

Agenda item:

Regulatory Committee

5

Dorset County Council



Date of Meeting	2 February 2017
<u>Local Member(s):</u> Cllr Robin Cook - Member for Minster <u>Lead Officer</u> Phil Hobson, Senior Definitive Map Officer	
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 Speirs 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 Spiers 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 Spiers 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