



Meeting: Regulatory Committee

Time: 10.00 am

Date: 2 February 2017

Venue: Committee Room 1 - County Hall, County Hall, Colliton Park, Dorchester DT1 1XJ

David Jones (Chairman)	Pauline Batstone (Vice-Chairman)	Steven Lugg
Barrie Cooper	Beryl Ezzard	Ian Gardner
Mervyn Jeffery	Paul Kimber	Mike Lovell
David Mannings	Mark Tewkesbury	Daryl Turner
Margaret Phipps	Peter Richardson	David Walsh

Notes:

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- We can provide this agenda and the reports as audio tape, CD, large print, Braille, or alternative languages on request.
- **Public Participation**
Guidance on public participation at County Council meetings is available on request or at <http://www.dorsetforyou.com/374629>.

Public Speaking

Members of the public can ask questions and make statements at the meeting. The closing date for us to receive questions is 10.00am on 30 January 2017, and statements by midday the day before the meeting.

Debbie Ward
Chief Executive

Contact: David Northover
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224175

Date of Publication:
Thursday 19 January 2017

1. Apologies for Absence

To receive any apologies for absence.

2. Code of Conduct

Councillors are required to comply with the requirements of the Localism Act 2011 regarding disclosable pecuniary interests.

- Check if there is an item of business on this agenda in which the member or other relevant person has a disclosable pecuniary interest.
- Check that the interest has been notified to the Monitoring Officer (in writing) and entered in the Register (if not this must be done on the form available from the clerk within 28 days).
- Disclose the interest at the meeting (in accordance with the County Council's Code of Conduct) and in the absence of a dispensation to speak and/or vote, withdraw from any consideration of the item.

The Register of Interests is available on Dorsetforyou.com and the list of disclosable pecuniary interests is set out on the reverse of the form.

3. **Minutes**

3 - 12

To confirm and sign the minutes of the meeting held on 5 January 2017 (attached).

4. **Public Participation**

Public Speaking

To receive any public questions and/or public statements and requests to speak in accordance with Standing Order 21 (2).

5. **The Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street and Crown Mead, Wimborne Minster) Definitive Map and Statement Modification Order 2016**

13 - 138

To consider a report by the Service Director - Highways (attached).

6. **Planning Application 2/2016/1127/DCC - Variation of Condition 2 and the removal of Condition 10 of planning ref: 2/2014/0529/PLNG associated with the development of a storage lagoon on land to the South of A354, Milborne St Andrew.**

139 - 196

To consider a report by the Service Director – Economy (attached).

7. **Questions from County Councillors**

To answer any questions received in writing by the Chief Executive by not later than 10.00am on Monday 30 January 2017.



Regulatory Committee

Minutes of the meeting held at County Hall, Colliton Park,
Dorchester, DT1 1XJ on Thursday, 5 January 2017

Present:

David Jones (Chairman)
Daryl Turner (Vice Chairman – for the meeting)
Beryl Ezzard, Ian Gardner, Paul Kimber, David Mannings and Margaret Phipps.

Hilary Cox, County Councillor for Winterborne attended for minute 8.

Officers attending:

Phil Crowther (Solicitor), Martin Farnham (Senior Technical Officer), Mike Garrity (Team Leader), Carol Mckay (Definitive Map Technical Officer (Public Path Orders)), Sarah Meggs (Senior Solicitor), Vanessa Penny (Regulation Team Leader), Steve Savage (Highway Liaison Officer) and David Northover (Senior Democratic Services Officer).

(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 **2 February 2017**).

Public Speakers

Nigel Hill, local resident - Crossways, minute 5.
Tim Arnold, local resident - Post Office Cottage, minute 6.
Diane Jones, proprietor - Tea and Supper Room, minute 6.
Colin Hampton, Parish Clerk, Milborne St. Andrew Parish Council, minute 8.
Alan Hannify, WYG Planning, minute 8.

Introductions, Announcements and Arrangements

1 In the absence of the Vice-Chairman, Pauline Batstone, it was

Resolved

That Daryl Tuner be appointed as Vice-Chairman for the meeting.

The Chairman, on behalf of the Committee, took the opportunity to thank Steve Butler for his contribution to the work of the Committee during his time serving on it. The Committee Clerk was asked to write to Councillor Butler accordingly.

The Chairman took the opportunity to welcome Steven Lugg, in his absence, to the Committee and following his successful completion of the mandatory training, looked forward to him joining members at their next meeting.

Apologies for Absence

2

Apologies for absence were received from Pauline Batstone, Barrie Cooper, Mervyn Jeffery, Mike Lovell, Peter Richardson, Mark Tewkesbury and David Walsh.

Code of Conduct

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

Minutes

- 4 The minutes of the meeting held on 27 October 2016 were confirmed and signed.

Mike Garrity took the opportunity to update members on developments relating to the deferred planning application for Woodsford Quarry. Further information was awaited from the applicants before consideration of the applications could progress further. Consideration was given as to whether members required a site visit in connection with the application, officers being of the view that there would be little to be gained from this in terms of members' better understanding of the issues at hand. It was felt that photographs, plans and, if necessary, video footage would be sufficient. The Chairman, in conjunction with the Vice-Chairman, undertook to make an assessment outside the meeting of whether a site visit was necessary after having canvassed members on this.

Public Participation

5 Public Speaking

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

Public Statements

There was one public statement received at the meeting, from Nigel Hill, in accordance with Standing Order 21(2).

In addressing the Committee, the content of Mr Hill's statement related to the 2015 Redbridge Quarry approval. He had observed that little extraction had taken place; the entrance to the site was unclean; noise levels were unacceptable; restoration had stopped; inert material recycling was unbunded close to the entrance; the number of fires and how long they burned was far in excess of what had been agreed; and there were non-quarry vehicles parked on site, drawing him to the conclusion that the operators adherence to their Approved Restoration Plan and Periodic Review was weak.

The Chairman thanked Mr Hill for his statement and asked officers to respond. Mr Garrity informed the Committee that the statement from Mr Hill was received only the day before the meeting and so officers had not had an opportunity to investigate the issues raised. Mr Garrity stated that Mr Hill had not raised these matters with the Monitoring and Enforcement Team who would be in a position to investigate compliance matters associated with planning conditions. He provided the Committee with an assurance that he would refer Mr Hill's concerns to the Monitoring and Enforcement Team and offered to report back to the Committee. The Chairman confirmed that he would welcome this and that he wished to be kept informed of officers' findings, with a subsequent update on the situation at Redbridge Quarry being submitted to a future meeting for consideration.

Proposed Waiting Restrictions - Various Roads, Worth Matravers

- 6 The Committee considered a report by the Service Director - Highways which explained that, following the advertising of proposed changes to parking restrictions in various roads in Worth Matravers, objections had been received to the proposals for the D53204 unnamed road on the north side of the Village Pond. Consequently, the Committee was now being asked to give consideration to those objections and decide whether the proposals should be implemented as advertised.

With the aid of a visual presentation, and having regard to the Update Sheet provided for members information prior to the meeting and appended to these minutes, officers explained the reasoning behind the need to impose the waiting restrictions and the basis on which the objections received had been made. Photographs and plans were shown to the Committee by way of illustration. These showed where the proposals would be situated, the character of the roads and their setting within the village. The

proposals were designed to improve the unimpeded flow of traffic through the village as it was considered that parking in the centre of the village was causing restricted access for some larger vehicles. It was considered that for these to be enforced effectively, the existing restrictions would require amendment to provide sufficient opportunity for this to take place. Such was the reasoning for the changes, that a year round implementation was also warranted.

The County Councillor for Purbeck Hills, Purbeck District Council, Dorset Police and Worth Matravers Parish Council all supported the proposals, with the views of the Parish Council being set out in the Update Sheet. Officers emphasised that it had taken much negotiation over a number of years to reach the point whereby proposals could be advertised.

Objections received considered that the new proposals would be of little benefit to the village and not noticeably improve the traffic situation. Moreover, it was considered that these would adversely affect the trade of local businesses, given the way in which the restrictions were designed. It was also considered that the consultation exercise undertaken, particularly by the Parish Council, was inadequate in being able to satisfactorily gauge the views of those most affected by the measures. Officers considered that the consultation undertaken in advertising the proposals had proven to be satisfactory in providing a sufficient opportunity for any observations to be made.

Officers acknowledged that whilst the changes would not necessarily be universally welcomed, on balance, they were considered to be beneficial and, on that basis, were now being recommended for approval as advertised.

The Committee heard from Tim Arnold, resident of Post Office Cottage, who in the first instance, expressed concern that the consultation exercise undertaken by the Parish Council had been inadequate and had not taken into account the views of those most affected on the difference the proposals would make. From his own observations, the changes proposed would be of little benefit to the majority of those living and working in the village and were unnecessary. He felt that any removal of parking would only serve to potentially increase the speed of traffic travelling through the village. Should changes be progressed, then waiting should be allowed for up to 2 hours to allow sufficient time for visits to the amenities in the village to be worthwhile. How the nearby car park might be better utilised was also mentioned.

Diane Jones, proprietor of the Tea and Supper Room, was of a similar view that, should there be a need for change, then 2 hour waiting would benefit customers. However she felt that the proposals were unnecessary as any parking problems were largely seasonal. She suggested that the erection of bollards would adequately regulate traffic at that point in the village.

In response to the points raised, officers were under the impression that the Parish Council's consultation process had been thorough in helping to shape those proposals which they submitted. Notwithstanding the two objections received, the wider community had seemingly accepted the proposals so they were now being recommended to be implemented on that basis.

In hearing what the speakers had to say, in consideration of the representations received and in light of the absence of any evidence from the emergency services that the current waiting restrictions were causing undue concern, the Committee was minded to accept that there was little benefit to be gained from amending the restrictions as proposed. They considered that the impact that parked vehicles had on regulating traffic speeds had to be given consideration and that the new proposal would potentially be detrimental to how village businesses were able to trade. There was a concern that the feel of the village would be more urbanised with the imposition

of more prohibitive measures. Members considered that the Parish Council managed car park could be better utilised with improved signage and that the prospect of providing some form of physical imposition at the 'pinch point' in the road should be actively pursued, if considered practicable, appropriate and necessary.

Given this, on being put to the vote, the Committee decided

Recommendation

That the proposed waiting restrictions for Worth Matravers, as advertised, should not be proceeded with.

Reason for Recommendation

In the public interest, in enabling economic growth and in maintaining road safety.

Application to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm

7 The Committee considered a report by the Service Director – Highways which set out details of an application to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm, as shown on Drawing 16/04 accompanying the report. As Lower Thurnwood Farm was part of the County Farms Estate there was an obligation for Public Path Order applications affecting Dorset County Council owned land to be considered by the Committee as a matter of practice.

With the aid of a visual presentation, and having regard to the Update Sheet appended to these minutes, the basis for the application and what it entailed was explained. Photographs and plans were shown to the Committee by way of illustration showing the footpaths proposed to be diverted, their character and setting within the landscape and the points between which they ran.

The reasoning for the application was to regulate the practicalities of accessing and traversing the land in and around the farm, given that farm buildings and facilities obstructed the routes, as they stood. The proposed diversion was therefore beneficial to the landowner in how the farm was able to be managed and operated.

Clarification was provided by the Solicitor that rights of way and access considerations were the determining factors on which the Committee should base their decision, with economic considerations playing no part in any decision.

The support for the proposals from the County Councillor for Blackmore Vale, Pauline Batstone, was drawn to the attention of the committee.

Having taken into account the details contained in the Director's Report, the points made by officers and the practical reasons for submission of the application, on being put to the vote, the Committee considered that the application should be accepted and an Order made accordingly.

Resolved

- (a) That the application to divert part of Footpath 11, Mappowder from A – B – C to A – E – F – G – H – C and part of Footpath 29, Mappowder from B – D to C – I – J – K – D as shown on Drawing 16/04 be accepted and an order made;
- (b) That the Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversions; and
- (c) If the Order was unopposed, or if any objections were withdrawn, it be confirmed by the County Council without further reference to the Committee.

Reasons for Decisions

- (a) The proposed diversions met the legal criteria set out in the Highways Act 1980.

- (b) The inclusion of these provisions in a public path order meant that there was no need for a separate legal event order to modify the definitive map and statement as a result of the diversion.
- (c) Accordingly, the absence of objections might be taken as acceptance that the proposed new routes were expedient and therefore the County Council could itself confirm the order.

Decisions on applications for public path orders ensured that changes to the network of public rights of way complied with the legal requirements and achieved the corporate plan objectives of:

Enabling Economic Growth

- Work in partnership to ensure the good management of our natural and historic environment
- Work with partners and communities to maintain cycle paths, rights of way and disabled access
- Encourage tourism to our unique county
- Support community transport schemes

Promoting Health, Wellbeing and Safeguarding

- Actively promote physical activity and sport Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that was conducive to cycling and walking
- Improve the provision of, and access to, green, open spaces close to where people live
- Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority. Dorset's Rights of Way Improvement Plan sets out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

Planning Application No.2/2016/1127/DCC - Variation and removal of conditions for the development of a storage lagoon on land to the south of A354 at Milborne St. Andrew

8 Of The Committee considered a report by the Service Director - Economy on planning application No. 2/2016/1127/DCC under Schedule 1 Paragraph 1 of the Town and Country Planning Act 1990 for the variation of a condition and the removal of a condition of planning permission 2/2014/0529/PLNG for a storage lagoon to handle digestate from the anaerobic digestion (AD) plant at Piddlehinton. The proposal sought to vary condition 2 - development in accordance with the approved plans - and remove condition 10 - provision of wheel washing facilities. Officers recommended approval of the development subject to conditions being imposed.

With the aid of a visual presentation, officers explained the background to the development and why it was needed. The context of the development within the character of the site, the surrounding landscape and other neighbouring agricultural development were all described.

The Committee were reminded that planning permission was originally granted subject to a number pre-commencement conditions being complied with. However it had transpired that works had commenced on site prior to a number of those conditions being discharged. Subsequently it had come to light that the lagoon had not been sited in accordance with the approved plan, having been constructed some 20 metres westwards of where permission had been granted, with its use having already begun. Following officers' requests, use of the site had been suspended pending determination of the application.

Photographs and plans were shown to the Committee which provided a sense of what

the proposals were designed to do, where these were situated on the ground, the access arrangements being implemented and the relationship of the development with other neighbouring facilities and dwellings in and around Milborne St. Andrew.

Officers also reported that the applicant did not now consider that it would be appropriate, or necessary, to provide wheel washing facilities on site, in accordance with condition 10 of the permission. The applicant's reasoning for this were numerous, but essentially cited that as the site entrance was shared with agricultural use, by what means any mud was carried onto the road could not be readily determined; the site had no access to power or water; any rumble track within the wheel wash could result in noise disturbance; stagnant water in the trough would give rise to odour; and exiting the wheel wash could result in residual water being deposited onto the A354 causing a hazard, particularly in freezing conditions. As an alternative to a wheel wash, the applicant proposed to provide a suitably surfaced track sufficient for mud to be discarded prior to vehicles joining the carriageway.

In taking into account the issues at hand, officers considered that the error in the siting of the lagoon relative to the permitted location did not cause any adverse visual impact or compromise the developments setting in the landscape. Accordingly the location of the lagoon was considered to be satisfactory. With regard to the applicant's case for not now requiring a wheel wash facility, officers confirmed that at the time of the original application, the understanding was that the access would not be shared with other farm traffic. Now this had come to light, the case made by the applicant as to why a wheel wash was inappropriate and unnecessary was reasonable in the circumstances and their alternative proposal for a bound surface to ensure excess debris was discarded whilst still within the confines of the site was a satisfactory and practical solution and that a wheel wash could in fact introduce additional hazards.

No objection has been received from the Highway Liaison Engineer as to the practicalities of dealing with mud in this manner nor to the reasoning for not now proceeding with the wheel wash.

Consequently the officer's recommended the revisions to the conditions as set out in the report as, in their opinion, there was no reason for their refusal.

The opportunity was given to hear from speakers. Colin Hampton, Parish Clerk, expressed severe misgivings over the way in which the development of the site had progressed and was being managed, considering that the applicant had flagrantly disregarded what the approved conditions were designed to achieve by their cavalier approach and the actions which had been demonstrated. The Parish Council's main concern was over road safety with the site accessed from a busy 60mph "A" road with sharp bends on the approach in both directions. Furthermore the Parish Council raised concern over the ability of the Waste Planning Authority to monitor and regulate this development to ensure that the applicant adhered to the planning conditions imposed. He suggested the Committee might wish to visit the site to see for themselves what the issue entailed.

Alan Hannify, the applicant's agent, explained the reasoning for why the variation of the two conditions were needed. He mentioned that in order to compensate for the error in siting the lagoon where it had been when this came to light, its size had been reduced somewhat to reflect this. The provision of a wheel wash facility was considered to be impractical and unviable for the reasons expressed. The alternative solution proposed was designed to mitigate this, whilst achieving an acceptable outcome.

The County Councillor for Winterborne, Hilary Cox, expressed her concern that the approved conditions were not being adhered to and that the attitude displayed by the

applicant to the manner in which the development was being managed was unbecoming. In particular she was aggrieved that works had begun without the necessary arrangements in place for the discharge of conditions or measures in place to properly manage the development. In siting the lagoon where it was had now compromised the opportunity for mud to be left on site. Her view was that the wheel wash condition was imposed for sound reasons and nothing had changed especially given what she felt was low level agricultural use of the access. Her view was that not complying with these conditions could undermine faith in the planning process.

In attempting to determine whether the siting of the lagoon was acceptable, the Committee were advised that, in officers' opinion, its positioning could not be regarded as having any adverse visual impact or compromise the landscape. In explaining why enforcement action had not been invoked by the Authority, it was noted by members that officers had sought to rectify the situation and the developer had proposed to address this by way of a planning application. When taking account of the visual impact of the lagoon as constructed, it was not considered to be expedient to pursue enforcement action in these particular circumstances.

The Solicitor clarified that whilst siting the lagoon in a different position was in itself a material consideration, the recommendation from the planning officer was that there was no fundamental visual change or impact from this. On this basis it was considered that the difference in location was of little consequence and not necessarily significant. Asked by members if, in principle, an appeal against refusal might succeed on this point, officers were of the view that this might well be the case, with the possibility of costs being awarded against the Authority.

Whilst the Committee were somewhat averse to the consideration of retrospective planning permissions in principle, they understood that there were circumstances whereby this was necessary. Furthermore they recognised the applicant's right to apply for the variation and removal of conditions which were being sought under Section 73 of the Town and Country Planning Act 1990.

On that basis they asked questions of the officer's presentation about the lagoon siting; development signage; shared access arrangements; compliance with conditions and, particularly, what the considered impact of withdrawing the necessity for the wheel wash facility would be. Officers considered that the provision of a bound concrete surface for the first 15 metres of the site entrance with an unbound, but specified, surfacing for the remainder of the access road would be satisfactory in the circumstances for addressing the issue of mud removal. Given the fact that farm vehicles would continue to use the field entrance, officers considered this to be a more effective measure than a wheel wash, in this particular case.

The opportunity was provided for Steve Savage, the Highway Liaison Engineer, to address the Committee with his professional assessment of the circumstances. He explained that the proposed surfacing would be sufficient to remove loose mud from vehicles within the site and would also be appropriate given the reasoning documented.

On a point of process, the Committee's attention was drawn to the reference of the wheel wash in Condition 11 of the revised conditions, which had inadvertently been retained. Officers acknowledged this and would ensure that this reference would be removed.

The Committee expressed concern that the way in which this particular planning process was progressing could be seen as bringing the process into disrepute.

The Committee was conscious that they did not condone the manner in which this development had proceeded and expressed their concern over the circumstances in this regard. Nevertheless they were conscious there was a need to find a practical solution to address what had materialised on the ground and to identify the best

means of doing this.

In making an assessment about whether the advantages of retaining the wheel wash outweighed the prospect of mud on the road, and by what means this was deposited given the dual use of the site, the Committee considered that they were unable to come to a decision on that basis, as it stood. They asked officers if there was scope to introduce a condition requiring a wheel wash at a future date, if this proved necessary. Officers considered it may be possible to do this, but wished to be given the opportunity to give some thought as to the wording and enforceability of such a condition.

Given this, the Committee agreed that further consideration of this application should be deferred pending the working up of a suitable condition to address this issue, to be developed following discussion between the applicant and planning officers. The Chairman asked that he, the Vice Chairman of the Committee and the local County Council member be kept informed of developments in this regard.

Resolved

That consideration of planning application no. 2/2016/1127/DCC be deferred pending consideration being given to adding a suitable condition requiring a wheel wash in the event that monitoring indicated the need for one, following discussion between officers and the applicant.

Reason for Decision

To ensure that a practical, reasonable and appropriate solution is found.

Questions from County Councillors

9 No questions were received from Members under Standing Order 20 (2).

Update Sheet

10

Traffic Matter

Minute 6

Proposed waiting Restrictions , Various Roads, Worth Matravers

Summary of letter dated 16 December 2016 from Mr Khanna, Parish Clerk of Worth Matravers

“A proposal was made by the Parish Council to amend the existing restrictions following meetings with Officers of the County Council and are similar to the restrictions that exist in East Purbeck.

The requirement for all year restrictions will allow the existing limited parking bay to be regulated all year round and would help with prevent the increasing problem of parking by camper vans around the Worth pond area in early spring and autumn when the existing restrictions do not apply.

The all year “no waiting at any time” would help to deal with the problems of parking obstructions in relation to the large farm associated vehicles that require access all year round.”

Rights of Way Matter

Minute 7

Application to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm

Correction to paragraph 3.7 of the report:

Para. 3.7 currently reads:

3.7 *The proposed diversion affects only the applicant's land and therefore no compensation is payable under Section 28 of the Highways Act 1980.*

This should read:

3.7 *The proposed diversion affects the land of Mr and Mrs Nieboer of Thurnwood Dairy Farm, in addition to the applicant's land. However, as Mr and Mrs Nieboer have agreed to the diversion, and the proposed route follows an existing used route, it is not anticipated that any compensation would be payable under Section 28 of the Highways Act 1980.*

Planning Matter

Minute 8

Planning application 2/2016/1127/DCC

Variation of condition no.2 and the removal of condition no.10 of Planning Permission 2/2014/0529/PLNG associated with the development of a storage lagoon on land to the South of the A354, Milborne St Andrew, Dorset.

Correction:

Note that the date of the meeting on the report cover sheet should read 5 January 2017

Further Representation:

A further representation has been received from a local resident who states –

"I am pleased to see most of the conditions are maintained in the final recommendation however, it would have been nice see the final permanent signage arrangements but at least the requirement is in the report.

Having recently witnessed 2 HGV's overtake a tractor/tanker on the down slope of the A354 Basen Hill I am somewhat surprised that a some form of assessment of the likely effects of these slow moving vehicles will have on inappropriate overtaking manoeuvres has not been included in the report compiled by the applicant, but I am sure we may have to revisit this issue in the future, subject, of course, to the plan being approved."

Officer comment:

A condition is included within paragraph 9 of the report which requires the submission and approval of permanent advance warning signage prior to any further works being undertaken.

The highways impact of the proposed development was fully considered in paragraph 6.6 – 6.10 of the previous Regulatory Committee report (see Appendix 3).

Update:

The applicants have submitted information to discharge the conditions detailed in paragraph 9 of the report.

Officer comment:

Officers are in the process of the considering the information submitted.

Meeting Duration: 10.00 am - 12.20 pm

Agenda item:

Regulatory Committee

5

Dorset County Council



Date of Meeting	2 February 2017
<p><u>Local Member(s):</u> Cllr Robin Cook - Member for Minster</p> <p><u>Lead Officer</u> Phil Hobson, Senior Definitive Map Officer</p>	
Subject of Report	The Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street and Crown Mead, Wimborne Minster) Definitive Map and Statement Modification Order 2016
Executive Summary	<p>An application was made in 2006 to add several footpaths in the Town Centre, Wimborne Minster, leading from Mill Lane (now unsupported by the absent applicant). Following investigation, a report was prepared for the Committee to consider the evidence relating to the status of two of the claimed routes.</p> <p>During the investigation evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen. Accordingly, evidence regarding this route was also reported for consideration by the Committee.</p> <p>Following publication of the report and immediately prior to the Committee meeting of 27 November 2014 additional evidence was submitted on behalf of an affected landowner. The matter was, therefore, deferred to enable the additional evidence to be considered.</p> <p>A later report incorporating the additional evidence was considered on 12 March 2015 by the Committee, which determined that there was a reasonable allegation that the claimed rights subsist and that an order should be made.</p>

	<p>The Order was made on 22 January 2016. During the statutory period for receiving representations a number of submissions both objecting to and supporting the Order were received.</p> <p>The County Council cannot itself confirm the Order as there are outstanding objections. The Order must be submitted to the Planning Inspectorate for determination. This report discusses the additional evidence received following publication of the Order and recommends that the County Council should support confirmation of the Order through either written representations, local hearing or local public inquiry as necessary.</p>
Applicant	Mr A Hewitt (2006) - Mrs S Hopkins is acting as the local point of contact for the application.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>Further to the evidence considered in earlier reports, and following the publication of the Order, two additional witnesses came forward and their evidence is discussed within this report.</p> <p>Additional representations have been made by and on behalf of the landowner objecting to the Order, and those representations are considered in this report.</p>
	<p>Budget:</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>Risk Assessment:</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>Other Implications:</p> <p>None</p>
Recommendation	That the County Council supports the confirmation of the Order through written representations or at a local hearing or local public inquiry as required by the Planning Inspectorate.

<p>Reasons for Recommendation</p>	<p>Evidence submitted since the publication of the Order together with the evidence previously considered demonstrates, on balance, that the Order routes should be recorded as provided by the Order.</p> <p>Taking an active role in relation to the submission of the Order to the Planning inspectorate ensures that the evidence is fully and helpfully presented for consideration by an Inspector.</p> <p>There is an active objector. Although there is a local contact in support of the Order the original applicant has left the area and is no longer involved.</p> <p>Maintaining the Definitive Map and Statement of public rights of way is a duty of the County Council and supports the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Work in partnership to ensure the good management of our natural and historic environment • Work with partners and communities to maintain cycle paths, rights of way and disabled access • Encourage tourism to our unique county • Support community transport schemes <p>Promoting Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Actively promote physical activity and sport • Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that is conducive to cycling and walking • Improve the provision of, and access to, green, open spaces close to where people live
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Report to the Regulatory Committee 12 March 2015, which includes the report prepared for and minutes relating to the Committee meeting on 27 November 2014. 2 - Extract from the minutes of the Regulatory Committee meeting on 12 March 2015. 3 - The Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street and Crown Mead, Wimborne Minster) Definitive Map and Statement Modification Order 2016 4 - Table of responses and additional evidence received supporting and opposing the Order. 5 - Letter dated 2 October 1987 from Steele Raymond regarding the transfer of land from Mr Benjamin McCartney to Mr Horace Slocock.

Background Papers	<p>The file of the Service Director Highways (ref. RW/T418).</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 evidence can be found on the case file RW/T418, which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Name: Phil Hobson, Senior Definitive Map Officer, Regulation Team, Dorset Highways Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add several footpaths to the Definitive Map and Statement of public rights of way in Wimborne Minster town centre was made by Mr A Hewitt on 10 January 2006. A report in respect of this application was due to be considered by the Regulatory Committee at their meeting on the 27 November 2014. Several additional documents and a covering letter were submitted by Mr A Cosgrove on behalf of an interested party on 26 November 2014, leaving insufficient time to analyse them prior to that Committee meeting. The matter was consequently deferred to allow the additional evidence to be reviewed and included in the report to the Committee. The additional evidence was discussed at paragraph 3 of a report to the Committee on 12 March 2015.
- 1.2 At their meeting on 12 March 2015 the Regulatory Committee determined that the evidence considered demonstrated that rights of way not shown on the map and statement subsisted or were reasonably alleged to subsist and that an Order should be made. The report, which includes the report prepared for the November 2014 meeting, is attached at Appendix 1. Following the making and advertising of the made order the Committee wanted to consider the matter again to determine whether, on the balance of the evidence, the order should be confirmed.
- 1.3 An extract from the minutes of 12 March 2015 Regulatory Committee forms Appendix 2. In summary, the evidence considered included documentary/map evidence relating to parts of the routes, user evidence and evidence of locked gates and signs. The dates of gates and signs preventing or denying public use was, therefore, an important consideration for the Committee to weigh against the dates of user evidence and documentary evidence of pre-existing public rights.
- 1.4 The Order was made on 22 January 2016 and published on 4 March 2016 (Appendix 3).
- 1.5 Evidence submitted following the making and advertising of the Order is discussed at paragraph 3 of this report.
- 1.6 An analysis and summary of the submissions, letters of objection and support, received in response to the publication of the Order are discussed at paragraph 4 of this report.

2 Law

- 2.1 A summary of the law is contained in Appendix 2 of the report to the Committee dated 27 November 2014 (Appendix 1 to this report).

3 Summary and Analysis of Responses and Additional Evidence in Support of the Application (copies available in the case file RW/T418)

- 3.1 15 responses that support the confirmation of the Order have been received (see Table at Appendix 4). Of these 13 provided no new evidence to take into consideration, nor did they raise any issues that have not been considered previously.

3.2 Two individuals have provided new or additional evidence in support of the confirmation of the Order. This evidence relates to the part of the order route A – A1 – B, and includes documentary evidence that has not been previously considered.

3.3 Mrs Ellen McCartney:

- (a) Mrs McCartney's late husband, Mr Benjamin McCartney, owned Millbank House, which also included the whole extent of that part of the claimed route as shown between points A – A1 – B. Mrs McCartney states that during the preparation and works to extend Millbank House between the years 1984 to 1986 a dispute arose with the neighbouring landowner, Mr H Slocock. An agreement was reached in 1987 whereby, if Mr Slocock agreed to drop his objections and claims, Mr McCartney agreed to transfer the land between points A – A1 – B to Mr Slocock. Steele Raymond, Solicitors represented Mr McCartney on the transfer of the land and in a letter dated 2 October 1987 (Appendix 5) one of the proposed terms was the protection of all associated rights pre-existing within the title, including a right of way for the public at large.
- (i) Paragraph 5 of the letter states ***“Our client will transfer to your client the land edged red on the enclosed plan (“the Property”) for a nominal consideration of £1 subject to the following terms”***.
- (ii) Paragraph 5(c) states ***“The property will be subject to all matters affecting the title in the normal way. The Property will also be subject to all existing and necessary easements in favour of our client and the occupiers of the land remaining in our client’s title. As the land is laid out at the moment the whole of it is used as a right of way by the public at large. There is no defined carriageway. A right of way at all times and for all purposes over the whole of the Property will, therefore, be preserved”***.
- (iii) Paragraph 5(e) states ***“Your client will covenant to accept liability for the maintenance and repair of the property and not to obstruct the right of way”***.
- (b) Mrs McCartney states that the general public had always had unchallenged access along Mill Lane, which her late husband respected and encouraged, as he believed it was important to maintain open public access by foot as this supported and boosted trade for local businesses.
- (c) With respect to the signs indicating ‘no public right of way’ Mrs McCartney confirms that her husband had no knowledge of them and would not have given his consent to display them or to any action undertaken to prevent or restrict public access over his land.

- (d) Mrs McCartney concludes, stating that her husband took positive steps to encourage and protect the existing public rights of way over his land. She is disappointed that since the deaths of both Mr H Slocock and her husband (in 2002), the area is now adorned with gates and bollards and the public rights appear to have been contravened.
- (e) It appears from the Land Registry entries that the land between points A – A1 – B was purchased by Mr McCartney in 1985 from A H White and E V White, who in turn purchased the land in 1949 from F W Lambourne. It was transferred to Mr Slocock on 29 April 1988.

Officer's comments:

- The statement of Mrs McCartney with its supporting documents demonstrate that the land between points A and B was sold to Mr H Slocock on 29 April 1988.
- The landowner prior to the transfer was Mr B McCartney. Included within the proposed terms of the sale of the land to Mr H Slocock is an acknowledgement that the whole of the land to be transferred was used as a right of way by the public at large.
- The statement of Mrs McCartney supports the information in the proposed terms of sale that a public right of way existed between points A and B prior to its transfer in 1988.
- Mrs McCartney confirms that the public had always enjoyed unrestricted access, which her late husband encouraged and that he would have had no knowledge of the signs erected by Mr Slocock referred to in the earlier reports and would not have consented to their erection.

3.4 Mr R Bushby also wrote in support of the Order.

- (a) Mr Bushby took over a garage workshop from his father in 1993. The garage/workshop is located on the southern side of the application route between points A and B, it occupies premises that had been used as a bottle store and garage by the former brewery. His father, Mr Ken Bushby, had run the business from these premises since 1959, his father being a tenant of Mr H Slocock. Mr R Bushby was a tenant of Mr H Slocock and later Mr C Slocock until January 2015.
- (b) Mr Bushby has been familiar with the area of Mill Lane since the age of nine. During his school years he and his friends spent most of their time playing in Mill Lane and Crowther's car park (1960s). They also played on and fished from the slipway to the river. Many people walked or drove up Mill Lane into the car park. There were never any gates but there was a pay kiosk at the entrance to the car park.

- (c) There was a café in the corner of the car park until the supermarket was built. People who worked in the Square and Mill Lane walked up to the café and at weekends it was very busy as people would have tea whilst watching the cricket. A path led from the car park over a footbridge and past the library to the High Street.
- (d) When the supermarket was built in the 1970s there were no signs, bollards or gates. The only gate was located through the archway from Mill Lane to the river (point E). It was closed occasionally, but people could still get through it or over it and nobody was ever stopped.
- (e) After the death of Mr H Slocock the Precinct was taken over by Mr C Slocock in or around 2002. Bollards and signs were erected and industrial gates were installed next to his garage, these were locked once or twice a year. This resulted in a lot of complaints as people thought it was Mr Bushby who had blocked the footpath.
- (f) Mr Bushby supplied a photograph of Mill Lane from 1988/89. This shows the lock-up that his father rented from Mr H Slocock in addition to the main garage. There are no signs apart from the red wooden one annotated 'Ken Bushby' and the property owners' white sign 'Mill Lane Body and Spray Works'. Mr Bushby states that there were no signs on any of the other buildings and that most of the private signs appeared after Mr C Slocock took over the business, although the smaller red signs may have been there slightly longer. One of these was put up on the top corner of the wall of the garage although nobody could see it and it soon faded. Mr Bushby believes that this was in the 1980s as he remembers the trouble between Mr H Slocock and the owner of Millbank House during the building works.

4 Summary and analysis of response and additional evidence opposing the Order

- 4.1. There were a total of 44 objections by 34 individuals made in respect of the Order (see Table at Appendix 4). Some objectors objected more than once.
- 4.2. Several of the objectors are retaining the objections they made at the time the previous report was presented to the Committee. Some objectors are seeking to provide evidence relating to the order route.
- 4.3. According to the information contained within their statements 13 objectors reveal that their evidence relates to a period after which it is thought that the alleged public rights were first brought into question (1979) and therefore provide no relevant evidence for the period under investigation. A further three provide evidence from or immediately prior to this date.
- 4.4. 14 of the objectors refer to the effect the Order would have, should it be confirmed, on parking and the associated businesses within the area.

- Whilst these concerns are noted and a number of these witnesses were contacted in order to discuss their concerns in respect of parking and the effect it may have on the local businesses they are not evidential matters for the purpose of determining the existence or otherwise of a right of way.

4.5 Leaving aside the statements of those objectors whose experience of the route and area post-date the suggested date of challenge (1979), many of the remaining objectors refer to the route being 'controlled' and that it was signed and gates were locked for 24 hour periods by the current landowner. Several of these statements suggest that this has been the case for a substantial period of time, stretching back to the 1940s.

- The evidence provided by Mrs McCartney demonstrates that, with respect to that part of the route as shown between points A – B – B1, neither Mr H Slocock nor Mr C Slocock 'controlled' this land prior to 1988 as they did not own it, Mr H Slocock having only purchased it in April 1988. Prior to this transfer, the land was under the 'control' of the owner at the time, Mr McCartney, who purchased it in 1985.
- Prior to 1985 the land (A – B – B1) was not owned by Mr Slocock or his father, the land was owned by other individuals.
- The evidence surrounding the signs and the gates has been dealt with previously in the earlier reports and was relevant for determining dates when use of the claimed routes were brought into question. However, the evidence provided by Mr Bushby, a former tenant of Mr Slocock, suggests that the majority of these signs may have been erected later than previously thought and the date of bringing the claimed routes into question may need further consideration.
- With respect to those parts of the Order as shown between points A to X (the slipway) and A to B, the question as to whether or not the signs had been in place is irrelevant if the Committee is satisfied that the documentary evidence demonstrates that the highway rights existed prior to the erection of any of these signs. The signs do have relevance as to whether or not a dedication of that part of the route between points E and F may have taken place and this question was dealt with in the previous report.
- The photograph supplied by Mr Bushby, which he states was taken in 1988/89, does not show a sign on the premises that he rented from Mr Slocock. In particular the small red 'no public rights of way' sign, presently in place on the wall of the Tattoo Parlour, adjacent the slipway (point A), which Mr Short manufactured and states was in place from 1979, is not shown in that location on the photograph. Mr Bushby also states that the sign above the entrance to the body shop in the vicinity of point B1 was placed there in the 1980s.

- As the gate at point B1 appears to have been erected as recently as 2002 it seems reasonable to assume that those witnesses referring to gates being locked prior to this time are referring to the gate at point E, as that would have been the only gate on any of the claimed routes at that time. Mr Bushby states that this gate was closed only occasionally, once or twice annually, but people could still get through, nobody was ever stopped. The gate at B1 was locked once or twice a year after it and the associated fence were erected in 2002, this post-dates the previously accepted date of challenge (1979) by some 23 years.
- Any remaining issues raised by the objectors have already been dealt with in the earlier reports.

4.6 Mr D Waters, acting on behalf of the owners of Crown Mead (B1 to C1), wrote on 12 April 2016 stating they had no objection to the proposal providing they would not be held liable for any maintenance. It was not possible to confirm that would be the position. Mr Waters wrote again on 13 May 2016 objecting to the proposal on the grounds that the route ought to be adopted.

- The grounds for this objection are not relevant to the question of whether or not the public rights claimed exist.

4.7 In a statement presented to the Committee at their meeting on the 12 March 2015, Mr I Spiers, on behalf of the Sloccock Trust, reiterated the objectors' opinion that signs had been in place since 1979 and that there was no evidence of a right of way over the land in question, which, it was suggested, had been in the ownership of Mr H Sloccock since 1949. Particular reference was made to the statutory declaration made by Mr H Sloccock in 1987.

- The information provided by Mrs McCartney in respect of the transfer of the land (as shown between points A and B) from her late husband to Mr H Sloccock, indicates that Mr H Sloccock did not own this land until 1988.
- The evidence from Mr Bushby indicates that there is some doubt as to when the signs were erected on the Tattoo Parlour wall and above the entrance to the Bodyshop workshop.
- It should be borne in mind that the documentary evidence relating to the parts of the routes as shown from A to B and from A to X demonstrates, on balance, that this part of the claimed route was already a public highway long before any of the signs, gates and other paraphernalia had been erected.

4.8 On 10 October 2016 Mr C Sloccock responded to the evidence received following the publication of the Order as follows:

- (a) Mr McCartney had an interest in the land only for a short period of time.

