rural area does not represent a cost effective return when judged against the high cost of restoring the barns"* (para 1.3 of supporting statement).

Whether the scheme is or is not viable as a whole is arguable. However, the applicant does not imply that the part of the extant permission for holiday lets lack viability - so increasing its relevance to the current proposal.

- 10.6** The design of the current application in terms of the holiday conversions is in many ways similar to the extant scheme. Unit 7 on the eastern edge also has a flat-roofed existing extension which would have been removed as part of the extant scheme. It is replaced by a pitched roof extension in this scheme. This includes extensive areas of glazing on the east elevation but does give this part of the building a more appropriate pitched roof. Given the poor design of the existing extension, coupled with the lack of clear or close views of this element from public land viewpoints it is considered acceptable in design and materials terms.
- 10.7** Turning to the 7 caravans component of this application, policy ET10 is relevant. This permissive policy allows new caravan sites (including this type of unit) subject to various criteria. Sites must be outside the Heritage Coast - which this is. The visual amenity impact of sites must also be acceptable. On this site the 7 caravans have generally been orientated to take advantage of open views towards the south/south-east, between or around the existing buildings. Whilst this varied alignment does differ with the more geometric alignment of the retained farm buildings, it is not a layout pattern which would be highly evident other than in overhead layout terms. In visual terms the site is not within a conservation area nor the Area of Outstanding Natural Beauty. It lies with the limestone hills landscape character area. The site benefits from being on top of gently rising ground such that it cannot be looked down on. Furthermore, there are no public footpaths or bridleways through or close to the site. Whilst the western end of the scheme can be viewed from adjacent to the access lane, this lane does not connect with other rights of way so in practice is not a significant public route. Whilst it is true to say that the site can be viewed from the west-east lane to the south, this view looking north is across an extensive field, with trees and other vegetation on the southern boundary of the site. (Appropriate further boundary landscaping would further mitigate any views of this scheme). The combination of the distance of the site from this viewpoint, the relatively low (4m) height of the caravans and their subdued unstained cedar colour would result in a development which would be visually acceptable in this locality. The Councils Landscape Officer considers that the development will have a minimal landscape and visual impact, subject to the following point regarding fencing.
- 10.8** The applicant has indicated 2m high timber fencing along the southern site boundary. This is not considered appropriate as it has a more suburban appearance. This could however be replaced by native hedgerow planting with hedgerow trees, as a more appropriate boundary screening. (The application does include landscaping proposals).
- 10.9** ET10 also refers to the need for the highway network to be adequate to accommodate the traffic generated. The site has a 'traffic credit' by virtue of its use history. Whilst the lanes serving it may be of limited width the Highway Authority do not raise objection to this scheme.
- 10.10** The final proviso of this policy indicates:  
"where possible [the scheme] has convenient access to frequent public transport services". This criteria does not require convenient and frequent public transport services; it merely states the desirability of this. The scheme satisfies this because a modest 0.4 mile walk to the north takes you to the A30 Forward Garage bus stop, where there are frequent bus services to

Yeovil and Sherborne, which in turn link to other bus services and railway stations at Yeovil and Sherborne. There are also bus services, albeit more limited, from Bradford Abbas about half a mile to the south. Whilst there are no footpaths the generally 3.5 - 4.5m wide lanes do generally have good forward visibility and/or various passing places to facilitate pedestrian safety and convenience. In the light of the above it is considered that this criteria is satisfied.

**10.11** In residential amenity terms it is considered that the units of holiday accommodation and the existing East Farmhouse each have an acceptable relationship with the other residential units.

**10.12** Regarding nature conservation issues Natural England has commented that a barn owl nesting site/day roost should be provided within one of the buildings, and that bird and bat boxes should be provided.

**10.13** The site lies within a Groundwater Source Protection Zone. The Environment Agency have recommended conditions to address foul and surface water drainage.

## **11. Conclusion**

**11.1** This application presents an unusual combination of characteristics. Strictly speaking, the conversion of the barns to holiday accommodation is now contrary to adopted Local Plan Policy, whilst the caravan element can be considered as consistent with policy. Regarding the proposed conversions it is relevant and pertinent to have regard to the extant permission, valid until February 2009, which establishes the principal of converting the barns to, amongst other uses, holiday accommodation.

