



Meeting: Regulatory Committee

Time: 10.00 am

Date: 12 July 2018

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

David Jones (Chairman)	Margaret Phipps (Vice-Chairman)	Jon Andrews
Shane Bartlett	Ray Bryan	Keith Day
Jean Dunseith	Katharine Garcia	Jon Orrell
David Shortell		

Notes:

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- 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 9 July 2018, and statements by midday the day before the meeting.

Debbie Ward
Chief Executive

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Date of Publication:
Wednesday, 27 June 2018

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 - 8

To confirm and sign the minutes of the meeting held on 14 June 2018.

4. Public Participation

(a) Public Speaking

(b) Petitions

5. Proposed Zebra Crossing, Dorchester Road, Upton 9 - 18

To consider a report by the Service Director Highways and Emergency Planning.

6. Application for a definitive map and statement modification order to add a Restricted Byway from Catherine's Well to Hilton Road, Milton Abbas 19 - 70

To consider a report by the Regulation Team Leader.

7. Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court Ruling 71 - 118

To consider a report by the Senior Definitive Map Officer.

8. Questions from County Councillors

To answer any questions received in writing by the Chief Executive by not later than 10.00am on 9 July 2018.



Regulatory Committee

Minutes of the meeting held at The Springfield Hotel, Wareham on
Thursday, 14 June 2018

Present:

David Jones (Chairman)
Margaret Phipps, Shane Bartlett, Ray Bryan, Jean Dunseith, Katharine Garcia, Nick Ireland,
Jon Orrell and David Shortell.

Members Attending

Cherry Brooks County Councillor for South Purbeck
Beryl Ezzard County Councillor for Wareham
Peter Wharf County Councillor for Egdon Heath

Officer Attending: Maxine Bodell (Head of Planning), Phil Crowther (Senior Solicitor), Chris Stokes (Principal Planning Officer (Development Manager)) and Lee Gallagher (Democratic Services Manager).

(Notes: 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 Cabinet to be held on **Thursday, 12 July 2018.**)

Apologies for Absence

22 Apologies for absence were received from Cllrs Jon Andrews and Kevin Brookes. Cllr Nick Ireland attended the meeting as a substitute for Cllr Jon Andrews.

Code of Conduct

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

Terms of Reference

24 Members received the Terms of Reference for the Committee.

Noted

Minutes

25 The minutes of the meeting held on 22 March 2018 were confirmed and signed.

Public Participation

26 Public Speaking

There were public questions received at the meeting in accordance with Standing Order 21(1). The questions are attached in an annexure to these minutes. It was clarified at the meeting that questions 1, 3 and 4 did not relate to the remit of the Regulatory Committee and would therefore be forwarded to the applicant to respond to outside of the meeting. The response to question 2 was provided as part of the introduction to the item by the Planning Officer at minute 27 below.

There were 28 public statements received at the meeting in accordance with Standing Order 21(2). All statements are attached in an annexure to these minutes.

Petitions

There were no petitions received at the meeting in accordance with the County Council's Petition Scheme.

Alterations to the existing railway footbridge and erection of new ramp structures, providing step free access from the highway to the footbridge. Wareham Railway Station, Northport, Wareham, Dorset, BH20 4AS.

27 The Committee considered a report by the Head of Planning in relation to a replacement step free crossing across the railway line at Wareham Station. A site visit to Wareham Train Station was held on 16 November 2017 and attended by a number of members. Those members who had not attended the site visit took part in the debate as they felt that they were familiar with the site and had sufficient knowledge of the site to take part.

The Principal Planning Officer provided a presentation and detailed introduction to the application and an update sheet (attached as an annexure to these minutes). A site plan and images of the proposed ramps were shared at the meeting to explain the design and scale. It was explained that as the key north-south pedestrian access for Wareham there were in excess of 1000 movements across the current crossing and approximately 68 trains passed through the station each day. The presentation included photos showing the station and application site, including public crossing the train line, the bridge, platforms, buildings and the surrounding roads near to the site. Further context was provided regarding the grade 2 listed bridge and buildings, and the street scene.

The impact of the proposal on the listed building was explained. Two 2m wide-sections of the bridge parapet would be removed to allow two mobility scooters to pass. Additional brackets and columns would be added to the bridge under these cut outs. The Principal Planning Officer explained that for the most part, the setting of the listed building was relatively unaffected. However, there was particular concern about the impact on the setting from the East and on the relationship between the existing bridge and the signal box. It was explained that Purbeck District Council's Conservation Officer had assessed the harm to the listed building as less than substantial. As the proposal would result in harm to the listed building, the Principal Planning Officer set out the various alternative that had been considered.

In relation to the rail crossing, the background to the use of the public across the trainline was explained and the arrangements in place for the current manned crossing. Network Rail and the Office for Road and Rail had an ongoing concern in respect of the potential for incidents at the crossing and that there had been recorded near misses on the site between 2015-2017. Network Rail had closed over 1000 level crossings based on the same risk assessment methodology (this crossing had been assessed at D4 based on a scale of A-M and 1-13) in December 2017 which included the abuse of crossings. A photo was shown taken by the Principal Planning Officer during an unannounced visit showing the crossing guard holding back a person who was on the wrong side of the gates after they had closed. A video of what in Network Rail's view constituted a near miss was also provided for information.

The design of the step free proposal which provided for 1:12 gradient ramps was explained in detail, which conformed with the Design Manual for Bridges and Roads. Although it would be preferred that the ramps would normally be at a gradient of 1:20, this was not possible due to the need to retain a crossing at this point, amount of space available on site and the need to limit the impact on the Listed Buildings and their settings. Previously proposed schemes, and examples of other bridges in Dorset at 1:12 were provided as context.

Discussion had taken place with the occupier of the adjoining dwelling. As a result of their concerns, mitigation in the form of a mesh screen had been incorporated into the design so that they had withdrawn their objection.