- (b) Mr Slocock's father had preserved the private status on the White's behalf, purchasing part of Mill Bank House from Mr White in 1950. There has been a long history of collaboration between his father and the previous owners going back to Mr Lambourne, when they acquired the land from the Ellis' and similarly over the road.
- (c) Access to what is known as the Crowther land [Supermarket site] was controlled, as confirmed by Mr Bushby, access to other property, Millbank House, the garage and cafe premises, was and remained by invitation or permission as private hereditaments. Mr Bushby confirms that the gate [point E] was closed "(locked 24hrs)" as confirmed by others.
- There is a conflict between the evidence provided by Mr C Slocock and Mr Bushby.
- (d) Mr Slocock also stated that no public right of way is identified in the deeds over any of the land in question, only private rights of way. He questions why Mr McCartney would have designated the land as a public right of way as he would then have had no need to reserve a private right of way and he is sure his father would not have acquired the land if such a right existed. He also states that East Dorset District Council discussed the possibility of a public right of way over the Estate land, as they knew none existed.
- Evidence discussed earlier indicates that public rights over the area A to B were accepted by the landowner in 1988.
 - Public and private rights can both exist over the same land.
 - East Dorset District Council is unlikely to have been aware of any recorded or unrecorded public rights over the land at the time of its response as the Order routes are not recorded.
- (e) Mr Slocock refutes the notion that Mr McCartney acknowledged the existence of or intended that a right of way existed over the land as no such rights have been registered or proven. He does not accept that the County Council has demonstrated the existence of a public right of way and certainly not a highway.
- Public rights do not have to be recorded on the title in order to exist.
- (f) He also notes that the supermarket development closed the site for 12 months during its construction.
- The effect of the supermarket construction on the validity of the application was dealt with in the earlier report.
- (g) Mr Slocock reiterates that signs saying "Private Property No Public Right of Way" had been put in place to prevent the accrual of public rights. He says that these signs were replaced when vandals removed them. Other people can confirm these signs, their location and that they have been in place long before Mr Bushby suggested they had.

- As it is now apparent that Mr Slocock did not own the land, although he suggests he was managing it on behalf of the former owners prior to 1985, this raises a question as to which land the notices related to, the application route A – A1 – B or to the land and other property that Mr Slocock did own at that time. However, if the signs did relate to the application route, they would have been sufficient to have brought rights into question.
- There is a conflict in the evidence provided to the County Council.

(h) Mr Slocock concludes by suggesting that what has confused people is that both he and his father had been consistent in the placing of the signs and the locking of the gate(s), which was done with the knowledge of the then owners of the land, whilst also allowing the public access at other times.

- If the area A – B – B1 was already public highway, notices and locked gates would have had no effect on the public rights.
- Signs would be relevant to parts of the route claimed as public due to use.

4.9 In opposing the application, representatives of the Slocock Trust claimed that under a Town and Country Planning Act Section 52 agreement dated 30 September 1977 between the East Dorset District Council and Arthur Oakes Developments, the paths within the Crown Mead development were to be “laid as public rights of way”. They expressed great concern that the Committee were not informed of this fact and that the public rights of way being sought had already been dedicated.

- During the initial investigation this document had not been found and Dorset County Council had no record of such a dedication.
- A copy of the document was recently acquired from the District Council. A Section 52 agreement is the forerunner of what is now referred to as a Section 106, under which the developer agrees to undertake certain works as part of the development for which they were granted planning permission.
- It appears that there was an intention on the part of the developer of the site that certain paths within the Crown Mead development were to be dedicated as public rights of way. However, the only part of the claimed routes affected is that shown between points C and D, part of which was not owned by the developer.
- Although this appears to have been the intention of the developer, no such dedication actually took place. It might be considered that this document provides support of an inference of dedication when taken together with the use by the public.

4.10 On 31 October 2016 Mr I Spiers submitted comments on the evidence received following publication of the Order. Mr Spiers acts on behalf of the Slocock Trust.

4.11 In respect of Mr Bushby's evidence:

- (a) Mr Speirs suggests that Mr R Bushby acknowledged that the public were allowed access over that part of the claimed route A – B – B1 in order to access the car park.
- (b) Mr Speirs states that this part of the route (A – B – B1) was 'controlled' and submitted copies of letters from Preston and Redman Solicitors dated June 1962, two of which were addressed to Mr Bushby Senior. These letters, which had been sent on behalf of Mr Crowther, related to his belief that cars were being parked on Mill Lane, presumably on that part from A to B1, illegally. Mr Crowther was attempting to negotiate a 'licence' allowing parking for a weekly fee. Mr Speirs believes that this provides evidence to the effect that the area was 'controlled'.
 - It is not clear on what basis or authority Mr Crowther sought a licence fee as he was not the landowner of the part of the route from A – B – B1.
 - Documentary evidence indicates, on balance, that part of the route A – B – B1 was a public highway originally dedicated at some time prior to 1900. Action undertaken by Preston and Redman Solicitors on behalf of a landowner or purported landowner would not extinguish a pre-existing public highway.
- (c) Mr Speirs refers to that part of Mr Bushby's statement in which he related that the gate at point E was closed "occasionally but people could still get through or over it". Mr Speirs interprets this as confirmation that the gate must have been locked.
 - The representations and statutory declaration considered do not state that the gate at point E was ever locked, only that on occasions it was closed. The information available indicates that people still used the route and the evidence needs to be tested to determine whether the closure of the gate was sufficient to evidence a challenge to use or a lack of intention to dedicate and how the periods of user evidence are affected.
- (d) Mr Speirs questions Mr Bushby's belief that not all of the signs were in the locations at the time (1979) suggested by Mr Slocock, and refers to written statements and statutory declarations that would support this.
 - To the extent that the presence of signs is relevant, there is a conflict in the evidence provided.
- (e) Mr Speirs refers to the final paragraph of Mr Bushby's statement, questioning why it had not been submitted to the Committee.
 - The statement from Mr Bushby was made in response to the publication of the Order and was not available prior to the presentation of previous reports.

- 4.12 In respect of Mrs McCartney's evidence, Mr Speirs states that there was no provision for a right of way for the public at large within the agreement and argues that had there been so there would have been no need for a private right of way.
- Documents relating to the transfer of the land from Mr McCartney to Mr H Slocock are referred to above and attached as Appendix 5.
- 4.13 Mr Speirs discusses the Finance Act, how deductions were made and the forms that landowners completed. Mr Speirs notes that in this case it is quite clear that the corresponding Field Book shows that no deductions were made by the Valuer to indicate that there was a public right of way through the property.
- It is not clear to which part of the Order routes Mr Spiers is referring.
- 4.14 With respect to that part of the route between points A – B – B1 Mr Speirs states that the exclusion of the route does not provide cast iron proof as to its status being that of a public right of way and, referring to the Planning Inspectorates Consistency Guidelines, concludes that without further proof such evidence can be completely discounted in the reports and decisions taken.
- The interpretation of the Finance Act is an important consideration in determining the existence or otherwise of highway rights over land excluded from valuation on the map. Paragraph 11.7 of the Consistency Guidelines states that *"if a route in dispute is external [excluded] to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion"*.
 - In the concluding comments to Section 11 of the Consistency Guidelines it is stated that the *"Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value" ... "It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending upon the circumstances"*.
 - Other documents relating to the status of land excluded from valuation on the Finance Act map have been considered in earlier reports.

- 4.15 Mr Speirs continues by discussing that part of the route as shown from A to X. Mr Speirs concedes that the area was used for the watering of horses but suggests that the water level would have been at point A. He further suggests that reference to the highway records of the 1800s indicates that the drinking point was in Mill Lane, point A rather than at point X, and suggests that the reference to the deposit of waste by Mr Ellis, the owner of the mill at the time, “adjacent to the watering point”, supports this. From this he therefore concludes that the water level must be at point A. Mr Speirs further suggests that the level of the River Allen was regulated to suit the Mill and in order for it to operate the water level would have had to have been higher than point X.
- The Highway Board records refer to the “removal of rubbish deposited at the Public Drinking Place” and “an encroachment by Mr Ellis at the mouth of the Drinking Place in Mill Lane”. It is not clear where the quote used by Mr Speirs is from.
 - The alternative interpretation of the Highway Board Minutes should be a matter for further submissions to the Planning Inspectorate.
 - The Ordnance Survey First Edition Six Inch Map, surveyed and published in 1887, has water features coloured and clearly depicts the level of the River Allen as equating approximately to point X.
 - The Finance Act 1910 plan clearly shows that A to X is excluded from valuation, strongly suggesting that it was regarded as a public highway. The public status of the route A to X is supported by several other documents including the Highway Board minutes which describe it as a “Public Drinking Place”.
- 4.16 Mr Speirs refers to an email sent to Mr Slocock on 21 October 2016 requesting evidence of his authorisation to act on behalf of the former owners of the land through the erection of notices to prevent the accrual of a public right of way. Mr Speirs states that the “No right of way” notices were fixed to the property of Mr Slocock and did not require further approval and as a beneficiary of a private right he was entitled to preserve those rights through the erection of appropriate notices.
- The information or evidence relating to the signs and how they affected land not, at the relevant time, owned by Mr Slocock needs to be clarified.
- 4.17 Mr Speirs provided a statement made by Mr Graham G Stephenson formerly of Wimborne. Mr Stephenson was born in Wimborne in 1945, spending most of his childhood there and after leaving school he worked in Mill Lane at a panel beater’s for about 3 years.
- 4.18 Mr Stephenson states that, to his own knowledge, there was no route to the north of the river, which led onto the open meadows grazed by cattle. The land known as Crown Mead was owned by Mr Crowther who operated ABC taxis and access was gated and private.

- As discussed in the previous report the documentary evidence suggests that the route from E to F has physically existed since the early part of the 17th Century. It is accepted that there is little if any evidence to support the existence of the route beyond point F to point G until approximately 1972.
- Use of parts of the route E – F and F – G was challenged at different dates. Signs claimed to have been erected in 1979 appear to challenge use of E – F, but not F – G.
- Mr Stephenson's statement in respect of the access into Crown Mead, which he says was gated and private, supports the statements of several witnesses, the majority of whom also noted the gate but do not recall it being locked or that it prevented their use of the route.
- Mr Stephenson confirms that there was a through route commencing from the High Street, point D, and continuing onto Mr Crowther's Land, the former car park and then to Mill Lane (D – C – B – A).

5 Conclusions

- 5.1 The Committee resolved that an order should be made on the basis that the evidence considered demonstrated that rights of way not shown on the map and statement subsist or are reasonably alleged to subsist. As the evidence was in dispute the Committee were not asked to consider whether, on balance, any order should be confirmed.
- 5.2 As objections have been made to the Order, the County Council cannot itself decide whether or not to confirm the Order. The Order must be sent to the Planning Inspectorate for an Inspector to consider the evidence and opposing submissions to decide whether or not the Order should be confirmed.
- 5.3 When the Order is submitted the County Council has a responsibility to ensure the available information and evidence is included and suitably presented.
- 5.4 As a result of the publishing of the Order new evidence, provided by both objectors and supporters, has provided additional support to the conclusion that, on balance, the public rights over these routes exist.
- 5.5 Therefore, it is recommended that the County Council supports the confirmation of the Order when submitted to the Secretary of State and in any further proceedings.

Andrew Martin
Service Director Highways

Regulatory Committee

6

Dorset County Council



Date of Meeting	12 March 2015
Officer	Director for Environment and the Economy
Subject of Report	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
Executive Summary	<p>Following an application made in 2006 to add several footpaths at the Town Centre, Wimborne Minster, leading from Mill Lane (now unsupported by the absent applicant), a report was compiled to consider the evidence relating to the status of two of the routes.</p> <p>In addition, during the investigation evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen.</p> <p>Following publication of the report and immediately prior to the Committee meeting of 27 November 2014 a substantial amount of additional evidence was submitted on behalf of the landowner. The matter was therefore deferred to enable the additional evidence to be considered.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>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 February 2014, which involved landowners, user groups, the local county Councillor, 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>60 user evidence forms from users of the claimed routes (but not in relation to the route A – X) were submitted during the investigation.</p> <p>Additional evidence was submitted on behalf of the landowner and has been discussed in this report.</p> <p>Budget:</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>Risk Assessment:</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>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record:</p> <p>(i) A footpath as shown G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D; and</p> <p>(ii) A restricted byway as shown A – B – B1; and</p> <p>(iii) A restricted byway as shown cross-hatched A – X on Drawing 14/07/3;</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>Reasons for Recommendations</p>	<p>(a) The available evidence for the part of the route proposed to be recorded as:</p> <p>(i) A footpath G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D, shows, on balance, that the right of way as claimed subsists or is reasonably alleged to subsist;</p>

	<p>(ii) and (iii) Restricted byways A – B – B1 and A – X, shows, on balance, that public vehicular rights subsist or are reasonably alleged to subsist. As there is no evidence that exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for restricted byways over these routes; and</p> <p>(b) The evidence shows, on balance, that these routes should be recorded as a footpath and restricted byways 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 and proposals for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieve the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • 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
<p>Appendices</p>	<p>1 - Report to and an extract from the minutes of the Regulatory Committee 28 November 2014</p> <p>2 - Additional evidence submitted on behalf of Mr Slocock - extracts from Statutory Declaration of Horace Lett Slocock dated 18 December 1987</p>
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/T418).</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 evidence can be found on the case file RW/T418, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson, Rights of Way Officer Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add several footpaths in Wimborne Minster town centre was made by Mr A Hewitt on 10 January 2006. A report in respect of this application was due to be considered by the Regulatory Committee at their meeting on the 27 November 2014 (attached at Appendix 1). However, several additional documents and a covering letter were submitted by Mr A Cosgrove on behalf of one of the interested parties on the 26 November 2014, leaving insufficient time to analyse them prior to the Committee meeting. Consequently, consideration of the report was deferred to allow the new documentary evidence to be reviewed and included in this report.
- 1.2 All the additional evidence is discussed at paragraph 3 below.
- 1.3 It should be noted that the recommendation (a)(ii) contained in the first report should have read A – B – B1, as contained in the conclusions of the report and not A – B, as stated.

2 Law

- 2.1 A summary of the law is contained in Appendix 2 of the report to the committee dated 27 November 2014 (Appendix 1 to this report).

3 Additional Evidence from Mr Cosgrove on behalf of Mr C Slocock (Appendix 3) (copies available in the case file RW/T418)

- 3.1 In his covering letter Mr Cosgrove states that he is a Chartered Surveyor and has lived in Wimborne since 1955. Mr Cosgrove enjoyed a brief period of employment with Dorset County Council in the Valuation and Estates Department before starting his own company in 1989. Whilst employed by the County Council he was involved in the purchase of land for highway improvements, the experience from which he states developed his understanding of public highway rights.
- 3.2 In representing the Slocock family Mr Cosgrove objects to those parts of the proposal as shown between points A to B, B – E – F and B – B1 – B2 on Drawing 14/07/3 (Appendix 1 to the November 2014 report) whilst acknowledging that the route as shown from A to X appears valid although he believes that the width may be overstated.

Summary and Analysis of Additional Evidence

Abstract of Title & Conveyance

- 3.3 The first pieces of additional evidence submitted are those relating to an **Abstract of Title of 1949** in respect of the property known as **Millbank House** (refer to the Drawing 14/07/3, Appendix 1 to the November 2014 report), formerly the **Town Brewery**, and a conveyance of the same year in respect of a freehold store and garage premises to the south side of **Mill Lane**. Mr Cosgrove notes that the title document commences with reference to a conveyance dated 12 March 1914, within Schedule 1 of which the land is described and reference made to a plan dated 15 March 1875.

- 3.4 Mr Cosgrove further notes that private rights of way have continued to be granted to **Millbank House** and other buildings and makes reference to the accompanying conveyance document of 1949, which includes a plan showing that the **Old Malthouse** (now the car body shop and tattoo parlour) was granted a private right over both the brown and yellow coloured land. This land includes that part of the claimed routes as shown between points A – B – B1 on Drawing 14/07/3.
- 3.5 Mr Cosgrove's argument is that this particular document demonstrates that a private right also existed over the land crossed by that part of the claimed route as shown between points A – B – E – F. Consequently, he is of the opinion that this suggests that there was no existing public right of way, as if one had existed there would have been no requirement for any private rights over the land.
- Mr Cosgrove is correct in as much as the private rights which he describes were granted to the purchaser of the properties concerned. However, he is incorrect to reach the conclusion that this provides positive evidence that the routes claimed could not, therefore, be public highways.
 - It is common knowledge that public and private rights can happily co-exist and there are many examples of such instances. There are various reasons to explain such occurrences, for example, the private rights may be higher than the public rights, e.g. providing private vehicular rights over a public footpath or bridleway.
 - In this particular instance the private rights are vehicular over part of a route which, on balance, the evidence previously examined indicated that public vehicular rights existed. Whilst this may seem superfluous, the importance of the private rights in this example is that they would not be affected should any existing public vehicular rights be formally extinguished. In establishing that private rights exist, a competent solicitor would ensure that such rights were retained on any subsequent conveyance in case the public rights were extinguished.

Correspondence from the County Surveyor & Highways Information Unit

- 3.6 Mr Cosgrove also submitted as evidence in support of his conclusions a letter received from the **County Surveyor** dated **16 June 1987** and another from the **Dorset County Council Highways Information Unit** dated **1 October 2014**. The **County Surveyor** confirmed that the definitive map had been inspected and there were no public rights of way within the area of **Mill Lane**. The response from the **Highways Information Unit** was in respect of a question as to the extent of the publicly maintained highway, **Mill Lane**. The response included a plan indicating that the publicly maintained highway did not extend any further east than point A (as shown on Drawing 14/07/3).

- Neither of these documents provides any evidence in support of Mr Cosgrove's conclusions. The response of 1987 merely confirms that at that time there were no **'recorded'** public rights of way in the vicinity. However, as Members will be aware, this does not necessarily mean that public rights did not exist over the route as another reasonable explanation is that, if they did, they simply had not yet been recorded.
- The letter from the **Highways Information Unit** confirms that according to their records the **publicly maintained highway** did not extend eastwards beyond point A. However, this response on its own does not provide confirmation that public rights did not exist beyond point A. As detailed in paragraphs 8.18 to 8.21 of the November 2014 report, the **List of Streets** and any accompanying documents, from which this information was provided, relate only to those highways that are publicly maintained. Public highways that are not publicly maintainable, or those which for one reason or another have yet to be recorded, are not and should not be recorded upon it.

Preparation of the first definitive map

3.7 Mr Cosgrove also refers to the procedures during the production of the **first definitive map**, which commenced with a survey of the area undertaken during 1951. He suggests that, if historical public rights had existed over the claimed routes, they would have been discovered during this process.

- Whilst it is a fact that the route was not recorded during this process, as members will be aware, one of the functions of the **Regulatory Committee** is to consider applications to record not only those routes that have come into existence since the publication of the definitive map but also those that may have been overlooked or omitted at that time.
- It should also be noted that the primary object of the original survey was the recording of public rights of way on foot or horseback, with provision for the recording of public vehicular routes, used mainly by the public on foot or horseback and known at the time as 'CRFs' and 'CRBs', later 'RUPPs' and eventually 'BOATs'. However, it was not the purpose of the survey to record public carriageways and as, on balance, the available evidence suggests the routes from A to X and A to B1 are public carriageways it may have been the case that these routes were not included within the survey as it was thought they were in fact public roads.

Finance Act 1910

3.8 Mr Cosgrove refers to the records of the **Finance Act 1910** and the "assumption" made within the November report that this is indicative of a public highway. Mr Cosgrove notes however that the accompanying **Field Book** records that the land was not affected by any easements and that all tax had been paid.

- The records from the **Finance Act 1910** are discussed in paragraphs 8.1 to 8.4 in the November 2014 report.

- To clarify the findings from the Finance Act records, as stated in paragraph 8.1 of the November 2014 report Mill Lane, including that part of the application route as shown from point **A to B** and the route shown from **A to X**, were **excluded from valuation** and these 'parcels' of land therefore have no hereditament numbers. As a consequence there are no corresponding entries within the Field Book relating to these parcels as, being public highways, they were not liable to valuation or taxation.
- The field book entries to which Mr Cosgrove refers relate to the **adjoining properties** abutting or containing the remainder of the claimed routes as shown between points **B1 to D** and **E to G**. Although these records indicate that the owners of these parcels did not acknowledge the existence of any public right of way over them, 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.

Mr H L Slocock Statutory Declaration

- 3.9 Mr Cosgrove submitted a copy of a statutory declaration, with an accompanying plan and several attachments, made by Mr H L Slocock in 1987. However, Mr Cosgrove makes no comments about it other than it relates to "land where there was a right to water". Although Mr Cosgrove makes no further comments in respect of this document it does provide some useful information in respect of this application.
- 3.10 At paragraph 4 Mr H L Slocock confirms that he purchased the **Old Brewery**, now the car body repair shop and tattoo parlour located to the south of that section of Mill Lane as shown between points A to B, in November 1949. By reference to an accompanying plan dated July 1987 he acknowledges that this conveyance did not include any part of that land as shown between point A and X on Drawing 14/07/3.
- This confirms that Mr Slocock did not own the land as shown from A to X at the time he purchased the Old Malthouse.
- 3.11 He further stated that since he had acquired the land he had enjoyed sole use of the adjoining land (A to X) initially for the parking of cars and that in 1966 he placed a builder's skip on the land for both his and his tenants use. Mr Slocock also provides the width of the route A to X, which by reference to the accompanying plan is shown to be approximately 3.6 metres (11' 10") at its narrowest point, identified as being between the points A and B shown on his accompanying plan.
- Whilst Mr C Slocock has now acknowledged that the route A to X is a public highway he still disputes the width of it. Mr H L Slocock's statement and plan clearly identifies the whole of this piece of land, it being defined by the boundaries formed by the **Old Malthouse** on the eastern side and the retaining wall located to the west. He acknowledges that the width of this route was 3.6 metres at its narrowest point.

3.12 Furthermore, in respect of this land, Mr H L Slocock states that to his own personal knowledge the route A to X was used by the Brewery to water the dray horses, which use he believed was ancillary to the Malt House and Brewery and was in use up to 1936, both these properties now being owned by him. To the best of his knowledge no person or body had ever objected to the placing of the skip.

- The use of the route A to X for the watering of horses by the brewery would be in accordance with it being identified as a public watering place. Had this land been owned by the brewery, serving purely the requirement of the brewery for the watering of their horses, it would be expected that it would not have been excluded from valuation during the survey in respect of the **Finance Act 1910** but instead would have been attributed to them.

3.13 At paragraph 5 Mr H L Slocock acknowledges that in 1986 he erected posts on either side of the entrance to the route shown from point A to X along with a chain and padlock to prevent access when the estate was closed. No objections to his enclosure of the land had been received.

- It should be noted that a public highway cannot be adversely possessed. Consequently, although Mr H L Slocock enclosed the land in an attempt to register and acquire it, as the available evidence demonstrates, the route was a public highway prior to his actions and still remains a public highway. Any attempt to acquire the land through occupation was destined to be unsuccessful.

3.14 At paragraph 8 Mr H L Slocock reveals that in August 1987 he instructed his Solicitors to investigate with the previous **Local Authority and Council** whether they had any knowledge as to title to or rights over the pink land (A to X). Copies of these letters are attached to the declaration. Of particular interest is that, within these letters, Mr Slocock recalls that at one time, many years ago, a notice had been fixed to the wall of the **Old Malthouse**, perhaps by the old **Urban District Council or Town Council** he questions whether either authority may have had a proprietary interest in this land.

- On balance, the available evidence indicates that A to X is a public highway, something the owner of the adjoining property, Mr C Slocock, now acknowledges. However, as further support to this conclusion, consideration ought to be given to the reference by Mr H L Slocock (contained in the letters attached to his **Statutory Declaration**) to a notice he believed to have been erected “many years ago”, possibly by the former **Town or Urban District Council**. This notice may well have been the same or a replacement of the notice that the **Wimborne District Highway Board** had ordered the **Surveyor** to erect in 1886 as detailed in paragraph 8.11 of the November 2014 report.

3.15 At paragraph 9 Mr H L Slocock refers to his purchase of the Old Brewery in July 1946 and the adjacent parcels of land coloured green and yellow. The yellow land is that over which the application routes as shown from E to F passes. Mr Slocock acknowledges that he allowed access over this land on foot but that he maintained a gate at a point marked X on the plan (point F on Drawing 14/07/3), that until recently he “shut” once a year. He further states that on a post at X there is a plaque indicating no public right of way.

- The gate located at point F has been discussed within the November 2014 report, for example at paragraph 10.9(d). Mr Speirs, on behalf of the present owners, suggested that use of the route B – E – F – G had been prevented by the occasional closing of a gate at this point. It has also been suggested that this gate may have been locked but any evidence to support that conclusion is only applicable to recent times.
- Mr H L Slocock’s statement provides additional support to the conclusion that the gate at F was, until recent times, not locked. He describes how his practice was to ‘**shut**’ the gate at least once a year; there is no suggestion that this gate was ever locked. Consequently, users of the route would have been able to open and close the gate: the action of shutting the gate would not have prevented their use of the route.

Land Charges Search 1992

3.16 Mr Cosgrove submitted a copy of a **land charges search** undertaken with the **East Dorset District Council** in **June 1992** in respect of the properties known as 5 and 5a Mill Lane and a coloured section of Mill Lane commencing from its junction with The Square approximately to point A as shown on Drawing 14/07/3. Mr Cosgrove notes only that the search revealed no public right of way.

- The search included what was then an optional enquiry numbered 18. Enquiry 18 related to whether any public right of way that abutted or crossed the property had been shown in a definitive map or revised definitive map.
- With respect to the routes as shown from A to B and A to X, as neither of these routes had been recorded on the definitive map or any other register of public rights of way then the “NO” response given was correct.
- The remainder of the application routes E to G and B to D did not cross or abut the property identified in the request so even if they had been recorded upon the definitive map the answer to enquiry 18 would still have been “NO”.

Transfer of Part 1997

3.17 Mr Cosgrove included a copy of a document dated 14 June 1993, which appears to be in respect of the transfer of property from one party (Messrs C C Wilson, G B Slocock and C J Slocock) to another (Mr & Mrs C J Slocock). In his list of submission documents Mr Cosgrove refers to it as “Transfer of Part 1997” but this does not appear to correspond with the date on the document.

3.18 The reference number DT207640 suggests that it is a Title number and emanates from the Land Registry and the accompanying plan bears a Land Registry stamp. There are no further details provided although Mr Cosgrove refers to a “recent grant of Private rights of way”.

- There is insufficient information provided to comment meaningfully on this document. However, it may have been introduced in support of the suggestion that the existence of private rights provides evidence against the existence of any public rights over the same route. Should this be the case then the response to the evidence from the Abstract of Title at paragraphs 3.3 to 3.5 above applies.

3.19 Mr Cosgrove also makes reference to a **Highway Search** dated **1 October 2014**, which he describes as defining the highway. Mr Cosgrove provides no further detail as to what he concludes from the response given by the **Highways Information Unit**. The response, which includes a plan, clearly defines the extent of the maintainable highway, which terminates at approximately point A (Drawing 14/07/3).

- The letter from the **Highways Information Unit** confirms that according to their records the ***publicly maintained highway*** did not extend eastwards beyond point A. However, this response on its own does not provide confirmation that public rights did not exist beyond point A. As detailed in paragraphs 8.18 to 8.21 of the November 2014 report, the **List of Streets** and any accompanying documents, from which this information was provided, relate only to those highways that are publicly maintained. Public highways that are not publicly maintainable, or those which for one reason or another have yet to be recorded, are not and should not be recorded upon it.

Letter and Map from Mr D Wheelton JP

3.20 The last piece of evidence offered comprises a letter and map from Mr D Wheelton, Devonport, Tasmania, Australia dated 25 November 2014, in which he makes comments and observations on the November 2014 report.

3.21 Mr Wheelton refers to paragraph 1.2 of the November report and questions the validity of the application as the original applicant could not be traced. He also notes that there appears to be no evidence of the original written application within the report.

- It should be noted that Mr Wheelton had already made a submission dated 6 May 2014, which is summarised and analysed from paragraph 10.7 of the November 2014 report.

- The question as to the validity of the application, in the absence of the original applicant, has been raised on a number of occasions during the investigation. The issue is dealt with at paragraph 10.8 (i) of the November 2014 report.
- With respect to the 'original written application' it is stated at paragraph 1.1 of the November 2014 report that the application was received on 10 January 2006. The application itself is contained within the case file, RW/T418 and has been available for public inspection since receipt.

3.22 Mr Wheelton refers to paragraph 8.19, which relates to the List of Streets, noting that the adopted highway appears to end at point A on Drawing 14/07/2, now superseded by Drawing 14/07/3.

- Mr Wheelton is correct in as much as the records indicate that the adopted, publicly maintainable highway ends at point A. However, this does not in itself determine that the route east of point A was not a public highway as, in this case, it may be unrecorded or, even if it were recorded, depending on the circumstances surrounding its dedication, it may not be maintainable at the public expense.

3.23 Mr Wheelton refers to paragraph 8.28 (a) and the subject of what was known as Crowther's Car Park. Mr Wheelton reiterates the comments he made in his earlier correspondence, adding that he now believes that the gates to the car park were closed and locked to both pedestrians and vehicles at weekends and bank holidays.

- It should be noted that Mr Wheelton's recollection of the gates being closed and locked to pedestrians and vehicles comes after having the opportunity to consider the published November report.
- In his earlier statement Mr Wheelton recalled that the gates to the car park were occasionally closed but had no recollection of them ever being locked or, when closed, whether this was to prevent vehicular access, pedestrian access or both.
- Mr Wheelton's original response is summarised and analysed at paragraph 10.7 of the November 2014 report.
- As detailed within the report, Mr Wheelton's recollection of events is disputed by the user witnesses.

3.24 Mr Wheelton notes that at paragraph 8.45 of the November 2014 report there is reference to the presence of a gate, fence or hedge at point F, but makes no further comment.

- The fact that there is and may have been a gate at point F is not disputed. However, a gate in itself does not necessarily prevent the public from using a route unless it can be demonstrated on balance that it was locked. There is little evidence to suggest that this was the case at least prior to 1979, when it is considered that the public's use of the route was brought into question.

3.25 Mr Wheelton quotes the first sentence of paragraph 8.45, this being the summary of the evidence that was provided by the Ordnance Survey maps. He states that there are references throughout the report with respect to there being no evidence that the route was ever a public highway. However, he does not quote or reference them nor does he make any further comments.

- Without references to the points that Mr Wheelton disputes it is not possible to comment.

3.26 Mr Wheelton makes the following comments on the summary of his initial submission contained at paragraph 10.7 in the November 2014 report.

- (a) He confirms that he was employed by Mr H L Slocock.
- (b) He is now of the opinion that the gate at point F was not just closed but was locked with a padlock and chain.
- (c) He remains of the opinion that gates to Mr Crowther's car park were closed to prevent both pedestrian and vehicle access. He does not state that they were locked and whether, in fact, Mr Crowther ever closed any gates is disputed by the user witnesses.

3.27 Mr Wheelton refers to the rather poor quality photograph which is discussed within the November report at paragraph 10.9 (m). He confirms what was written on the sign attached to the gatepost and notes that the gate at point F, which is shown in the picture, is open and not locked. This he believes is because it was not a weekend or public holiday but a normal workday evidenced by the cars that would have belonged to people working in the units.

- All of the points Mr Wheelton refers to are considered within the analysis and summary at paragraph 10.9 (m). As stated within the report, as the photograph is undated and the age of the car at the time the picture was taken unknown it is of little value in determining when the notice was initially erected.

3.28 Mr Wheelton concludes by stating that, in his opinion, there has never been a public right of way over the property in Mill Lane and that the report is biased towards making the land a public right of way.

- On balance, the evidence suggests otherwise.

4 **Conclusions**

4.1 The majority of the evidence submitted as 'additional' evidence by Mr Cosgrove adds little, if anything, to his conclusion that, save for that part of the route shown from A to X, the claimed routes cannot be considered as public highways. His conclusions in respect of the land searches, title deeds, correspondence with the County Surveyor and the Highways Information Unit and also the records derived from the Finance Act 1910, are incorrect.

4.2 The statutory declaration made by Mr H L Slocock has helped to clarify certain issues such as the ownership of land and, in particular, that the gate at point F was never locked but merely closed.

- 4.3 Mr Wheelton has expressed his opinion as to what he believes took place but this is uncorroborated, lacking detail and provides no times or dates and is disputed by the majority of the user witnesses.
- 4.4 Therefore the following recommendations are made:
- (a) That an order be made to record the route as shown between points A – A1 – B – B1 as a restricted byway.
 - (b) That an order be made to record the route as shown between points A – X as a restricted byway.
 - (c) That an order be made to record the route as shown between points E – F – G as a footpath.
 - (d) That an order be made to record the route as shown between points B1 – B2 – B3 – C – C1 – C2 – C3 – D as a footpath.
- 4.5 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

Regulatory Committee

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Dorset County Council



Date of Meeting	27 November 2014
Officer	Director for Environment and the Economy
Subject of Report	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
Executive Summary	<p>Following an application made in 2006 to add several footpaths at the Town Centre, Wimborne Minster, leading from Mill Lane (now unsupported by the absent applicant), this report considers the evidence relating to the status of two of the routes.</p> <p>In addition, during the investigation evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>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 February 2014, involving 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>60 user evidence forms from users of the claimed routes (but not in relation to the route A – X) were submitted during the investigation.</p> <p>Any relevant evidence provided has been discussed in this report.</p> <p>Budget:</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>Risk Assessment:</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>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record:</p> <p>(iv) A footpath as shown G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D; and</p> <p>(v) A restricted byway as shown A – B; and</p> <p>(vi) A restricted byway as shown cross-hatched A – X on Drawing 14/07/3;</p> <p>(c) 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>Reasons for Recommendations</p>	<p>(c) The available evidence for the part of the route proposed to be recorded as:</p> <p>(iii) A footpath G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D shows, on balance, that the right of way as claimed subsists or is reasonably alleged to subsist;</p> <p>(iv) and (iii) Restricted byways A – B and A – X shows, on balance, that public vehicular rights subsist or are reasonably alleged to subsist. As there is no evidence that exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for restricted byways over these routes; and</p> <p>(d) The evidence shows, on balance, that these routes should be recorded as a footpath and restricted byways 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 and proposals for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieve the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • 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
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<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 14/07/3 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1910 Finance Act map ▪ 1846 Tithe map ▪ 1878-1892 Highways Board minutes ▪ 1903 and 1916 Wimborne Urban District Council minutes ▪ 1613-14 Plan of Wimborne Minster by Richard Harding ▪ 1613 Hanham Estate plan ▪ 1832 Bankes Estate Map of the Town of Wimborne Minster ▪ 1889 Ordnance Survey First Edition map scale 25 inches to the mile (1:2500) 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show level and periods of use of sections of the routes 5 - Table of additional evidence and representations in support of the proposals 6 - Table of evidence and representations opposing the proposals 7 - Table of other submissions received
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/T418)</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.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T418, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add several footpaths in Wimborne Minster town centre was made by Mr A Hewitt on 10 January 2006.
- 1.2 At the commencement of the investigation it was discovered that the applicant, Mr Hewitt, had left the area and despite attempts to contact him his whereabouts remain unknown.
- 1.3 As sufficient evidence had been provided by the applicant to raise a reasonable allegation as to the existence of public rights over some, if not all, of the routes claimed, it appeared both reasonable and in the interest of the public to pursue and determine the status of the alleged routes.
- 1.4 Although there is no longer an applicant, a local resident, Mrs S Hopkins, offered to act as a local point of contact and assist in the gathering and collating of information in respect of this case.
- 1.5 The route claimed is that shown on Drawing 14/07/3 commencing from point A, Mill Lane, Wimborne Minster and terminating at point D on the High Street. There is a further section or spur that commences from point B and terminates at point G, Crown Mead.
- 1.6 From point A the route leads east for approximately 25 metres to point B before following a generally southerly direction, passing through a gate in a recently erected wire fence and between a row of bollards at point B1, then continuing southerly along a tarmac or paved area on the eastern bank of the River Allen to the west of the adjacent supermarket to point C, a distance of approximately 112 metres. From point C the route continues in a westerly direction crossing the River Allen by means of a bridge then passing between a row of bollards at point C1 and a second row of bollards at point C2 before terminating on the High Street at point D, a distance of approximately 70 metres. The width of the route from A to A1 is approximately 5 metres, from A1 to B approximately 9 metres, from B to B2 approximately 10 metres, from B2 to B3 approximately 3 metres, B3 to C 5 metres, narrowing to 2 metres then 4 metres at C, widening to 5 metres and narrowing to 3 metres near D and 4.6 metres at the splay at point D.
- 1.7 The northern section or spur commences from point B leading northwards through a covered passageway at point E, before crossing a bridge over the River Allen and through a pair of ornamental iron gates to point F, a distance of approximately 35 metres. From F the route continues north, entering a public car park and then turning eastwards before terminating at a public road, Crown Mead, shown as point G, a distance of approximately 52 metres.
- 1.8 During the course of the investigation evidence came to light to suggest an additional route as shown from A to X may also hold unrecorded public rights. It commences from point A on Mill Lane following a route generally south and east to the bank of the River Allen at point X, a distance of approximately 20m. The surface is tarmac and the width at A is approximately 4 metres extending to approximately 7 metres at point X.

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/T418)

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/T418)

4.1 A table of user evidence from witness evidence forms and charts showing the periods and level of use of the routes A – D and A – G are summarised at Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 **Additional evidence in support of the proposals** (copies available in the case file RW/T418)

5.1 12 letters in support of the proposals were received as a result of the consultation and are summarised at Appendix 5.

6 **Evidence opposing the proposals** (copies available in the case file RW/T418)

6.1 22 letters or statements, several from the same respondent, were received as a result of the consultation. These are summarised at Appendix 6.

7 **Other submissions received** (copies available in the case file RW/T418)

7.1 Another three submissions were received as a result of the consultation (Appendix 7).

8 **Analysis of documentary evidence**

Finance Act 1910

8.1 Parts of the claimed routes are clearly visible on the **Ordnance Survey maps, sheets 34.8 northeast and southeast at a scale of 50 inches to the mile (1:1250)**, used as the base map for the Finance Act plans. The route as shown from point A to B is excluded from valuation, this being indicated by the colour-washed adjacent boundaries and there being no associated hereditament or parcel number. In addition, a further short section commencing from point A and leading south to the River Allen, shown as point X, is also shown to be excluded from valuation.

8.2 The claimed route to the south as shown from B to C2 is contained within **Hereditament 317** and from C2 to D within **Hereditament 335**. The 'spur' route to the north as shown from E to F is also contained within **Hereditament 317** and from point F to G within **Hereditament 309**.

- 8.3 The accompanying **Field Book** identifies **Hereditament 317** as **Millbank House**, describing it as a “Residence, Lawn and Garden” There were no deductions for public rights of way. However, it was also the site of the **Town Brewery (Ellis & Son)** and the sketch plan of the site within the Field Book entry shows that the site consisted of a number of buildings in addition to the house, namely engine room, stables, malt and barley store, bottling store and wine cellar, all of which occupied the site of the present day Millbank House. In addition the building that is presently used as a car body repair shop and tattoo parlour, which is located immediately to the south of the claimed route as shown from point A to B, was identified as the motor house and store for the brewery.
- 8.4 The exclusion of Mill Lane, including that part of the claimed route between points A to B and A to X, is strong evidence towards the conclusion that they were considered to be public highways, probably public carriageways. The fact that the claimed route between points A and B was not included within **Hereditament 317** and in the knowledge that the **Town Brewery** had both stables and a motor store, the vehicles from which would have had to have used Mill Lane (including that section from A to B), in order to gain access to the wider network of public highways, provides further support towards the conclusion that the part of the claimed route A to B was recognised as being a public carriageway.