**13.2** Would there be harm caused to planning considerations if the conversions now sought were approved? One of the main underlying reasons for the current policies ET9/SS4 is to curb unsustainable development. However, this particular scheme is not in a location far away from public transport or local facilities; there are the bus services already mentioned and a shop and public house in Bradford Abbas which could benefit. The buildings sought for conversion do make a contribution to the character of the rural landscape. This is an opportunity to retain some of them in the landscape for the future. All of the farm buildings could in fact be demolished without requiring planning approval, - it would be regrettable to lose them.

**13.4** Thus, we have a situation where policy seems to support the provision of caravans, but not the retention of historic buildings which are part of this established landscape. Yet both elements have similar access to facilities and public transport. Whilst the buildings are not "next" to the Defined Development Boundary they are relatively close at 0.4 miles.

**13.3** This application cannot reasonably be resisted because of a preference for the extant permission on the site. Although the extant permission can reasonably be used as a justification for supporting the current application.

**13.4** It is considered that this scheme is acceptable in terms of the planning history, background and in terms of its visual impact, residential amenity and highway safety considerations.

## **14. Recommendation**

**14.1 Approve**

- i. Implement by 12th February 2009 (to co-incide with extant permission expiry date).**
- ii. Holiday accommodation use only.**
- iii. Materials (including window treatment)**
- iv. Remove permitted development rights - means of enclosure (including omission of 2m fence on southern boundary).**
- v. Hard and soft landscaping.**
- vi. Foul and surface water drainage details.**
- vii. Bird and bat boxes.**

**INFORMATIVE: This permission partly relates to the conversion of existing buildings as shown on the approved drawings and it does not convey or confer any approval for additional demolition and rebuilding of those buildings.**



Incorporating Marsh Wary

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ROW  
R Bell

FAO Mr Roger Bell  
Dorset County Council  
Dorset Countryside  
County Hall  
Colliton Park  
Dorset  
DT1 1XJ

Your Ref:  
Our Ref: TM/11772/0002  
Date: 7 October 2014  
Please ask for Tracey Merrett  
tracey.merrett@pardoes.co.uk  
Direct Line: 01278 454405  
Mobile: 07973 156218

Dear Roger

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**APPLICATION FOR A DEFINITIVE MODIFICATION ORDER-BRADFORD ABBAS**

I have now had an opportunity to consider the user evidence in this application by the Parish Council to Modify the Definitive Map and wish to make the following objections.

Firstly there are some generic points to be made and evidence to be discounted or qualified.

The site was previously a dairy and before that a feed mill, both of these uses would have entailed the public visiting the site and using the track to buy animal feed or buying milk see Rachel Fry's evidence as an example.

Mr Brian Chant kept chickens and calves there and had people visiting him on site and coming to buy eggs see Rachel Fry's evidence.

There is also the usage by the Wallis's who live on site and their visitors whose evidence should be discounted. Clearly the people who live on site would use the access everyday this is not evidence to create a public right of access.

A number of the witnesses would have been visiting the people who live on site,

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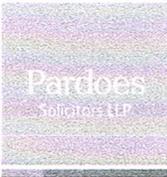
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Community  
Legal Service





Mr and Mrs Wallis, see Mrs Wallis's evidence and it is not possible to quantify this usage which therefore puts in doubt the usage evidence of many of the locals.

The use of the site has clearly been used as a shortcut on bicycle and by car to the village as stated in some of the witness statements e.g. Mr Bennett.

Some of the witnesses e.g. Betty Barber and Mr Houston state that they have not seen anyone else using the route recreationally which is surprising when considering the level of usage that is alleged. We know that a lot of the affirmative answers to 1 F refer to seeing the farmworkers or tenants on the route which is not relevant evidence for this application and the answers to 1F can therefore be afforded no weight..

One of the witnesses Betty Fellows evidence relates to times completely outside the relevant time frame i.e.1987 to 2007.

Three of the witnesses have since died, Mr Lisle, Peter Pepper and Betty Fellows and therefore their evidence cannot be cross examined and tested at an inquiry.