Officers' conclusions were that the significant safety concerns and the need to maintain a crossing on the direct route from the North of Wareham to the South was sufficient to clearly outweigh the harm to the listed building and to the street scene.

Four public questions were received at the meeting in accordance with Standing Order 21(1), and twenty-eight public statements in accordance with Standing Order 21(2). It was clarified at the meeting that questions 1, 3 and 4 did not relate to the remit of the Regulatory Committee and would therefore be forwarded to the applicant to respond to outside of the meeting. The response to question 2 was provided as part of the introduction to the item by the Planning Officer. The questions and statements are attached as an annexure to these minutes.

The issues raised by members of the public addressing the Committee at the meeting are summarised below:

- Retention of the route as outlined in the Purbeck Neighbourhood Plan;
- Structure and visual impact of the proposed ramps;
- A proposed alternative layout for the ramps to provide a 1:15 gradient;
- The 1:12 gradient of the ramps and the impact on all users including those with disabilities and those who were able bodied, cyclists and use of buggies and pushchairs;
- That the proposal is a breach of the County Council's duty under the Equalities Act;
- That the ramps would be unusable in the winter when icy;
- It was contested that the ramps would not be wide enough for two scooters or wheelchairs to pass;
- The site would be used for skateboarders and rollerbladers;
- An asserted risk of breaching the Equalities Act by using ramp gradients too steep for disabled, especially those being pushed in wheelchairs, and less mobile people to use;
- The health and safety, and risk factor being rated as High when there had never been any fatalities or incidents at the site;
- Suggested alternative of using a controlled barrier, gates linked to signals, or other technology to retain a crossing in its current location;
- The negative impact on the existing Grade 2 listed building, which outweighed the public benefit of the proposal;
- Impact on the local heritage of Wareham as a historic town as the gateway to the Isle of Purbeck and world heritage site;
- The overriding need to take account of the local community views and needs;
- The design did not reflect the street scene or character of the locality;
- Access to services and the economic impact on Wareham in terms of local people using the town's amenities;
- Residents and visitors would be encouraged to go to Poole or Dorchester as an alternative to Wareham;
- It would adversely affect the regeneration of Wareham;
- The strong public support to keep the existing level crossing with barrier control/automation;
- It was important for the crossing not to be compared with the Poole pedestrian level crossing;
- There was an assumption of unlawful removal of public rights of way at the site;
- Concern that there were no alternatives that National Rail were prepared to look at which would retain the crossing;
- That Network Rail's risk assessment graded all level crossings as high risk;
- That the Office of Road and Rail would look at alternatives to a bridge, it is only Network Rail that is wedded to a bridge;
- The need to cross the bridge for tickets and return to the same platform;
- That the matter could be referred to the Council's Audit and Governance

Committee as a call-in;

- That the application was not in accordance with National Planning Policy Framework regarding good design, conservation and the Purbeck District Council Local Plan; and,
- Support from Michael Tomlinson MP to the views of the residents of Wareham in opposing the application.

The following clarifications were provided in response to points raised in the statements at the meeting:

- Although the Highways Authority was the applicant it was necessary for the County Council's Regulatory Committee to consider the application, but this was undertaken in an impartial way with assessment and decision making being carried out in the same way as any other application;
- It was also clarified that there was no further right of appeal or consideration by another committee of the Council relating to the decision of the Regulatory Committee as suggested in one of the statements; and,
- Legal advice had been received in relation to the stopping up of the road in the 1970s through a side roads order which extinguished all public rights. Any challenge to this position would be required separately to the planning application by the Council's rights of way team.

The following comments were made in favour of the application:

- The ramps would create a permanent step free and safe network for all users 24 hours a day, and included those with limited mobility;
- There was evidence of near-misses on site;
- The County Council had a duty to reduce as far as reasonably practicable the health and safety concerns relating to the site;
-
- Public access would cease in 2038;
- Over time the current situation was not tenable;
- Manned crossings were a thing of the past and not sufficiently safe; and,
- Automated barriers would be demonstrably less safe.

Local member representations were received from Cllrs Peter Wharf, Beryl Ezzard and Cherry Brooks. The representations echoed closely the concerns raised by members of the public, but with the addition of:

- Clarification that the proposal was not in accordance with policy for conserving and enhancing the historic environment (Section 12 of the National Planning Policy Framework (NPPF)); policy for good design (Section 7 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990); Policy LHH (Landscape, Historic Environment and Heritage) and Policy D (design) of the Purbeck Local Plan; and paragraphs 30 and 41 of the NPPF and Policies IAT and CEN of the Purbeck Local Plan;
- That not all avenues had been explored for an alternative crossing; and,
- Future alternatives could be found through developing technology in the future.

At this point the Committee asked questions of clarification before entering formal debate and decision making in respect of the application. A request was made for more information regarding the near misses associated with the crossing, to which officers clarified that there had been formally recorded near misses of 1 in 2015, 1 in 2016 and 1 in 2017. It was also clarified that the crossing was manned between 6am until 1am daily.

The reporting of issues and problems on bridges with 1:12 gradient slopes was raised as although there had been no recorded complaints or problems reported by the public to the bridges team, but there was no formal reporting procedure. It was also felt that from the examples provided at the meeting, and through the experience of local members, the 1:12 gradient was not appropriate for wheelchairs. It was also clarified that although a gradient of 1:12 was not preferred in general design principles, and a ramp of 1:20 would be, it was in line with the Design Manual for Roads and Bridges in exceptional circumstances due to the restricted space available.

Wheelchair and mobility scooter access and passing on the existing bridge and proposed ramps was discussed in detail. It was explained that the ramps were 2m wide which would accommodate for two standard width wheelchairs (650mm) to be able to pass. However, concern was expressed that there were a range of sizes of wheelchairs and scooters available. The width of the bridge was accepted as being more than the width of the ramps using reference to scale maps at the meeting.