Other documents

Inclosure and Tithe Awards

- 8.6 The **1786 Wimborne Inclosure Award** does not include the area of Mill Lane.
- 8.7 The **1846 Wimborne Tithe Apportionment Plan** depicts Mill Lane including that part of the claimed route from A to B1. This section is un-apportioned and was therefore not liable to taxation it is also coloured ochre, being depicted in exactly the same manner as the network of public carriageways to which it connects. The route south from B1 passes through **Apportionments 202, 208 and 210**. At point C there appears to be a bridge depicted over the River Allen but no reference is made to any public rights of way within the descriptions. The route north from point E to F is also contained within **Apportionment 202**. There appears to be a bridge and perhaps a barrier, hedge, fence or gate at point F, the claimed route then passes into **Apportionment 517**, an open field and is not depicted.
- 8.8 Whilst it was not the primary purpose of these documents to depict public highways, in many cases they do as they often form the boundaries of separate apportionments. In this instance it is considered that the lack of any apportionment number and the colouring of the route from A to B1 suggest it was regarded as a public highway, possibly a carriageway and consequently provides additional support in respect of this part of the application.
- 8.9 With respect to the remainder of the claim from point B1 to D, although the plan shows that a through route may have been possible it provides no compelling evidence in support of or against the claim.

- 8.10 With respect to that part of the claim from point E to G, whilst it suggests that passage may have been possible, at least as far as point F, as beyond this point it led into a field, with no obvious means of passage beyond, it seems reasonable to conclude that at this time a through route, in respect of the application route, did not exist.

Highway Board Minutes

- 8.11 One volume of the **Wimborne District Highway Board** minutes has recently been discovered covering the period from **1878 to 1892**. There are several entries relating to **Mill Lane** but of particular interest is an entry from **25 June 1886** that refers to the ***“re-erection of the gates in the Mill Lane and the removal of rubbish deposited at the Public Drinking place”***. It was resolved that the ***“rubbish at the Drinking Place be removed by the Surveyor or levelled and the posts which are still in the ground be sawn level with the Road or taken up at his discretion. It was resolved that leave be obtained for the placing of a notice on the wall of the premises adjoining stating that no rubbish must in future be placed there”***.
- 8.12 In a further entry dated **26 February 1892** the Surveyor reported ***“an encroachment by Mr Ellis at the mouth of the Drinking Place in Mill Lane by the erection of a manure pit and the planting of some shrubs and Messrs Habgood, Wilson and Bartlett were appointed a committee to see Mr Ellis upon the subject”***.
- 8.13 In an entry dated **Friday 8 April 1892** the committee reported that the encroachment had taken place and the Clerk was instructed to write to Mr Ellis and inform him that if he agreed to pay one shilling a year and to remove the manure heap causing the obstruction whenever required to by the Board the manure heap could remain, subject to these conditions.
- 8.14 An entry dated **17 June 1892** records that the Clerk was directed to write to Mr Ellis requesting a reply to his letter of 19 April last regarding the encroachment made by him in Mill Lane.

Wimborne Urban District Council

- 8.15 The **Wimborne UDC Minute Book from 1901 to 1916** also makes several references to Mill Lane. At a meeting of the **Roads, Buildings and Sanitary Committee on 14 September 1903** the Surveyor explained that due to the high level of the water the work on the **Drain Outfall in Mill Lane** was not possible without working in the water.
- 8.16 An entry dated **13 June 1916** relating to the **“Public Drinking Place – Mill Lane”** notes that the Medical Officer for Health and the Surveyor were instructed to ***“inspect Public Drinking Place & river course”***.
- 8.17 Although these entries from the Highway Board Minutes and the UDC provide no direct evidence towards determining the full extent of the public highway known as Mill Lane they do make reference to repairs to a **Drain Outfall** and to the **Public Drinking Place**, both of which were located in Mill Lane. It is considered, on balance, that the Public Drinking Place referred to is located at the end of the route as shown from point A to X on Drawing 14/07/2.

List of Streets

- 8.18 **Section 36(6) of the Highways Act 1980** requires every highway authority to make, and keep up-to-date a **list of all streets** (LOS) maintainable at public expense. The LOS does not list **all** public highways, only those which are maintainable at the public expense. Mill Lane is recorded on the current LOS and has been since local government re-organisation took place in 1974. Prior to this date Mill Lane would have been part of the highway network managed by **Wimborne Urban District Council (UDC)**.
- 8.19 The schedule of roads for April 1974 records Mill Lane as the D40841, describing it as a paved road of 0.41 miles (0.07km) in length. There appears to be an error in respect of the grid reference as only the commencement point is given, this being (SY) 010001. The current schedule provides exactly the same information. This suggests that the adopted public highway ends at approximately point A on Drawing 14/07/2
- 8.20 Dorset County Council records do not record a date of adoption although this road would have been handed over by the Wimborne UDC. Unfortunately, the surviving records of Wimborne UDC are yet to be catalogued and no records relating to this have been discovered.
- 8.21 There is a discrepancy between what is recorded as the adopted network and the **'inspected network'** of public highways. Whereas the **adopted network** ends at point A, the inspected network of public highways continues to the entrance to Millbank House, point B. Whilst there is no explanation for this discrepancy the extent of the highway as recorded on the inspected network is supported by the evidence from the Finance Act 1910, The Tithe Apportionment Plan and several other maps and plans examined.

Estate Maps and Town Plans

- 8.22 The **1613-14 Plan of Wimborne Minster** by **Richard Harding**, although of a rather crude construction nevertheless depicts a route that would generally correspond to that of **Mill Lane**, including that part of the claimed route as shown from point A to B. The former Mill is also shown, being labelled as **"The Towne Myll"**. The area around the site of the mill shows little in the way of development and there is no detail of any other part of the claimed route. The lane itself is coloured and depicted in the same or a very similar manner to other public roads in the area.
- 8.23 The **Hanham Estate Plan** is undated but possibly dates from the 16th or 17th Century. The plan clearly depicts the **Town Mill**, which is numbered '8' in the accompanying key, it being located at the end of a narrow thoroughfare that would correspond to what is now known as **Mill Lane** and includes that part of the claimed route as shown from point A to B1. This lane does not appear to be gated but is an open route as far as the Mill. The Mill is depicted as being constructed over the river but there is no obvious depiction of a bridge, though one may have existed. There appears to be a route north from what would correspond with point E to point F, where there appears to be a structure, perhaps a sluice, dam or bridge across the river. Beyond the river the area is depicted as open marshland.

- (a) The claimed route south of point B1 is not shown but the area is depicted as open meadow or parkland with the two channels of the River Allen bounding the western and eastern sides, and an avenue of trees along the western side. Whether these trees existed or were due to artistic licence is unclear. At point C there is a bridge shown and the route from here to point D is clearly defined by two parallel lines. There are no barriers depicted along any part of the route from point B to point D.
- (b) The main roads of the town are numbered and named on the plan as are the main buildings including the **Town Mill**. **Mill Lane** is not numbered or named, which may indicate that it was either not of sufficient significance or not regarded as a public route at this time. However, it does appear to have been the only means of accessing the mill with vehicles (carts) and it appears reasonable to assume that it was used by the public for that purpose; use which, if not at that time, may have later led to its present status as a public carriageway.

8.24 The **1775 Survey and Map of Wimborne Minster** by **John Woodward** identifies the freehold, copyhold and leasehold properties in the town. **Mill Lane** is clearly shown although it is not labelled as such. It extends as far as the mill, which is identified as '**Talbotts Mill**' and appears to be on land in the ownership of Mr Cray. The lane is shown to be free of any gates or barriers and extends over the River Allen and includes that part of the claimed route as shown from A to B. The **Town Brewery**, now Millbank House, does not appear to have been constructed at this time and is not shown on the plan.

- (a) The route from point B to C is not defined but the area appears to represent open fields, the first part belonging to Mr Cray and the second to Mrs King. At point C there is no bridge to cross the river but the route from D back to the western bank of the river opposite point C is clearly and separately defined from adjacent property by means of two parallel lines and is not gated at any point, being open at point D, where it joins what is now known as the **High Street**.
- (b) The northern part of the claimed route from point B to F also passes through an open field belonging to Mr Cray. There is a sluice, dam or bridge at point F leading into the next field, which is also owned by Mr Cray, the path from point F to G is not defined.

8.25 The **1832 Bankes Estate Map of the Town of Wimborne Minster** depicts **Mill Lane** throughout its length A to B. It also shows the route continuing from point B1 to B2, where there may have been a gate, fence, hedge or wall. Although not defined the route would have passed through what appears to be an open field to point C. At point C a bridge is depicted across the River Allen and the route is then clearly defined by two parallel solid lines to point D, passing through what may have been a gap, gate, fence, hedge or wall near point C3.

- (a) The route north from point B to F is also clearly defined, initially by two parallel solid lines before crossing a bridge or other structure at point F into an open field, the route from F to G being undefined.

- (b) The short route to the river bank shown from A to X is also clearly defined with no evidence of any gates or barriers. It is partially coloured blue, which may suggest that it was subject to encroachment by water, depending on the level of the river.

8.26 The **1873 Dean's Court Estate Plans** comprise two plans of Wimborne Minster at different scales.

- (a) The smaller scale plan clearly shows **Mill Lane** although it is not labelled as such.
 - (i) The lane is shown to cross the river and then turn southerly for a short distance, being defined by two parallel solid lines and including that part of the claimed route from point A to B1. On crossing the river it is shown to enter a parcel of land assigned to Mr C Ellis (Ellis & Son Brewery) although neither the mill nor the brewery is depicted.
 - (ii) From B2 the area is a parcel of land coloured green and numbered 268. There is no key with the plan to identify the numbered parcels although it appears to represent an open field and the claimed route is not defined separately within it. At point C there appears to be a bridge over the River Allen and the route to point D is contained within a clearly defined parcel, which appears to be an extension of the parcel numbered 268.
 - (iii) That part of the claimed route north from point E and then east to point G is not defined although there is a bridge or crossing point shown at point F, where the route enters land assigned to the Rev W H Castleman.
- (b) The larger scale plan is the same as the smaller one but contains more detail.
 - (i) **Mill Lane** is not labelled but is shown clearly, including that part of the claimed route from point A to B1. The **Mill** and the **Town Brewery (Millbank House)** are outlined.
 - (ii) The plan shows the area from B2 to approximately C2 in the same manner as on the smaller scale plan but from point C2 westwards there is another parcel numbered 279 and then a further unnumbered parcel before point D.
 - (iii) The route north from point E is shown in the same manner as on the smaller scale plan being undefined, a barrier, fence or gate may be depicted at point F.

8.27 The **1929 Dean's Court Estate Plan** uses a 50 inch to the mile (1:1250) **Ordnance Survey base Map of 1928**. Mill Lane is clearly labelled as such and is coloured brown, including that part of the claimed route from point A to B. The colouring corresponds with the manner in which other public roads within the town are depicted.

- (a) The route from point A to X is also shown and that part from B to B1 is shown between buildings and the claimed route from B1 to C2 is also clearly defined by means of a broken line drawn a little distance from the eastern bank of the River Allen to a bridge at point C. From point C westward it is defined by two parallel solid lines to point C2. At C2 there is a solid line through the route, possibly defining the location of a gate, fence or hedge. The remainder of the route from C2 to D is also clearly defined, with another solid line across the route at point D.
- (b) The route north from point E to F is also clearly defined by two solid parallel lines. Passing under a covered passageway at point E it then continues to a crossing point or bridge at point F. From point F it enters into a field, parcel number 75, it is undefined from this point.

8.28 The **1964 Wimborne Minster Town Improvement Plan**, produced by the **Wimborne Minster Urban District Council**, includes a number of plans and a discussion in respect of proposed improvements to the town centre. One plan, based on the Ordnance Survey, shows **Mill Lane**, which is labelled as such, the labelling extending through what would correspond to points B and B1 to point B2. The route A to X is also depicted.

- (a) The route south of point B2 is clearly defined extending to the entrance to what is labelled as a car park (Crowther's Car Park), which occupied the site of what is now the supermarket. At point C the annotation '**F.B.**' indicates the location of a footbridge over the River Allen and the route from here to point D is also clearly defined for the majority of its length by two parallel solid lines. Throughout its length there does not appear to be any gates, fences or hedges located across the route.
- (b) The route north from point E is also clearly defined as far as point F, the river crossing, from which point the remainder to point G is not shown.

8.29 The **Goad Town Plans** of Wimborne cover the period from **1971 to 2012**. **Goad Plans** were and still are produced for numerous clients, including insurance companies.

- (a) The plans for **1971 and 1973** show a short stretch of **Mill Lane**, which is clearly labelled, but does not extend as far as the claimed route at point A. The footbridge at point C is shown, as is the remainder of the route west to point D.
- (b) The plan dated **August 1975** is very similar to the earlier plans but is annotated with details of the proposed development of the central site "**TO BE SMKT & SHOPS**". The plan of **August 1977** is also similar to the earlier plans with additional information "**TO BE SAFEWAY SMKT & SHOPS**".

- (c) The plans from **2007, 2010 and 2012** depict the whole of **Mill Lane**, along with its associated retail and domestic buildings and also that part of the claimed route from point A to B. Millbank House is shown along with the Somerfield Supermarket (now the Co-Operative), the claimed route from B through to D is also clearly shown as is that from E to G with what may be a gate at point F.
- 8.30 The **1986** pamphlet entitled **The Historic Town of Wimborne Minster, B Willis**, includes a 'sketch' plan of the town centre. **Mill Lane** is shown on the plan and a route defined by a single broken line that corresponds with that part of the claimed route from point A to D. Although there is no key by reference to other ways shown on the plan the single broken line appears to represent pedestrian routes within the town.
- 8.31 Copies of the **Wimborne Minster Town Guide** produced by the **Chamber of Commerce** for the years **1996 to 2004** include within them a map of the town centre. These plans all depict **Mill Lane**, which is clearly labelled as such, including that part of the claimed route from point A to B. That part of the claimed route from B to D and also that part from B to F are also shown on the plans, reference to the accompanying keys indicate that these routes were all regarded as pedestrian routes although there is no indication as to whether their status was that of public or private paths.
- 8.32 The **Estate Maps and Town Plans** encompass a period of approximately 400 years, 1613 to 2012. They demonstrate that **Mill Lane**, including that part of the claim from point A to B, has existed throughout that period. The majority of the plans also show that the route or the course of the route as shown from B to D also existed and it appears that the route was free of obstructions or impediments to passage. With respect to the route north from point E, most of these plans show it extending as far as point F, from which point it would have entered into what was once an open field with no obvious exit. The later Goad plans from 2007 do show the development of the present car park and consequently the continuation of the route from point F to G is also shown.
- 8.33 Whilst these documents by themselves do not provide any compelling evidence as to the status of the claimed routes, the manner in which **Mill Lane**, including that part of the claimed route as shown from A to B, is defined on many of them suggests that the entire length of Mill Lane was considered to be a public highway, probably a public carriageway. They also provide support to the claim in respect of the remainder of the application routes.
- 8.34 The **East Dorset District Council Policy Planning Division Supplementary Planning Guidance No 15**, published in April 2006 was intended to provide guidance as to the elements and characteristics of the **Wimborne Conservation Area** to be taken into consideration when considering planning applications. Pages 49 to 51 of the document discuss the area of Mill Lane, describing it as forming an important link in the town centre footpath network, connecting the Square with the main car parks and Crown Mead shopping area.

- (a) Paragraph 5, page 50, describes the route A to X as having been used for the watering of horses and for tipping and disposing of ice and snow into the river. In the conclusions on page 51 it describes the area as having vitality ***“despite the poor ground finishes, cheap signs and utilitarian detailing. Less acceptable are the ugly galvanized barriers recently erected by the landowner to control pedestrian use of the ways”***.
- (b) This document, which is based on a document originally published in 1994, describes the application route as an important link in the town’s footpath network. Although this does not prove that the route is a public highway it nevertheless portrays a route that has been extensively used by the public for a considerable period of time. However, one important detail noted is the reference to the recently installed ‘barriers’ at point B1, a reference that does help to define the point in time when they had been erected and which would concur with some of the user witness statements, who stated they had been prevented from using the route by their erection in 2005 – 2006.

Ordnance Survey Maps

- 8.35 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 Wimborne Minster was completed in **1807/8** and clearly depicts **Mill Lane**, including that part of the claimed route from point A to B, which is shown to lead to both the Mill and the Town Brewery (Millbank House), both of which are also depicted. The map is of insufficient scale to depict any of the remaining parts of the claimed route.
- 8.36 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also clearly depicts **Mill Lane** including that part of the claimed route as shown from point A to B. The road is shown to be free of any obstructions such as gates or fences but the scale of the map prevents any meaningful interpretation of the remainder of the claimed route.
- 8.37 The later revised 1 inch **Ordnance Survey maps from 1895, 1904, 1947 and 1960** provide similar information and all depict **Mill Lane**, including that part of the claimed route from point A to B in the same manner, namely as a minor road. Due to the restriction in scale they do not provide any meaningful information as to the remainder of the claimed route.
- 8.38 The **1887 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows that part of the claimed route from point A to B in exactly the same manner as the remainder of **Mill Lane**, which is currently recorded as a public carriageway. It also shows the route leading to the River Allen as shown from A to X in the same way. At point B there appears to be an extension of the main part of what is now known as Millbank House westwards across the claimed route and connecting to what is now the car body repair shop. There is no indication on this map as to whether this was a ‘solid’ building or a covered walkway similar to that located over the route at point E.

- (a) The remainder of the route leading south alongside the River Allen from point B is not defined although the area appears to comprise 'open' land, perhaps a garden or field. There is a line across the route a little south of point B, possibly representing a wall, hedge, fence, or gate that also appears to define the extent of the Town Brewery (Millbank House) site. At point C the map is annotated 'F.B.', indicating the presence of a footbridge. The route west of this up to point C2 is clearly defined by two parallel lines. At C2 there is a line across the route that may represent a barrier, fence, hedge or gate across the route. There appears to be a through route from C2 to D and at point D there is a line across the route which may represent a gate, fence or hedge or may merely define the extent of the adjoining carriageway.
- (b) The route north from point E to F is also shown. There appears to be a bridge over the river at point F that leads into what was then an open field. There is no indication of any barrier, fence, hedge or gate on this section. The route beyond F lies in an open field and is not defined. No part of the route is annotated 'F.P.' or 'B.R.' that may suggest it was recognised as a footpath or bridleway and no disclaimer is present on this map (see note in Table of Evidence, Appendix 3).

- 8.39 The **1902 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in a very similar manner to the First Edition, including the route down to the River Allen as shown from A to X. The significant differences relate to the addition of a barrier, hedge, fence, or gate on the northern section at point F, the removal of the structure connecting the Town Brewery (Millbank House) to what is now used as the car body repair shop at point B1, leaving this as an 'open' route and the footbridge at point C being no longer annotated as such.
- 8.40 The **1929 Revised Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) is similar to that of 1902 although the barriers at C and D may no longer be in place. The barrier, hedge, fence or gate located to the south of point B is still shown but from here to point C the route appears well defined by two parallel lines. The bridge at C is in place as is the line through the route at point C2 that may indicate a gate, fence or hedge.
- 8.41 The **1949 Revised Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) depicts the route or its course in the same manner as the 1929 edition. The gate, fence or hedge at point F is no longer shown and additional unidentified features are shown in the field beyond point F.
- 8.42 The **1889 First Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) shows that part of the claimed route from point A to B in a similar manner to the earlier six inch map. It is depicted in the same manner as other public roads in the area and is labelled as '**Mill Lane**'. It also shows the route leading to the River Allen as shown from A to X in exactly the same way. At point B1 the extension of the main part of the brewery, now Millbank House, westwards across or over the claimed route connecting to what is now a car body repair shop is depicted. The crossed diagonal lines through this feature indicates that it was an archway or covered walkway, the same as the feature located over the northern section of the claimed route at point E.

- 8.43 From point B1 south the claimed route is not physically depicted although it does not appear to be obstructed save for a line across the route that may depict the location of a gap, gate, fence or hedge at B3. A footbridge is shown at point C with what may be a gate on the western side of the bridge. From C westwards the route is defined by two parallel lines and appears to be open and unobstructed to its junction with the High Street at point D where there is a line across the route, which may represent a gate, fence or hedge or may merely define the extent of the adjoining carriageway.
- 8.44 The **1902 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 and the route from A to X in much the same manner as on the First Edition 25 inch map. However, the archway shown at point B1 on the First Edition has now been removed and at this point the route is open and unobstructed. The route south from B1 is not physically depicted the line across the route at point B3, possibly depicting the location of a gate, fence or hedge, remains. The footbridge shown at point C on the First Edition map is not shown. The remainder of the route westwards to point D is clearly depicted defined by two parallel lines although there are additional lines across the route at points C2 and D that may define the presence of a gate, fence or hedge.
- 8.45 The route north from point E is clearly defined between the building on the eastern side and the river on the western side. A sluice is depicted at point F and a line through the route here suggests the presence of a gate, fence or hedge. From here the route to G passes through an open field and is undefined.
- 8.46 The series of extracts from the **Ordnance Survey 1:2500, 1:10000 and 1:10560 scale maps published between 1963 and 1984** demonstrate that in 1963 the route between points F and G did not physically exist and the public roads known as Crown Mead and Hanham Road had not yet been constructed.
- By 1968 the eastern end of Hanham Road had been or was under construction but there is still no evidence of the route from F to G. By 1972 Hanham Road had been constructed (confirmed by the aerial photograph of the same year (see paragraph 8.54) and a car park had also been constructed where the Hanham Road car park is today, although the entrance is in a different place. Crown Mead is not shown but there does appear to be a route available that generally corresponds to that shown between points F and G.
- 8.47 Although the **Ordnance Survey maps** provide evidence in support of the application they do not, on their own, provide any compelling evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map. They alone demonstrate that Mill Lane, including that part of the claimed route from point A to B, has physically existed since at least 1807, being consistently defined in the same manner as other public roads in the area at that time.

- Whilst the smaller scale maps provide little information on the remainder of the claimed route the larger scale maps generally demonstrate that the claimed route south of point B through C to point D either physically existed or, where the route is not physically defined, there appears to be no obvious or persistent obstructions to its use.
- That part of the claimed route north from point E to G and the additional route south from point A to X do not appear on the smaller scale maps but A to X is consistently portrayed on the larger scale maps having the appearance of being an extension of the road from which it branches, Mill Lane.
- E to F is also consistently depicted on both the early and later larger scale maps as is the structure crossing the river at point F. However, the earlier maps pre-date the recent development of this area of Wimborne and on these maps the route from F to G is undefined.
- The later maps show the gradual development of the area and suggest that the route F to G, or at least one that generally corresponds with it, would have been available for use around the time of the construction of Hanham Road in approximately 1972 and after the construction of the supermarket, Crown Mead and the re-development of the Hanham Road Car Park from approximately 1979-80.

Commercial maps

- 8.48 None of the **Bartholomew's maps** or the **Small Scale Commercial Maps** of Dorset examined, are of sufficient detail to show the area of the application route.

Parish Survey and County Council rights of way maps and records

- 8.49 The Wimborne Urban District Council Survey of rights of way was completed by March 1951 but the application routes were not claimed.
- 8.50 The routes were not included on the 1959 draft, 1964 provisional or 1966 first definitive maps and there is no evidence to suggest that they have ever been the subject of any previous claim or application.

Site and Aerial Photographs

- 8.51 Several photographs, including aerial photographs have been submitted by both the supporters of the application and the objectors. The first of these dates from around 1914, being in the custody of the **Priests House Museum**, Wimborne. The photograph has an annotation to the top identifying it as "The Town Mill in Mill Lane" and an accompanying description that states "***The Town Mill. Taken from the end of the garden rented by Mr Mead – The Square – (There is a public right of way in Mill Lane to the edge of the water on the left)***".

- The right of way referred to corresponds to the route from Mill Lane to the River Allen as shown from point A to X, point X being depicted in the picture. This is also believed to be the feature referred to as being a public drinking place in the Wimborne District Highway Board and Urban District Council minutes, see paragraphs 8.11 and 8.16 above.
- 8.52 There are several photographs depicting the construction of the new supermarket during 1979-80. Although difficult to determine there do not appear to be any obvious signs other than that shown on the gate leading onto the site.
- These photographs appear to show that the application route would not have been passable from point B1 to C during the construction of the supermarket
- 8.53 Two photographs from 1987-88 were taken in Mill Lane during the re-development of Jessop House. The first is taken looking west down Mill Lane towards the square and the second looking east towards Millbank House.
- The photograph taken looking towards the square is taken from a position just to the east of point A. It can be observed that a vehicle is parked at the beginning of the route leading towards the River Allen and shown as A. It can also be observed that at this time there were no signs either affixed to the walls of the building or on the road itself suggesting that in 1987-88 there were no signs in the vicinity of point A to suggest that the route was considered private and not a public right of way.

Aerial Photographs

- 8.54 Aerial photographs covering the period 1947 to 2005 have been examined. The 1947 photograph is not of sufficient quality to discern features such as gates but nevertheless appears to show the claimed route from points A to D. The 1972 photograph also appears to depict the route from A to B and also the development of a car park north point F although the termination point at G appears to be located in scrub/woodland as the road that presently exists was not constructed at this time. It should also be noted that Hanham Road was constructed by this time, although Crown Mead, point G, was not.
- 8.55 The aerial photographs from 1979/80 depicting the construction of the supermarket suggest that use of the route from point B1 towards C was, in all probability, not possible due to the obstruction of the route by scaffolding, building supplies and a fence and gate at point B1.
- 8.56 The 1997 photograph shows that by this time the termination point shown as G is now adjacent the present road constructed at the same time as the supermarket, shopping complex and the Hanham Road Car Park, which are also shown.
- 8.57 The 2005 photograph is of better quality than the earlier photographs and there do not appear to be any gates or barriers located along the routes as shown between points A to D, E to G or A to X, although some parts are partly obscured by trees.

9 Analysis of user evidence supporting the application

- 9.1 A total of 60 Forms of Evidence were submitted in response to the consultation from users of the claimed routes, three of which have been discounted as they lack details of the period of use or the route(s) that were used and the individuals could not be contacted to clarify their statements. Several witnesses were contacted by telephone in early October 2014 in order to clarify their statements.
- 9.2 The vast majority of the witnesses state on the form or indicate on the accompanying plan that they used all sections of the claimed route (A to D and A to G), as shown on Drawing 14/07/3. 51 of the witnesses indicate that they used the route A – B – E – F – G, two having used only that part from A to B2. 47 of the witnesses indicated that they had used the route A – B – C – D, two having used only that part from A to B2.
- 9.3 All of the witnesses state that they used the routes, either individually or with other users, mainly for pleasure but also to get to work. The majority of use was on foot although 21 witnesses state their use was on foot and with a car or other vehicle whilst seven witnesses state that their use was on foot and also with a bicycle.
- 9.4 Although there appears to be evidence of public vehicular use over the route closer analysis suggests that this use was in connection with the car parks located at Hanham Road and the supermarket or with the business use (vehicle repairs) of premises located along the claimed route and would therefore be considered as use by invitation. The associated bicycle use is considered as being insufficient to have established public vehicular rights.
- 9.5 The earliest date of use, on foot and with vehicles is from 1953 and the latest date of use is 2014, encompassing a period of some 61 years. The number of users per year varies from two in the 1950s to 50/51 from 2000 to 2004. Frequency of use varies from once or twice a day to once a month; the majority of witnesses used the route on a daily or weekly basis.
- 9.6 In respect of the route A – B – E – F – G, 51 of the witnesses indicate that they used this route on foot. Seven of these witnesses also used it with a bicycle and 18 with a car or other vehicle (MPV). The earliest date of use was 1953 on foot and with a car and the latest date of use was 2014.
- 9.7 In respect of the route A – B – C – D, 47 of the witnesses indicate that they used this route on foot. Seven of these witnesses also used it with a bicycle and 19 with a car or other vehicle (MPV). The earliest date of use was 1953 on foot and with a car and the latest date of use was 2014.
- 9.8 The majority of witnesses state they were never challenged when using the route and were not aware of any gates or other obstructions, which would have prevented their use of the route, nor to the existence of any notices, the effect of which would have been to make them aware the route was not a public highway. However, several witnesses do recall gates and/or fences being recently erected, some noting that they were locked on occasions and others that they were never locked.

- Several witnesses were aware of the presence of signs stating 'private road' in approximately 2006 and one witness thinks there may have been a sign on a gate stating 'no right of way' just prior to the construction of the supermarket and shops in 1979-80.
- Four witnesses state they enjoy a private right of access over all or some of the route and eight witnesses state that they were prevented from using the route, the earliest being November 2005 and the latest in March 2006.
- One witness states that they were aware that the gate at point F was closed at Christmas or Easter for a day.

9.9 One witness, Mr T Jessop, provides photographic and documentary evidence in respect of the refurbishment of premises in Mill Lane, now Jessop House, which demonstrates that the signs attached to what is now used as a Tattoo Parlour (point A) were not in place in May 1988.

10 Analysis of evidence opposing the application

10.1 Mr D Hoyle responded twice to the consultation by e-mail. On 10 April 2014 Mr Hoyle, who has lived in the area for some 40 years, stated that he believes that access over the end of **Mill Lane [A to B]** was allowed by the owner of the freehold in respect of the residents of Millbank House and their visitors, traders and their customers. He states that there were no footbridges over the River Allen and the route north of point B over the sluice was not viable. Mr Hoyle continues, stating that in 1976 he was aware that the end of **Mill Lane [A to B]** was private freehold property. At the time that the supermarket was built the owner took action with fencing and gates but allowed public access to the supermarket and to the car park at Hanham Lane. He concludes that he believes no right of way exists nor has one ever existed.

- In addition to any public rights that may exist, the residents of Millbank House enjoy private rights over the whole of Mill Lane. The vast majority of public highways are contained within private land holdings and the fact that land is private does not preclude the possibility that a public highway may exist over it.
- Mr Hoyle has provided no evidence in support of his statement that a right of way has never existed over the route. Should it be demonstrated that a public right of way existed over a sufficient period of time prior to the erection of any signs, fences or gates then this action by the landowner would have taken place after the public right to the use of the route had become established.

- 10.2 Mr J Batchelor wrote on 8 April 2014 stating that he has lived in Wimborne for some 55 years and is familiar with the land in question. He states that part of **Mill Lane** is a public highway but the remainder **[A to B]** is privately owned and has always been clearly identified as such. Mr Batchelor notes that Mr Crowther owned the land now occupied by the supermarket and controlled the former car park, on occasions closing the land off at the point now occupied by the gate and bollards (B1). At point F there was a field gate, now replaced with metal gates, which are also regularly closed. Mr Batchelor is of the opinion that the landowner has done all that is required to identify the land as being private whilst allowing access to facilities.
- Mr Batchelor is correct in that the landowner has taken steps to prevent the accrual of public rights over the route. However, there is a conflict of evidence as to when this challenge was first initiated, the user witnesses being of the opinion that this has happened relatively recently. Furthermore, should the historical evidence show, on balance, that the route, or parts of it, was already a public highway prior to the landowner's action then his challenge to use of the way would be unsuccessful.
- 10.3 Mr & Mrs Blackmore wrote on 8 April 2014 stating that they had lived in Mill Lane since 2002 and from that time had been aware of the signs and gates and the private nature of the 'precinct'. They are also aware that the landowner closes the gates annually, usually at Christmas and occasionally at Easter and bank holidays. In their view there has never been a public right of way over the application route.
- 10.4 Mr D Hart wrote on 10 April 2014 stating that he was born in Wimborne and worked there in the 1960s. To the best of his knowledge there is no right of way beyond the Asiana restaurant (point A). At the end of Mill Lane there was a car park to one side controlled by the owner of the land and to the other side a field, both of which had gates closing them off. In the 1980s both these areas were developed and opened up. He was aware of signs stating that the land in Mill Lane was private, not a public right of way, before that time and since and the gates have been regularly closed.
- 10.5 Mr J Wells wrote on 28 April 2014 stating that he was born in Wimborne and lives and works there. He acknowledges that part of Mill Lane is a public highway up to the Old Church House but beyond there it is private land and has been signposted as private land and not a public right of way for many years and the gates have been closed regularly. He recalls from the 1960s and 1970s that once past the Mill at the end of the lane there was nowhere to go to except fields and in his view there has never been a public right of way over the land.
- 10.6 In respect of the statements made by Mr & Mrs Blackmore, Mr Hart and Mr Wells and in common with Mr Batchelor's statement there is a conflict of evidence. The questions to determine are:
- When did the first challenge to the public use of the route take place?
 - Was the route in fact already an established public highway prior to any such challenge?

10.7 Mr D Wheelton wrote in 6 May 2014 stating that he was born in Wimborne Minster in 1943 and served an apprenticeship with a printing business in Mill Lane during the late 1950s and 1960s. He notes that at point F there was a gate that was closed at times. From the end of Mill Lane, to the right, was what was called Crowther's Lane and he recalls that Mr Crowther would regularly close access to this area. At weekends and public holidays the area would be closed for more than 24 hours at a time. On visits to Wimborne he has noticed the signs and gates and in his view there has never been a public right of way over the property in Mill Lane.

- It should be noted that the printing business with which Mr Wheelton served his apprenticeship is owned by the current landowner, Mr Slocock.
- Mr Wheelton notes that gates were present and occasionally closed. However, it is not stated whether these gates were ever locked.
- Mr Wheelton notes that Mr Crowther closed off the area of the car park sometimes for periods exceeding 24 hours. Whether this course of action was taken by Mr Crowther is disputed by the user witnesses and, if it was, Mr Wheelton does not clarify as to whether it was intended to prevent vehicular access, pedestrian access or both, nor does it seem likely that Mr Wheelton would have observed the area constantly, in excess of 24 hours, to be able to confirm what he believes may have taken place.
- Mr Wheelton states that on return visits to Wimborne he was aware of signs and gates. However, he provides no dates nor does he confirm whether the gates were closed and locked.

10.8 Mr C Slocock and Mr M Shutler, representing the Slocock Trust (landowners) submitted a number of responses between 12 April 2014 and 11 August 2014 raising the following issues:

- (a) The route is not a public right of way; the settler and his predecessors allowed the public to pass and repass to access their facilities and other premises. Action was taken annually to deny access and signs were erected to make users aware that it was private land and access to adjoining land was obstructed by gates and third party owners.
- There is a conflict of evidence as to when the landowners' actions were first initiated.
- (b) It is not possible for Mrs Hopkins and other tenants or owners of Millbank House, that have a private right of way, to attempt to make it a public right of way and their submissions should be excluded as evidence.

- Whilst the use of the way or those parts of it by persons with private rights over them cannot be taken into consideration as evidence of public use (unless such use exceeds their private rights), their knowledge of the general public's use of the way or to the erection of signs, gates and of any challenges to the public use of the way are admissible and can be taken into consideration in determining the application.
- (c) They raise concerns over a number of statements made by Mrs Hopkins, which they consider inaccurate and misleading.
 - It was not stated which of Mrs Hopkins statements were considered inaccurate or misleading.
- (d) After viewing the case file they note that a letter of 2009 from Dorset County Council stated that the route was not a public right of way.
 - It is suggested that the letter to which they referred may be one of 5 August 2009 from East Dorset District Council to Mrs Hopkins in which the Planning Officer advised Mrs Hopkins that the Council's informal view was that it was not a right of way. It is also noted that the Planning Officer, Mr Gausden, stated quite clearly within the letter that ***"the role of the East Dorset District Council as the Local Planning Authority does not extend to judgements in respect of 'rights of way' "***.
- (e) They query the legitimacy of Mrs Hopkins' involvement with the claim following the inability to contact the original applicant Mr Hewitt. They also raise concerns over what they regard as procedural errors in that a number of affected landowners had not been identified by the applicant.
 - Since making the application Mr Hewitt has left the area and it has not been possible to contact him. Whilst it is the responsibility of the applicant to make all efforts to contact affected parties it became apparent that a number of them had not been identified. However, during the course of the investigation it is believed that all those affected have now been contacted and it is considered that no party has been prejudiced by the initial oversight on behalf of the applicant.
- (f) They state that they have found no record of any public right of way ever having been in existence over their land. However, they note that there are records concerning private rights of way being granted quite recently, which they consider reinforces their position that no public right of way exists.
 - Copies of the Finance Act 1910 were provided to the landowners that demonstrate that at that time the route (part) had been excluded from valuation. It was explained that, whilst on its own this was indicative of the existence of a public highway over the route, it would have to be considered alongside any other relevant evidence that came to light.

- (g) Mr M Shutler provided 8 signed statements in support of Mr Slocock. Six of these witnesses have signed what appear to be prepared statements that generally refer to the same information, namely that the witness was aware that the land was private, that signs denoting this and that there was not a public right of way over the property had been on site for as long as they had lived or worked there and that gates were in place and were closed annually, normally at Christmas and public holidays. They were all of the opinion that the route was not a public right of way.
- Seven of these witnesses, K Short, A Trim, E Dunningham, S Tucker, D Munford and J & L Henton are or were employees or tenants of Mr Slocock. The earliest date for which they can provide information is 1979. Several of the witness statements include a photograph of one of the signs located under the archway at point E. None of the witnesses are specific as to the exact locations of the signs or the gates to which they refer.
 - In a telephone conversation with Mr Short on 11 August 2014 he clarified that he did manufacture the signs for Mr C Slocock's father but that was not responsible for their erection. Furthermore, although he was aware of the signs around the estate he could not confirm that all the signs and more specifically those present on the wall of the Tattoo Parlour (point A) and present today were in place in 1979.
 - In a further statement of 18 September 2014 Mr Short confirmed that he did manufacture the signs and that they had been "fixed on site by by Mr H L Slocock and currently Mr C J Slocock". Mr Short also stated that he was aware that since 1979 the signs had been placed on the buildings, posts and gates in the locations identified on the accompanying plan and shown in the accompanying photographs.
 - Another witness, Mr Monds, a former Solicitor and Partner at Turners, believed that these signs had been in place for 25 years or more and consequently the public must have been aware that the land was private and their use was by implied consent. Mr Slocock's statement reiterates points such as his belief that the signs had been in place for 35 years, the gates had been closed at least annually and that the former owner of the car park had, on occasions, prevented public use of the way. He believes that the route is not a public right of way and the public are using the route and not reading or seeing the signs and not seeing or realising that the gates are shut annually.
 - Mr Monds believes the signs have been in place for at least 25 years (1989). However, he has not provided information as to their specific location or to the gates to which he also refers.
 - In his statement Mr Slocock states that he believes that the signs and gates have been in place for at least 35 years (1979) but he also suggests that it may be the case that the public do not see or read the signs or see or realise when the gates are shut.