In addition with respect to the reference to witnessing other people using the track, of course they would have done, and this does not amount to evidence of use of the route as a public right of way. Both of the business uses of the site would have entailed delivery and collection vehicles visiting and customers and employees vehicles coming and going from the site.

Whilst the site was a Feed Mill the operation was 24 hours a day and there would have been a large amount of traffic visiting the site including artics night and day.

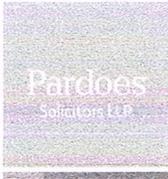
Going through the witness statements in turn;

1. Raymond Allwright states that he used the path for pleasure on foot and a few times in a private car. To use the route in a private car signifies that he had a purpose in visiting the site other than walking for pleasure, he was possibly buying eggs or visiting the occupiers, the Wallis family, however evidence of car usage does not support the application for a footpath.
2. Mr and Mrs Balch, this evidence is of no weight as the period is outside the relevant period being considered and in any event they used the path with consent.
3. Mrs Barber she states that she used the route 40 or 50 times a year and no one else used this route(1f). Not willing to give evidence.
4. Mr Barber, not willing to give evidence.
5. Mr Richard Bennett statement of use of 6 times a year is split between usage on foot, in the car on a bicycle. We cannot put any



weight on this as it is not possible to determine how many times he used the route on foot which is the evidence which is required for the application. Mr Bennett clearly had a purpose other than dog walking to use other methods of transport and he states his purpose was driving down to the village therefore this is not good evidence of recreational use. He also states that he has seen notices on the route restricting its usage see 7(e).

6. Ailsa Bowring ,not willing to give evidence.
7. Elizabeth Chapman , not willing to give evidence.
8. Richard Coast-Smith, not willing to give evidence.
9. Beatrice Down, not willing to give evidence.
10. Betty Fellows passed away and was not willing to give evidence.
11. Rachel Fry is a tenant of the owner of the land and visited the site using the route to collect milk, visit the dairy, visit her brother, buy chicken food and to buy milk. Although she lists the purpose of her usage as pleasure or family outing these purposes do not present evidence of walking for pleasure and would not carry weight as evidence of use of the footpath as a public route particularly as she is a tenant of the owner of the land and therefore has implicit permission to use the route. She has not answered question 6 which inquires as to whether she had permission. None of her usage evidence can be considered to be relevant and she is not willing to give evidence.
12. Ian Houston states he used it 30 times a year as a pleasure walk, but his usage is to include using the route on bicycle and in a car and therefore he clearly had another purpose to visit the site/use the route other than pleasure and the proportion of usage which relates to walking cannot be implied and therefore his usage evidence can be given no weight. He also refers at 1(g) to other people using the route and he clearly state this relates to( "rental of farm buildings and fields) referring only to the people renting the building and farming the land and not other recreational users.
13. K Houston used the route between 12 and 20 times a year the but her usage is to include using the route on bicycle and therefore she clearly had another purpose to visit the site/use the route other than pleasure and the proportion of usage which relates to walking cannot be implied and therefore her usage evidence can be given no weight.
14. Mr Lisle only gave evidence that he used the path frequently which



is vague in the extreme, and further details unfortunately cannot be obtained as he is dead and he was not willing to give evidence.

15. Caryl Parsons states that she used the route 2 or 3 times in 2006 and intermittently between 1990 and 2006. The purpose of her use of the route is to look for a lost cat and pleasure, this does not amount to adequate clear evidence of usage of the path on foot other than to say it was used at least once for pleasure in the whole period.
16. Peter Pepper states his use is for delivering literature and walking a dog 6-10 times a year, we have no clear evidence of the number of times it was used for walking a dog and unfortunately Mr Pepper cannot be asked to clarify this as he is dead. Whilst alive he was not willing to give evidence.
17. Mr and Mrs Wallis live on site in the middle of the route and are tenants of the owner, clearly as tenants they have permission to access their house. Evidence of the use of the route as an access to the Wallis's house is clearly not evidence of use of the route as a public right of way.
18. Mary Yoeman was not willing to give evidence.

In addition only 7 of the 19 living witnesses are willing to give evidence at inquiry and have their evidence tested, which should affect the weight to be given to their evidence. To conclude there is very little usage evidence that is clear and testable and I have been unable to find any historic evidence of a right of way along this route.

Kind regards

  
Tracey Merrett 