Alternatives to the proposal were discussed in detail, and a number of members were keen to understand why the provision of automated barriers linked to the signalling system had not been considered as a viable alternative by Network Rail. It was clarified that the application was that of Dorset Highways and not Network Rail and it was the duty of the planning service to consider the application submitted, and although it was possible for alternatives to be looked at in planning terms, this related to alternatives to the impact on heritage assets and listed buildings affected by the development only. It was anecdotally referenced that Network Rail considered all level crossings to be unsafe and was therefore not considered to be an acceptable alternative and that it was known that Network Rail had planned to close a further 600 crossings in addition to over 1000 already closed on grounds of safety.

A question was asked about a possible alternative of developing pedestrian access to the bypass. The Principal Planning officer confirmed that he was not aware of any proposal for a footpath enhancement, and in practical terms this would be more out of the way that the proposed ramps.

The mitigation put in place in respect of the neighbouring property to the ramps was discussed as it was felt that although the property owner had discussed mitigations and had not objected to the proposal, in relation to good design principles it seemed to be too close to the property. Officers confirmed that the property owner had been consulted and there were no issues of overlooking, overshadow and no noise nuisance so it was therefore not unreasonable for it to be there.

Following questioning from the Committee, Cllr Margaret Phipps highlighted the importance of listening to the local community as well as material planning considerations and proposed that the application should be refused for the following reasons:

- 1. The construction and presence of the proposed ramp would cause harm to the setting and therefore the significance of the Grade II listed bridge which forms part of a listed group of station buildings, as well as ancillary/curtilage buildings which are listed. No clear and convincing exceptional circumstances have been demonstrated to justify harm to the Grade II listed bridge. Neither would the harm to this nationally important heritage asset be clearly and convincingly outweighed by the public benefits associated with the proposed development, as other significantly less harmful alternatives are available.*
- 2. Approval of such development would be contrary to government policy for conserving and enhancing the historic environment set out in Section 12, paragraphs 131, 132, 133 and 134 of the National Planning Policy Framework (NPPF, March 2012) and the proposed development would make no desirable positive contribution to local character and distinctiveness as encouraged by paragraph 131 of the National Planning Policy Framework.*
- 3. Section 7, Paragraphs 56, 57, 61 and paragraph 64 of the NPPF states that permission*

should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The excessive mass and scale of the proposed ramps will not improve the character of the historic bridge and station. This is also contrary to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

4. The application is contrary to Policy LHH (Landscape, Historic Environment and Heritage) of the Purbeck Local Plan. In addition, the ramps would detract from the street scene and be contrary to Policy D (Design) of the Purbeck Local Plan Part 1. This is because the application fails to demonstrate that the protection and enhancement of the setting of the designated heritage asset has been addressed. It also fails to establish that the adverse effect that the proposed development would have on the setting of the listed building, can be satisfactorily alleviated through appropriate and acceptable mitigating measures.

5. Also the proposal is likely to increase the use of motor vehicles, and therefore fails to promote sustainable transport, contrary to Paragraphs 30 and 41 of the NPPF and Policies IAT and CEN of the Purbeck Local Plan.'

The proposal was seconded by Cllr David Shortell who also indicated that alternatives should be considered.

Views were shared by members which supported the refusal of the application, whilst noting that the current arrangements were strongly supported by the local community, the significant impact to the character of the local area, and risk to the public and less mobile of icy conditions in the winter.

However, an opposing view was expressed that a deferral of the application could be considered based on the exploration and negotiation between the Council and National Rail for an alternative arrangement at the site, potentially with automated barriers.

On considering the proposal for refusal it was agreed that it would also be suggested that the Highway Authority and Network Rail be encouraged to enter into discussions about alternative solutions including an automated barrier system.

On being put to the vote the proposal was agreed unanimously.

Resolved

1. That the application be refused subject to the reasons set out in the minute above.
2. It is suggested that the Highway Authority and Network Rail enter into discussions about alternative solutions including an automated barrier system.

Questions from County Councillors

28 There were no questions raised by members under Standing Order 20(2).

Meeting Duration: 10.10 am - 1.35 pm

Regulatory Committee

Dorset County Council



Date of Meeting	12 July 2018
Officer	Andrew Martin – Service Director Highways and Emergency Planning
Subject of Report	Proposed Zebra Crossing, Dorchester Road, Upton
Executive Summary	<p>The main B3067, Dorchester Road, divides Upton in half which can lead to community severance with pedestrians having difficulty crossing the road safely.</p> <p>The proposed location of the crossing is on an established route to the Upton Methodist Church, which houses a pre-school and nursery facility and Upton Infant School and Junior Schools and Lytchett Minster School.</p> <p>Following advertisement of a Public Notice in February 2018 with the intention to install a Zebra crossing three objections have been received. This report considers the objections and representations and whether the proposed Zebra crossing should be implemented as advertised.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment for overall scheme was carried out in February 2017. This concluded that there will be no discriminatory or negative consequences for any sector of the community on the grounds of gender, race or ethnicity, sex, sexual orientation or other socially excluded groups.</p>

Proposed Zebra Crossing, Dorchester Road, Upton

	<p>However the proposal to introduce Zebra crossing will positively benefit the sectors of age, disability, pregnancy and maternity and Religion and belief.</p>
	<p>Use of Evidence:</p> <p>Pedestrian and traffic surveys undertaken to inform the Pre-feasibility report and the support of the Local Member, Town and District Councils and the Police.</p>
	<p>Budget:</p> <p>£38,000.00 allocated from the Local Transport Plan budget for 2018/19</p>
	<p>Risk Assessment:</p> <p>Having considered the risks associated with this decision using the County Council's approved risk management methodology, it is the officer's opinion that there are no High risks that need to be reported. The level of risk has been identified as:</p> <p>Current Risk: MEDIUM Residual Risk MEDIUM</p>
	<p>Other implications:</p> <p>None</p>
Recommendation	That having considered the objections received, Cabinet be recommended to approve the provision of a Zebra crossing as advertised.
Reason for Recommendation	The proposals should allow the provision of a Zebra crossing facility on Dorchester Road, Upton, without adversely affecting the amenity of adjacent properties.
Appendices	Appendix 1 - Scheme Location Plan Appendix 2 - Consultation Drawing
Background Papers	1. Primary consultation responses from the District and Town Councils, Dorset Police and the local County Councillor(s) are held on file in the Environment and the Economy Directorate.
Officer Contact	Name: Andrew Bradley Tel: 01305 224837

	Email: a.l.bradley@dorsetcc.gov.uk
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1. Background

1.1 The scheme was requested by Upton and Lytchett Minster Town Council in support of the Local Member for the Division.

1.2 A pre-feasibility study was undertaken which investigated three options; a pedestrian refuge to the east of Sea View Road junction, a zebra crossing to the east of the Sea View Road junction and a zebra crossing to west of the Sea View Road junction. The final option was discounted as it was away from the natural desire line. Of the first and second options, the zebra crossing was preferred and was taken forward.