- (h) They state that they have found no evidence of unobstructed user activity of sufficient frequency to establish public rights and question the validity of the user evidence.
- There is evidence of public use dating from the 1950s, the numbers and frequency of which could be considered sufficient, without any evidence to the contrary, to raise a presumption of dedication.
- (i) They reiterate their concerns as to the validity of the application and Mrs Hopkins' involvement with it.
- Mr Slocock was informed that the investigation was being conducted on the basis of the evidence that had been discovered. Due to the unavailability of the original applicant, Mr Hewitt, there was no applicant, nor was one required. Mrs Hopkins' involvement was as an interested party and a local point of contact.
- (j) They question the interpretation of the evidence provided by the Finance Act 1910.
- Although the interpretation of this evidence is questioned no alternative interpretation has been provided to comment on.
- (k) Mr Slocock and Mr Shutler enquire as to whether the investigation would be undertaken with complete impartiality. They also reiterate their concern as to the motives of Mrs Hopkins and the other owners of Millbank House, suggesting a conflict of interest and that any evidence provided by them should not be taken into consideration. They reiterate that access to private land outside of Mill Lane was restricted, controlled and physically obstructed by gates. Access across the (Crowther) car park was also controlled (point B1 south) and consequently there does not appear to have been the continuous route as suggested. With respect to the Finance Act 1910 they have seen no evidence that the plan produced was a result of the survey and no evidence that the owner claimed an exemption from tax.
- The Slocock Trust was advised that every investigation is carried out impartially, that any evidence discovered and/or submitted during the course of the investigation would be taken into consideration and where applicable would be attributed the appropriate weight that it merited.
 - There is a conflict of evidence as to when the actions of the landowner(s) to prevent the accrual of public rights over the route were first initiated.
 - The extract from the Finance Act plan was acquired during a routine visit to the National Archives in London. Should it prove necessary a certified copy of the document can be acquired.

- There is no, nor will there be any evidence within the Finance Act documentation that a landowner had claimed an exemption as this part of the route was excluded from valuation. Had there been an owner who could demonstrate that they had control of the land, then in all likelihood an entry would have been made within the accompanying Field Book. In all probability the 'owner' or 'owners' of the land are the adjacent property owners who own all of the land to the centre of the highway except for the surface, which was and remains vested with the Highway Authority and therefore out of the control of the landowner(s). Consequently, as highways were not subject to valuation or tax, the route was excluded on the plan from which a strong indication that the route was considered to be a public highway, probably a public carriageway, can be inferred.
 - (l) Mr C Slocock responded on 11 August 2014 to an additional consultation on the route shown A to X. Mr Slocock states that his family has owned the land for over 67 years and over this time nobody exercising any rights has been observed using it. They have used the land in a variety of ways such as parking and it had been identified, closed and used as private property over that time. The deeds have identified no public rights and past use appears to have been related to private activities involving horses, drinking and limited access connected with the Brewery, not a public brewery. He concludes, stating that he sees little point in something that goes nowhere, the use of which has ceased a long time ago.
 - The documentary evidence shows this route excluded from the provisions of the Finance Act 1910, suggesting that it was regarded as a public highway, probably a public carriageway. Extracts from the Highway Board records suggest that it was the public drinking place.
- 10.9 Mr C Speirs, Chartered Surveyor, submitted a report on behalf of the Slocock Trust in April 2014 and made several other submissions, the last being made on 19 September 2014. A summary of the report follows: full details are contained in the case file reference RW/T418.
- (a) Mr Speirs commences with a brief history of the site and a summary of the application noting that not all of the landowners, including Mr Slocock had been identified by the original applicant Mr Hewitt. He also notes that the case was not pursued by the County Council immediately, the matter being raised again by Mrs Hopkins.
 - (b) Mrs Hopkins is the owner of a flat in Millbank House through which she enjoyed a private right of access and therefore has no personal reason to seek a right of way from which she already benefits.
 - The application was not pursued immediately due to the fact that at that time there was a 7 year 'backlog' of applications. Except in extenuating circumstances all applications are dealt with in chronological order.
 - Mr Slocock is identified on the application form as being the landowner, whom the original applicant, Mr Hewitt, acknowledges was notified.

- During the course of the investigation it is believed that all of the interested parties had been identified and had all had the opportunity to comment on the application. There is no evidence to suggest that any of the interested parties have been prejudiced.
 - Mrs Hopkins did not seek to pursue the application. It was by chance that she contacted the County Council and, in the conversation that followed, during which it was explained that without an applicant the investigation of the application would most likely be delayed, Mrs Hopkins took it upon herself to attempt to trace Mr Hewitt. Having been unsuccessful in locating the applicant Mrs Hopkins offered to act as a local contact in order that the investigation was not delayed any further.
- (b) Mr Speirs discusses the Finance Act documents and appears to suggest that they provide no evidence as to the status of the way, stating that the only evidence is that of a red line ***“which is purported to indicate this”***. He continues, stating that no evidence in writing has been provided to support this and no evidence to suggest that tax was avoided has been produced.
- Mr Speirs’ interpretation of the Finance Act documents is incorrect. The exclusion of the route is considered as being very strong evidence to the effect that the excluded section was regarded as a public highway, probably a public carriageway.
 - The red line to which he refers is used in conjunction with green lines to denote the boundaries of the separate hereditaments or parcels, which are individually numbered and assessed for the purpose of valuation and taxation.
 - The majority, if not all, of public land and specifically public highways were not subject to valuation and taxation and consequently were excluded from the process, being given no hereditament or parcel numbers (footpaths and bridleways were generally included within the hereditaments and deductions allowed in respect of them) .
 - Conversely, private roads were subject to valuation and even if they were not subject to taxation, due perhaps to other easements over them, would nevertheless have been included in or given a separate hereditament or parcel number. The fact that the land is excluded is evidence to the fact that it was not valued and that no tax was paid on it.
- (c) Mr Speirs then discusses that part of the claimed route from point A to B, noting that this land is subject to private rights granted to the owners of Millbank House. Mr Speirs acknowledges that from 1979 to date access was available along this route to members of the general public but that the route was signed, indicating that it was private and not a public right of way. Prior to 1979 no access was available from point B towards point C without the payment of a car parking charge. Millbank House was the former Town Brewery, which was linked to the Mill building and joined to the current car body workshop by a passageway, there being no access to the southeast at this point.

- It is not disputed that there are signs indicating that the route is not a public right of way. However, it is disputed as to when these signs were first erected.
 - It is acknowledged that the present supermarket was formerly a car park although many witnesses dispute that the owner was as vigilant as has been suggested. There is no evidence to suggest that pedestrian users of the route were permitted, challenged or charged for passage by the owner of the car park.
 - The evidence provided by the Ordnance Survey indicates that the 'passageway' between points B and B1 to which Mr Speirs refers was in fact an archway, the same as that which is presently located opposite at point E. This would suggest that there was in fact access southeast from point B towards point C.
- (d) Mr Speirs then discusses that part of the claimed route from point B to point C. Mr Speirs states that the first part, B to B1, is owned by the Slocock Trust and the first part of the remainder, possibly to point B2, was transferred to the Slocock Trust in 2005. The final part, B2 to C, is owned by the Co-operative Society, being previously owned by Mr Oaks and prior to 1985 by Mr Crowther, when it was used as a car park and who generally barred access, charging a fee for entry.
- Whilst Mr Speirs has identified the ownership of the land in respect of that part from point B to B2 (Slocock Trust) he does not appear to have suggested any action that may have been taken by the landowner to prevent the accrual of public rights.
 - With respect to that part from B2 to C Mr Speirs suggests that the owner of the car park, Mr Crowther, generally barred access, charging an entry fee to park a vehicle in the car park. Whilst this suggests that passage beyond B2 in a vehicle was not as of right but by the payment of a charge, there is no evidence to suggest that Mr Crowther permitted, challenged or charged others to the use of the way.
- (e) With respect to that part of the route from point B through point E to F, Mr Speirs states that the whole of this section is in the ownership of the Slocock Trust with B to E subject to private rights granted to the owners and occupiers of Millbank House. He acknowledges that B to E is open at all times but that access width is restricted and barred from time to time. In respect of that part from E to F he states that the land beyond point F was originally a field with a five bar gate prior to its present use as a car park and is now gated at both ends.
- Mr Speirs states that public access through this part of the claimed route was allowed but on occasions 'barred', presumably by the closing of the gates. However, no dates have been provided as to when this action may have been taken and the majority of user witnesses state that during their main period of use the gates were not locked, the locking of gates having only occurred relatively recently (prior to the application).

- (f) Mr Speirs suggests that the Town, District and County Councils have had ample opportunity to suggest that the route is a public right of way and correspondence regarding this subject, in which each has stated that the route is not a public right of way, is a matter of public record.
- As noted at paragraph 10.8 (d) above Mr Speirs has probably confused the response from the District Council in 2009 as being from the County Council, in which the District Council clearly state that the **“the role of the East Dorset District Council as the Local Planning Authority does not extend to judgements in respect of ‘rights of way’ ”**.
 - Whilst the Town Council may have commented on the status of the route no evidence to that effect has been discovered or submitted for consideration.
 - With respect to the County Council’s position on the status of the route, if the question were asked prior to the application then the answer would have been that the route was not recorded as a public right of way on the definitive map and statement. However, the definitive map is only conclusive as to those ways shown upon it and is not prejudicial to the existence of any higher or unrecorded public rights that may also exist. If the question arose after the application then the answer would have been that it was not a recorded public right of way but was subject to an application that was awaiting determination.
- (g) Mr Speirs concludes by stating that it is clear that relevant signage has been in place to indicate that the land is private and that the route has been closed at sufficient periods to indicate that a right of way has not been established at least since 1979. Prior to this date he suggests that the land to the southeast (B to C) was policed by the owner, Mr Crowther, who charged for the use of the car park. He notes this land was private, enclosed and access led nowhere beyond the car park. He believes that the only evidence that can be relied upon is that of the Finance Act but this has yet to be proved and also that no tax was paid. He also states that a public right of way should provide a link between two points of interest and it is clear that these routes are not capable of providing a continuous route over the period of time required to establish a right of way.
- It is acknowledged that the landowner in respect of those parts from A to B2 and B to F has taken steps to prevent use of the route by the public and in doing so has challenged public use of the way. However, what has not been established is when this action or challenge first occurred. If, as Mr Speirs suggests, it can be established that this first took place in 1979 then consideration must be given to whether public use of the way for the preceding 20 years would give rise to a presumption that a dedication had taken place. Consideration must also be given to whether the documentary evidence considered demonstrates that, on balance, the route was already an established public highway.

- It is reasonable to conclude that, as the route was excluded from valuation in the Finance Act documents, no tax was due or paid on the land involved. The exclusion of the route is indicative that it was regarded as a public highway, probably a public carriageway.
 - As case law has established it is not a pre-requisite that a public right of way must lead to a point of interest. Generally speaking a public right of way would lead to another highway or a point of interest, for example a mill, river or open space. However, the user evidence in this case and the majority of the documentary evidence examined suggests that a route from A to D has been available over a considerable period of time. With respect to the route from B to G the documentary evidence suggests that this has been available as a through route over a considerably shorter period of time, probably from around the time of the construction of the car park.
- (h) On 6 June 2014 Mr Speirs submitted an addendum to his report of April 2014 including extracts from several of the documents to which he refers. With respect to a reproduction Ordnance Survey map of Wimborne Minster 1900, Mr Speirs believes this demonstrates that Mill Lane was in fact a cul-de-sac serving only the Brewery and the Mill. This he notes would concur with the situation as depicted on the Finance Act plan. This document also included a letter from Mr D Wheelton of Tasmania, Australia a former resident of Wimborne, which is summarised at paragraph 10.7 above.
- Ordnance Survey maps are dealt with in some detail from paragraph 8.35 above. In conjunction with the other maps and plans examined they demonstrate that Mill Lane, including that part as shown from A to B, has existed since at least 1613.
- (i) Mr Speirs included a reference to the former **Town Brewery** (Millbank House) that notes that it was acquired by Hall & Woodhouse in 1937, concluding that it probably operated as a brewery into the war years.
- Probably of more significance is the fact that it was a brewery at the time of the Finance Act and that the Brewery made no claim over that part of Mill Lane as shown from point A to B.
- (j) Mr Speirs then refers to an **Aerial Photograph of Wimborne**, which although undated, he suggests is probably from the 1950s. Mr Speirs notes that the photograph shows that the original open access of the brewery yard has now been enclosed by a brick wall. He further notes that access to Mill Lane remains restricted and the completely enclosed garden area at the rear of the former brewery is now the supermarket and its car park.
- Reference to the **six inch Ordnance Survey maps dated 1887, 1902 and 1930** suggest that the brewery yard has always been enclosed by a fence, wall or hedge, earlier maps, for example, the **Deans Court Estate Map 1873**, would concur with this conclusion.

- From the photograph supplied it is not possible to determine whether there are any restrictions on Mill Lane as the road is obscured by the buildings adjacent its southern boundary.
 - Mr Speirs' observations in respect of the supermarket and car park appear correct but it should be noted that the extension of Mill Lane into the car park is also depicted in the picture.
- (K) Mr Speirs refers to a note made by Mr G Watson, the co-founder of the Priest's House Museum, Wimborne Minster, in which he describes how the brewery drays 'had' to be driven along the bed of the river from Mill Lane towards Eastbrook, indicating that there was no other route from Mill Lane to this side of Wimborne.
- The note is undated and does not indicate from where the information was obtained.
 - Mr Watson refers to carts that had unloaded their grain and were empty, not specifically brewery drays, and that it was 'tradition' that after unloading they would use the river bed rather than return through the town. However, there is no other evidence to suggest that this was common practice nor is there anything to suggest that it was compulsory. It seems reasonable to assume that the normal practice was for loaded drays and carts to have used Mill Lane when leaving or entering the brewery.
 - Although, after all of the available evidence has been considered, it may be determined that vehicles did not or could not proceed any further than what was the old car park, there is nothing within Mr Watson's statement to suggest that passage on foot or indeed with a vehicle beyond this point was not possible at that time.
- (m) Mr Speirs also provides a photograph, of poor quality, showing a vehicle parked at point F. The vehicle's registration suffix is 'L', suggesting that it was first registered in 1972. The photograph shows that the gate at F is open and the gate post to the eastern side has a notice affixed to it. The notice is illegible but Mr Speirs has provided the wording it contained, namely "**WIMBORNE INDUSTRIAL ESTATE PRIVATE PROPERTY NO PUBLIC RIGHT OF WAY**". Mr Speirs appears to suggest that this may indicate that in 1972 the land was clearly identified as being private with no public right of way.
- Mr Speirs could be correct, although he qualifies his statement by noting that the photograph is undated and that January 1972 would have been the earliest date the car was registered. Consequently, as the photograph is undated and the age of the car at the time the picture was taken is unknown it has little value in determining exactly how long the notice may have been in place.

- (n) Mr Speirs states that since the beginning of the 20th Century Mill Lane has been a cul-de-sac and none of the evidence provided, including that of the Finance Act 1910, suggests that this has not remained the case. Mr Watson's note, he suggests, shows that the only access to the lower part of the Town, without the use of the main road, was by the river bed, which in turn he suggests shows that there was no other road or footpath available. The later plans and photographs he concludes show that there was no public access either to the south over the land now occupied by the supermarket and previously used as a car park, or to the north, which was properly fenced and gated well into the 1970s.
- The majority of the documents examined do not provide any compelling evidence to the conclusion that the route (A to D) was a cul-de-sac. For example, the 1910 Finance Act plan clearly shows a through route from point A to D that may or may not have been gated at point C2. The majority of other 'early' plans examined generally support this conclusion.
 - The later plans would also support the conclusion that a through route (A to D) was available. In addition, they also show that the route E to G, prior to and following the time the supermarket was built, was also available. For example, the Town Plan of 1964 shows the route continuing into the car park and exiting towards point D via a footbridge. The later Town Guides and Plans 1986 – 2004 all show the route was available for public use.
 - With respect to the northern section of the route (E to G), although the photograph provided may show the presence of a notice there is nothing to determine when the picture was taken i.e. the date from which the use of the route by the public was challenged. Furthermore, it will be noted that the gate is open and the picture itself provides no evidence to the effect that it was ever closed or locked.
- (o) On 19 September 2014 Mr Speirs provided a plan, photographs and a further written statement from Mr Short in respect of the placing of signs along the route. Mr Short confirms that these signs have been in place at the locations shown on the plan since 1979.
- Mr Short's latest statement contradicts his recollection of events as established during a telephone conversation that took place on 11 August 2014, see paragraph 10.8 (c) above.

11 Analysis of other submissions

11.1 The other letters contain no relevant evidence for consideration.

12 Date Public use was brought into question

12.1 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.

- 12.2 There is a suggestion that users of the route, other than those parking their vehicles and passing through the former car park were challenged by the owner at the time, Mr Crowther. However, there is insufficient evidence to corroborate this and the majority, if not all of the witnesses, do not recall being challenged.
- 12.3 The landowner claims to have erected signs stating 'no public right of way' and provides a witness statement from the person who states that he manufactured and erected them in 1979 and has maintained them since. During a telephone conversation the manufacturer of these signs, Mr Short, confirmed that although he manufactured the signs he could not state whether they were actually displayed in 1979. However, Mr Short has since provided a further written statement with an accompanying plan contradicting his previous position and confirming that the signs have been erected at the locations shown on the plan since 1979.
- 12.4 The majority of user witnesses do not recall any signs or notices, in particular those stating that there was no public right of way. Several state that they were aware of the 'private road' and 'private property' signs.
- 12.5 The aerial photographs taken during the construction of the new supermarket in 1979-80 shows the provision of a fence and gate at point B1 in addition to the obstruction of the route at several points beyond B1 towards C through the construction works. It appears reasonable to suggest that this work would have prevented use of the route during the construction phase but may be regarded as a temporary obstruction rather than a direct challenge to users of the way.
- 12.6 Photographic evidence indicates that there were no signs to suggest that the route was considered private and not a public right of way on the route at or in the vicinity of point A in May 1988.
- 12.7 There is evidence of bringing the use of part of the route (A to B1) with vehicles into question through the erection of bollards and barriers in 2005/06.
- 12.8 There is also evidence of a challenge to users of the way through the locking of a gate at point B1 in November 2005 and March 2006.
- 12.9 Witnesses opposing the application have provided statements that they were aware of signs and gates that were at times closed and/or locked. However, the majority of these witnesses' evidence does not extend further back in time than 1979 and that which does cannot be corroborated.
- 12.10 The application was made on 10 January 2006 and is a further date of bringing the use of the route into question.
- 12.11 It is considered that the earliest evidence of a date of a challenge to public use of those parts of the route as shown from A to X, A to B1 and E to F is as a result of the erection of notices at various points, namely A, B1, E and F which appear to have been in place since 1979. There is no or insufficient evidence of a challenge to the use of any other part of the claimed route(s) namely F to G and B1 to D prior to the application in 2006.

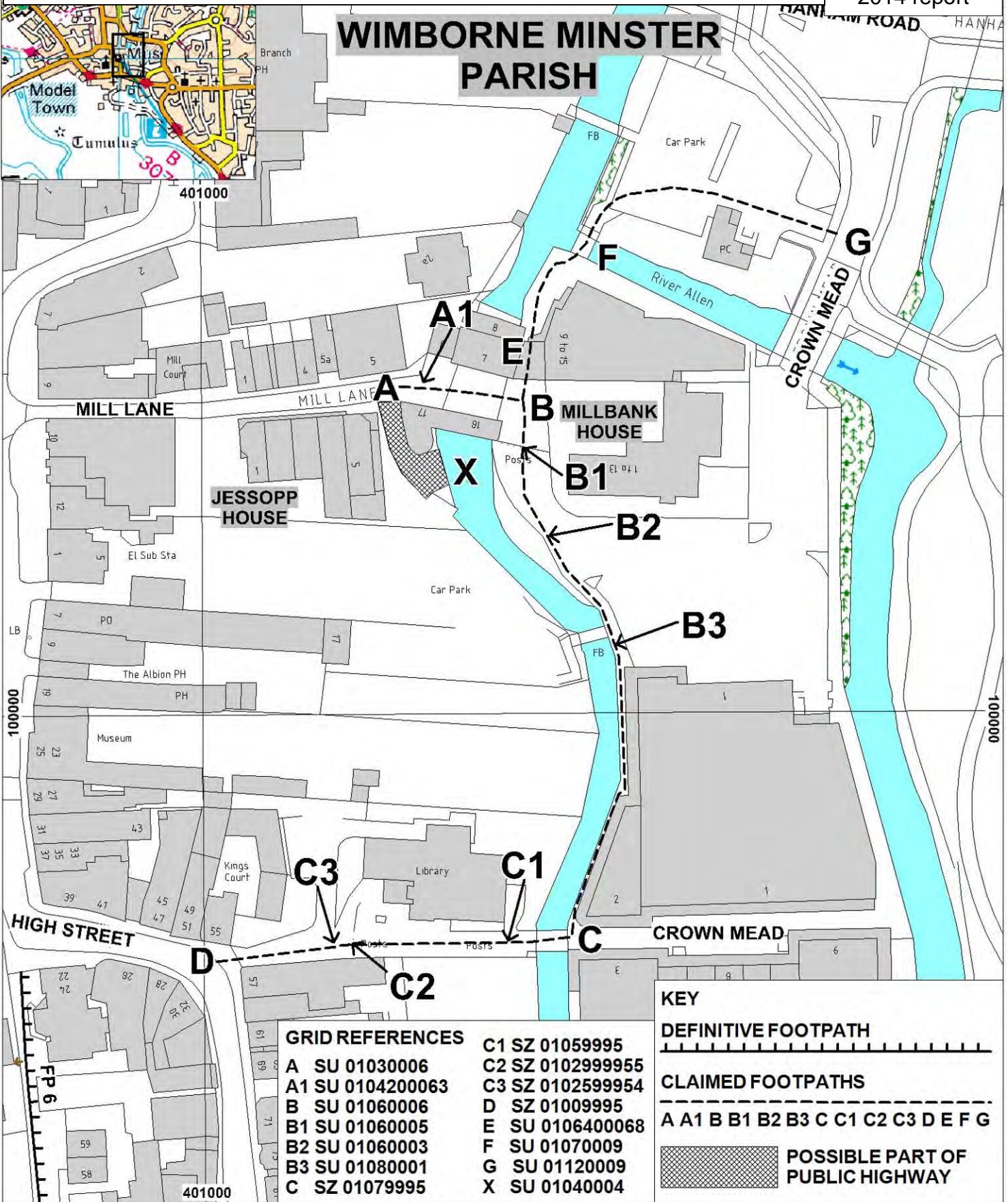
13 Conclusions

- 13.1 As no parts of the routes to be considered are currently recorded as public rights of way it is necessary for members to decide whether it can be reasonably alleged that the rights originally claimed (A – B – C – D and B – G) or proposed (A – X) do exist.
- 13.2 With respect to that part of the route as shown from **A to B1** the most important piece of documentary evidence is that of the **Finance Act 1910**, which demonstrates that this section of the route was excluded from valuation suggesting it was considered to be a public highway, part of the existing highway Mill Lane, a public carriageway. This conclusion is supported by the evidence from the **Wimborne Tithe Apportionment 1846, Ordnance Survey Maps** and several **Estate and Town Plans** and, to a certain extent, the showing of the route on the inspected layer of the **List of Streets** as far as point B.
- 13.3 Similarly, with respect to that route shown from **A to X**, this is also shown as being excluded from valuation on the **Finance Act 1910** plan, indicative of it being regarded as a public highway, most likely a public carriageway. This conclusion is supported by the evidence derived from both the **Wimborne Highway Board Minutes** and the **Wimborne Urban District Council Minutes**, in addition to that provided by **Ordnance Survey Maps** and several of the **Estate and Town Plans**.
- 13.4 With respect to the route as shown from point **E to G** the majority of the historical documents examined and the later Ordnance Survey Maps suggest that **E to F** has existed for a considerable period of time, probably since the early 17th Century. That part from **F to G** has been undefined, existing as an open field until comparatively recent times. There is no compelling evidence to suggest that the route E to G was not available to the public throughout this period.
- 13.5 With respect to that part from **B1 to D** the documentary evidence, including that provided by the **Ordnance Survey Maps** and **Aerial Photographs**, also indicate that this has existed wholly or partially from the early 17th Century. With the exception of the period during the construction of the supermarket 1979-80, there is little evidence to suggest that it was not available for public use.
- 13.6 In respect of those parts of the route shown from **A to X, A to D and E to F** 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 **1979** and, with respect to that part shown from point **F to G**, from the date of the application in **2006**.
- 13.7 With the exception of the route shown from **A to X**, there is evidence of public use of all of the routes that is considered, on balance, as being sufficient to demonstrate that public rights on foot exist along the claimed routes and which fulfils the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question in 1979.

- 13.8 If members are not satisfied that the user evidence alone is sufficient to satisfy the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, then consideration ought to be given to the evidence of use in conjunction with the documentary evidence, which is also considered, on balance, sufficient to raise an inference of dedication under the common law.
- 13.9 On balance, it is considered that a presumed dedication under Section 31 of the Highways Act 1980 is satisfied. With the exception of the route shown **A to X** there is sufficient evidence to demonstrate that public rights on foot exist along the claimed routes.
- 13.10 In addition, the documentary evidence demonstrates that, on balance, public vehicular rights exist along the routes as shown from point **A to X** and from point **A to B1**. However, as no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act appears to apply, the public mechanically propelled vehicular rights have been extinguished.
- 13.11 Therefore the following recommendations are made:
- (e) That an order be made to record the route as shown between points A – A1 – B – B1 as a restricted byway.
 - (f) That an order be made to record the route as shown between points A – X as a restricted byway.
 - (g) That an order be made to record the route as shown between points E – F – G as a footpath.
 - (h) That an order be made to record the route as shown between points B1 – B2 – B3 – C – C1 – C2 – C3 – D as a footpath.
- 13.12 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

November 2014



WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD TWO FOOTPATHS FROM MILL LANE, WIMBORNE

Ref: 14/07/3
 Date: 20/10/2014
 Scale 1:1000
 Drawn By: ACWH
 Cent X: 401059
 Cent Y: 100028

GEOGRAPHICAL INFORMATION SYSTEMS



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THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

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 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.
- 2.3 Section 31(6) of the Highways Act 1980 permits landowners to deposit with
- 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.

6 Natural Environment and Rural Communities Act 2006

6.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. Where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.

Table of documentary evidence

Date	Document	Comment
1613	Plan of Wimborne Minster – Richard Harding	Shows Mill Lane including that part of the application route from point A to B. Remainder of claimed route undefined.
16 th /17 th Century	Hanham Estate Plan	Shows Mill Lane and application route is defined from point A to B1 and also those parts shown from point E to F and point C to D. B to C not defined within an open field.
1775	Survey and Map of Wimborne Minster – John Woodward	A to B clearly defined, B to C passes through open fields and is undefined, no bridge at point C but route clearly defined through to point D. B to F passes through open field bridge at point F, F to G in open filed and undefined.
1786	Wimborne Inclosure Award & Plan	Area not covered by Award.
1807-1808	Ordnance Survey Drawing	Depicts Mill Lane, including A to B, in the same manner as other roads
1811	Ordnance Survey First Edition one inch map scale 1 inch:1 mile	Depicts Mill Lane, including A to B, in the same manner as other roads
1832	Map of Wimborne Minster – Bankes Estate	Shows Mill Lane, including A to B2. B to F and B2 to D also shown, F to G is undefined, A to X also shown
1846	Wimborne Tithe Apportionment & Plan	A to B1 shown un-apportioned and coloured ochre, in same manner as other public roads.
1873	Dean's Court Estate Plans	Mill Lane shown to continue as far as B1-B2, undefined from B2 to C, C to D defined.
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1886	Wimborne District Highway Board Minutes	Make reference to the Public Drinking Place in Mill Lane (A to X).
1887	Ordnance Survey First Edition map scale 6 inches:1 mile	Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, footbridge at C, C to D defined. E to F defined, F to G undefined.
1889	Ordnance Survey First Edition map scale 25 inches:1 mile (1:2500)	Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, footbridge at C, C to D defined. E to F defined, F to G undefined.
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.	

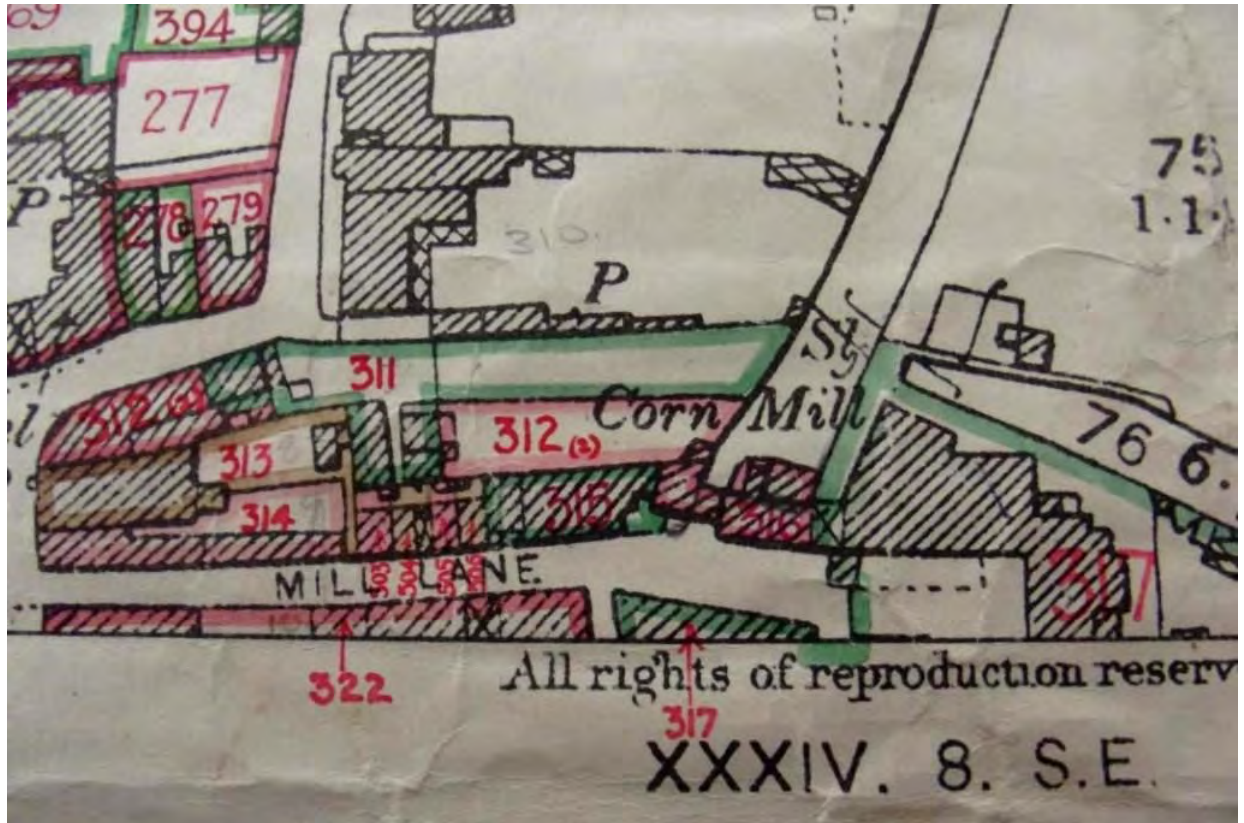
Date	Document	Comment
1892	Wimborne District Highway Board Minutes	Reference to an encroachment at the mouth of the Drinking Place in Mill Lane by Mr Ellis (Town Brewery).
1895	Ordnance Survey Revised One Inch Map scale 1 inch:1 mile	Mill Lane depicted as minor road, including A to B.
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, no footbridge at C, C to D defined. E to F defined, F to G undefined.
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, no footbridge at C, C to D defined. E to F defined, F to G undefined
1903	Wimborne Urban District Council Minutes	Reference to repairs to Bathing Place.
1904	Ordnance Survey Revised One Inch Map scale 1 inch:1 mile	Mill Lane depicted as minor road including A to B.
1906	Wimborne Urban District Council Minutes	Reference to repairs to drain outfall, Mill Lane that would require working in the water (River Allen).
1916	Wimborne Urban District Council Minutes	Surveyor instructed to inspect public drinking place and river course.
1916	Wimborne Urban District Council Minutes	Summons issued in respect of nuisance in Mill Lane.
1910	Finance Act Plan & Field Book(s)	Those parts of the route as shown A to B and A to X are excluded from valuation. A route from B to D is shown, as is a route from E to G but no deductions are made in respect of them
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1929	Ordnance Survey Revised Edition map scale 6 inches:1 mile (1:10560)	Mill Lane, including A to B and A to X defined in same manner. B to C undefined, footbridge at C, C to D defined. E to F defined, F to G undefined.
1929	Dean's Court Estate Plan	Mill Lane depicted coloured brown including A to B. B to C2 defined by broken line, C2 to D also defined, as is A to X. E to F defined, F to G undefined.

Date	Document	Comment
1947	Ordnance Survey Revised One Inch Map scale 1 inch:1 mile	Mill Lane depicted as minor road including A to B.
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.	
1949	Ordnance Survey Revised Edition scale 6 inches:1 mile (1:10560)	Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, footbridge at C, C to D defined. E to F defined, F to G undefined.
1951	Parish Survey	Route not included in Survey and not included or claimed thereafter.
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.)	
1960	Ordnance Survey Revised One Inch Map scale 1 inch:1 mile	Mill Lane depicted as minor road including A to B.
1964	Wimborne Town Improvement Plan (Wimborne Urban District Council)	Depicts Mill Lane extending to B2, from B2 defined as car park, footbridge at C, C to D clearly defined. E to F defined, F to G undefined.
1967	First definitive map	Not recorded
1971 & 1973	Goad Town Plans	Shows part of Mill Lane. Plan does not extend as far as point A. C to D is shown, including footbridge at C.
1974	List of Streets	Mill Lane recorded as D40841, a paved road 0.41 miles (0.07km) in length. A to B not shown on Maintained Highways Map but is shown on Inspected Highway Map.
1975 & 1977	Goad Town Plans	Similar to those from 1973/75 but annotated with details of supermarket development.
1986	Wimborne Pamphlet (B Willis)	Plan of town shows route A to D, defined by broken line, suggesting pedestrian route.
1989	Current definitive map	Not recorded
1996-2004	Wimborne Town Guide Chamber of Commerce	Includes plans depicting Mill Lane including A to B, also B to D and E to F.
2007, 2010, 2012	Goad Town Plans	Depict Mill Lane including A to B. Routes from B to D and E to G both clearly shown.

Extracts from key documents

(See the case file RW/T418 for copies of other documents mentioned)

1910 Finance Act maps sheets 34.8 NE and SE



1846 Tithe map



1878-1892 Highways Board minutes

25 June 1892

The Minutes of the last meeting were read and confirmed
Wimborne. The Surveyor reported that Mr Stopkins had acknowledged the receipt of the letter he had been directed to write to him respecting the re-erection of the Gates in the Mill Lane and the removal of rubbish deposited at the Public Drinking place and that no further steps had been taken by Mr Stopkins or himself.
It was proposed by Mr Whislett and seconded by Mr Burt and carried unanimously that the rubbish at the Drinking place be removed by the Surveyor or levelled at the discretion of the Surveyor and the posts which are still in the ground be sawn level with the Road or taken up at his discretion.

112
It was resolved that leave be obtained for the placing of a notice on the wall of the premises adjoining stating that no rubbish must in future be placed there

26 February 1892

Wimborne. The Surveyor reported an encroachment by Mr Ellis at the mouth of the Drinking place in Mill Lane by the erection of a manure pit and the planting of some shrubs and Messrs Halgood, Wilson and S. Bartlett were appointed a committee to see Mr Ellis upon the subject.

8 April 1892

Wimborne. The Committee appointed at the last Board to view the alleged encroachment by Mr E. Ellis - - reported that they had met on the spot and that - - - undoubtedly there was an encroachment and that Mr Ellis left himself in the hands of the Board and the Clerk was directed to communicate with Mr Ellis and inform him that if he would write and agree to pay £10 a year and to remove the manure heap causing the obstruction whenever required to do so by the Board, the

manure heap could remain subject to these conditions.

17 June 1892

Wimborne. The Clerk was directed to write to Mr A. H. Ellis requesting a reply to his letter of the 19th of April last, regarding the encroachment made by him in Mill Lane.

1903 and 1916 Wimborne Urban District Council minutes

14 September 1903

118
14 Sept 1903 Mill Lane Drain Outfall. The Surveyor explained that owing to High Water it was not possible to do the work without working in the water.
It was decided to appoint a Committee consisting of the whole Council to view the Place. To meet next Friday at 9.45 am.

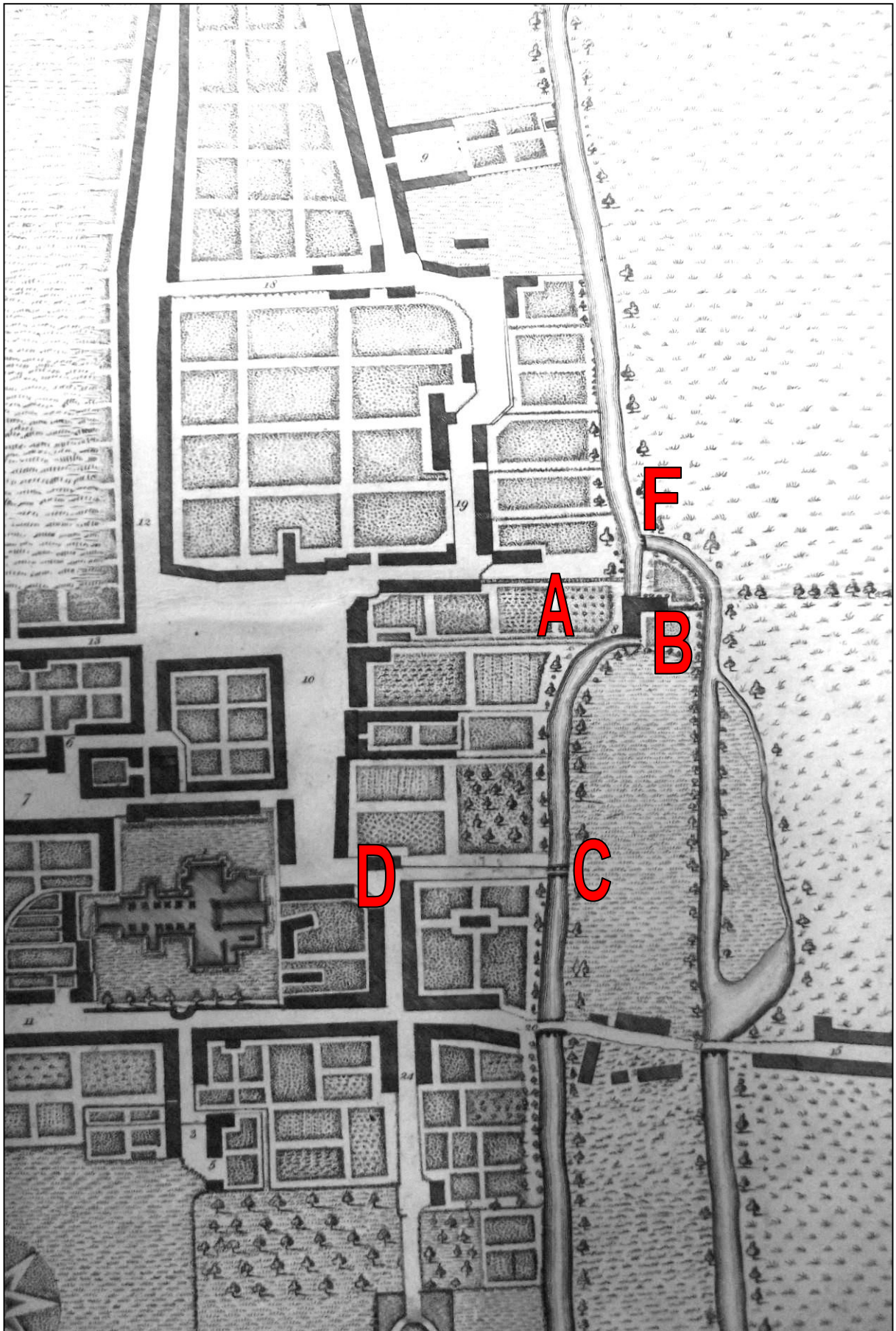
13 June 1916

Dr. Debit. Folio Ledger. Credit Folio Ledger.
13 June 1916
The two Clerks who assisted in the work.
Resolved that Mr. Luff be paid the sum of £5-5-0 and the two Clerks £7-10-0 each.
Also resolved that the sum of £3-17-0 be paid to the Clerks of the Council for the maintenance of the Register up to the 31st March 1916.
Public Drinking Place - Mill Lane.
Instructions were given to the M.G.H. and Surveyor to inspect Public Drinking Place & river course.

1613-14 Plan of Wimborne Minster by Richard Harding



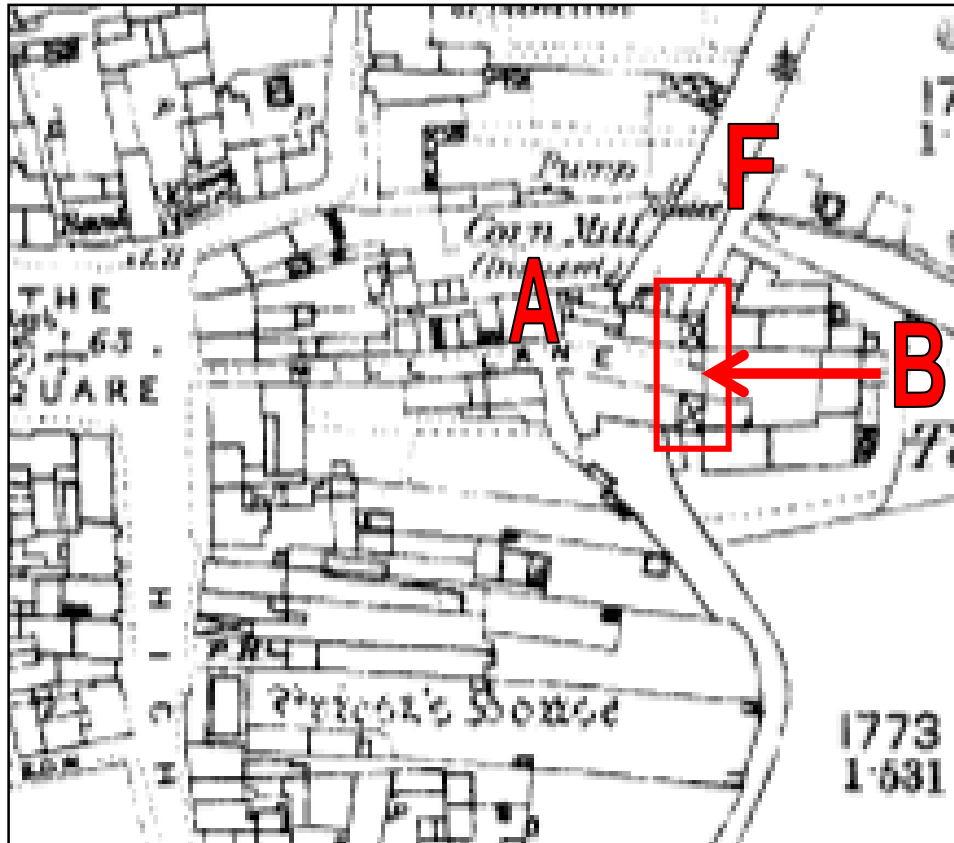
1613 Hanham Estate plan



1832 Bankes Estate Map of the Town of Wimborne Minster



1889 Ordnance Survey First Edition map scale 25 inches to the mile (1:2500)
(showing covered archways)



User Evidence
Table summarising user evidence from forms

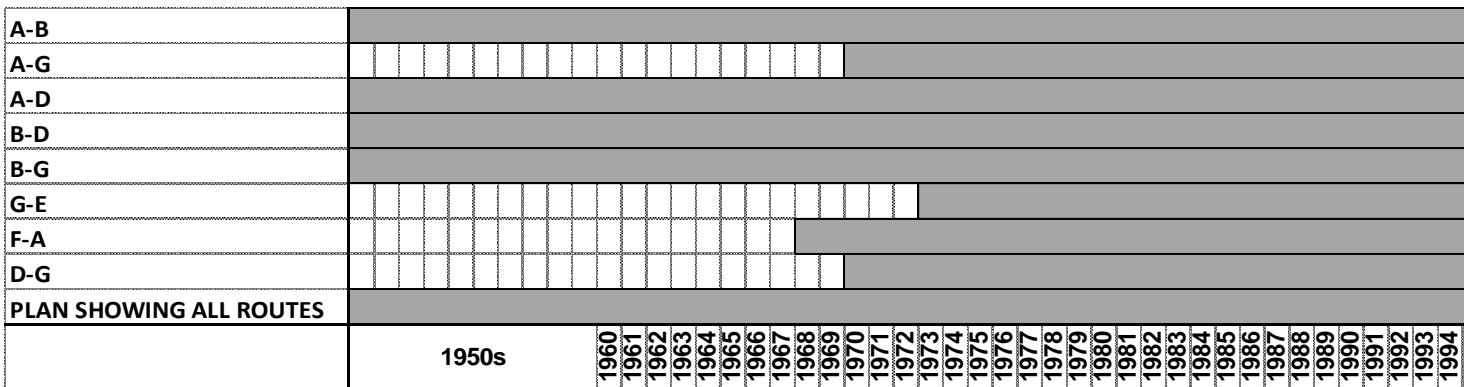
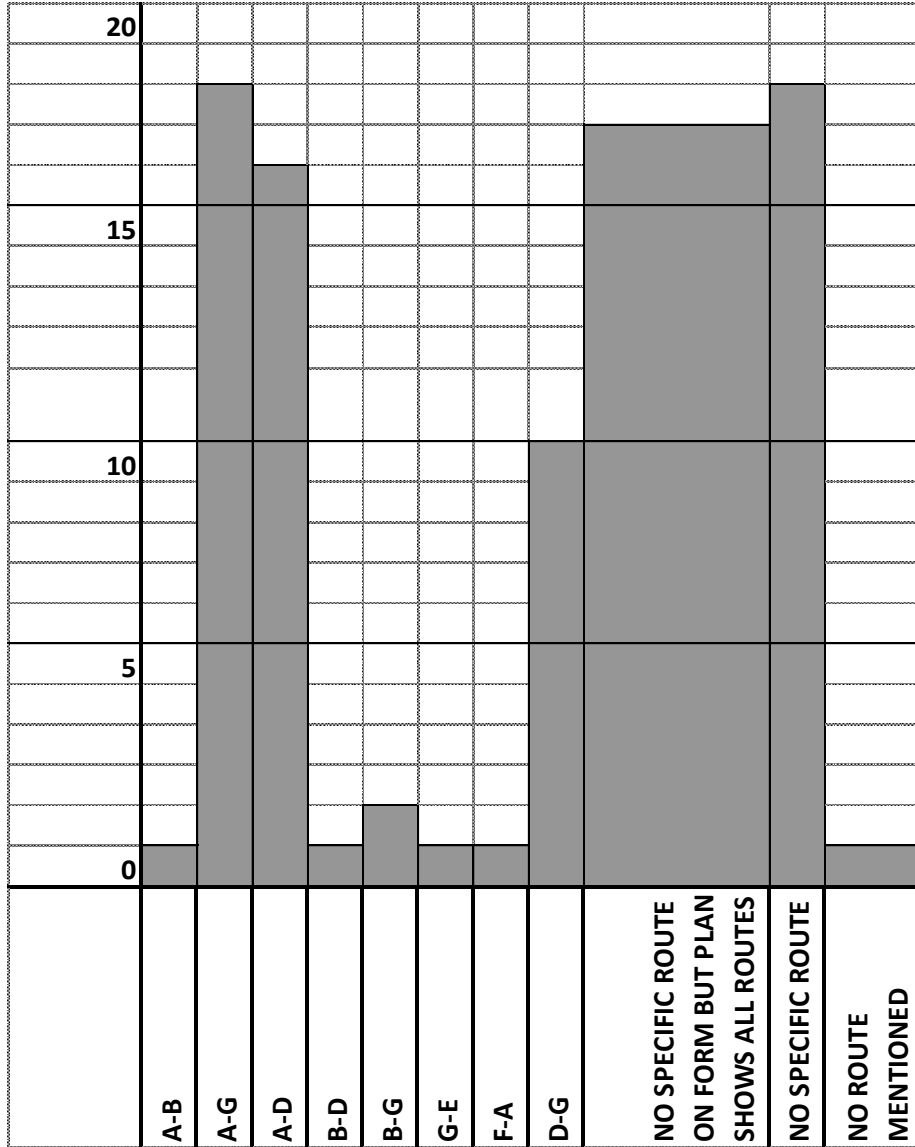
Name	Comments
**Miss B Abineri	1981-2000, daily, foot and car, no route identified, no notices other than 'private road' gates but always open.
*Mrs A Andrews	1981-2014, 100 times (weekly), foot, used all routes A-D and A-G, no notices, gate closed at B1 on 7 March 2006.
Mrs G Arnold	1978-2013, 3 or 4 times weekly, foot and vehicle, A-D and A-G, no gates or notices, bollards and vehicles caused obstructions.
*Mrs M Arnold	1982-2005, weekly, foot and bicycle, A-G and A-D, no notices, gates erected c2003, prevented from use 6/12/2005 and 10/03/2006.
*Mrs S Atkins	1970-2014, weekly, foot and bicycle, A-G and A-D, no gate until recently, may have been signs but did not pay attention.
Mrs A Bell	1985-2005, 150 (weekly), foot, A-G, gates may have been locked from time to time, prevented from use on 10/03/2006.
*Mrs V Blundell	1973-2014, weekly, foot and vehicle, A-G and A-D, no notices or gates, never challenged.
Mrs A Board	All of life 1984-2005, 2 or 3 times daily, foot, Mill Lane to supermarket A-B2, gates in last few years but not locked until recently 17/11/2005.
Mrs M Board	Late 70s to date (1978-2006), 1 or 2 times daily, foot, Mill Lane to supermarket A-B2, mesh barrier erected in last 5 years (2001/02) prevented from use 17/11/2005.
*Mrs M Bolton	1974-2014, daily, foot and bicycle, A-G and A-D, recent gates, no signs.
*Mrs E Box	1968-2014, weekly, foot, A-F (car park), gate locked once in recent years.
Mrs L Brooks	All of life (1990-2006), weekly, foot, A-G, gates locked recently 7/03/2006, notice 'private road'.
Mrs T Brown	1970-2013, weekly, foot and car, A-F and A-D, no gates, health and safety notice.
*Mr M Budden	1953-2014, once a month, foot and car, A-B Car (Car serviced at garage) B-D and B-G stated enjoyed private right but meant as of right, no notices gates erected in 2002.
Mrs W Carter	1962-2014, daily, foot, A-D and A-G, gate at F always open, no notices, never challenged.
Mrs A Chalkley	1975-2013, twice weekly, foot and car, A-B car and foot, B-G and B-D foot, gates and notices in 2008.
*Mrs H Christopher	2000-2013, daily, foot and vehicle, A-G and A-D, no gates, saw sign 'private no parking'.
Mr E G Franklin	1963-2013, weekly, foot, A-D, no gates or notices, but knows a gate is locked from time to time.
*Mrs B Fraser	1984-2013, 52 (weekly), car and foot, A-G and A-D, no gates, sign saying 'private land'.
Mrs E Friend	1984-2013, 100 (weekly), car and foot, A-G and A-D, no notices, gates not locked.

Name	Comments
*Mr Fromow	1980-2013, frequently, foot, A-G and A-D, no notices, gates only recently 2005.
Mrs N Goodall	2000-2013, weekly, foot, A-G, gates not locked, no notices, never challenged.
Mrs P Greenall	1967-2013, 3 times weekly, foot and car, A-D, no gates, sign about 3 years ago.
Mrs D Gridley	1990-2013, weekly, foot, A-D and A-G, no gates or notices.
*A Guaggenti	1988-2006, daily, foot, A-B2 (supermarket), gates 2005 often closed in evening, notice 'private road', never challenged or prevented from using route.
*Mr R Harris-Hawkins	1986-2006, daily, foot and vehicle, A-D and A-G, gates and fence open, notices 'private property'.
Mr A M Hewitt	1980-2005, daily, foot, A-D and A-G, gates only recently last 18 months, locked once.
Mrs E Hilton	1976-2014, daily/weekly, foot and cycle, A-D and A-G, no notices, gates erected recently, unlocked.
Mr G Holt	1970-2013, 50/60 times a year, foot and bicycle, A-D and A-G, gate at F always open, no notices but possibly one 'not a right of way' at F before shops opened.
*Mr T Jessop	1962-2014, many times, foot, A-D and A-G, no gates or notices until recently.
Mrs D Jones MBE	1955-1975, daily/weekly, car and foot, A-D, owned café in car park 1960-65, used route prior to this and afterwards, throughout 1950s well used route, no signs, gates or other obstructions used by the public in cars and on foot.
Mrs J Lakins	2005, occasionally, foot, A-B2 (supermarket), gates installed recently prevented use on 15/11/2005.
*Miss S Lambert	1974-77 and 1983-2014, most days, foot, A-D and A-G, no gates until recently, never challenged.
**Mr G Lewis	1970-2014, most days, foot, A-D and A-G, no gates until recently never challenged, private right.
*Mrs K Lewis	1980-2014, most days, foot, A-D and A-G, no notices or gates until recently, never challenged.
Mrs D Maidment	1980-2006, most days, foot, A-D and A-G gate at F closed at Christmas, notices recently appeared, never challenged until 7/03/2006.
Mrs V Maidment	G-D 1984-2013 and A-G 1993-2013, 3 or 4 times weekly, car and foot, does not recall any notices but may have been sign 'no right of way', gates, but always open.
Mrs D Masterman	1982-2013, weekly, foot and car, A-D and A-G, no notices, bollards, gate in 2012 prevented use.
Mrs E Murray	1983-2013, 3 times weekly, foot and car, A-D and A-G no gates or notices, never stopped or challenged.
*Mrs P Murray	1998-2005, every week, foot, A-D and A-G, no notices, gates erected in last few years not locked until 10/03/2006.
*Mr I Napleton	1973-1984 daily 1984-2014 occasionally, foot, A-D and A-G, no gates or notices, never stopped or challenged, stated private right - clarified as of right.
Mrs E Patrick	1996-2006,

Name	Comments
*Mrs K Pearce	2012-2013, weekly, foot, A-G no gates or notices.
Mrs G Sands	1983-2013, 3 times weekly, foot, car and bicycle, A-D and A-G, no gates or notices, private sign recently, never challenged.
Mr R Sands	1983-2013, 3 times weekly, foot, car and bicycle, A-D and A-G, no gates or notices, private sign recently, never challenged.
Mrs F Scott	1979-2013, weekly, foot, A-D and A-G, gates not locked until recently, bollards, no notices, never challenged.
**Mrs I Selway	1975, weekly, foot and vehicle, A-D and A-G, gates not locked until recently, bollards no notices, never challenged.
Mrs J Sidibeh	1970s – 1980s, all the time, foot, A-D and A-G, no gates or other obstructions, no notices, never challenged.
Mrs P J Smith (2 forms)	1987-2013, 2 or 3 times a month, foot and car, A-D and A-G, gates and bollards, no notices, private signs recently, never challenged.
*Mr A Stanley	1985-2006, several times weekly, foot, A-G and A-D, not aware of notices, gates recently and 'private road', never challenged.
*Mrs I Stanley	1997-2006, several times weekly, foot, A-D and A-G, not aware of notices, gates recently prevented use on 17/11/2006.
Mrs G Strange	1970-2013, twice weekly, foot, A-D and A-G, does not recall any signs, gates open, never challenged.
*Mrs A Strudwick	1972-2005, weekly, foot, A-G, no gates or notices, never challenged.
Mrs J Sturgess	1975-2005, weekly, foot, A-D and A-G, no gates or notices, never challenged.
Mrs E Taylor	1999-2013, most days, foot, car and bus, A-D and A-G, no gates or notices, never challenged.
Miss S Thompson	1995-2005, daily, foot, A-G, notice 'private road' last 4 years, no gates until about 5 years ago, locked on 5/11/2005.
*Mrs S Webster	1993-2013, twice weekly, car to car park and then on foot, A-B2 and A-G, no gates or notices, never challenged.
Mrs J West	1981, weekly, foot and vehicle, A-D and A-G, no gates or notices, never challenged.
Mr C Wood	1997-2013, daily, car and foot, A-D and A-G, gates open, notice 'private road gates subject to closure' and on fence and gate, never challenged.
Mrs P Wood	1998-2013, weekly, foot, A-D and A-G, no notices, gates sometimes locked, never challenged
<p>NOTES * Statements clarified by telephone between 1st and 7th October 2014 ** Witness evidence lacking details and has been discounted it was unable to be verified</p>	

Charts to show level and periods of use of sections of the routes

NUMBER OF USERS



YEARS OF USE

Additional evidence and representations in support of the proposal

Name	Comments
Mr G Hemsley (Ramblers, east Dorset Group)	The Ramblers welcome and support the application. Both routes have been used by the public for many years without barriers, obstructions or other impediments to use. With the exception of that part from F to G, he has personally used the routes, without challenge, from the early 1990s, during which time he observed other members of the public freely using them. He has never observed any signs to prevent such use.
Mrs S Slade (resident of Millbank House enjoys private right of access from A to B)	(As a resident of Millbank House enjoys private right of access from A to B). Refers to the installation of fences and gates at several locations on Mill Lane, which are secured, locked at the same time. Has witnessed use of the route from B1 towards the supermarket
Mrs S Slade	Sent a further letter in which she states that she has used all of the routes for 20 or more years as a footpath and where appropriate with a car. Has never been stopped, was not aware of any signs and has never been given permission.
Mr D Slade	(As a resident of Millbank House enjoys private right of access from A to B). Uses route from B1 to supermarket daily, believes the gate and fence at point B1 should be open at all times.
Mr D Curtis	Supports application, lived in area since 1985, disputes landowner's claim that private signs / notices have been on-site for 35 years.
Mrs J Caley	Enclosed a press cutting from Stour & Avon Magazine, 21 March 2014, relating to the issue of public rights over these routes in which she states that she has constantly walked or driven over the land [Mill Lane A to B] in question. Mrs Caley adds that these paths have been regularly used since their inception and should remain as public rights of way. She adds that she was stopped from using the route on Christmas Day 2013.
Mrs M Hoare	States that she and her late husband used the car park in Mill Lane (now the site of the supermarket) from the 1950s to 1970s. States she has always known Mill Lane was a public right of way and that it was used as such until erection of fence, to which she objects.
M & D Griffiths (Salamander Cookshop)	Support the application, have owned Salamander Cookshop for 18 years and have enjoyed "unfettered" access to the side and rear of premises via Crown Mead. Have personally used Crown Mead to shop since 1989 and have never been prevented from using way or seen any signs to the effect that the way was private.

Name	Comments
Mr P Fowler (Kiteleys Solicitors)	Has worked in Wimborne for 20 years and through his personal knowledge of the site can confirm he has used both routes, but in particular that shown from A to D. During this period nobody has ever attempted to prevent his use nor has he seen signs to dissuade him from using it.
Mrs E Davies (resident of Millbank House enjoys private right of access from A to B)	Supports the application. Has lived at Millbank House over 20 years and has used these routes regularly without hindrance, with the exception of the route to the supermarket (from B1) over the last 7 or 8 years, when the gate was occasionally closed.
V Bossem	Owns V & A Discount Warehouse, Mill Lane and has rented the property for 5 years. Has always believed that Mill Lane (A to B) was a public right of way. Does not see the need for other routes and states that the landlord closes them 2 or 3 times a year, usually at weekends or during public holidays. Signs have been in place throughout his occupancy.

Evidence and representations opposing the proposals

Name	Comments
Mr C Slocock (The Slocock Trust)	Mill Lane Precinct is private property, no public right of way. Signs to this effect for 35 years (1979). Applicant was aware of signs and gates. Enclosed photographs of signage.
Mr D Hoyle (e-mail 1)	Prior to the erection of the supermarket (1979-80) there was no public access through the end of Mill Lane. After supermarket was built the landowner allowed public access. Landowner has closed gates to prevent access and the accrual of public rights.
Mr J Batchelor	Resided in Wimborne for 55 years (1959) does not believe the routes to be public and they have always had signs to that effect, gates are usually closed at Christmas. Believes that the land beyond B1 (former car park) was owned by a Mr Crowther who charged for access and on other occasions closed access to the site. The 'spur' route he states was gated (point F) and closed regularly.
Mr & Mrs Blackmore	Has lived in Mill Lane since 2002, during which time they have been aware of signs and gates stating property was private. Gates usually closed at Christmas, Easter and on bank holidays. Do not believe the route is a public right of way.
Mr D Hart	Believes that there is no public right of way beyond point A. Beyond B1 owner of car park charged for access, both this route and the 'spur' route were gated and closed. Area developed in 1980s and was aware of signs stating land was private not a public right of way prior to this (no date given).
Mr D Hoyle (e-mail 2)	Reiterates that he believes that the letters to the press from users of the routes were untruthful and the land was private, public access was only being allowed as a friendly gesture by the landowner.
Mr C Slocock & Mr M Shutler (The Slocock Trust) (12/04/2014)	Does not believe route is public, signs have always been in place and gates closed across route. Residents of Mill bank House enjoy a private right of access. In 2009 Dorset County Council was of opinion no public right of way existed at that time. In absence of Mr Hewitt (applicant) queries the lack of an applicant. Suggests that there have been a number of procedural errors including the lack of notification to certain owners of the land, including the Slocock Trust. No records of any public rights but recent private rights have been granted, reinforcing the view that no public rights exist.
Mr M Shutler Turner's Solicitors	Letter on behalf of Slocock Trust enclosing eight signed statements from employees and tenants in support of the landowner (summarised below), magazine article and map.
(1) K Short	Owns signing and engraving company at 14a Mill Lane since 1979 and manufactures signs for Mr Slocock. Does not consider the route to be public.

Name	Comments
(2) A Trim	Employee of Mr Slocock since 1988, aware of signs and gates over this period. Does not consider the route to be public.
(3) E Dunningham	Held lease at 10a Mill Lane, Riverside Tea Rooms, from March 1985 to July 1992. Aware of signs in place and gates subject to annual closure. Does not consider the route to be public.
(4) S Tucker	Lived and worked in Wimborne since September 1988, taught music to Mr Slocock's children at Mill Lane. Aware of signs over this period and the annual closure of the gates. Does not consider the route to be public.
(5) D Munford	Employee of Mr Slocock since 2001 and aware of signs and gates over this period and annual closure of gates. Does not consider route to be public.
(6) E Monds (Solicitor) Turner's	Worked in Wimborne office from 1986, former trustee of Slocock Trust. Confirms signage in place for upwards of 25 years (1989). Aware that gates were closed annually, usually Christmas, considers users would have been aware that land was private and their use by implied consent.
(7) J & L Henton	Have held lease to 10a Mill Lane, Riverside Café, since 1997, aware of signs and that gates were subject to annual closure. Do not consider route to be public.
(8) C Slocock	Owner of some of the property affected. Adopted highway ends at Church House, private property identified thereafter. Over the period of ownership by his family signs have been in place, the red signs for the last 35 years. Has installed gates and barriers that are closed annually. In his view there is no public right of way over the land.
Mr C Slocock & Mr M Shutler (The Slocock Trust) (28/04/2014)	No evidence of unobstructed public use, any use that has taken place is of insufficient frequency. No record of a new application. Does not believe public rights exist over routes and reiterates point about private rights recently granted.
Mr I Speirs (Instructed by The Slocock Trust)	Report on evidence in respect of the alleged right of way. (Dealt with in more detail within the body of the report.)
Mr J Wells	Believes that Mill Lane beyond point A is private and is aware that it has been signposted as such for many years. There were also gates that were regularly closed.
Mr C Slocock & Mr M Shutler (The Slocock Trust) (30/04/2014)	Queries the validity of the application in lieu of the original applicant. Reiterates observations in respect of signs, gates and use of land prior to the 1980s development. States that they do not believe the application is being dealt with on the basis of evidence discovered but through coercion by the "local point of contact". Believes that the Finance Act plan is not evidence that a survey was undertaken at that time and that it provides no evidence of tax exemption for the whole of Mill Lane.
Mr C Slocock (The Slocock Trust) (02/05/2014)	Reiterates previous observations and comments.

Name	Comments
Mr D Wheelton	Lives in Tasmania, former resident of Wimborne. Served apprenticeship at printing business in Mill Lane. Was aware of gates and signs and is of the opinion that there is no public right of way over the land
Mr C Slocock (Slocock Trust)	Responded to additional consultation on route A to X. Does not believe the route to be public.
Mr I Speirs (Instructed by The Slocock Trust 19/09/14)	Mr Spiers provided a signed statement and further information regarding the placing of signs along the route(s).
	<p>Issues were raised such as: -</p> <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Noise • Pollution • Suitability • Dangerous junctions • Disruption and damage to the historical environment • Current and past use

Appendix 7
to November
2014 report

Other submissions received

Name	Comments
Mr M Board	During 1950s cycled down Mill Lane and into the former car park, recalls being shouted at by an elderly man who occupied the hut at the entrance to the car park.
Mrs C Shoopman (British Horse Society)	No evidence for or against the application.
Southern Gas Networks	No evidence for consideration. Gas mains present in vicinity of site.

**Extract from the minutes of the Regulatory Committee
27 November 2014**

Application to add footpaths and a proposal to add a restricted byway to the definitive map and statement for Mill Lane, Wimborne Minster in the town centre

40.1 With regard to the application to add footpaths and a proposal to add a restricted byway to the definitive map and statement for Mill Lane, Wimborne Minster in the town centre, the Chairman informed the Committee that the County Council had received additional documentary evidence the previous day and, consequently, officers had not had sufficient opportunity to meaningfully examine them for their relevance, or otherwise.

40.2 He had been advised that it was sensible to defer consideration of this item so that the documents and their relevance, or otherwise, could be reviewed. To proceed with consideration of the application as it stood would leave the County Council vulnerable to challenge or complaint.

40.3 He considered that as officers had undertaken comprehensive consultation on this application, had provided ample opportunity for documentary evidence to be provided in sufficient time and had made themselves available for discussions about this case, it was disappointing that these papers had been forwarded to the Council at such a very late stage.

40.4 On behalf of the Committee, he offered his sincere apologies in having to inconvenience those members of the public who had attended the Committee anticipating that the application would be determined and with the intention to speak. Whilst this was undoubtedly frustrating, he hoped that they would understand that it was important that all evidence available in relation to matters before the Committee was dealt with consistently. He thanked those members of the public who had attended for that item for the interest they had shown and hoped to see them again when the application was again before the Committee for consideration.

40.5 So that a similar situation did not arise again, he urged any members of the public to make sure that any documentary evidence which they considered to be relevant to be made available to officers in sufficient time for them to be meaningfully considered.

40.6 The Chairman clarified that those interested parties would be informed in due course over the arrangements for when consideration of this application was to be heard again.

Resolved

41. That consideration of the application to add footpaths and a proposal to add a restricted byway to the definitive map and statement for Mill Lane, Wimborne Minster in the town centre be deferred to allow the new documentary evidence to be reviewed.

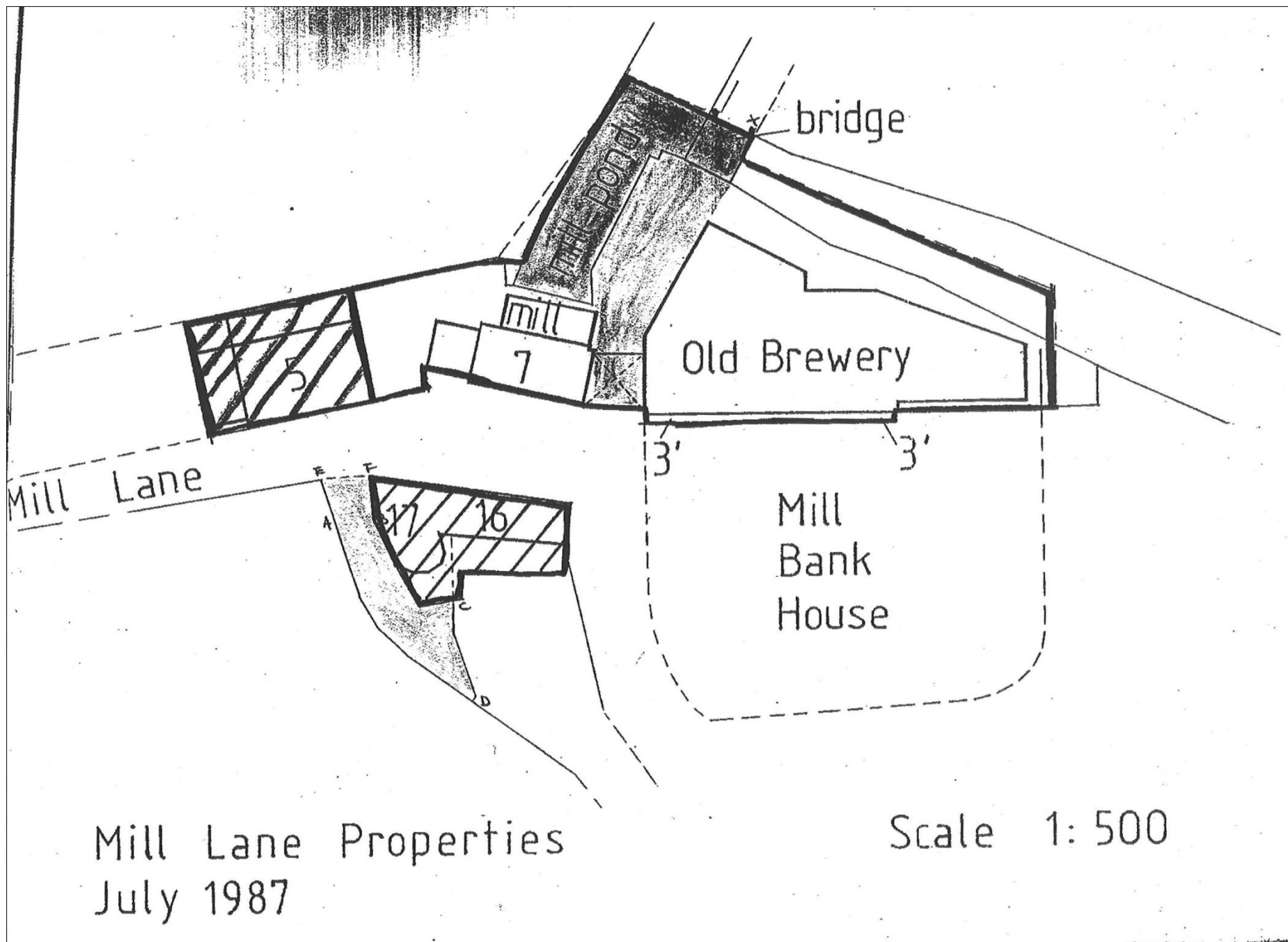
**Additional evidence submitted on behalf of Mr Slocock
- extracts from Statutory Declaration of Horace Lett Slocock
dated 18 December 1987**

4. I acquired the Old Malt House, Mill Lane, such property being edged red and hatched black on the plan annexed hereto by Conveyance dated 8th November 1949. As to the pink land which adjoins the same on its Western and Southern boundaries since I acquired the Malt House in 1949 it has been used exclusively by me (and by tenants of mine with my permission) without claim from any other person by right. Initially I used the land for the parking of cars in connection with my adjoining industrial estate and for the storage of materials by me (and with permission from me by my tenants). In 1966 I had positioned in the land a builders skip measuring 1.8. metres in overall width and having a length of 3.10 metres. The total width of the land from the points marked "A" and "B" is approximately 3.6. metres (11'10"). This builders skip has been used exclusively by me and by my tenants of my adjoining industrial estate only with my permission. No person or body has ever objected to the skip being positioned there and I believe my title to the pink land is undisputed. The land is bounded on the East side by my property the Old Malt House, on the West side by a high wall and as to the Boundary "C" "D" by frontage to the River Allen. No person to my knowledge has or purports to exercise rights of way or otherwise over the land to get to the River although I know from my own personal knowledge that up until approximately 1930 when the pink land was used as part of the Old Town Brewery run by the Ellis family the land was used to enable dray horses to have access to the river and to be watered at the River Allen. Such use was of course ancillary to the Malt House and Brewery which was used until 1936. I repeat that I acquired the Malt House by Conveyance in 1949 and bought the Old Brewery by Conveyance dated 19th July 1946.

5. In 1986 really to ensure the safety of children (a) from the River and (b) from investigating rubbish and materials or cars that might from time to time be parked on the pink land I erected posts on either side on the boundary at the points "E" & "F" and when the estate is closed the access is barred by a chain and padlock. No party to date has ever objected to the complete enclosure by the said chain of the pink land and I have only not enclosed it permanently because of the need to obtain access to the rubbish skip.

8. On the 10th August 1987 I instructed my Solicitors to investigate with the previous Local Authority and Council whether they had any knowledge of any documentary title or claim to rights over the pink land. There is produced and shown to me marked "H.L.S.2" copies of the letters written by my said Solicitor on 10th August 1987 to which to date no reply has been received.

9. As to the green land this abuts and adjoins land edged red which was acquired by me under the said Conveyance dated 19th July 1946. The said Conveyance carries with it the exclusive use of the water and rights in and over the Mill Pond and the green land does in fact form the bed of the River Allen and I claim ownership of the entire bed of the said River subject to any statutory rights vested as to water in the Wessex Water Authority. At the time of the Conveyance of 19th July 1946 I also acquired the adjoining land designated by the words "Old Brewery" on the plan attached and whereas I have allowed access on foot from time to time over that area of land coloured yellow I have always maintained since I owned the land a gate at the point marked "X" and have until recently made it a practise to shut that gate at least once a year to ensure that no party acquired rights by prescription over the land coloured yellow. In addition upon the post in the position marked "X" there is a plaque which indicates there is no public right of way and that the land is in fact privately owned. In the premises I claim that I am the undisputed owner of the bed of the River Allen co-extensive with the green land.



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Regulatory Committee

Extract from the minutes of a meeting held on 12 March 2015

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 Slocock 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 Slocock 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.

Regulatory Office 12/03/16 mins 24-26

KJS 017/16

Dorset County Council



Wildlife and Countryside Act 1981

**Dorset County Council
County of Dorset Definitive Map and Statement of Rights of Way**

**Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street
and Crown Mead, Wimborne Minster)
Definitive Map and Statement Modification Order 2016**

This Order is made by Dorset County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the County of Dorset Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) namely, that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates and section 53(3)(c)(iii) namely that any other particulars contained in the map and statement require modification.

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

1. For the purposes of this Order the relevant date is 10 December 2015.
2. The County of Dorset Definitive Map and Statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the "Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street and Crown Mead, Wimborne Minster) Definitive Map and Statement Modification Order 2016".

SCHEDULE

(The points specified relate to the map attached to the Order and their positions are identified by national grid references)

Part I

Modification of definitive map Description of ways and paths to be added

Restricted Byways and Footpaths at Wimborne Minster in the East Dorset District:

A Restricted Byway

(to be numbered Restricted Byway 17, Wimborne Minster)

A – A1 – From its junction with Mill Lane, south of 5 Mill Lane at point A (SU 01030006), east, via point A1 (SU 0104200063), for a distance of 25 metres to point B (SU 01060006), extending north to point E (SU 0106300064) and
B – B1
and B – E (from point B (SU 01060006)) south, passing to the west of Millbank House, to its junction with the proposed new Footpath 18 at point B1 (SU 01060005). The width varies: 5 metres between points A (SU 01030006) and A1 (SU 0104200063), 9 metres at point A1 (SU 0104200063), widening to 13 metres at point B (SU 01060006) (extending south to point B1 (SU 01060005) and north to point E (SU 0106300064)), as shown shaded hatched on the Order plan 14/07/4.

A Footpath

(to be numbered Footpath 18, Wimborne Minster)

B1 – B2 – From its junction with the proposed new Restricted Byway 17, to the west of
B3 – C – Millbank House at point B1 (SU 01060005), south and south east along a
D tarmac/paved surfaced path, on the eastern bank of the River Allen, to the west of a car parking area, via points B2 (SU 01060003) and B3 (SU 01080001), then south and south south west, passing to the west of the supermarket to Crown Mead at point C (SZ 01079995). Continue west, crossing a bridge over the River Allen, then west, passing to the south of the library and continuing west to its junction with the High Street, south of 55 High Street at point D (SZ 01009995). The width varies: 10 metres between points B1 (SU 01060005) and B2 (SU 01060003), 3 metres between points B2 (SU 01060003) and B3 (SU 01080001), 4 metres between points B3 (SU 01080001) and C (SZ 01079995), 4 metres at point C (SZ 01079995), 4.6 metres at point D (SZ 01009995).

A Footpath

(to be numbered Footpath 19, Wimborne Minster)

E – F – G From its junction with the proposed new Restricted Byway 17, to the west of Millbank House at point E (SU 0106300064), north through a covered passageway, then generally north north east along the eastern bank of the River Allen and crossing a bridge over a branch of the River Allen at point F (SU 01070009). Continue north north east, entering the car park, then east south east across the car park for a distance of 52 metres to its junction with Crown Mead at point G (SU 01120009). The width varies: 2.5 metres between points E (SU 0106300064) and F (SU 01070009), 2 metres between points F (SU 01070009) and G (SU 01120009).

A Restricted Byway

(to be numbered Restricted Byway 20, Wimborne Minster)

- A – X From its junction with Mill Lane, south of 5 Mill Lane at point A (SU 01030006), generally south along a tarmac surfaced path, between the properties 5 and 17 Mill Lane, then turning east, at the south of 17 Mill Lane, to the bank of the River Allen at point X (SU 01040004).
The width varies: 3 metres at point A (SU 01030006), widening to 7 metres at point X (SU 01040004) as shown shaded cross hatched on the Order plan 14/07/4.

Part II

**Modification of definitive statement
Variation of particulars of ways and paths**

Add:

Restricted Byway 17, Wimborne Minster in the East Dorset District:

From: SU 01030006 To: SU 01060005
From its junction with Mill Lane, south of 5 Mill Lane at, east, via SU 0104200063, for a distance of 25 metres to SU 01060006, extending north to SU 0106300064 and (from SU 01060006) south, passing to the west of Millbank House, to its junction with Footpath 18.
The width varies: 5 metres between SU 01030006 and SU 0104200063, 9 metres at SU 0104200063, widening to 13 metres at SU 01060006 (extending south to SU 01060005 and north to SU 0106300064), as shown shaded hatched on the Order plan 14/07/4.

Add:

Footpath 18, Wimborne Minster in the East Dorset District:

From: SU 01060005 To: SZ 01009995
From its junction with Restricted Byway 17, to the west of Millbank House, south and south east along a tarmac/paved surfaced path, on the eastern bank of the River Allen, to the west of a car parking area, via SU 01060003 and SU 01080001, then south and south south west, passing to the west of the supermarket to Crown Mead at SZ 01079995. Continue west, crossing a bridge over the River Allen, and passing to the south of the library and continuing west to its junction with the High Street, south of 55 High Street.
The width varies: 10 metres between SU 01060005 and SU 01060003, 3 metres between SU 01060003 and SU 01080001, 4 metres between SU 01080001 and SZ 01079995, 4 metres at SZ 01079995, 4.6 metres at SZ 01009995.