1.3 Dorchester Road is within the town 30mph restriction. Peak flows of traffic are typically between 08:00-09:00 and 15:00 and 16:00 which correlates with school hours when the crossing would be most in use.

1.4 Over the last three year there have been no reported accidents within 50 metres of the junction of Sea View Road.

1.5 A 12 hour usage survey was taken in November 2015 between 07:00-19:00 within 50m either side of the Sea View Road Junction, the results show that the site meets the requirements for a pedestrian crossing.

1.6 The proposed crossing meets with council policy and has been prioritised in the Local Transport Plan where it met criteria for funding.

2. Law

2.1 Section 23 of the Road Traffic Regulation Act 1984 gives DCC the power to establish pedestrian crossings subject to prescribed consultation and compliance with the specific regulations.

3. Consultation Responses

3.1 The proposed Zebra crossing was advertised in February 2018 as part of the public consultation process. Copies of the Public Notice were placed on lighting columns at the proposed site and also sent, together with a scheme plan, to residential properties in the immediate vicinity.

3.2 Under Dorset County Council's procedure, primary consultation was carried out on the proposed scheme and it is supported by the Local Member, Purbeck District Council, Upton and Lytchett Minster Town Council and the Police.

3.3 It should be noted that there was a change of Local Member due to County Council elections during the process but the current Member is also supportive.

3.4 As a consequence of the public consultation objections and concerns were received by email from the residents of 3 of the properties immediately adjacent to the proposed crossing.

3.5 The concerns raised as part of the objection read, in italics below, with officer comments after each bullet point objection:

- *Objection 1: We wish to strenuously object to the installation of a Zebra pedestrian crossing outside of our house 78, Dorchester Road. This is the first we have heard of this proposal as we recently purchased the property on the 09/12/17. It is totally unacceptable and not needed as a perfectly acceptable light controlled crossing is only 260 metres (0.16 miles) on Dorchester Road to the East. A central refuge as discussed before by the Town Council would have been completely acceptable.*
- Comment: The principal objector moved into the property after the initial discussions with the Town Council and options were considered. However the purpose of this report is to consider objections and representations received as part of the Public Advert.

A pedestrian refuge island was considered but due to the necessary cost of widening the road to accommodate the island, and moving telegraph poles and lighting columns, was discounted on cost grounds.

- *Objection 2: Although we have not been able to speak to any representative from Upton Methodist Church we understand that they too have concerns about disabled access and parking for the hearse during funerals.*
- Comment: Discussions were held with the Church and some concerns were raised about the need to be able to park a hearse on Dorchester Road together with the impact on a small memorial tree. The plans, as advertised, were amended to accommodate parking and the tree was moved with the agreement of the Church. The Church were sent the plans as part of the public advertisement and no further representations were received.
- *Objection 3: Situating a Zebra Crossing outside of our house will cause severe lack of amenities to us and our family.*
- Comment: Officers believe that any impact on amenities would be negligible, see further comments in response to cited objections below.
- *Objection 4: The installation of the crossing and the zig zags will not permit parking or even limited waiting outside of numbers 76,78,79,80,81 and 82 Dorchester Road. We have two children and they are frequently dropped off outside of our house by other parents who do car sharing with us.*
- Comment: The statement is correct, however, all the properties have off-road parking. In the event off-road parking was not available then it would entail a short walk from either side of the zig-zags of negligible inconvenience.

- *Objection 5: There will be increased noise pollution from vehicles waiting at the crossing and then accelerating away. Will DCC pay for enhanced triple glazing if the proposed crossing goes ahead?*
- **Comment:** Rights to either financial compensation or noise insulation stem from the Land Compensation Act 1973.

Part 1 of the Act, allows owners of property whose value is reduced by 'physical factors', including noise and fumes, to claim compensation from the highway authority.

The Noise Insulation Regulations 1975, which were made under the provisions of the Act, give the highway authority discretionary powers to offer grants for noise insulation where properties are affected by increased noise following alteration works to a public highway.

In either case, the Act states that the road is deemed to be altered only when there is a change to the location, width or level of the carriageway (other than by resurfacing) or an additional carriageway is provided beside, above or below an existing one.

The proposal to create a zebra crossing on Dorchester Road would not involve a change to the location, width or level of the carriageway. The project therefore falls outside the definition of altered highway and there is no right to either Part 1 compensation or noise insulation.