Add:

Footpath 19, Wimborne Minster in the East Dorset District:

From: SU 0106300064 To: SU 01120009
From its junction with Restricted Byway 17, to the west of Millbank House, north through a covered passageway, then generally north north east along the eastern bank of the River Allen and crossing a bridge over a branch of the River Allen at SU 01070009. Continue north north east, entering the car park, then east south east across the car park for a distance of 52 metres to its junction with Crown Mead.
The width varies: 2.5 metres between SU 0106400068 and SU 01070009, 2 metres between SU 01070009 and SU 01120009.

Add:

Restricted Byway 20, Wimborne Minster in the East Dorset District:

From: SU 01030006 To: SU 01040004

From its junction with Mill Lane, south of 5 Mill Lane, generally south along a tarmac surfaced path, between the properties 5 and 17 Mill Lane, then turning east, at the south of 17 Mill Lane, to the bank of the River Allen.

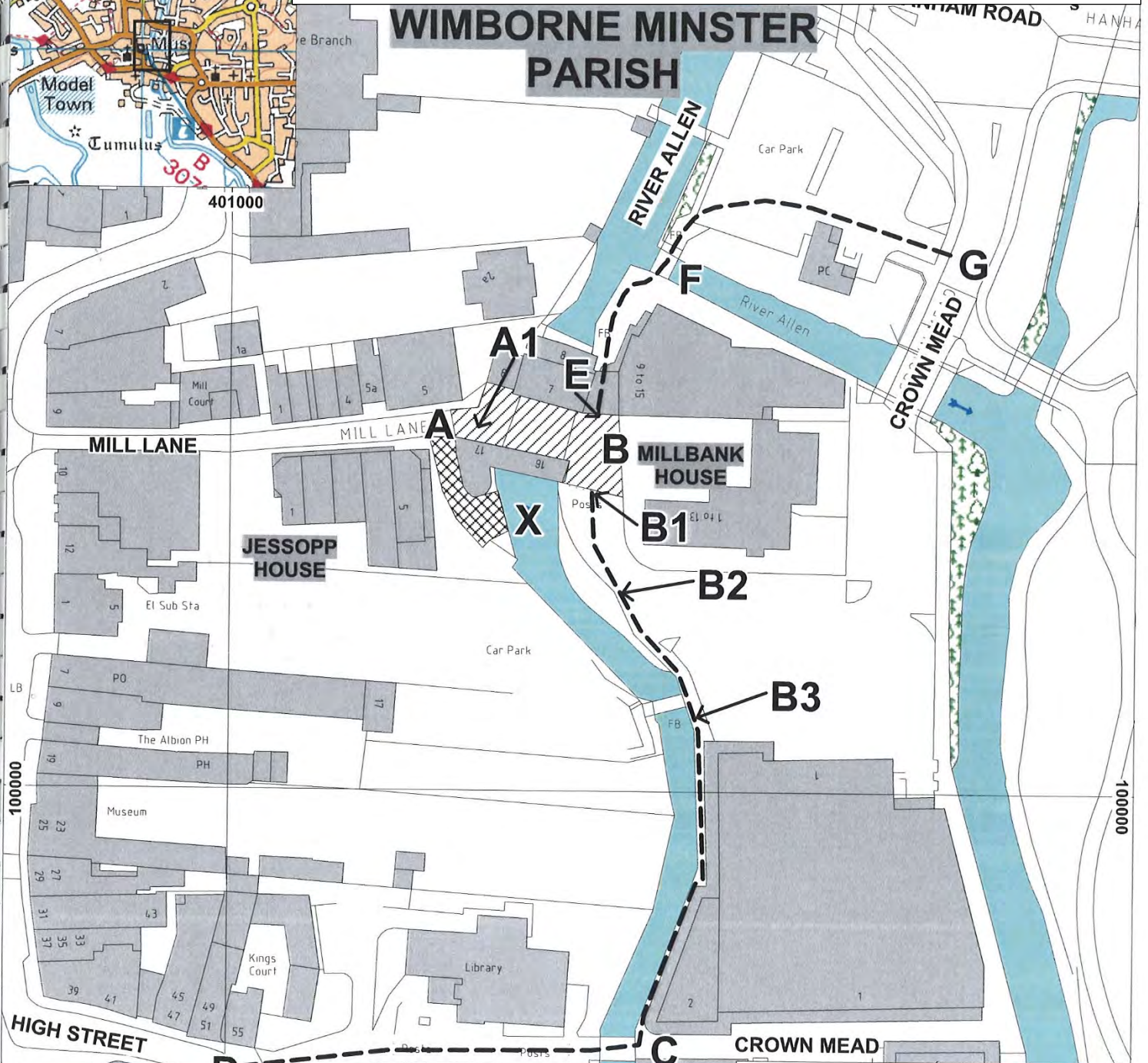
Width: 3 metres at SU 01030006, widening to 7 metres at SU 01040004 as shown shaded cross hatched on the Order Plan 14/07/4.

Dated this 22ND day of JANUARY 2016

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



Authorised Signatory



GRID REFERENCES

- | | |
|------------------|-----------------|
| A SU 01030006 | C SZ 01079995 |
| A1 SU 0104200063 | D SZ 01009995 |
| B SU 01060006 | E SU 0106300064 |
| B1 SU 01060005 | F SU 01070009 |
| B2 SU 01060003 | G SU 01120009 |
| B3 SU 01080001 | X SU 01040004 |

KEY

- DEFINITIVE FOOTPATH**
- PROPOSED FOOTPATHS**
 B1 B2 B3 C D E F G
- PROPOSED RESTRICTED BYWAYS**

Jonathan Mei

Ref: 14/07/4
 Date: 09/12/2015
 Scale 1:1000
 Drawn By: KJS
 Cent X: 401059
 Cent Y: 100028

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

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Table of responses and additional evidence received supporting and opposing the Order

SUPPORTING THE ORDER		
NAME	COMMENTS	OFFICER'S COMMENTS
Mr G Hemsley, The Ramblers	Welcomes the proposed Order	
Mrs A Chalkley	Supports Order, disappointed it has taken so long, lived in Wimborne all her life (1936). Mill Lane has become "a blot on the landscape". Has used the route for many years with friends.	
Mrs V Maidment	Supports the proposal, objects to the restrictions in Mill Lane, fences, bollards, barriers and the lack of free movement over A to X leading to River Allen.	
Mrs J Dale (e-mail)	Supports the Order, surprised that they are not already recorded on the Definitive Map. Has used the paths regularly over the last 30 years (1986), two or three times weekly.	Provides no evidence for the period prior to the public rights being challenged (1979)
Mrs B Fraser	Supports Order, notes that Mill Lane has become a difficult area to access due to the restrictions and limitations, fences and barriers that have been installed.	
Ms L Wilkins	Supports Order.	
Mrs B Masterman	Believes it is a right of way and should not be blocked by locked gates.	
Mr D & Mrs S Slade	They support the Order but have experienced restrictions for some years. Have always understood the route(s) to be public as historically horses could be led down to the river to drink.	
Ms P Smith	Supports the Order.	
Mr A West	A new resident in the area but supports the Order.	In residence since February 2016. Consequently can provide no evidence in support of or against the Order

SUPPORTING THE ORDER		
Mr B Masterman	Favours the proposal, believes it is wrong for a public right of way to be blocked and gates to be locked by a private individual.	Although this witness believes that the routes are public rights of way and it is considered that the evidence examined demonstrates it, they are not recorded on the Definitive Map and their status is under investigation.
Ms F Metcalfe	Supports Order, frequent user of Mill Lane on foot and by car.	
Mrs E Friend	Believes the route is a public right of way, uses it two or three times weekly and welcomes the proposals to improve the route.	
Mrs M Wood	Approves of the proposal.	
Mr A Spencer	Supports Order, believes from the evidence seen that there has always been a public right of way.	
Mr J Young	Supports Order, finds present restrictions unacceptable.	
Mrs V Blunden	Supports Order, lived in Wimborne since 1973 and has used the route since then, refers to the 'recent' gates and barriers, which she regards as obstructions	Evidence relates to a period immediately prior to the date considered as the challenge to public use, states that gates and barriers are 'recent' additions.

SUPPORTING THE ORDER		
Mr R Bushby	<p>Supports Order. Father ran garage in Mill Lane since 1959, then a tenant of Mr H Slocock. Took over the business from father in 1993 and ran it until 2015. As a child played in Mill Lane and Crowther's car park (1960s), used slipway to fish. Never any gates but there was a pay kiosk into the car park. Busy café in corner of car park (early 1960s and 70s). Until supermarket built everybody drove and walked up Mill Lane the only gate was under the Archway, point F, it was closed occasionally but people could still get through it or over it, nobody was ever stopped. After Mr H Slocock died, Mr C Slocock took over and lots of signs put up, and bollards (2002), red signs have been there longer (1980s). Industrial gates next to garage then erected and locked once or twice a year. Provided a photograph taken 1988/89 of what is now the Tattoo Parlour, point A, showing no signs other than his own "Ken Bushby" and another stating "Mill Lane Body and Spray Works", were in place. No signs on any of the other buildings, most of the private signs date from 2002.</p>	See report for full summary and analysis.
Mrs E T McCartney	<p>Supports Order, wife of Mr B McCartney (deceased), former owner of the land between points A and B1. Submitted new evidence, documents relating to the sale of the land in 1988, for evaluation.</p>	See report for full summary and analysis.

OPPOSING THE ORDER		
NAME	COMMENTS	OFFICER'S COMMENTS
Mr & Mrs S Balson	Have lived in Wimborne for 67 years. Land has been controlled with notices and annual closures. Understands that local companies [in Mill Lane] are upset about parking and does not wish to see them leave.	Parking not affected by proposal. Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mr J Batchelor	Has lived in Wimborne 57 years (1949), land is privately owned. Access controlled to prevent accrual of public rights. Aware of signs being in place over that period and that gate(s) were closed for periods of 24 hours, or much longer periods the further back in time you go.	Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mrs G Stean	Lived in Wimborne for 40 years (1976). Aware of notices and gates, which were locked.	Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mrs E Wheelton	Lives in Australia but visited the area in 1972; 74; 76 and 89. Aware of gates being locked at Christmas [no dates given]. Husband lived in Wimborne and worked in Mill Lane for many years before war and told her that access to Crown Mead was not possible as it was all private.	(Letter dated 30 March 2016 but posted in Wimborne on 6 April 2016.) Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mrs M James	Lived in area since 1988. Obvious that Mill Lane is private, signs, gates closed annually. Order unreasonable and unnecessary.	Witness's statement in respect of the situation from 1998 is probably correct. However, the evidence indicates that public rights were acquired prior to the witness residing in the area, a period for which she is unable to provide any evidence.
A Taste of Rasa Sayang (Mrs Y R Slocock) (1)	Lived here for 28 years, Mill Lane always been private, signs in place during this period, owner closed gate for 24 hours at least once a year. Will affect customer parking and therefore her business, unnecessary, unreasonable, will seek compensation from DCC.	Resident since 1988, the evidence indicates that public rights were acquired prior to the witness residing in the area. Parking not affected by proposal. Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. No compensation would be payable.

OPPOSING THE ORDER		
Ms N Taylor	Lived in Wimborne 33 years (1983), being a tenant of landowner for past 4 years, aware of signs and gate being locked for 24 hour periods. Concerned that Order would affect parking and if approved will seek compensation.	Witness's statement in respect of the situation from 1983 is probably correct. However, the evidence indicates that public rights were acquired prior to the witness residing in the area, a period for which she is unable to provide any evidence. Parking not affected by proposal. Signs and gates acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. No compensation would be payable.
Mr C Rowell	Order would affect his business, parking and prove financially damaging, is unreasonable and unnecessary. Will seek financial compensation from DCC.	Parking not affected by proposal. No compensation would be payable.
Mrs Y R Slocock (2)	Believes that proposal is part of a vendetta by a few residents of Millbank House led by Mrs Hopkins. Mill Lane precinct has always been private property with signs stating as much. Aware that owner closed the gate annually for 24 hours throughout her period of residence, which covers 28 years (1988). Her private parking will be affected and she will seek compensation from DCC.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Witness's statement in respect of the situation from 1988 is probably correct. However, the evidence indicates that public rights were acquired prior to the witness residing in the area, a period for which she is unable to provide any evidence.
Ms A Slocock	Proposal unreasonable. Lived in Wimborne for 20 years, land was controlled to prevent accrual of public right of way, aware of signs and gates being closed/locked annually, usually on Christmas Day. Order will commercially damage Slocock Trust property.	Beneficiary of Slocock Trust. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.

OPPOSING THE ORDER		
Mrs V Bossem	Lived in Wimborne for 9 years (1997), confirms land has been privately owned, access controlled to prevent public rights being acquired. Gates locked annually for 24 hour periods. Landowner advised her that her parking will be affected, Order a waste of time & money, will seek financial compensation.	Tenant of landowner for 7 years (1999). Only aware of situation since 1999, the evidence indicates that public rights were acquired prior to the witness residing in the area, a period for which she is unable to provide any evidence. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mr D Wheelton	Born in Wimborne 1943, served apprenticeship in Mill Lane until August 1967. Emigrated to Australia 1970. Land has been privately owned with notices stating not a public right of way, gates locked for 24 hour periods for 60 years or more. Has returned to UK on a number of occasions and can confirm that notices, gates and barriers were still in place.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Evidence suggests only one gate prior to 2002 and barriers and fencing erected at the same time.
Mr K Short (1)	Has owned sign engraving business in Mill Lane since 1979, made sign for landowner Mr C J Slocock and his father Mr H Slocock, signs have been displayed throughout the estate during this time. Aware that both Mr C and Mr H Slocock annually closed gates on estate for 24 hours at Christmas, Easter and bank holidays during this period. Does not believe public rights exist, Order would affect his parking and be financially damaging.	Mr Short is/was a tenant of both Mr C and Mr H Slocock since 1979 and has amended his statement during the course of the investigation (see previous reports)
Ms C Potts	Lived in Wimborne for 16 years (1990). Parking and business will be affected, land private not public, controlled with signs and gates closed for 24 hours once a year, unfair and vindictive, waste of money.	Provides evidence for a period post dedication. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking unaffected by proposal.

OPPOSING THE ORDER		
Mr A Payne	Concerned Order will affect parking and damage business, aware of signs and gates being locked for 24 hour periods. Order not justified on evidence, financial compensation should be paid to those affected.	Tenant of 'landowner' since 2013 (3 years) consequently, although correct, his evidence relates to a period long after dedication took place. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking unaffected by proposal.
Mr C J Slocock	Right of way does not subsist, no dedication at common law. Lack of intention to dedicate has been demonstrated by landowner.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Mr Slocock did not own A to B1 until 1988 so was not capable of demonstrating a lack of intention to dedicate prior to this time
Mr D Slocock	Lived in Wimborne 23 years, involved with closing gate for 24 hour periods, usually Christmas, during which the signs had been pointed out to him. Order would significantly damage Trust land and affect parking, access and development. Order should be dismissed and compensation paid.	Beneficiary of Slocock Trust. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking, access unaffected.
Mr D Hoyle	Referred to earlier submission summarised in previous report. Lived in Wimborne for 40 years (1976), aware of gates and signs, disputes historical evidence.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Mrs S Lavender	Lived in area for 60 years, aware that land was privately owned and controlled with signs saying it was not a public right of way. Also gates locked for 24 hours at relevant points, unnecessary, unreasonable, and a waste of money.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Does not indicate where relevant points are.

OPPOSING THE ORDER		
Mr A M Hadfield	Lived in Wimborne 48 years (1972). Understands land has been private throughout this period with signs stating no public right of way and gates, locked for periods of 24 hours. Parking and business will be affected. Aware that Mr Crowther owned car park and restricted access to Crown Mead. Gate after Archway (F) was locked shut all the time.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking unaffected by proposal.
Mr K Short (2)	Responded to reply to his initial submission. Confirmed that signs he manufactured for the landowner(s) were in the locations he identified on the accompanying plan since 1979.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Other evidence, documentary and user, contradicts this.
Mr D Waters (Waters Surveyors)	Acting on behalf of the freehold owners of Crown Mead. Owners have no particular objection to proposal providing that maintenance liability would rest with DCC.	Treated as an objection, although not relevant, as no guarantee can be provided as to future liabilities. No relevant evidence provided for or against the proposal.
Mr D R Bailey	Protests against change of status of path, increased pedestrian traffic would be hazardous to vehicle movements, increase in litter and dog mess. Pointless, needless.	Offers no relevant evidence for consideration.
Mr D R Hart	Lived in Wimborne 65 years (1951). Aware that land privately owned and access controlled throughout this period with signs stating no public right of way and gates, locked for 24 hour periods. Parking and business affected. Aware Mr Crowther owned car park and restricted access to what is now Crown Mead. Gate on other side (F) was locked shut all the time until the 70s or 80s.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking unaffected by proposal.
Mr D Munford	Lived in area for 49 years (1967). Aware that land is private and controlled with signs saying no public right of way, gates locked for 24 hours. Order will affect business and parking on Mill Lane.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Parking unaffected by proposal.

OPPOSING THE ORDER		
Mr C J Slocock (2)	Right of way does not subsist, no dedication at common law. Lack of intention to dedicate has been demonstrated by landowner. Significant procedural errors have occurred.	Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Has yet to disclose what he believes to have been procedural errors on the part of DCC.
Mr C J Slocock (3)	Submission identical to second above, different typeface and address (Unit 6 Mill Lane), summary as above.	Comments as above.
The Minster Press (Mr C J Slocock) (4)	Objects on same grounds as first and second submissions.	Comments same as first and second submissions.
Ms J Carter	Lived in area for 39 years (1976), aware that land is privately owned and controlled with signs saying no public right of way, gates at relevant points locked for periods of 24 hours. Understands that "Restrictive Bye way" will not allow mechanical propelled vehicles, will affect her classes at A Taste of Rasa Sayang, will affect her and the business.	Has only resided in the area from around the time the evidence suggests that the public rights were brought into question, offers no evidence prior to this time. Private vehicular rights will not be affected.
A Taste of Rasa Sayang (Restaurant, Mill Lane (Mrs Y R Slocock) (3)	Does not believe the evidence demonstrates a right of way exists or existed prior to closing of gates. Landowner took steps to prevent accrual of public rights through signs and closing of gates.	Has made previous submission(s) (see above). Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.

OPPOSING THE ORDER		
<p>Mr J Slocock</p>	<p>Lived in Wimborne 26 years (1990), born there, objects as DCC have not demonstrated that the public rights exist. His father and grandfather took action to prevent accrual of public rights, signs, gates locked for 24 hours. No consideration of commercial impact, effect on parking, development, security, traffic management, cleaning, maintenance. Unreasonable as on a number of occasions Highway Authority stated that no public rights existed in Mill Lane.</p>	<p>Not clear as to when the 26 year period falls, possibly 1990/2016 in which case evidence relates to a period long after public rights had been dedicated. Does not agree to report conclusions but provides no evidence as to why. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. The issues raised such as commercial impact and traffic management are not issues that can be taken into consideration when determining the application. The Highway Authority/District Council statements were and are correct as, with the exception of that part of Mill Lane recorded as a publicly maintainable highway on the List of Streets, there are currently no additional recorded public rights of way within the area of the application.</p>
<p>Mr I Spiers, Surveyor (Landowner's Representative)(1)</p>	<p>Objects to Order. Complains that client was not informed of the application or Order. Evidence does not support the proposal, complains of procedural errors.</p>	<p>Mr Spiers' client is the owner of Unit 6, Mill Lane, which comprises a lock-up garage/shed. The owner of Unit 6 is Mr C J Slocock who, as members will be aware, owns several properties in Mill Lane and has been consulted widely and responded several times to the application. Mr Spiers provides no evidence to substantiate his conclusion that the evidence considered does not support the report's conclusions or to what he considers constitutes procedural errors.</p>

OPPOSING THE ORDER		
Mr I Spiers, Surveyor (Landowner's Representative)(2)	(Second submission) Objects to Order as rights of way shown do not subsist. Documentary evidence does not support the Order, landowner has taken measures to demonstrate a lack of intention to dedicate, procedural errors.	Provides no evidence in support of his conclusions in respect of the documentary evidence. Mr Slocock's action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Whilst prior to 1988, this action in respect of that part of the route between points A and B1 may constitute a challenge to users, as Mr Slocock did not own the land it cannot be taken as a lack of intention to dedicate unless he could demonstrate that he was acting under the authority of the actual landowner, something he has not been able to demonstrate.
Mrs S Tucker	Does not believe a public right of way subsists. Lived in Wimborne for 25 years (1989) aware of signs and has witnessed gates being locked for 24 hour periods.	Period of residence postdates the time at which it is believed that the existence of public rights was brought into question. Action in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken.
Ms K Harvey	Lived in area for 21 years (1995) aware that land is privately owned and "controlled" with signs stating "not a public right of way", gates at 'relevant points' locked for periods of 24 hours, which she had witnessed. Understands that a Restrictive "Bye way" will not allow mechanical propelled vehicles, will affect business and parking.	Has only resided in area since 1995, therefore her evidence postdates the time at which it is believed the public rights were brought into question. Private vehicular rights would not be affected nor would parking. Action in respect of signs and gates is acknowledged but evidence demonstrates that public rights existed prior to this action being taken.
Mr & Mrs Dunningham	Lived in Wimborne for 54 years (1960). Do not believe that public rights exist, aware that land is privately owned and access "controlled", also of signs stating private land over the period and gates locked for 24 hour periods annually.	Do not believe public rights exist but provide no evidence to dispute the documentary evidence. Most land is privately owned but may be subject to public rights over it. They may have been aware or have been told that the gates had been locked but unlikely that they would have observed such action over a 24 hour period

OPPOSING THE ORDER		
<p>Name of witness difficult to discern, possibly Stephanie, but no return address was supplied</p>	<p>Lived in Wimborne over 30 years (1986), now a frequent visitor. Mill Lane always been private property, aware of signs saying as such and no public right of way as well as gates being closed for 24 hour periods.</p>	<p>Unable to determine whether the 30 year period preceded the “frequent visitor” period. Majority of public rights of way pass over private property, refers to gates being closed not locked, unlikely to have personally observed such events over a 24 hour period.</p>
<p>Mr C J Slocock (5)</p>	<p>Refers to correspondence from Highway Authority stating area not subject to any public rights of way. Land includes a private road with a right of way for Millbank House residents, privately maintained, owned and lit. Gates locked to prevent accrual of public rights. Plan shows extended areas and additional measurements, no notice given to landowners and tenants. Order objected to, widths excessive, unreasonable. If approved Order would interfere with parking, private access. Considers application was engineered by a few individuals with a personal interest. The landowner has operated a permissive path with signs and gates that were locked for 24 hour periods. It is possible that some users passed through regularly but were unaware of the control of the land and their claims should be considered as invalid. The land from A to X is not part of the public highway, historic access for horses associated with the brewery has long been abandoned and the land privately controlled with restricted access.</p>	<p>The application is to add unrecorded public rights of way to the Definitive Map, as such any previous correspondence from DCC or the District Council would have stated that there were no recorded public rights of way as none are currently recorded. As members will be aware, it does not necessarily follow from this statement that no public rights of way exist. Action taken by landowner in respect of signs and gates is acknowledged, but evidence demonstrates that public rights existed prior to this action being taken. Current landowner appears to acknowledge that the locking of gates/signs may not have been brought to the attention of many regular users. Documentary evidence suggests that A to X and A to B1 were considered to be public highways, the ‘public watering place’ as its name implies, was for the use of the public at large not just the brewery.</p>

OPPOSING THE ORDER		
Mr A Cosgrove	Lived in the town from 1955 before moving to Shapwick in 1980. Worked in garage providing taxis/wedding cars, competing with Crowther's who owned Crown Mead and charged for parking. Access was only possible when car park was open. In course of employment dealt with Minster Press and visited premises in Mill Lane and was aware of signs around the late 1960s. Continued to work in the town and is aware that both Mr C Slocock and his father sought to prevent any dedication over their property.	The question as to whether Mr Crowther locked the gates is disputed by other witnesses who claim the contrary. There is little, if any, corroborated evidence to suggest that any signs had been in place prior to 1979. Action in respect of signs and gates by present landowner acknowledged but evidence demonstrates that public rights were dedicated prior to this action being taken. Mr Slocock did not own A to B1 until 1988.
Mrs J Young	Worked in Mill Lane from 1947, aged 18, until 1952 as a journalist/editor. Moved to Bristol 1952, family remained in Wimborne often visited family, now resides in Scotland. Confirms that land is privately owned and access was limited, later Mr Crowther owned land. No free access, owner closed access and chased people off when car park closed. Wooden bridge with locked gate crossed over river. During the 1940s and 50s at point F there were sluice gates and an eel trap, you could not pass this point.	The question as to whether Mr Crowther locked the gate is disputed by other witnesses. There is little if any corroborated evidence to suggest the signs had been in place prior to 1979. The action taken in respect of signs and gates is acknowledged, but the documentary evidence that public rights existed prior to this action being taken.

OPPOSING THE ORDER		
Cllr R Cook	Has connections with the area for almost 40 years, lived in town since 1987, being in business from 1978 to 2010. Prior to development of Crown Mead in 1980 the area was a car park. Aware that part of the route was in private ownership due to 'common knowledge' and signs. Concerned that letter from County Surveyor of 16 June states that there are no public footpaths or bridleways shown on the Definitive Map for that area. Asks that Order should not be confirmed.	As Cllr Cook will be aware this is an application to add a path to the Definitive Map, which, depending on the outcome of the investigation, may result in the recording of a way that, although public, has not been recorded on the Definitive Map. The County Surveyor's response was correct as the paths associated with this application are not recorded on the Definitive Map. Cllr Cook's evidence relates to a period from or just before the time it is considered the ways were dedicated. Although landowner's action in respect of signs and gates is acknowledged the evidence demonstrates that public rights existed prior to this action being taken.
BLM (Landowners, Crown Mead, Legal Representative)	Submitted a formal statement and objection	Analysed and summarised within the main body of this report
Mr K Short (3)	Third submission, raises issues of partiality, confirms signs had been on site "going back a very long way", his role was to make new plastic signs from 1979. Signs at point A are some of the oldest.	Mr Short is a tenant of Mr Slocock, he has altered his statements and has complained of 'partiality', but when asked to provide evidence of this did not respond. Manufactured signs used on the site since 1979 and those at point A amongst the oldest, photographic evidence suggests that there were no signs at point A in 1988/89.
Mr D Water's (Waters Surveyors) (2)	Acting on behalf of the freehold owners of the land at Crown Mead. Objects as feels the path should be adopted.	Does not dispute the evidence or question whether the route is a public right of way, only that its maintenance should be undertaken by the highway authority. Objection not relevant.

OTHER SUBMISSIONS		
NAME	COMMENTS	OFFICER'S COMMENTS
Mr I Spiers	Letter requesting copy of decision report and an explanation of the authority under which the report was made.	
Mr G Stephenson	Born in Wimborne 1945, has lived in France since 2001. Worked in Mill lane at an Industrial Unit leased from Mr H Slocock for 3 years. From personal knowledge no route north of point F which at that time was open meadows. Land known as Crown Mead was owned by Mr Crowther who operated ABC taxis, access from Mill Lane was gated and private and at that time there was no public car parking. There was a second access to this land via a narrow track that led from the High Street. To gain access to Crowther's land there was a narrow gated bridge. There was no public access and anyone venturing onto the land would be told by Mr Crowther to leave.	It is acknowledged within the report that until later development took place there was no discernible route north of point F, although the route as far as point F was available. The question as to the presence and location of gates is disputed by other witnesses, Mr Stephenson states that gates were present but not that they were locked. Private land does not preclude the existence of a public right of way over it, it is private subject to the right of the public to pass and repass. Mr Stephenson confirms that there was a route from the High Street (point D) to Crowther's land and consequently to Mill Lane.

Letter dated 2 October 1987 from Steele Raymond regarding the transfer of land from Mr Benjamin McCartney to Mr Horace Slocock

APPENDIX 2

STEELE RAYMOND SOLICITORS

Vendals House, Post Office Road, Bournemouth BH1 1BX Tel: (0202) 284586
David A. Steele, LL.B., John R. Raymond, Simon S. Quisen, B.A. Fax: (0202) 28285
Eugen F. Johnson, B.Sc., Julian L. L. Fenn, B.A. Telex: 418222
Associates John Daniels, LL.B., Paul G. Longland, LL.B., B.C.L. DX 7842

Your Ref: PT/DT/WAT,0093 Our Ref: JRR/FI Date: 2 October 1987

Messrs Luff Raymond & Williams
Solicitors
DX 45303 WIMBORNE

Dear Sirs

Millbank House Mill Lane Wimborne

We refer to our various telephone conversations and confirm that we are instructed to write to you regarding the disposal of the differences between our respective clients as follows:-

1. Our client will remove the overhanging roof. You have confirmed that it is in order for this work to be carried out.
2. Such arrangements to which your client is at present entitled regarding the well may be continued.
3. In so far as he is able, our client will release your client from the covenants referred to in your letter to us of 10 August 1987. If this matter proceeds, please let us have a draft release for approval.
4. Your client will give up all claims to the title of the 3' strip of land and will notify H M Land Registry accordingly. Your client will continue to enjoy any existing rights to any services under the strip of land in so far as they serve his adjoining property. We suggest that this is recorded in the Transfer referred to in paragraph 5.
5. Our client will transfer to your client the land edged red on the enclosed plan ("the Property") for a nominal consideration of £1 subject to the following terms:-
 - (a) The matter remains subject to contract until completion of the Transfer.
 - (b) The consent of our clients mortgages will be required to the release.
 - (c) The property will be subject to all matters affecting the title in the normal way. The Property will also be subject to all existing and necessary easements in favour of our client and the occupiers of the land remaining in our client's title. As the land is laid out at the moment the whole of it is used as a right of way by the public at large. There is no defined carriage way. A right of way at all times and for all purposes over the whole of the Property will, therefore, be reserved.
 - (d) The release by Millbank Residents Association Limited of its rights under the various occupational leases will be required. We enclose a specimen

con't

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2.

lease. Your client will be required to indemnify our client and the Company against any liability under the various leases in so far as it arises in connection with the Property.

(e) Your client will covenant to accept liability for the maintenance and repair of the Property and not to obstruct the right of way.

f. Each party will bear its own costs.

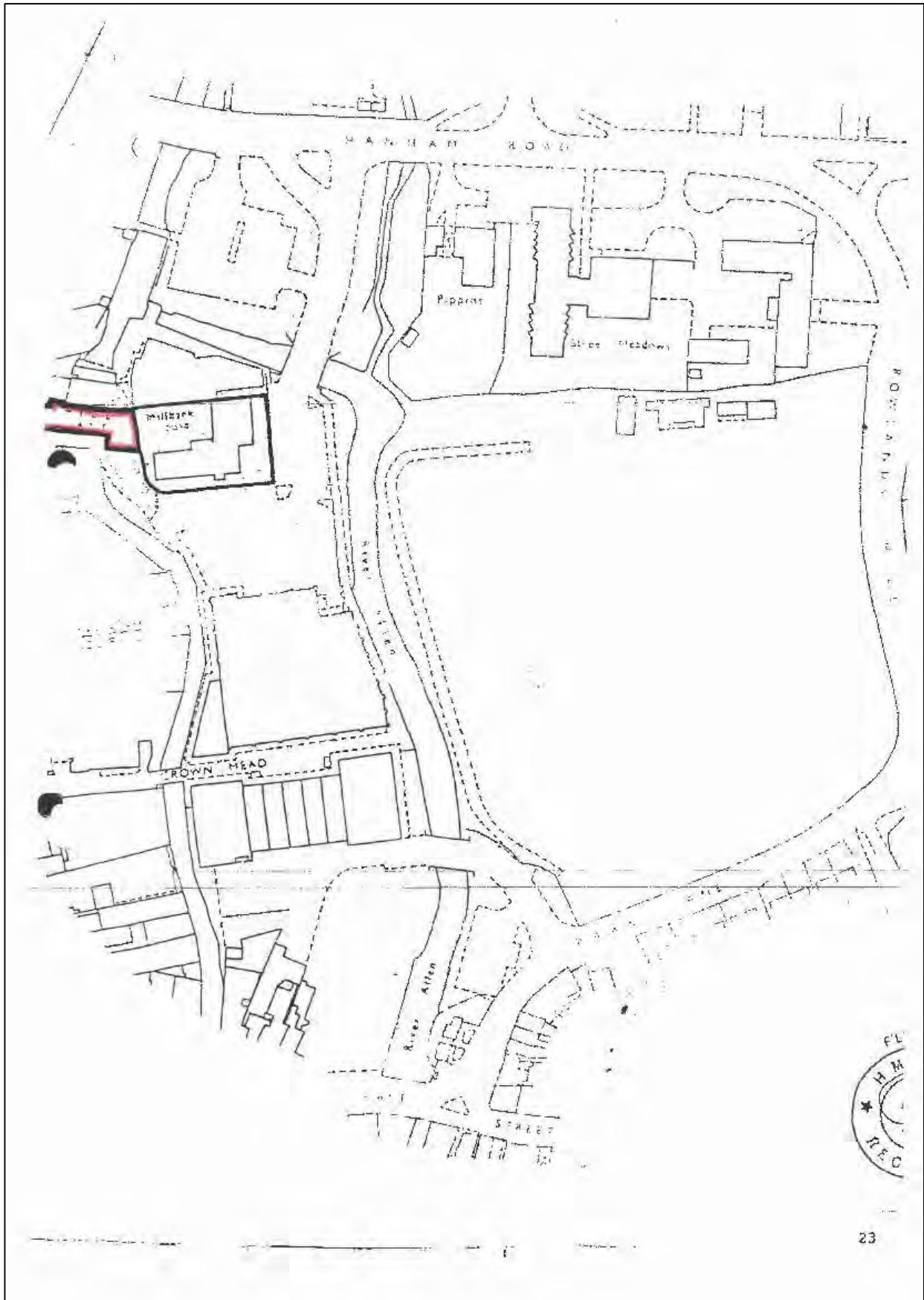
Our client has asked us to remind your client that our client did carry out remedial work on your client's adjoining property in order to assist your client and has made no charge for this work.

We would stress that the offer contained in this letter is made in the desire to close this long outstanding matter and look forward to hearing from you on Mr Tewkesbury's return from holiday.

Yours faithfully


STEELE RAYMOND

Encs



Regulatory Committee

Dorset County Council



Date of Meeting	02 February 2017
Officer	Service Director for Economy
Subject of Report	To consider planning application No. 2/2016/1127/DCC under Schedule 1 Paragraph 1 of the Town and Country Planning Act 1990, in North Dorset District Council, for Section 73 planning application proposing the variation of Condition 2 and the removal of Condition 10 of planning ref: 2/2014/0529/PLNG associated with the development of a storage lagoon on land to the South of A354, Milborne St Andrew, Dorset for Eco Sustainable Solutions Ltd.
Executive Summary	<p>The report considers a planning application for the variation of condition and removal of condition of planning permission 2/2014/0529/PLNG for a storage lagoon to handle digestate from the anaerobic digestion (AD) plant at Piddlehinton. The current proposal seeks to vary condition 2 (development in accordance with the approved plans) and removal of condition 10 (provision of wheel washing facilities).</p> <p>The application was considered at the Regulatory Committee meeting of 5 January and committee deferred its decision pending the consideration of a suitable condition to allow for the introduction of a wheel wash if subsequent monitoring determines there is a need for one. A new condition is set out in the attached report.</p> <p>The report recommends approval of the development subject to conditions.</p>
Impact Assessment:	<p>Equalities Impact Assessment: This report concerns the determination of an application for planning permission and not any changes to any new or existing policy with equality implications.</p>
	<p>Use of Evidence: The recommendation has been made after consideration of the application and supporting documents, the development, the relevant development</p>

	<p>plans, government policy, legislation and guidance, representations and all other material planning considerations as detailed in the main body of the report.</p> <p>Budget: Generally the determination of applications will not give rise to any budget implications for the Committee.</p> <p>Risk Assessment: As the subject matter of this report is the determination of a planning application the County Council's approved Risk Assessment methodology has not been applied.</p> <p>Other Implications: None</p>
Recommendation	That planning permission be granted subject to the conditions set out in section 7 of this report.
Reason for Recommendation	The reasons for granting planning permission are set out in full in paragraphs 4.11 and 4.12 of this report.
Appendices	<ol style="list-style-type: none"> 1. Previous Regulatory Report (2/2016/1127/DCC) 2. Location Plan 3. Site Plan 4. Previous Regulatory Report (2/2014/0529/PLNG) 5. Regulatory Report Minutes (2/2014/0529/PLNG) 6. Decision Notice (2/2014/0529/PLNG)
Background Papers	<p>PA File 2/2014/0529/PLNG</p> <p>NB: Copies of representations may be inspected in the Environmental Services Directorate and will be available for inspection in the Committee Room prior to the meeting.</p>
Report Originator and Contact	<p>If you have any queries on this report please contact Name: Mr Rob Jefferies</p> <p>Tel: (01305) 224279 Email: r.w.jefferies@dorsetcc.gov.uk</p>

1. Background

- 1.1 This application was considered by Members of the Regulatory Committee at the meeting of 5 January 2017 (see Appendix 1 for committee report). During the meeting Members expressed concerns that the development had commenced prior to the relevant conditions being discharged and that the siting of the lagoon did not accord with approved plan. Concern was also expressed as to the potential for mud to be deposited on the highway should a wheel wash facility not be provided on site.
- 1.2 Members resolved to defer the determination of the application to allow officers to consider the drafting of a condition requiring the installation of a wheel wash facility after an initial temporary period should it be determined through the use of the site that a wheel wash facility is indeed required.

2. Site Description

- 2.1 The application site is located to the south of the A354 approximately 500 metres to the west of Milborne St Andrew. It measures approximately 1 ha in area, including the access track and turning area. Vehicular access to the site is via an existing agricultural access off the A354.
- 2.2 The application site and surrounding area is characterised by fields laid to pasture or crop production enclosed by mature hedgerows.
- 2.3 The nearest residential property is located approximately 150 metres to the west of the proposed lagoon.

3. The Proposal

- 3.1 This planning application seeks to amend condition 2 and remove condition 10 of planning permission 2/2014/0529/PLNG.
- 3.2 Condition 2 of Planning Permission 2/2014/0529/PLNG states:

“Unless otherwise approved in writing by the Mineral Planning Authority, no development shall be carried out other than in strict accordance with the Drawing Nos. 5114/004 dated April 2014, 5114/006 dated July 2014, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.”

- 3.3 This current application seeks to regularise the fact that the lagoon has not been constructed in the location as detailed in the approved plans. It is proposed to amend condition 2 to refer to a revised set of plans that accurately reflect what has been constructed on the ground.
- 3.4 Condition 10 of Planning Permission 2/2014/0529/PLNG states:

“Prior to the commencement of development a scheme showing precise details of the design, specification and position of wheel washing facilities shall be submitted to and approved by the Waste Planning Authority. The

approved scheme shall be implemented and maintained in full working order for use throughout the duration of the development.”

- 3.5 The applicant is not proposing the use of a wheel wash and is therefore applying for the above condition to be removed.

4. Planning Assessment

Siting of Lagoon

- 4.1 The lagoon has been constructed approximately 20 metres further west than was approved by planning permission 2/2014/0528/PLNG.
- 4.2 Having regard to the scale and nature of the development as well as the presence of the mature screening vegetation I consider that the landscape and visual impacts of the proposed lagoon when viewed from public vantage points would not be materially different to that previously approved. The landscape and visual impacts of the proposed development are set out in paragraphs 6.1 to 6.7 of the previous Committee Report (See Appendix 1). In conclusion, I consider that this aspect of the proposal accords with Policy 4 of the BD&PWLP, Policy 4 of the North Dorset Local Plan Part 1 and Appendix B (c) of the NPPW and is acceptable.

Imposition of Further Condition

- 4.3 Following the deferral of the application at the Regulatory Committee of 5 January, Officers have proposed a condition that would require the installation of a wheel wash should one be considered necessary after an initial trial period of no longer than 12 months. This period is considered reasonable as it should allow monitoring to take place during a variety of weather conditions.

- 4.4 The following condition has now been added to the list of conditions as set out in section 7 of this report –

“If within 12 months of the date of this permission operations associated with the development hereby approved result in the deposition of debris onto the A354 to an extent that would in the opinion of the Waste Planning Authority be to the detriment of highway safety, a wheel wash facility shall be installed, maintained and retained on site for the duration of the development. Within 1 month following written notification from the Waste Planning Authority that a wheel wash should be installed on site a scheme for the siting, design, timetable for installation and maintenance of the wheel wash shall be submitted to the Waste Planning Authority for its approval in writing. The installation and operation of the wheel wash shall thereafter be carried out in accordance with the approved details. Once installed all vehicles leaving the application site shall use the wheel wash facility.”

- 4.5 The condition as drafted above has been agreed by applicants and the County Council's Highway Liaison Officer.
- 4.6 Having regard to the conditions as set out in paragraph 7 of this report, it is considered that the development would not be detrimental to the existing highway network or highway safety. The proposal is considered to be in

accordance with Policy 1(i) and Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW, and no unacceptable effect on residential areas will result by way of noise, disturbance, vibration or safety.

- 4.7 Following the nature of the concerns raised by members at the meeting of the 5 January 2017, should members resolve to grant planning permission it is noted that the site will be monitored on a frequent basis during both the initial construction phase and during the initial 12 month trial period. After this time the development will be subject to on-going inspection as part of the Waste Planning Authority's standard monitoring and enforcement regime.

Submission of Schemes Pursuant to Conditions

- 4.8 The applicant had previously submitted information in order to discharge the relevant planning conditions associated with planning permission 2/2014/0529/PLNG. This information was submitted to the Waste Planning Authority following notification that the development had commenced without compliance with the relevant planning conditions. With the exception of the requirement for a wheel wash the details were largely considered to be acceptable.
- 4.9 A revised set of the conditions are now proposed by officers and are detailed in paragraph 7 of this report.
- 4.10 The applicants have now submitted information in relation to all those draft conditions as set out in section 7 of this report. At the time of compiling this report officers are still in the process of considering the acceptability of the submitted schemes. Members will be updated through the Member Update Sheet or verbally on the day of Regulatory Committee as to whether the submitted schemes are satisfactory. This does not prejudice the ability of the committee to consider the planning application as presented in this report.

Conclusion

- 4.11 The appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape will ensure that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal therefore accords with Policy 4 of the BD&PWLP and Appendix B (c) of the NPPW. The proposed access to the application site and surfacing arrangements are suitable in respect of highway safety. The proposal therefore accords with Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW.
- 4.12 Based upon the evidence before me and taking account of the views of the Highway Liaison Officer, I am of the view that the removal of condition 10 relating to a wheel wash is justifiable in planning terms. However, as a precautionary measure, having regard to members' concerns, an additional condition has been proposed (condition 12 in section 7 of this report) allowing

for the Waste Planning Authority to require a wheel wash if monitoring indicates a need for one.

5. Human Rights Implications

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

- i. Article 8 - Right to respect for private and family life; and
- ii. The First Protocol, Article 1 - Protection of Property.

5.2 Having considered the impact of the development, as set out in the assessment above as well as the rights of the applicant and the general interest, the opinion is that any effect on human rights does not outweigh the granting of the permission in accordance with adopted and prescribed planning principles.

6. Statement of Positive Involvement

6.1 In accordance with paragraphs 186 and 187 of the NPPF, the Council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The Council worked with the applicant/agent in a positive and proactive manner by:

- i. updating the applicant's agent of issues as they arose in the processing of the application;
- ii. discussing possible solutions to material concerns raised; and
- iii. providing the applicant with the opportunity to address issues so that a positive recommendation to grant permission could be given.

7. Recommendation

7.1 That planning permission be granted subject to the conditions set out below:-

Time Limit - Commencement

1. The development hereby permitted shall be begun not later than the expiration of 3 years beginning from the date of this permission.

Reason:

In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).

Adherence to approved plans and details

2. Unless otherwise approved in writing by the Waste Planning Authority, no development shall be carried out other than in strict accordance with the Drawing No's 5114/004/Rev G dated December 2016, 140601-01 and 140601-03. Operations on the application site shall be

carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.

Reason:

To maintain planning control over the site and to ensure the permission is implemented in accordance with Policies 1 and 4 of the Bournemouth, Dorset and Poole Waste Local Plan and Policy 4 of the North Dorset Local Plan Part 1

Exportation of Waste

3. No digestate stored within the lagoon hereby approved shall be exported off the agricultural holding containing the lagoon.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Importation of Waste

4. Only digestate generated from the Piddlehinton AD Facility as approved by Planning Permission 1/D/08/0989 (or any subsequent consent granted over the same area) shall be imported into the site.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Environmental Management Plan

5. No further operations on the development shall take place until a Construction Environmental Management Plan (CEMP) incorporating pollution prevention measures has been submitted to and approved by the Waste Planning Authority. The development shall be implemented in accordance with the approved details and agreed timetable set out in the approved CEMP.

Reason:

To prevent pollution of the water environment having regard to Policy 1 of the Bournemouth, Dorset and Poole Waste Local Plan.

Access Crossing

6. No further operations on the development shall take place until the first 15.00 metres of the access crossing measured from the nearside edge of the carriageway shall be laid out and constructed to a specification first submitted to and approved in writing by the Waste Planning Authority.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Parking and Loading Areas

7. No further operations on the development shall take place until the areas shown on the submitted plans for the manoeuvring, parking, loading and unloading of vehicles have been made available for these purposes. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Entrance Gates

8. Any entrance gates shall be set back a minimum distance of 15.0 metres from the edge of the carriageway and hung so that the gates can only open inwards.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Visibility Splays

9. No further operations on the development shall take place until the visibility splay areas as shown on the submitted plans shall be cleared/excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be maintained and kept free from all obstructions.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Traffic Management Plan

10. No further operations on the development shall take place until a Traffic Management Plan (TMP) and programme of works has been submitted to and approved in writing by the Waste Planning Authority. The TMP shall include construction vehicle details (number, size, type and frequency of movement), vehicular routes, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing and drainage). The TMP shall also include a scheme of signing of the heavy vehicle route to the site agreed with both temporary and permanent advice/warning signs at appropriate points. The development shall be carried out strictly in accordance with the approved Traffic Management Plan.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Landscaping

11. No further operations on the development shall take place on site until a scheme of soft landscaping has been submitted to and approved by the Waste Planning Authority. These details shall include:

- Planting plans to include a schedule of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
- Implementation timetables; and
- Details for the retention, protection and management of existing vegetation for the life of the development.

The approved landscaping shall be carried out in the first available planting season. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan and Policy 4 of the North Dorset Local Plan Part 1

Fencing Details

12. No further operations on the development shall take place until a detailed specification of the proposed perimeter fencing has been submitted to and approved in writing by the Waste Planning Authority. The development shall then be carried in accordance with these approved details and Policy 4 of the North Dorset Local Plan Part 1

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Control of Debris on the Highway

13. If within 12 months of the date of this permission operations associated with the development hereby approved result-in the deposition of debris onto the A354 to an extent that would in the opinion of the Waste Planning Authority be to the detriment of highway safety, a wheel wash facility shall be installed, maintained and retained on site for the duration of the development. Within 1 month following written notification from the Waste Planning Authority that a wheel wash should be installed on site a scheme for the siting, design, timetable for installation and maintenance of the wheel wash shall be submitted to the Waste Planning Authority for its approval in writing. The installation and operation of the wheel wash shall thereafter be carried out in accordance with the approved details. Once installed all vehicles leaving the application site shall use the wheel wash facility.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

7.2 ADDITIONAL INFORMATION FOR INCLUSION IN DECISION NOTICE

- I. Informatives as requested by the Environment Agency and Highway Liaison Engineer
- II. A statement explaining how the Council worked with the applicant in a positive and proactive way as set out in paragraph 8.1 of the report considered by Regulatory Committee on 5 January 2017.

Regulatory Committee

Dorset County Council



Date of Meeting	05 January 2017
Officer	Head of Economy
Subject of Report	To consider planning application No. 2/2016/1127/DCC under Schedule 1 Paragraph 1 of the Town and Country Planning Act 1990, in North Dorset District Council, for Section 73 planning application proposing the variation of Condition 2 and the removal of Condition 10 of planning ref: 2/2014/0529/PLNG associated with the development of a storage lagoon on land to the South of A354, Milborne St Andrew, Dorset for Eco Sustainable Solutions Ltd.
Executive Summary	The report considers a planning application for the variation of condition and removal of condition of planning permission 2/2014/0529/PLNG for a storage lagoon to handle digestate from the anaerobic digestion (AD) plant at Piddlehinton. The current proposal seeks to vary condition 2 (development in accordance with the approved plans) and removal of condition 10 (provision of wheel washing facilities). The report recommends approval of the development subject to conditions.
Impact Assessment:	Equalities Impact Assessment: This report concerns the determination of an application for planning permission and not any changes to any new or existing policy with equality implications.
	Use of Evidence: The recommendation has been made after consideration of the application and supporting documents, the development, the relevant development plans, government policy, legislation and guidance, representations and all other material planning considerations as detailed in the main body of the report.
	Budget: Generally the determination of applications will not give rise to any budget implications for the Committee.

	<p>Risk Assessment: As the subject matter of this report is the determination of a planning application the County Council's approved Risk Assessment methodology has not been applied.</p>
	<p>Other Implications: None</p>
Recommendation	<p>That planning permission be granted subject to the conditions set out in paragraph 9.1 of this report.</p>
Reason for Recommendation	<p>The reasons for granting planning permission are set out in full in paragraph 6.19.</p>
Appendices	<ol style="list-style-type: none"> 1. Location Plan 2. Site Plan 3. Previous Regulatory Report (2/2014/0529/PLNG) 4. Regulatory Report Minutes (2/2014/0529/PLNG) 5. Decision Notice (2/2014/0529/PLNG)
Background Papers	<p>PA File 2/2014/0529/PLNG</p> <p>NB: Copies of representations may be inspected in the Environmental Services Directorate and will be available for inspection in the Committee Room prior to the meeting.</p>
Report Originator and Contact	<p>If you have any queries on this report please contact Name: Mr Rob Jefferies</p> <p>Tel: (01305) 224279 Email: r.w.jefferies@dorsetcc.gov.uk</p>

1. Background

- 1.1 The Regulatory Committee resolved to approve planning application 2/2014/0529/PLNG in November 2014 for a storage lagoon. The officer's previous report is at Appendix 3 and the Regulatory Committee Minutes of that meeting is at Appendix 4. Planning permission was granted subject to a number pre-commencement conditions which included the submission of a Construction Traffic and Environmental Management Plan, agreeing and setting out a specification for the first 15 metres of the access crossing, the submission of landscaping details and the submission of a scheme detailing wheel washing facilities. The conditions of planning permission 2/2014/0529/PLNG are set out in Appendix 5.
- 1.2 In January 2016 the Waste Planning Authority was notified that works had commenced on site prior to a number of planning conditions being discharged. The applicants were contacted with regard to the immediate issues of mud on the highway and need for temporary advance highway warning signage. Both these issues were addressed in a timely manner; however works continued on site until the lining of the lagoon had been installed.
- 1.3 The Waste Planning Authority subsequently liaised with the applicant to obtain all necessary information to discharge the relevant planning conditions. It was later established that the siting of the lagoon and its overall dimensions did not accord with the approved plan. It was also established that the applicant did not consider it would be appropriate to provide wheel washing facilities on site. The reasons for this are set out in paragraph 6.12 of this report.
- 1.4 The Waste Planning Authority has been notified that the lagoon has been used for the storage of digestate on two occasions.

2. Site Description

- 2.1 The application site is located to the south of the A354 approximately 500 metres to the west of Milborne St Andrew. It measures approximately 1 ha in area, including the access track and turning area. Vehicular access to the site is via an existing agricultural access off the A354.
- 2.2 The application site and surrounding area is characterised by fields laid to pasture or crop production enclosed by mature hedgerows.
- 2.3 The nearest residential property is located approximately 150 metres to the west of the proposed lagoon.

3. The Proposal

- 3.1 This planning application seeks to amend condition 2 and remove condition 10 of planning permission 2/2014/0529/PLNG.
- 3.2 Condition 2 of Planning Permission 2/2014/0529/PLNG states:

"Unless otherwise approved in writing by the Mineral Planning Authority, no development shall be carried out other than in strict accordance with the

Drawing Nos. 5114/004 dated April 2014, 5114/006 dated July 2014, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.”

3.3 This current application seeks to regularise the fact that the lagoon has not been constructed in the location as detailed in the approved plans. It is proposed to amend condition 2 to refer to a revised set of plans that accurately reflect what has been constructed on the ground.

3.4 Condition 10 of Planning Permission 2/2014/0529/PLNG states:

“Prior to the commencement of development a scheme showing precise details of the design, specification and position of wheel washing facilities shall be submitted to and approved by the Waste Planning Authority. The approved scheme shall be implemented and maintained in full working order for use throughout the duration of the development.”

3.5 The applicant is not proposing the use of a wheel wash and is therefore applying for the above condition to be removed.

4. Consultations and Representations

4.1 The application was advertised in the local press, by site notice and by one neighbour notification. A representation was received from a local resident questioning why the proposed field gate is not 15 metres from the edge of the highway and why the details for the permanent traffic management signs have not yet been submitted. The representation also queried what measures would be in place to ensure visibility splays are maintained throughout the life of the development and whether the site will be monitored during both the construction and operational phase of the development. A representation has been received from Cllr Hilary Cox, the Local Ward Member, stating that she supports the requests of Milborne St Andrew Parish Council on this matter (see para. 4.3).

4.2 North Dorset District Council:
No objection.

4.3 Milborne St Andrew Parish Council:
The Parish Council has expressed its severe misgivings over the way that the development on the site has progressed. After initially raising no objection to the original application the Parish Council considers that the applicant has disregarded the planning conditions of the existing permission by siting the lagoon considerably nearer the entrance, failing to construct the approved site entrance, not maintaining adequate visibility either side of the entrance, not putting in place sufficient signage warning traffic of the site entrance, failing to ensure that construction vehicles did not deposit mud on the highway and not properly securing the site. The Parish Council is concerned over the ability of the Waste Planning Authority to regulate this development and ensure that the applicant adheres to the planning conditions imposed.

In specific response to the variation of condition 2 the Parish Council states that moving the lagoon nearer to the entrance has resulted in there being

insufficient room to place the entrance gate 15 m from the roadside as per condition 8 of planning permission 2/2014/0529/PLNG. This will result in vehicles over-hanging the highway whilst waiting at the gate. The proposed gravel entrance is totally inadequate and does not meet highway specifications. The approach track to the lagoon should be a non-migratory hard surface i.e. concrete or tarmac, especially if a wheel wash facility is not being provided.

The Parish Council considers that conditions 6, 8, 9 and 11 in the original planning approval should remain.

In response to the removal of the condition 10, the Parish Council considers that whilst the arguments for its removal have some merit it was always understood that such a facility would be provided in order to keep as much mud off the road as possible. The Parish Council considers that the fact that there are difficulties in providing and maintaining a wheel wash in no way diminishes the argument for providing one.

The Parish Council concludes that the site should be developed in accordance with the original approved scheme or development should stop altogether and the site reverted to its original condition.

4.4 Highway Liaison Engineer:

"I have no objection, in principle, to the proposed variation of Condition 2 of the original approval, providing the revised access and turning areas shown on Drawing No. 5114/004 Rev E are available for use.

Having read the applicant's rationale for not needing or being able to provide a satisfactory wheel-washing facility, I can agree to the removal of Condition 10. This is subject to the first 15m of the access crossing from the public highway being constructed to an agreed specification with the Highway Authority (as per Condition 6 of the original consent) and the internal access route to the storage lagoon being a hard surface formed of aggregate and road stone, as suggested by the applicant in the supporting documentation."

4.5 Environment Agency:

Awaiting comments.

4.6 Wessex Water:

No objection.

4.7 Senior Landscape Officer:

Awaiting comments.

5. Planning Policy Framework

5.1 Applications for planning permissions must be determined in accordance with the development plan unless material considerations indicate otherwise. The term 'other material considerations' is wide ranging, but includes national and emerging planning policy documents.

5.2 The Development Plan includes the saved policies of the Bournemouth, Dorset and Poole Waste Local Plan (BD&PWLP) originally adopted June 2006 and the North Dorset Local Plan Part 1 adopted 2016 The following policies are of particular relevance to this application:

- 5.3 Bournemouth, Dorset and Poole Waste Local Plan
- Policy 1 (Guiding Principles)
 - Policy 4 (Landscape Character)
 - Policy 21 (Transport)

North Dorset Local Plan Part 1

- Policy 4 (The Natural Environment)
- 5.4 National planning policy includes the National Planning Policy Framework (NPPF) and National Planning Policy for Waste (NPPW). The following sections of the NPPW are of particular relevance to this application:
- Paragraph 7 (Determining Planning Applications)
 - Appendix B (Locational Criteria).

6. Planning Assessment

- 6.1 Having regard to the provisions of the development plan, the information submitted in support of the application and the representations received, I consider that the main issues raised by this application are:
- i. the visual and landscape character impacts of the development on the surrounding area; and
 - ii. the impacts of traffic movements on highway safety.

Landscape and Visual Impact

- 6.2 Policy 4 of the BD&PWLP and Policy 4 of the North Dorset Local Plan Part 1 states that applications for development will be permitted where they are in scale and keeping with the local landscape character and that there are no unacceptable adverse impacts on the local character of the landscape, taking into account mitigating measures. Appendix B (c) of the NPPW states that in determining planning applications, waste planning authorities should consider the potential for design-led solutions to produce acceptable development that respects landscape character.
- 6.3 The lagoon has been constructed approximately 20 metres further west than was approved by planning permission 2/2014/0528/PLNG. As a consequence of this the length of the access road from the highway to the lagoon has shortened.
- 6.4 The lagoon has been excavated to a depth of approximately 3.5 metres and is enclosed by a 2 metre high anti-climb fence. These details are consistent with the original planning permission for the site.
- 6.5 Mature hedges are situated immediately to the north and south of the lagoon. Whilst glimpses of the lagoon and the associated security fence are visible through the hedge in winter months the lagoon does not appear unduly prominent when travelling along the A354. Having regard to the scale and nature of the development as well as the presence of the mature screening vegetation I consider that the landscape and visual impacts of the proposed

lagoon when viewed from public vantage points would be minimal and would not adversely impact upon the landscape character of the locality.

- 6.6 Furthermore, I consider that the visual impacts of the lagoon as constructed are no more significant than that which was previously approved under planning permission 2/2014/0529/PLNG.
- 6.7 In conclusion, having regard to the appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, I consider that there will be no significant detrimental impact upon the visual and landscape qualities of the area. The proposal therefore accords with Policy 4 of the BD&PWLP, Policy 4 of the North Dorset Local Plan Part 1 and Appendix B (c) of the NPPW.

Highways Impact

- 6.8 Policy 1(i) of the BD&PWLP states that in considering proposals for waste management facilities, the Waste Planning Authority will take into account the location of the proposed development in relation to the source of waste, the destinations of any transferred waste and the markets for any recycled or recovered material. Policy 21 of the BD&PWLP states that proposals for waste management facilities will not be permitted where the associated traffic would have an unacceptable effect on residential or other environmentally sensitive areas, in terms of noise, disturbance, vibration or safety, and that harm could not be avoided or adequately mitigated through an acceptable highways agreement, planning obligation and related package of works/traffic management measures or through appropriate planning conditions. Appendix B (f) of the NPPW states that in determining planning applications, waste planning authorities should consider the suitability of the road network.
- 6.9 The proposed traffic generation levels associated with the development (as set out in planning application 2/2014/0529/PLNG) amount to 3 deliveries on weekdays and 1-2 deliveries on Saturdays. This equates to 17 deliveries (34 vehicle movements) per week. Data from a recent traffic survey demonstrates that during the stated hours of digestate delivery, average traffic flow exceeds 28,000 movements per week along this section of the A354.
- 6.10 The details submitted in support of the original planning permission for the lagoon indicated that the access onto the A354 would only be used by vehicles associated with the proposed storage lagoon. It has subsequently been established that the existing access onto the A354 will continue to be used by the landowner in connection with agricultural activities on the farm as well as by vehicles delivering digestate to the proposed lagoon.
- 6.11 Concerns have been raised that the proposed plan does not allow sufficient room between the highway and existing field gates so as to ensure that vehicles are clear of the highway when entering the site and opening the gates. The applicants have confirmed in writing that they agree to setting the new access gates 15 metres back from the edge of the highway and a revised plan has now been submitted showing this detail. It is considered that the siting of the access gates can be secured through the use of a planning condition as shown in section 9 of this report.

6.12 This application seeks to remove an existing planning condition that required the provision of a wheel wash to be installed at the site. The applicants have set out a number reasons why they consider that a wheel wash would not be needed and would not be appropriate in the context of the development being undertaken. These are summarised as follows –

- The site entrance is still an agricultural field entrance that is used heavily during cultivation and harvest. Therefore it is neither efficient nor sustainable for every tractor and other form of agricultural machinery to pass through the wheel wash. The surfacing proposed for the lagoon entrance and access road will mean that vehicles working in the field will bring far more mud onto the highway than those vehicles associated with the lagoon. If farm vehicles run through the wheel wash as they leave the field this could be dangerous and could lead to the wheel wash becoming choked.
- The site does not have access to power or water. Therefore, a wheel wash would consist of a long tray with about 200mm of water and rumble track. To clean it would require an excavator.
- The use of a rumble track within the wheel wash could result in noise disturbance to the nearby residential property and when not used intensively during the summer months could become stagnant becoming a source of odour complaints as well as attracting flies.
- Vehicles going through the wheel wash will exit straight to the A354, dripping water onto the road. In freezing conditions this will promote black ice. During dry conditions will result vehicles hitting an unexpected wet patch. The site does not have enough room for a suitable runoff area prior to vehicles exiting the wheel wash and joining the highway.
- The concept of having a bound and specified unbound surface between road and lagoon is to keep the tractors dry. Wetting the wheels just before they pull out onto the highway may lead to wheel spin and increase the risk of accidents.
- The lagoon was proposed to ensure that the applicant does not have to track tractors and trailers through the village intensively to match the running of the spreader unit, thereby massively reducing traffic impact and potential for mud on the road. The use of the lagoon will remove this excessive impact without the requirement for a wheel wash.
- The site has no power and will not be lit so the sunken wheel wash will present as hazard to vehicles entering the site.

6.13 I consider that the ongoing use of the access by agricultural vehicles does present difficulties in operating a safe and efficient wheel wash. Should only vehicles serving the lagoon be required to use the wheel wash then dripping water may mix with mud deposits from agricultural vehicles that would lead to mud/debris being carried onto the highway. I also consider that it would be impractical and unreasonable for all agricultural traffic entering and leaving through the existing field entrance to use the wheel wash.

6.14 If a wheel wash is not be provided on site then the surfacing of both the access itself and the road leading to the lagoon should be of a suitable

material so as to keep vehicles as clean and dry as possible. The proposal details the provision of a bound concrete surface for the first 15 metres of the site entrance and an unbound but specified surfacing for the remainder of the access road. This will help to prevent mud forming on the wheels of vehicles associated with the lagoon in the first instance and, given the fact that farm vehicles will continue to use the field entrance, I consider this to be a more effective measure than a wheel wash in this particular case.

- 6.15 With the provision of a suitable surface for the access and internal track leading to the lagoon I consider that in this instance a wheel wash facility is not required. The surfacing for both the access crossing and access road can be adequately secured through a condition as detailed within section 9 of this report.
- 6.16 Through the determination of planning permission 2/2014/0529/PLNG it was established that that the site access arrangements allowed for adequate visibility for vehicles leaving the site. A condition as detailed within section 9 of this report ensures that the visibility splays are maintained for the duration of the development.
- 6.17 No objection has been received from the Highway Liaison Engineer.
- 6.18 The proposed levels of traffic associated with the development are relatively low. I consider that there would be no detrimental impact upon the existing highway network or highway safety as a result of the proposed development, nor would traffic associated with the development lead to unacceptable impacts upon amenity in the area. The proposal is considered to be in accordance with Policy 1(i) and Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW, and no unacceptable effect on residential areas will result by way of noise, disturbance, vibration or safety.

Conclusion

- 6.19 The appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, will ensure that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal therefore accords with Policy 4 of the BD&PWLP, Policy 4 of the North Dorset Local Plan Part 1 and Appendix B (c) of the NPPW. The proposed access to the application site and surfacing arrangements are suitable in respect of highway safety. The proposal therefore accords with Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW.

7. Human Rights Implications

- 7.1 The provisions of the Human Rights Act and the principles contained in the Convention of Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols of particular relevance are:
- i. Article 8 - Right to respect for private and family life; and
 - ii. The First Protocol, Article 1 - Protection of Property.

7.2 Having considered the impact of the development, as set out in the assessment above as well as the rights of the applicant and the general interest, the opinion is that any effect on human rights does not outweigh the granting of the permission in accordance with adopted and prescribed planning principles.

8. Statement of Positive Involvement

- 8.1 In accordance with paragraphs 186 and 187 of the NPPF, the Council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The Council worked with the applicant/agent in a positive and proactive manner by:
- i. updating the applicant's agent of issues as they arose in the processing of the application;
 - ii. discussing possible solutions to material concerns raised; and
 - iii. providing the applicant with the opportunity to address issues so that a positive recommendation to grant permission could be given.

9. Recommendation

9.1 That planning permission be granted subject to the conditions set out below:-

Time Limit - Commencement

1. The development hereby permitted shall be begun not later than the expiration of 3 years beginning from the date of this permission.

Reason:

In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).

Adherence to approved plans and details

2. Unless otherwise approved in writing by the Waste Planning Authority, no development shall be carried out other than in strict accordance with the Drawing No's 5114/004/Rev G dated December 2016, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.

Reason:

To maintain planning control over the site and to ensure the permission is implemented in accordance with Policies 1 and 4 of the Bournemouth, Dorset and Poole Waste Local Plan and Policy 4 of the North Dorset Local Plan Part 1

Exportation of Waste

3. No digestate stored within the lagoon hereby approved shall be exported off the agricultural holding containing the lagoon.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Importation of Waste

4. Only digestate generated from the Piddlehinton AD Facility as approved by Planning Permission 1/D/08/0989 (or any subsequent consent granted over the same area) shall be imported into the site.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Environmental Management Plan

5. No further operations on the development shall take place until a Construction Environmental Management Plan (CEMP) incorporating pollution prevention measures has been submitted to and approved by the Waste Planning Authority. The development shall be implemented in accordance with the approved details and agreed timetable set out in the approved CEMP.

Reason:

To prevent pollution of the water environment having regard to Policy 1 of the Bournemouth, Dorset and Poole Waste Local Plan.

Access Crossing

6. No further operations on the development shall take place until the first 15.00 metres of the access crossing measured from the nearside edge of the carriageway shall be laid out and constructed to a specification first submitted to and approved in writing by the Waste Planning Authority.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Parking and Loading Areas

7. No further operations on the development shall take place until the areas shown on the submitted plans for the manoeuvring, parking, loading and unloading of vehicles have been made available for these purposes. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Entrance Gates

8. Any entrance gates shall be set back a minimum distance of 15.0 metres from the edge of the carriageway and hung so that the gates can only open inwards.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Visibility Splays

9. No further operations on the development shall take place until the visibility splay areas as shown on the submitted plans shall be cleared/excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be maintained and kept free from all obstructions.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Traffic Management Plan

10. No further operations on the development shall take place until a Traffic Management Plan (TMP) and programme of works has been submitted to and approved in writing by the Waste Planning Authority. The TMP shall include construction vehicle details (number, size, type and frequency of movement), vehicular routes, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The TMP shall also include a scheme of signing of the heavy vehicle route to the site agreed with both temporary and permanent advice/warning signs at appropriate points. The development shall be carried out strictly in accordance with the approved Traffic Management Plan.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Landscaping

11. No further operations on the development shall take place on site until a scheme of soft landscaping shall be submitted to and approved by the Waste Planning Authority. These details shall include:
- Planting plans to include a schedule of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
 - Implementation timetables; and
 - Details for the retention, protection and management of existing vegetation for the life of the development.
- The approved landscaping shall be carried out in the first available planting season. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan and Policy 4 of the North Dorset Local Plan Part 1

Fencing Details

12. No further operations on the development shall take place until a detailed specification of the proposed perimeter fencing shall be submitted to and approved in writing by the Waste Planning Authority. The development shall then be carried in accordance with these approved details and Policy 4 of the North Dorset Local Plan Part 1

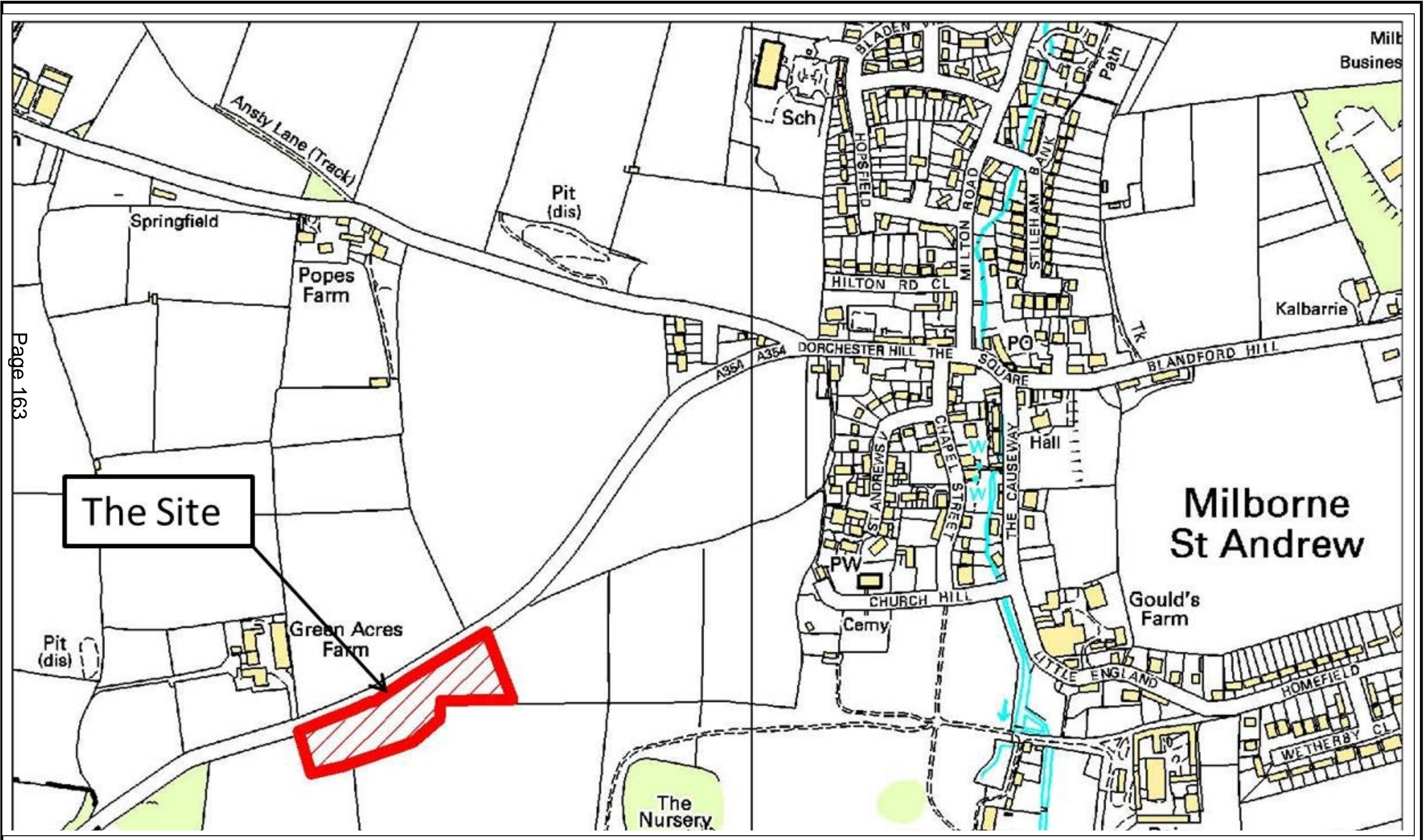
Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

9.2 ADDITIONAL INFORMATION FOR INCLUSION IN DECISION NOTICE

- I. Informatives as requested by the Environment Agency and Highway Liaison Engineer
- II. A statement explaining how the Council worked with the applicant in a positive and proactive way as set out in paragraph 8.1 above.

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Proposed development of a Storage Lagoon, Milborne St Andrew.

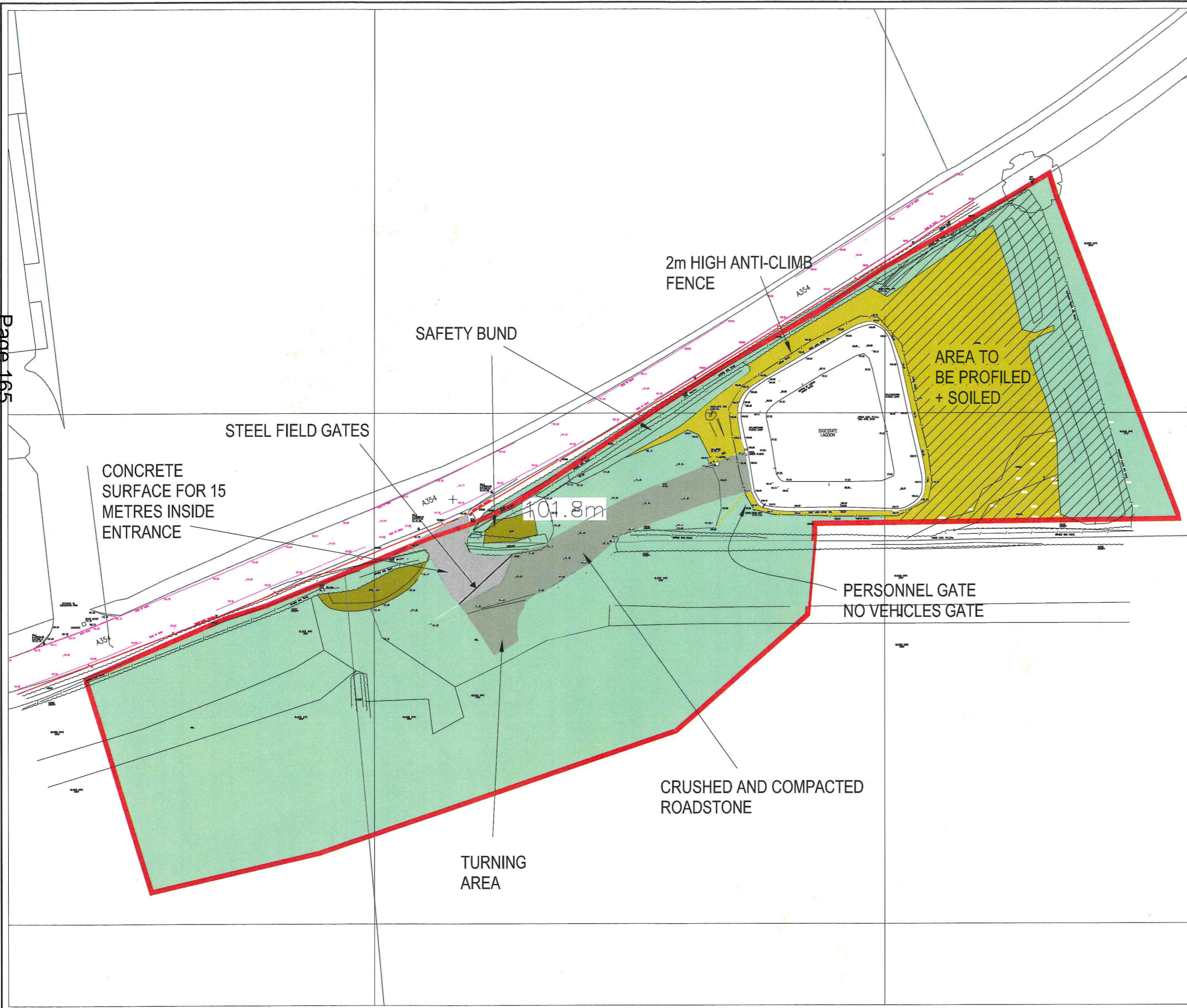
Application No. 2/2014/0529



ENVIRONMENT AND THE ECONOMY

M D PILES
Head of Economy

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KEY

	Grassed Areas
	Spoil Heap
	Gravel
	Concrete
	Crushed & Compacted Roadstone

Rev	Date	Comments

CLIENT
Eco Sustainable Solutions

PROJECT
Milborne
Proposed Digestate Storage Lagoon

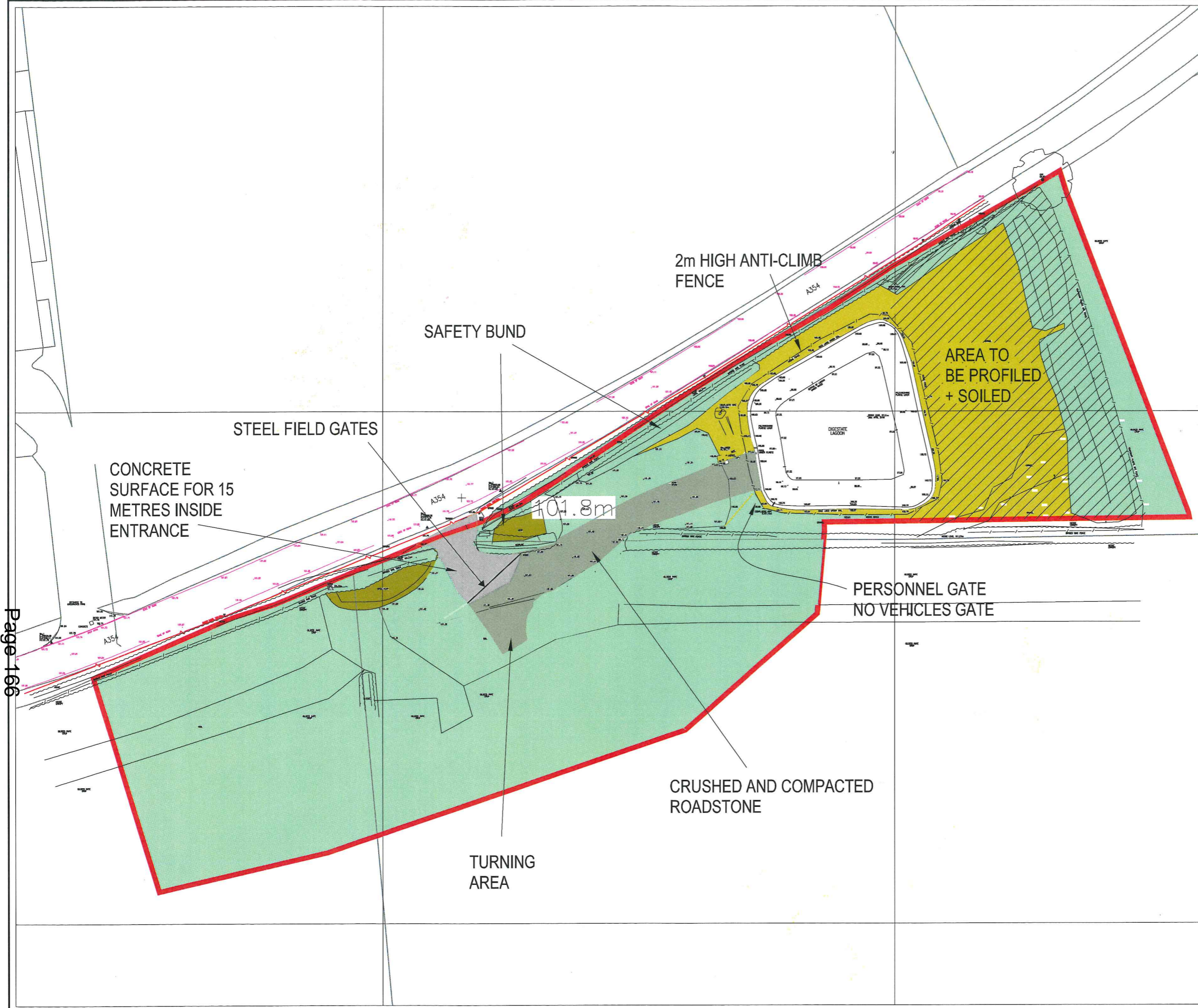
TITLE
Proposed Site Plan

DRG No: 5114/004/Rev G	SCALE: 1:500 @ A2	DATE: December 2016
DRAWN BY: AMCH	CHECKED BY: AH	APPROVED BY: AH

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KEY

	Grassed Areas
	Spoil Heap
	Gravel
	Concrete
	Crushed & Compacted Roadstone

Rev	Date	Comments

CLIENT
Eco Sustainable Solutions

PROJECT
Milborne
Proposed Digestate Storage Lagoon

TITLE
Proposed Site Plan

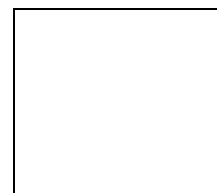
DRG No: 5114/004/Rev G	SCALE: 1:500 @ A2	DATE: December 2016
DRAWN BY: AMCH	CHECKED BY: AH	APPROVED BY: AH

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Agenda Item:



Regulatory Committee

Dorset County Council



Date of Meeting	27 November 2014
Officer	Head of Economy
Subject of Report	To consider planning application No. 2/2014/0529/PLNG under Schedule 1 Paragraph 1 of the Town and Country Planning Act 1990, in North Dorset District Council, as amended by Drawing No: 5114/004 Rev D received 26/09/2014, for proposed development of a Storage Lagoon at Land to the South of A354, Milborne St Andrew, Dorset for Eco Sustainable Solutions Ltd.
Executive Summary	The report considers a planning application for the construction of a digestate storage lagoon. The report recommends approval of the development subject to conditions.
Impact Assessment:	Equalities Impact Assessment: This report concerns the determination of an application for planning permission and not any changes to any new or existing policy with equality implications.
	Use of Evidence: The recommendation has been made after consideration of the application and supporting documents, the development, government policy, legislation and guidance, representations and all other material planning considerations as detailed in the main body of the report.
	Budget: Generally the determination of applications will not give rise to any budget implications for the Committee.
	Risk Assessment: As the subject matter of this report is the determination of a planning application the County Council's approved Risk Assessment methodology has not been applied.