- *Objection 6: There will be increased exhaust pollution from vehicles waiting at the crossing and then accelerating away.*
- **Comment:** Given the open topography of the site, the impact of any changes in local pollutants is considered to be negligible.
- *Objection 7: Light pollution from the flashing Belisha beacons.*
- **Comment:** Light reducing hoods can be attached to the flashing globes, but the level of light pollution is minimal and it is usual to install Zebra crossings without hoods. If subsequently there is an issue they can be retrofitted in response to reports of light pollution, and hoods have been used successfully at other locations. Any form of cowl or hood will reduce the visibility of the globe in highlighting the crossing location and has to be used with caution.
- *Objection 8: There could be an issue with pollution from brake dust as vehicles stop at the crossing.*
- **Comment:** Given the open topography of the site, the impact of any changes in local pollutants is considered to be negligible.
- *Objection 9: The danger of us having to turn right into our drive from the queue of traffic waiting at the crossing and the drivers of oncoming vehicles not expecting to see vehicles crossing in front of them as they pull away from the crossing.*

Proposed Zebra Crossing, Dorchester Road, Upton

- Comment: If one is indicating to turn right and sees a vehicle waiting at the crossing one should only proceed when deemed safe to do so in the normal manner.
- Objection 10: *The addition of street furniture virtually outside of our house would do nothing to enhance our property and will change the character of the street scene.*
- Comment: Zebra crossings are commonly part of the street-scene in residential and suburban town centres.
- Objection 11: *The crossing outside of our house would we believe devalue our property.*
- Comment: There is no known studies to suggest the proposed crossing would devalue the property(s).
- Objection 12: *The location of the proposed zebra crossing is too close to the junction of Sea view Road. Our concerns are that at busy periods, particularly during the school runs, cars turning right out of Sea View Road at speed due to traffic congestion would not have enough time to respond to children at the crossing and cause danger to life.*
- Comment: The proposed Zebra crossing is approximately 26m from the junction. The national guidance states that such crossings should be a minimum of 20m from a junction so the proposed crossing is in line with national guidance. Moving the crossing further away from the junction would displace it from the pedestrian desire line and encourage inappropriate crossing of the carriageway in the vicinity of the zebra crossing.
- Objection 13: *We propose that there is a more suitable location adjacent to the British Legion building some 130 meters to the west. Less residents would be affected. Additionally this location would benefit the residents further along the Dorchester Road towards Lytchett Minster who have much further to walk at present to cross the road safely.*
- Comment: The surveys undertaken show that people are crossing in the locality of the proposed crossing and the location meets national criteria. Siting the crossing further to the west would be away from the desire line for children crossing to/from school.

4. Conclusion

4.1 The Zebra crossing would provide a safe crossing point for all pedestrians and in particular children on their route to/from school on this busy road main road.

4.2 Having considered the objections submitted as part of the consultation process officers feel that the position of the crossing, in relation to the properties, will have negligible impact on residents' amenity value.

Proposed Zebra Crossing, Dorchester Road, Upton

4.3 It is recommended that the Committee recommend to Cabinet that the Zebra crossing be implemented as advertised.

Mike Harries
Director for Environment and the Economy
June 2018

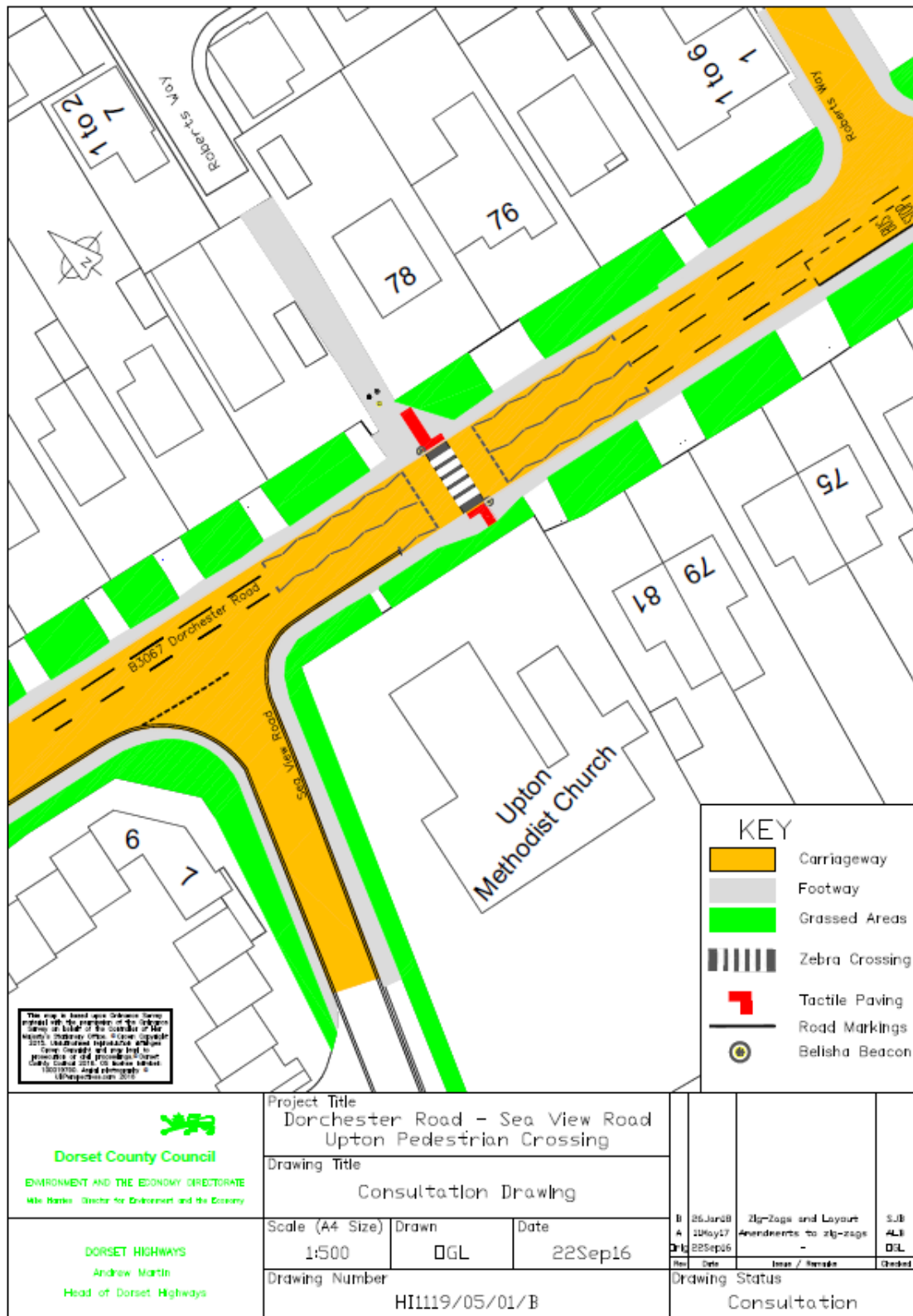
Appendix 1

Proposed Zebra Crossing, Dorchester Road, Upton



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Proposed Zebra Crossing, Dorchester Road, Upton



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Agenda item:

Regulatory Committee



Dorset County Council



Date of Meeting	12 July 2018
<p><u>Local Member(s):</u> Cllr Hilary Cox - Member for Winterborne</p> <p><u>Lead Officer(s)</u> Vanessa Penny, Regulation Team Leader</p>	
Subject of Report	Application for a definitive map and statement modification order to add a Restricted Byway from Catherine’s Well to Hilton Road, Milton Abbas
Executive Summary	Following an application made in 2009 to add a Restricted Byway in the parish of Milton Abbas, this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence:</p> <p>The applicant submitted witness statements in support of her 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 July 2014, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillor for Winterborne, Hilary Cox, was also consulted. In addition notices explaining the application were erected on site.</p>

	<p>User evidence forms from 72 users of the claimed route were submitted during the investigation. Any relevant evidence provided is 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 the route from Catherine’s Well to Hilton Road as shown A1 – A3 – B – B1 – C – D on Drawing 14/21/2 as a restricted byway; and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
	<p>(a) The available evidence shows, on balance, that the route A1 – A3 – B – B1 – C – D should be recorded as a byway open to all traffic. However, as the application was submitted after 20 January 2005, and 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 a restricted byway over the route; and</p> <p>(b) The evidence shows, on balance, that the route should be recorded as a restricted byway as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p>

<p>Reason for Recommendations</p>	<p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-18 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset’s economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while ‘keeping Dorset moving’, enabling people and goods to move about the county safely and efficiently
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 14/21/2 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"> ▪ 1969-70 Plan of the Manor of Milton Abby ▪ 1808 Map of the Manor and parish of Hilton with part of Milton Abbas ▪ 1910 Finance Act plan and field book entry - extract from hereditament 1 ▪ Ordnance Survey maps <ul style="list-style-type: none"> - 1811 scale 1 inch: 1 mile - 1888 First Edition scale 1:2500 - 1902 Second Edition scale 1:2500 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use <ul style="list-style-type: none"> ▪ On foot ▪ With horses ▪ With bicycles ▪ With mechanically propelled vehicles (e.g. motorbike/car)
<p>Background Papers</p>	<p>The file of the Service Director, Highways and Emergency Planning (ref. RW/T491).</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>

	Copies (or photographs) of the documentary evidence can be found on the case file RW/T491, which will be available to view at County Hall during office hours.
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1 Background

- 1.1 An application to add a Restricted Byway in the parish of Milton Abbas as shown between points A and D on Drawing 14/21/2 (Appendix 1) was made by Mrs Carol Shoopman on behalf of the British Horse Society on 17 September 2009.
- 1.2 The claimed route begins at point A on the county road D33305 known as Catherine's Well. It follows the county road westwards for approximately 65 metres to point A1, the termination point of the county road. The claimed route then continues west from point A1 following a well-defined level gravel/stone track approximately 3.3 metres wide with verges and hedges to both sides.
- 1.3 At point A2 there is a signpost located on the southern side of the track which reads as follows **"Private Land No Public Right of Way No Unauthorised Vehicles Permissive Footpath Only Cyclists required to dismount Dogs on leads at all times Users do so entirely at their own risk"**. An additional board states **"Horse riding welcome subject to above terms and conditions"**. There is also a finger post indicating a pedestrian route to Milton Abbas, St Catherine's Chapel and Jane's Wood, the post has PERMISSIVE routed on it.
- 1.4 The route continues in a generally westerly direction along the well-defined gravel/stone surfaced track that displays evidence of localised repairs having been undertaken. The track retains verges and hedges to both sides up towards point A3 where the hedge to the south is replaced or supplemented by metal railings. There is a metal gate located within this fence line at point A3 which has a sign on it stating **"PRIVATE LAND please KEEP OUT"**.
- 1.5 The route continues generally westerly turning slightly north westwards to point A4 where there is another sign located within the verge to the north of the track, facing traffic heading easterly. This sign has identical wording to the sign located at point A2.
- 1.6 The route continues, turning slightly westwards through point B, its junction with the drive to St Catherine's House, before descending gradually through woodland passing Steeptonbill Farm to the south and a path leading northerly to St Catherine's Chapel. The route continues its gradual descent, passing through point C, where a finger post is located to the north of the track indicating a pedestrian route to Milton Abbas and St Catherine's Chapel. From point C to D, the route's termination point with the county road, the D33308 (unnamed road), the track is approximately 6 metres wide, being defined by woodland to both sides.
- 1.7 A land registry search was undertaken, which revealed that the part of the claimed route as shown between points A1 and A5 is owned by Anita Burdett-Clark of Milton Abbas and is subject to private rights of access at all times and by all means. That part between points A5 and C is owned by Mr S Gould and Teresa Evans of Weymouth. However, that part from C to D is unregistered and the owner is unknown.
- 1.8 The owners of St Catherine's House located in the vicinity of point B do not appear to own any part of the track but do enjoy a private right over that part shown between points C and D, by all means and at all times.