	Other Implications: None
Recommendation	That planning permission be granted subject to the conditions set out in paragraph 9.1 of this report.
Reason for Recommendation	The reasons for granting planning permission are set out in full in paragraph 6.15
Appendices	<ol style="list-style-type: none">1. Location Plan2. Site Plan
Background Papers	PA File 2/2014/0529/PLNG NB: Copies of representations may be inspected in the Environmental Services Directorate and will be available for inspection in the Committee Room prior to the meeting.
Report Originator and Contact	If you have any queries on this report please contact Name: Mr Rob Jefferies Tel: (01305) 224279 Email: r.w.jefferies@dorsetcc.gov.uk

1. Background

- 1.1 Planning permission was granted in 2008 for the construction of an Anaerobic Digestion (AD) facility at Bourne Park Estate, Piddlehinton. The facility was developed to process 25,000 tonnes per annum of organic domestic and commercial waste and also 12,000 tonnes of agricultural slurry arising from local pig farms. It was proposed that the facility would generate up to 700 kw of power, via a gas turbine, for supply to the national grid, whilst the final digestate would be used on local farms as a soil improver.
- 1.2 At the time the application for the AD facility was considered it was envisaged that around 90% of the 18,000 tonnes of digestate produced each year would be used as a soil improver on farms immediately surrounding the digester, without the need to transport it on the local road network. The officers' report for the proposal stated *"it is possible that this figure will vary throughout the year and periods of wet weather could present problems. If this figure is not achieved then no objection would be raised to the product being exported from the site, provided all HGVs turned south, towards Dorchester"*. A planning condition attached to the original consent stated that *"Unless otherwise agreed in writing by the Waste Planning Authority, not more than 2 loads of product per day shall be exported from the site. These loads shall be removed via the southern section of the B3143 only."*
- 1.3 The AD facility is now operational. The current application details two principal reasons why the landholding around the AD facility at Piddlehinton has not been used for digestate spreading. Firstly, the holding is located on land classified as a Ground Water Source Protection Zone 1. In such areas only waste which achieves a certain level of accreditation can be spread on the land. In light of operational issues concerning higher levels of grit and glass within the waste stream than was originally forecast, the appropriate level of accreditation has not yet been reached to allow the waste to be spread on the land. In addition, the amount of waste from intensive pig farms within the locality that is being spread on the land holdings immediately surrounding the AD facility is higher than envisaged. This has further reduced the opportunities for digestate from the facility to be used in addition to this pig waste.
- 1.4 This report considers only the impacts associated with the construction of the digestate lagoon and its subsequent use. Considerations as to whether it would be appropriate or not to vary conditions that currently limit the amount of digestate exported from the Piddlehinton AD facility to the proposed lagoon are not a material consideration in this instance.
- 1.5 This application was submitted in conjunction with three other planning applications for the construction of digestate lagoons at Broadmayne, Puddletown and Waterston. The applications relating to the sites at Puddletown and Broadmayne have subsequently been withdrawn by the applicants. An application for a digestate lagoon at Laycock Farm, Waterston (Application Ref: WD/D/14/001088) has recently been approved under delegated powers.

2. Site Description

- 2.1 The application site is located to the south of the A354 approximately 500 metres to the west of Milborne St Andrew.
- 2.2 The application site measures approximately 1 ha, including the access track and turning area. Vehicular access to the site is via an existing agricultural access off the A354.
- 2.3 The application site and surrounding area is characterised by fields laid to pasture or crop production enclosed by mature hedgerows.
- 2.4 The nearest residential property is located approximately 150 metres to the west of the proposed lagoon.

3. The Proposal

- 3.1 The proposed storage lagoon will be excavated to a depth of 3.5 metres and will be constructed with engineered earth banks using site excavated materials. The earth banks will be 1.5 metres above ground level and profiled to provide an overall depth to the lagoon of 5 metres.
- 3.2 The lagoon will be lined with a high-density polyethylene liner and will also be fitted with an impermeable cover to keep rain water out. A 1.8 metre high anti-climb fence with locked gate will be provided around the perimeter of the lagoon to prevent unauthorised access.
- 3.3 It is proposed that the lagoon will receive digestate via tractor and tankers from the AD facility at Bourne Park, Piddlehinton at a rate of 3 deliveries on weekdays and 1-2 deliveries on Saturdays. The application states that these figures do not represent an average but are the specific movements projected throughout the year.
- 3.4 The application states that the delivery of digestate would take place during the normal operating hours of the AD facility which are 07:00 – 17:00 Monday to Friday and 07:00 – 13:00 on Saturdays.
- 3.5 In addition, the application states that the digestate stored within the lagoon will only be used on the land holding and will not be exported off site to other farms.

4. Consultations and Representations

- 4.1 The application was advertised in the local press and by site notice and by one neighbour notification. One letter of objection has been received from the occupier of Greenacres. The representation states that tractors and trailers will be using an access onto a road that has a 60 mph limit. The letter of objection states that there has been three accidents on this stretch of road in the last 12 months. An objection is also made in relation to the use of a wheel wash facility as during cold weather any remnants of water may come onto the road and will become slippery and accidents may occur. The representation also queries the health issues caused by the so called low odour and asks why the lagoon has to be constructed so close to the road.

4.2 North Dorset District Council:

The District Council objects to the proposal as it would result in 17 deliveries (34 vehicle movements) of slurry/digestate on six days of every week throughout the year. Given that Bourne Park is some 8 miles away by road the proposal is considered wholly unsustainable in terms of vehicle movements, vehicle fuel use, vehicle emissions, traffic generation, inconvenience, road safety, noise and road congestion. It is stated that the facility should be located either at, or much closer to the Bourne Park Estate. Concerns are also raised in relation to the landscape impact of the proposal and the potential risk the facility may pose to anyone who might enter the site – either deliberately or inadvertently. Any such facility should be contained within an entirely securely fenced, alarmed and CCTV monitored enclosure.

4.3 Milborne St Andrew Parish Council:

Awaiting comments.

4.4 Highway Liaison Engineer:

No objection, subject to conditions.

4.5 Environment Agency:

No objection subject to conditions.

4.6 Wessex Water:

The proposed development is within a Source Protection Zone and any surface water discharge will need to be in line with the Environment Agency guidelines.

4.7 Senior Landscape Officer:

No objection subject to a condition requiring details of vegetation to be retained.

5. **Planning Policy Framework**

5.1 Applications for planning permissions must be determined in accordance with the development plan unless material considerations indicate otherwise. The term 'other material considerations' is wide ranging, but includes national and emerging planning policy documents.

5.2 The Development Plan includes the saved policies of the Bournemouth, Dorset and Poole Waste Local Plan (BD&PWLP) originally adopted June 2006. The following policies are of particular relevance to this application:

- Policy 1 (Guiding Principles).
- Policy 4 (Landscape Character).
- Policy 21 (Transport).

5.3 National Planning Policy for Waste (NPPW). The following sections are of particular relevance to this application:

- Paragraph 7 (Determining Planning Applications)
- Appendix B (Locational Criteria)

6. **Planning Assessment**

6.1 Having regard to the provisions of the development plan, the information submitted in support of the application and the representations received, the

main issues raised by this application concern the visual and landscape character impacts of the development on the surrounding area, the impacts of traffic movements on the local road network and their associated impact on amenity, and the potential for adverse odours.

Landscape and Visual Impact

- 6.2 Policy 4 of the BD&PWLP states that applications for waste facilities will be permitted where they are in scale and keeping with the local landscape character and that there are no unacceptable adverse impacts on the local character of the landscape, taking into account mitigating measures. Appendix B (c) of the NPPW states that in determining planning applications, waste planning authorities should consider the potential for design-led solutions to produce acceptable development that respects landscape character.
- 6.3 The proposed lagoon will be excavated into the ground to a depth of 3.5 metres, with the resulting fill being used to form the outer earth banks 1.5 metres in height. The cross sections submitted in support of the application show that the profile of the earth banks that enclose the lagoon will be shallow and will grade into the existing ground levels in the locality. Mature hedges are situated immediately to the north and south of the lagoon. Having regard to the nature of bank profiling and the presence of mature hedging to the west of the lagoon, it is considered that the visual impact of the proposed lagoon when viewed from public vantage points would be minimal and would not adversely impact upon the landscape character of the locality.
- 6.4 The application details the provision of a 1.8 metre high anti-climb fence around the perimeter of the lagoon. Whilst no specific details of the proposed fence have been submitted, the applicants have stated that the fence will be of a chain-link style. Owing to presence of mature screening vegetation between the public highway and the proposed development, it is considered that a fence of this scale will not appear intrusive and will not add significantly to the prominence of the development within the landscape. The precise details of the fencing can be controlled satisfactorily by means of condition.
- 6.5 Overall, having regard to the appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, it is it considered that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal is therefore seen to accord with Policy 4 of the BD&PWLP and Appendix B (c) of the NPPW.

Highways Impact

- 6.6 Policy 1(i) of the BD&PWLP states that in considering proposals for waste management facilities, the Waste Planning Authority will take into account the location of the proposed development in relation to the source of waste, the destinations of any transferred waste and the markets for any recycled or recovered material. Policy 21 of the BD&PWLP states that proposals for waste management facilities will not be permitted where the associated traffic would have an unacceptable effect on residential or other environmentally sensitive areas, in terms of noise, disturbance, vibration or safety, and that harm could not be avoided or adequately mitigated through an acceptable

highways agreement, planning obligation and related package of works/traffic management measures or through appropriate planning conditions. Appendix B (f) of the NPPW states that in determining planning applications, waste planning authorities should consider the suitability of the road network.

- 6.7 Taking into consideration the location of the proposed development in relation to the source of waste, it is noted the proposed lagoon is situated 9.2km (5.7 miles) from the entrance of the Bourne Park Estate in Piddlehinton. 4.3km (2.7 miles) of this overall distance is on the A354 (Puddletown to Blandford Road) with the remainder being on Class C roads.
- 6.8 The application states that the location of the proposed lagoon has been selected as it is within relative close proximity to the AD facility at Piddlehinton but crucially lies outside of the Source Protection Zone 1 and as such the digestate can be spread on the land within the agricultural holding.
- 6.9 The application states that number of vehicles will be 3 deliveries on weekdays and 1-2 deliveries on Saturdays. This equates to 17 deliveries (34 vehicle movements) per week. Data from a recent traffic survey demonstrates that during the stated hours of digestate delivery, average traffic flow exceeds 28,000 movements per week along this section of the A354. The proposed levels of traffic associated with the development are relatively low and the proposed lagoon is within reasonably close proximity of the source of the waste. It is considered that there would be no detrimental impact upon the existing highway network or highway safety as a result of the proposed development and no objection has been received from the Highway Liaison Engineer.
- 6.10 The proposal is considered to be in accordance with Policy 1(i) and Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW, and no unacceptable effect on residential areas will result by way of noise, disturbance, vibration or safety.

Odour

- 6.11 Policy 1(iv) of the BD&PWLP states that in considering proposals for planning permission for waste management facilities, the Waste Planning Authority will take into account the environmental impact of the proposal. Appendix B (h) of the NPPW states that in determining planning applications, waste planning authorities should consider the proximity of sensitive receptors and the extent to which adverse odours can be controlled through the use of appropriate and well-maintained and managed equipment.
- 6.12 Having regard to the potential for the proposed development to generate odour, it is noted that that the slurry lagoon incorporates a floating cover and is therefore sealed apart from a ventilation pipe built into the lagoon. In addition, the application states that the digestate itself is low odour.
- 6.13 The nearest residential property to the proposed lagoon is Green Acres Farm, situated 150 metres to the west.
- 6.14 In considering the provision of a floating cover to the lagoon, the low odour emission of the digestate and the distance between the proposed lagoon and the nearest residential property, it is considered that no adverse impacts on

residential properties by way of odour will be generated by the proposed lagoon. The proposal is therefore seen to accord with Policy 1(iv) of the BD&PWLP and Appendix B (h) of the NPPW.

Conclusion

6.15 The appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, will ensure that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal therefore accords with Policy 4 of the BD&PWLP and Appendix B (c) of the NPPW. Having regard to the close proximity of the source of the waste to the proposed lagoon, it is considered that the proposal accords with Policy 1(i) of the BD&PWLP. In addition the level of vehicular movements between the sites is not considered to be significant and the proposed access to the application site is suitable in respect of highway safety. The proposal therefore accords with Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW. The digestate to be stored in the proposed lagoon is low odour and the lagoon will be fitted with a cover and so accords with Policy 1(iv) of the BD&PWLP and Appendix B (h) of the NPPW having regard to potential odour impacts.

7. Human Rights Implications

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

- i. Article 8 - Right to respect for private and family life; and
- ii. The First Protocol, Article 1 - Protection of Property.

7.2 Having considered the impact of the development, as set out in the assessment above as well as the rights of the applicant and the general interest, the opinion is that any effect on human rights does not outweigh the granting of the permission in accordance with adopted and prescribed planning principles.

8. Statement of Positive Involvement

8.1 In accordance with paragraphs 186 and 187 of the NPPF, the Council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The Council worked with the applicant/agent in a positive and proactive manner by:

- i. updating the applicant's agent of issues as they arose in the processing of the application;
- ii. discussing possible solutions to material concerns raised; and
- iii. providing the applicant with the opportunity to address issues so that a positive recommendation to grant permission could be given.

9. Recommendation

9.1 That planning permission be granted subject to the conditions set out below:-

Time Limit - Commencement

1. The development hereby permitted shall be begun not later than the expiration of 3 years beginning from the date of this permission.

Reason:

In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).

Adherence to approved plans and details

2. Unless otherwise approved in writing by the Mineral Planning Authority, no development shall be carried out other than in strict accordance with the Drawing No's 5114/004/Rev E dated October 2014, 5114/006 dated July 2014, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.

Reason:

To maintain planning control over the site and to ensure the permission is implemented in accordance with Policies 1 and 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Exportation of Waste

3. No digestate stored within the lagoon hereby approved shall be exported off the agricultural holding containing the lagoon.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Importation of Waste

4. Only digestate generated from the Piddlehinton AD Facility as approved by Planning Permission 1/D/08/0989 (or any subsequent consent granted over the same area) shall be imported into the site.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Environmental Management Plan

5. The development hereby permitted shall not be commenced until a Construction Environmental Management Plan incorporating pollution prevention measures has been submitted to and approved by the

Waste Planning Authority. The Plan shall be implemented in accordance with the approved details and agreed timetable.

Reason:

To prevent pollution of the water environment having regard to Policy 1 of the Bournemouth, Dorset and Poole Waste Local Plan.

Access Crossing

6. Prior to the commencement of any other part of the development hereby permitted the first 15.00 metres of the access crossing measured from the nearside edge of the carriageway shall be laid out and constructed to a specification first submitted to and approved in writing by the Waste Planning Authority.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Parking and Loading Areas

7. The development hereby permitted shall not be occupied or brought into use until the areas shown the submitted plans for the manoeuvring, parking, loading and unloading of vehicles have been made available for these purposes. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Entrance Gates

8. Any entrance gates shall be set back a minimum distance of 15.0 metres from the edge of the carriageway and hung so that the gates can only open inwards.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Visibility Splays

9. Prior to the commencement of the development hereby permitted, the visibility splay areas as shown on the submitted plans shall be cleared/excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be maintained and kept free from all obstructions.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Wheel Washing Facilities/Provision of Appropriate Surface

10. Prior to the commencement of development a scheme showing precise details of the design, specification and position of a wheel washing facility or an appropriately bound surface of an agreed

specification shall be submitted to and approved by the Waste Planning Authority. The approved scheme shall be implemented and maintained in full working order for use throughout the duration of the development.

Reason:

In the interests of road safety having regard to Policy 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Traffic Management Plan

11. The development hereby permitted shall not commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include construction vehicle details (number, size, type and frequency of movement), vehicular routes, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The plan shall also include a scheme of signing of the heavy vehicle route to the site agreed with advice/warning signs at appropriate points. The development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Landscaping

12. Prior to the commencement of the development hereby approved a scheme of soft landscaping shall be submitted to and approved by the Waste Planning Authority. These details shall include:

- Planting plans to include a schedule of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
- Implementation timetables; and
- Details for the retention, protection and management of existing vegetation for the life of the development.

The approved landscaping shall be carried out in the first available planting season. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Fencing Details

13. Prior to the commencement of the development hereby approved a detailed specification of the proposed perimeter fencing shall be submitted to and approved in writing by the Waste Planning Authority. The development shall then be carried in accordance with these approved details.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

9.2 ADDITIONAL INFORMATION FOR INCLUSION IN DECISION NOTICE

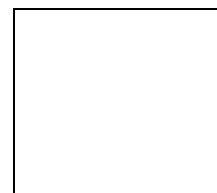
- I. Informatives as requested by the Environment Agency and Highway Liaison Engineer
- II. A statement explaining how the Council worked with the applicant in a positive and proactive way as set out in paragraph 8.1 above.

Matthew Piles

Head of Economy

October 2014

Agenda Item:



Regulatory Committee

Dorset County Council



Date of Meeting	27 November 2014
Officer	Head of Economy
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Awaiting comments.

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Landscape and Visual Impact

- 6.2 Policy 4 of the BD&PWLP states that applications for waste facilities will be permitted where they are in scale and keeping with the local landscape character and that there are no unacceptable adverse impacts on the local character of the landscape, taking into account mitigating measures. Appendix B (c) of the NPPW states that in determining planning applications, waste planning authorities should consider the potential for design-led solutions to produce acceptable development that respects landscape character.
- 6.3 The proposed lagoon will be excavated into the ground to a depth of 3.5 metres, with the resulting fill being used to form the outer earth banks 1.5 metres in height. The cross sections submitted in support of the application show that the profile of the earth banks that enclose the lagoon will be shallow and will grade into the existing ground levels in the locality. Mature hedges are situated immediately to the north and south of the lagoon. Having regard to the nature of bank profiling and the presence of mature hedging to the west of the lagoon, it is considered that the visual impact of the proposed lagoon when viewed from public vantage points would be minimal and would not adversely impact upon the landscape character of the locality.
- 6.4 The application details the provision of a 1.8 metre high anti-climb fence around the perimeter of the lagoon. Whilst no specific details of the proposed fence have been submitted, the applicants have stated that the fence will be of a chain-link style. Owing to presence of mature screening vegetation between the public highway and the proposed development, it is considered that a fence of this scale will not appear intrusive and will not add significantly to the prominence of the development within the landscape. The precise details of the fencing can be controlled satisfactorily by means of condition.
- 6.5 Overall, having regard to the appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, it is considered that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal is therefore seen to accord with Policy 4 of the BD&PWLP and Appendix B (c) of the NPPW.

Highways Impact

- 6.6 Policy 1(i) of the BD&PWLP states that in considering proposals for waste management facilities, the Waste Planning Authority will take into account the location of the proposed development in relation to the source of waste, the destinations of any transferred waste and the markets for any recycled or recovered material. Policy 21 of the BD&PWLP states that proposals for waste management facilities will not be permitted where the associated traffic would have an unacceptable effect on residential or other environmentally sensitive areas, in terms of noise, disturbance, vibration or safety, and that harm could not be avoided or adequately mitigated through an acceptable

highways agreement, planning obligation and related package of works/traffic management measures or through appropriate planning conditions. Appendix B (f) of the NPPW states that in determining planning applications, waste planning authorities should consider the suitability of the road network.

- 6.7 Taking into consideration the location of the proposed development in relation to the source of waste, it is noted the proposed lagoon is situated 9.2km (5.7 miles) from the entrance of the Bourne Park Estate in Piddlehinton. 4.3km (2.7 miles) of this overall distance is on the A354 (Puddletown to Blandford Road) with the remainder being on Class C roads.
- 6.8 The application states that the location of the proposed lagoon has been selected as it is within relative close proximity to the AD facility at Piddlehinton but crucially lies outside of the Source Protection Zone 1 and as such the digestate can be spread on the land within the agricultural holding.
- 6.9 The application states that number of vehicles will be 3 deliveries on weekdays and 1-2 deliveries on Saturdays. This equates to 17 deliveries (34 vehicle movements) per week. Data from a recent traffic survey demonstrates that during the stated hours of digestate delivery, average traffic flow exceeds 28,000 movements per week along this section of the A354. The proposed levels of traffic associated with the development are relatively low and the proposed lagoon is within reasonably close proximity of the source of the waste. It is considered that there would be no detrimental impact upon the existing highway network or highway safety as a result of the proposed development and no objection has been received from the Highway Liaison Engineer.
- 6.10 The proposal is considered to be in accordance with Policy 1(i) and Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW, and no unacceptable effect on residential areas will result by way of noise, disturbance, vibration or safety.

Odour

- 6.11 Policy 1(iv) of the BD&PWLP states that in considering proposals for planning permission for waste management facilities, the Waste Planning Authority will take into account the environmental impact of the proposal. Appendix B (h) of the NPPW states that in determining planning applications, waste planning authorities should consider the proximity of sensitive receptors and the extent to which adverse odours can be controlled through the use of appropriate and well-maintained and managed equipment.
- 6.12 Having regard to the potential for the proposed development to generate odour, it is noted that that the slurry lagoon incorporates a floating cover and is therefore sealed apart from a ventilation pipe built into the lagoon. In addition, the application states that the digestate itself is low odour.
- 6.13 The nearest residential property to the proposed lagoon is Green Acres Farm, situated 150 metres to the west.
- 6.14 In considering the provision of a floating cover to the lagoon, the low odour emission of the digestate and the distance between the proposed lagoon and the nearest residential property, it is considered that no adverse impacts on

residential properties by way of odour will be generated by the proposed lagoon. The proposal is therefore seen to accord with Policy 1(iv) of the BD&PWLP and Appendix B (h) of the NPPW.

Conclusion

- 6.15 The appearance and scale of the proposed development as well as the presence of mature hedging that both screens and assimilates the development into the wider landscape, will ensure that there will be no detrimental impact upon the visual and landscape qualities of the area. The proposal therefore accords with Policy 4 of the BD&PWLP and Appendix B (c) of the NPPW. Having regard to the close proximity of the source of the waste to the proposed lagoon, it is considered that the proposal accords with Policy 1(i) of the BD&PWLP. In addition the level of vehicular movements between the sites is not considered to be significant and the proposed access to the application site is suitable in respect of highway safety. The proposal therefore accords with Policy 21 of the BD&PWLP and Appendix B (f) of the NPPW. The digestate to be stored in the proposed lagoon is low odour and the lagoon will be fitted with a cover and so accords with Policy 1(iv) of the BD&PWLP and Appendix B (h) of the NPPW having regard to potential odour impacts.

7. Human Rights Implications

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

- i. Article 8 - Right to respect for private and family life; and
- ii. The First Protocol, Article 1 - Protection of Property.

- 7.2 Having considered the impact of the development, as set out in the assessment above as well as the rights of the applicant and the general interest, the opinion is that any effect on human rights does not outweigh the granting of the permission in accordance with adopted and prescribed planning principles.

8. Statement of Positive Involvement

- 8.1 In accordance with paragraphs 186 and 187 of the NPPF, the Council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The Council worked with the applicant/agent in a positive and proactive manner by:

- i. updating the applicant's agent of issues as they arose in the processing of the application;
- ii. discussing possible solutions to material concerns raised; and
- iii. providing the applicant with the opportunity to address issues so that a positive recommendation to grant permission could be given.

9. Recommendation

9.1 That planning permission be granted subject to the conditions set out below:-

Time Limit - Commencement

1. The development hereby permitted shall be begun not later than the expiration of 3 years beginning from the date of this permission.

Reason:

In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).

Adherence to approved plans and details

2. Unless otherwise approved in writing by the Mineral Planning Authority, no development shall be carried out other than in strict accordance with the Drawing No's 5114/004/Rev E dated October 2014, 5114/006 dated July 2014, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.

Reason:

To maintain planning control over the site and to ensure the permission is implemented in accordance with Policies 1 and 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Exportation of Waste

3. No digestate stored within the lagoon hereby approved shall be exported off the agricultural holding containing the lagoon.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Importation of Waste

4. Only digestate generated from the Piddlehinton AD Facility as approved by Planning Permission 1/D/08/0989 (or any subsequent consent granted over the same area) shall be imported into the site.

Reason:

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Environmental Management Plan

5. The development hereby permitted shall not be commenced until a Construction Environmental Management Plan incorporating pollution prevention measures has been submitted to and approved by the

Waste Planning Authority. The Plan shall be implemented in accordance with the approved details and agreed timetable.

Reason:

To prevent pollution of the water environment having regard to Policy 1 of the Bournemouth, Dorset and Poole Waste Local Plan.

Access Crossing

6. Prior to the commencement of any other part of the development hereby permitted the first 15.00 metres of the access crossing measured from the nearside edge of the carriageway shall be laid out and constructed to a specification first submitted to and approved in writing by the Waste Planning Authority.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Parking and Loading Areas

7. The development hereby permitted shall not be occupied or brought into use until the areas shown the submitted plans for the manoeuvring, parking, loading and unloading of vehicles have been made available for these purposes. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Entrance Gates

8. Any entrance gates shall be set back a minimum distance of 15.0 metres from the edge of the carriageway and hung so that the gates can only open inwards.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Visibility Splays

9. Prior to the commencement of the development hereby permitted, the visibility splay areas as shown on the submitted plans shall be cleared/excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be maintained and kept free from all obstructions.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Wheel Washing Facilities/Provision of Appropriate Surface

10. Prior to the commencement of development a scheme showing precise details of the design, specification and position of a wheel washing facility or an appropriately bound surface of an agreed

specification shall be submitted to and approved by the Waste Planning Authority. The approved scheme shall be implemented and maintained in full working order for use throughout the duration of the development.

Reason:

In the interests of road safety having regard to Policy 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Traffic Management Plan

11. The development hereby permitted shall not commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include construction vehicle details (number, size, type and frequency of movement), vehicular routes, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The plan shall also include a scheme of signing of the heavy vehicle route to the site agreed with advice/warning signs at appropriate points. The development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.

Reason:

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Landscaping

12. Prior to the commencement of the development hereby approved a scheme of soft landscaping shall be submitted to and approved by the Waste Planning Authority. These details shall include:
- Planting plans to include a schedule of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
 - Implementation timetables; and
 - Details for the retention, protection and management of existing vegetation for the life of the development.

The approved landscaping shall be carried out in the first available planting season. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Fencing Details

13. Prior to the commencement of the development hereby approved a detailed specification of the proposed perimeter fencing shall be submitted to and approved in writing by the Waste Planning Authority. The development shall then be carried in accordance with these approved details.

Reason:

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

9.2 ADDITIONAL INFORMATION FOR INCLUSION IN DECISION NOTICE

- I. Informatives as requested by the Environment Agency and Highway Liaison Engineer
- II. A statement explaining how the Council worked with the applicant in a positive and proactive way as set out in paragraph 8.1 above.

Matthew Piles

Head of Economy

October 2014



County Hall, Colliton Park
Dorchester
Dorset DT1 1XJ

Tel : 01305 or 01202 251000

Minicom: 01305 267933

We welcome calls via text Relay

Email: planning@dorsetcc.gov.uk

DX: DX 8716 Dorchester

Web Site: www.dorsetforyou.com

TOWN & COUNTRY PLANNING ACT 1990

**TOWN & COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT
PROCEDURE) ORDER 2010**

Application N^o
2/2014/0529/PLNG

Date Received 28 April 2014

GRANT OF PLANNING PERMISSION

LOCATION OF DEVELOPMENT: Land to the South of A354, Milborne St Andrew, Dorset

DESCRIPTION OF DEVELOPMENT: Proposed development of a Storage Lagoon.

In pursuance of their powers under the above mentioned Act, the DORSET COUNTY COUNCIL being the Local Planning Authority, HEREBY GRANT PLANNING PERMISSION for the development described above in accordance with the details given in the application number above, and subject to the following 13 conditions:-

Time Limit - Commencement

- 1 The development hereby permitted shall be begun not later than the expiration of 3 years beginning from the date of this permission.

Reason

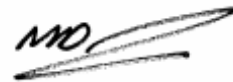
In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).

Adherence to approved plans and details

- 2 Unless otherwise approved in writing by the Mineral Planning Authority, no development shall be carried out other than in strict accordance with the Drawing Nos. 5114/004 dated April 2014, 5114/006 dated July 2014, 140601-01 and 140601-03. Operations on the application site shall be carried out in accordance with the approved plans and details and no part of the operations specified therein shall be amended or omitted without the prior written approval of the Waste Planning Authority.

TO: Mr Alan Hannify
Alliance Planning
35 Old Queen Street
London
SW1H 9JA

SIGNED



Head of Economy

DATED : 19th December 2014

PLEASE SEE OVERLEAF

Reason

To maintain planning control over the site and to ensure the permission is implemented in accordance with Policies 1 and 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Exportation of Waste

- 3 No digestate stored within the lagoon hereby approved shall be exported off the agricultural holding containing the lagoon.

Reason

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Importation of Waste

- 4 Only digestate generated from the Piddlehinton AD Facility as approved by Planning Permission 1/D/08/000989 (or any subsequent consent granted over the same area) shall be imported into the site.

Reason

To ensure that the traffic movements and any associated environmental and highway impacts connected with the use of the lagoon are maintained at acceptable levels in accordance with the submitted application and Policies 1, 4 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Environmental Management Plan

- 5 The development hereby permitted shall not be commenced until a Construction Environmental Management Plan incorporating pollution prevention measures has been submitted to and approved by the Waste Planning Authority. The Plan shall be implemented in accordance with the approved details and agreed timetable.

Reason

To prevent pollution of the water environment having regard to Policy 1 of the Bournemouth, Dorset and Poole Waste Local Plan.

Access Crossing

- 6 Prior to the commencement of any other part of the development hereby permitted the first 15.00 metres of the access crossing measured from the nearside edge of the carriageway shall be laid out and constructed to a specification first submitted to and approved in writing by the Waste Planning Authority.

Reason

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Parking and Loading Areas

- 7 The development hereby permitted shall not be occupied or brought into use until the areas shown the submitted plans for the manoeuvring, parking, loading and unloading of vehicles have been made available for these purposes. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason



In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Entrance Gates

8 Any entrance gates shall be set back a minimum distance of 15.0 metres from the edge of the carriageway and hung so that the gates can only open inwards.

Reason

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Visibility Splays

9 Prior to the commencement of the development hereby permitted, the visibility splay areas as shown on the submitted plans shall be cleared/excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be maintained and kept free from all obstructions

Reason

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Wheel Washing Facilities

10 Prior to the commencement of development a scheme showing precise details of the design, specification and position of wheel washing facilities shall be submitted to and approved by the Waste Planning Authority. The approved scheme shall be implemented and maintained in full working order for use throughout the duration of the development.

Reason

In the interests of road safety having regard to Policy 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Construction Traffic Management Plan

11 The development hereby permitted shall not commence until a Traffic and Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include construction vehicle details (number, size, type and frequency of movement), vehicular routes, delivery hours, signage and contractors' arrangements (compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The Traffic Management Plan shall include a scheme of temporary signing of the heavy goods vehicle route for construction vehicles and appropriate permanent advance warning signs at the access itself. The development shall be carried out strictly in accordance with the approved Traffic and Construction Management Plans.

Reason

In the interests of road safety having regard to Policies 1 and 21 of the Bournemouth, Dorset and Poole Waste Local Plan.

Landscaping

12 Prior to the commencement of the development hereby approved a scheme of soft landscaping shall be submitted to and approved by the Waste Planning Authority. These details shall include:

- Planting plans to include a schedule of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
- Implementation timetables; and



- Details for the retention, protection and management of existing vegetation for the life of the development.

The approved landscaping shall be carried out in the first available planting season. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

Fencing Details

13 Prior to the commencement of the development hereby approved a detailed specification of the proposed perimeter fencing shall be submitted to and approved in writing by the Waste Planning Authority. The development shall then be carried in accordance with these approved details.

Reason

To safeguard the environment of the surrounding area having regard to Policy 4 of the Bournemouth, Dorset and Poole Waste Local Plan.

INFORMATIVES

The applicant is advised that notwithstanding this consent Section 184 of the Highways Act 1980 requires the proper construction of vehicle crossings over kerbed footways, verges or other highway land. Before commencement of any works on the public highway, Dorset County Council's Dorset Highways should be consulted to agree on the detailed specification. They can be contacted by telephone at Dorset Direct (01305 221000), by email at dorsetdirect@dorsetcc.gov.uk, or in writing at Dorset Highways, Dorset County Council, County Hall, Dorchester, DT1 1XJ.

The site falls within a groundwater Source Protection Zone II (SPZ2). This is a zone of protection surrounding a nearby drinking water borehole, which is vulnerable to pollution. It therefore requires careful protection from contamination. Further information on SPZs can be found at <http://www.environment-agency.gov.uk/homeandleisure/37833.aspx>

Construction Environmental Management Plan (CEMP)

The applicant should note the sensitivity of groundwater in this area and ensure that installation contractors are competent to install such liners and that they pay particular attention to the integrity of welded seams. We therefore recommend inclusion of a condition requiring submission of a detailed construction method statement prior to development in order to protect controlled waters.

Environmental Permit

The applicant can get a standard rules permit for storing digestate (SR2010No17) <http://www.environment-agency.gov.uk/business/topics/permitting/117260.aspx> providing that they meet the conditions of this permit.

Construction standards for earth lagoons

The lagoon must comply with the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010. To comply, it has to be built in accordance with British Standards set out in CIRIA (Construction Industry Research and Information Association) Report 126.



The applicant is advised to contact our local Environment Management team on 01258 483307 for further guidance.

Technical standards for this can be found in CIRIA 126 and at: <https://www.gov.uk/government/publications/altering-or-installing-new-earth-bank-slurry-stores-and-tanks>.

We would require 'secure storage' for polluting materials (as required above). For your lagoons, we would expect construction to be of the same standard as for agricultural slurry lagoons covered under The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010, as amended 2013.

Statement of Positive Involvement

In accordance with paragraphs 186 and 187 of the NPPF, the Council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The Council worked with the applicant/agent in a positive and proactive manner by:

- i. updating the applicant's agent of issues as they arose in the processing of the application;
- ii. discussing possible solutions to material concerns raised; and
- iii. providing the applicant with the opportunity to address issues so that a positive recommendation to grant permission could be given.

Further details including application documents and Planning Officers report can be viewed using the Application No. above at the following url:

<http://countyplanning.dorsetforyou.com/ePlanningOPS/searchPageLoad.do>



NOTES

1. This permission does not carry any approval or consent which may be required under any enactment, bye-law, order or regulation (eg., in relation to Building Regulations or the Diversion of Footpaths etc) other than Section 57 of the Town and Country Planning Act, 1990.
2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 (1) of the Town and Country Planning Act, 1990, within six months of receipt of this notice. (Appeals may be made on-line at the following url:

<http://www.planningportal.gov.uk/england/public/planning/appeals/>

or if you are unable to use the online service, please contact the The Planning Inspectorate Customer Services Team on 0117 372 6372 for a paper form. The Planning Inspectorate address is Department of the Environment, Temple Quay House, 2 The Square, Temple Quay, BRISTOL BS1 6PN). The Secretary of State for the Environment has power to allow a longer period for the giving of a notice of appeal, but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State for the Environment need not consider an appeal if it seems to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the Development Order and to any other direction given under the Order. **Please note, only the applicant possesses the right of appeal.**

3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the county district in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act, 1990.
4. In certain circumstances, a claim may be made against the local planning authority for compensation where permission is refused or granted subject to conditions by the Secretary of State for the Environment on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 and related provisions of the Town and Country Planning Act, 1990.
5. Commencement of development: The attention of the applicant/developer is drawn to the fact that development pursuant to this planning permission may not lawfully commence unless and until all pre-start conditions have first been approved or agreed in writing. The applicant/developer or their agent should accordingly be aware of their responsibility here. If you have not already done so, you are advised to put arrangements in place for the timely submission of these and to check that there are no omissions in terms of the details required