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/T491)

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/T491)

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

5 **Additional evidence in support of the application** (copies available in the case file RW/T491)

5.1 Six submissions were received supporting the application:

Name	Comments
S Bewers	Wrote on 3 August 2014 - uses path regularly, has been aware of it for over 30 years and it is a very well used route.
Mr N Brockway	Wrote on 4 August 2014 - lived in village for 63 years, over which time has used route constantly/daily.
C H R Fookes	Emailed in response to consultation letter on 17 August 2014 claiming that from 1932 the track became a much used route for walking, riding and vehicular purposes.
Rodger & Janet Pressland	Responded to consultation letter on 17 August 2014 stating that they have used the route on foot for some 20 years. Until the recent sale of the land they had always assumed it to be a public right of way.
Simon Valentine	E-mailed 21 August 2014 - moved with family to Milton Abbas 2003, since when have used route regularly, walking and cycling, never been stopped or prevented. Believes status should be changed, removing all restrictions.
S Gould & T Evans	E-mailed 21 August 2014 - purchased Steeptonbill Farm in Feb 2009. They state that the track is well used by both villagers and visitors and support the application.

6 **Evidence opposing the application** (copies available in the case file RW/T491)

6.1 One submission was received prior to the start of the consultation in 2014 and a further two submissions were received as a result of the consultation and are summarised in the table below.

Name	Comments
Mr M Cox	Emailed on 27 October 2009 stating he owned the track until March 2008. There are no rights on the usage of the track other than with owners’ permission. Took action to maintain privacy of route. Allowed track to be part of the Heritage Trail under the designation of permissive.
Mr C Burdett-Clark	Emailed 19 August 2014 stating that he believed the track was used by the public with permission.
Mr C Burdett-Clark	Wrote on 31 October 2017 wishing to register his objection to the submission. The public have enjoyed the benefit of permissive access by a previous landowner and themselves, yet now “demand to make this footpath a “Right of Way””. They have suffered verbal comments and threatening behaviour from members of the public using the route. The police have been helpful in dealing with incidents reported to them by Mr Burdett-Clark. Signs they have placed on the route regarding its permissive status have been vandalised on numerous occasions. When Mrs Burdett-Clark bought the land, they were advised by the previous owner that the route was permissive and this was borne out by legal documents associated with the purchase. He believes the application was made as people mistakenly believed that the track was to be closed to the public. They do not wish to stop people using the track, but wish to maintain its permissive status. Claims of use have been exaggerated and the application should not succeed.

7 **Other submissions received** (copies available in the case file RW/T491)

7.1 Another two submissions were received in response to the consultation and are summarised in the table below.

Name	Comments
Claire Pinder DCC Senior Archaeologist	21 July 2014 - Route skirts edge of landscaped park at Milton Abbey but she does not consider this to be a constraint on the application.
Mrs J Wardell, The Ramblers	Believes the evidence from Ordnance Survey Maps suggests the route has been a highway for some considerable time. Supports the application.

8 **Analysis of documentary evidence**

“Milton Abby” Survey

8.1 A survey and valuation of the extensive manors of **Milton Abby, Stickland and Stoke Abbotts** was undertaken during the years 1769-70 for the owner, Lord Milton, the first Earl of Dorchester. The resulting plan of the Manor of Milton Abby shows the village prior to its relocation in 1786. It depicts what is described as the “new road from Abby Milton to Blandford”, which corresponds to the main village road of today.

8.2 The plan also shows a route that generally corresponds to that part of the application route between points A and B and which does correspond to that part shown between points B and D. It is defined by two parallel pecked lines from point A to point C from where it is then depicted by two parallel solid lines through the woodland. It is annotated as the "Private Road to Whitchurch".

- This evidence demonstrates that the application route, or one very close to it, has been in existence for more than 200 years. The double pecked lines suggest that, in addition to pedestrians and horse riders, it was probably used by or available to vehicular traffic although there is nothing to suggest that it was regarded as a public highway at that time.
- The annotation "private road to Whitchurch" suggests that it was not regarded as a public road at that time.

Map of the Manor of Hilton

8.3 The **Map of the Manor of Hilton 1808** includes parts of Milton Abbas. It depicts the village following its relocation and a route, some of which generally corresponds to that of the claim, is shown passing through a parcel of land that is clearly identified as a Deer Park. This route is defined by two parallel pecked lines. That part of the claimed route as shown from point A to approximately point B appears to be located further south than the route depicted on this map although that part as shown from approximately point B to D, which is shown to pass through woodland, generally corresponds with the route as shown on the map. There also appears to be a gate across the route located in the vicinity of point B.

- Only that part of the application route as shown between points B to D corresponds to the way depicted on this map whereas that part between points A and B does not. Furthermore, it is clearly shown passing through a Deer Park, which suggests that the area would have been designed to keep deer in and in addition, whether intentional or not, exclude the public.
- Convention suggests that the pecked lines defining the course of the route indicate that it was not fenced, any solid lines indicating fences or gates. The route may have been gated as it was a Deer Park at that time, indeed it almost certainly was both enclosed and gated although it cannot be determined from the map alone whether any gates present were locked.
- Whilst this evidence does demonstrate the existence of a route within the vicinity of the application route at the time, the fact that it was a Deer Park and that part of the route was in all probability enclosed and gated suggests that it may not have been considered as a public route at that time.

Finance Act 1910

- 8.4 The claimed route is clearly shown on the **Finance Act Plan 1910**, which uses the **Ordnance Survey 25 inch map second edition 1902**. The whole of the claimed route, A to D, is not excluded from valuation and was contained entirely within **Hereditament 1**.
- 8.5 The accompanying **Field Book** demonstrates that there was a deduction of £500 for public rights of way or user within **Hereditament 1**. Under the heading **Fixed Charges, Easements, Common Rights and Restrictions** the following note has been added ***“there are roads and footpaths but don't know if they are public rights or not”***.
- Although £500 pounds was a considerable sum of money at that time, as **Hereditament 1** is known to contain several public highways, including public carriageways, it is reasonable to conclude that the deduction was allowed in respect of these highways and without further information it is not possible to determine whether the claimed route may also have been part of this deduction.
 - Consequently, it is considered that this evidence is neutral in this instance.

Other documents

Ordnance Survey maps

Ordnance Survey Drawings

- 8.6 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 Milton Abbas parish was completed in **1805/06**.
- 8.7 A route, which although does not directly correspond to the position of that part of the claimed route as shown between points A and B1 but nevertheless probably represents the earlier course of the claimed route, is shown on the map. That part from B1 to D is also shown and generally corresponds to that of the claim. The route representing that part as shown from A to B1 is shown by two parallel pecked lines, suggesting it was unfenced. That part from B1 to D is shown by two parallel solid lines, suggesting it was fenced.
- 8.8 The part from A to B1 appears to be enclosed, this being suggested by a red line surrounding the parcel of land through which the route passes, which is annotated as being a Deer Park. That part from B1 to D passes through woodland before joining what is now the road to Hilton. The route may have also been gated at point B1.

1 inch: 1 mile scale maps

- 8.9 The **1811 First Edition Ordnance Survey Map** at a scale of **1 inch: 1 mile** depicts a similar situation to that shown on the earlier drawing although the route appears to be ungated at this time.

- 8.10 The **1898 Revised New Series Ordnance Survey** map at a scale of **1 inch: 1 mile** depicts a route that corresponds with that of the claim as shown from point A to point D, suggesting that by this time part of the earlier route (A to B1) had been realigned. The route from A to B1 is defined by two solid lines, suggesting the presence of hedges or fences, that part from B1 to D is defined by two parallel pecked lines, suggesting that it was un-fenced, no gates appear to be present on the route. The southern boundary of the route, whether solid or pecked, is shaded which, by reference to the accompanying key, suggests that it may have been regarded as either a second or third class metalled road.
- 8.11 The **1945 Ordnance Survey New Popular Edition 1 Inch: 1 mile map (Sheet 178)** depicts a route that corresponds with that of the claim. The solid lines defining the route suggest that it was fenced for almost its entire length with no gates or other obstructions along the route. Reference to the accompanying key suggests that it may have been regarded as a minor metalled road in bad condition.
- 8.12 The **1960 Ordnance Survey 7th Series 1 Inch: 1 Mile map (Sheet 178)** depicts a similar situation to that shown on the 1945 New Popular Edition. The accompanying key suggests that the route was regarded as an un-tarred minor metalled road.

6 inches: 1 mile (1:10560) and 1:10000 scale maps

- 8.13 Both the **1887 First Edition and the 1902 Second Edition Ordnance Survey Maps** at a scale of 6 inches: 1 mile (1:10560) depict a route that corresponds to that of the application route. For the majority of its length it is defined on both maps by two solid parallel lines, suggesting that here the route was fenced or hedged. There is nothing to suggest that the route was gated and the route is not shaded to one side on either map, evidence of which might suggest that it was regarded as a public road although it should be borne in mind that third class public roads were not shaded to one side.
- 8.14 Both the **1969 Ordnance Survey Plan** at a scale of 1:10560 (6 inches: 1 mile) and the **1983-89 Ordnance Survey Plan** at a scale of 1:10000 (approximately 6 inches: 1 mile) show the development of Catherine's Well at the eastern end of the route, point A. The course of the route is shown clearly on both plans although the 'metalled' part, the track within the centre of the parcel, is not separately defined. There is no evidence of any gates or other barriers to prevent use.

25 inches: 1 mile (1:2500) scale maps

- 8.15 The **1888 First Edition** and the **1902 Second Edition Ordnance Survey Maps** at a scale of 1:2500 (25 inches: 1 mile) depict the claimed route. The 1888 map shows the route defined by two parallel solid lines with another 'track' defined within this by means of two parallel pecked lines, the southern and eastern boundaries of which are shaded heavier, suggesting that it may have been regarded as either a public road or possibly a private carriageway.

8.16 On the **1888 First Edition map** the parcel of land containing the whole of the lane including that part of the application route as shown from point A to point C has been assigned a separate parcel number, namely 201, with a total area of 3.146 acres. The **1902 Second Edition map** also numbers the same parcel as 276 and with the same acreage.

8.17 The **1962 Ordnance Survey Plan** at a scale of 1:2500 (25 inches: 1 mile) shows the development of Catherine's Well that had taken place at the eastern end of the route, point A. The plan shows the claimed route in a similar fashion to the earlier maps. There is a suggestion that a gate may have been present at point C.

- The evidence provided by the early Ordnance Survey Maps concurs with the earlier 'Milton Abby' survey of 1769-70 and the 'Hilton' survey of 1808. Together they demonstrate that a route, though not entirely corresponding with that of today, has existed for almost 250 years.
- The later maps show both the development of the area and the realignment of the original route to that of today. The earliest evidence of this realignment is shown on the First Edition 6 inches: 1 mile scale map of 1887 and the First Edition 25 inches: 1 mile scale map of 1888 and demonstrates that the route, as it appears today, has been in existence for some 130 years.
- This realignment is also shown on the Revised 1 inch: 1 mile scale map of 1898, which also shows that the southern boundary of the route was heavily shaded. Shading denotes that the route was considered fit for fast wheeled traffic and first and second class public roads were depicted thus (third class public roads were not shaded). However, private carriage roads could also be shown shaded so although this may raise a question as to whether or not the route was public, further evidence is required before reaching any conclusion.
- Earlier maps show that a gate may have been present at point C and it seems likely that when the area was a deer park it would have been both enclosed and gated. The later maps suggest that if this was a gate it had since been removed and it should also be noted that it has long been Ordnance Survey practice to show all gates in the closed position.
- The inclusion of a parcel number and acreage for the parcel of land comprising the route may have some significance as all public roads were identified in this manner. However, it is also true that all private or occupation roads that were fenced and exceeded 10 Chains (200 metres) in length were also identified in this way and the length of the route exceeds 200 metres.

- Ordnance Survey maps can generally be relied upon to provide accurate details of the features evident at the time they were published. However, whilst they may provide supporting evidence, they cannot by themselves provide any conclusive evidence as to the status of any way shown upon them. In this particular case there is evidence to suggest that the route may have been regarded as public but this same evidence may also indicate a route that was regarded as being private.
- Consequently, taken on its own this evidence is considered as being neutral. However, it should be noted that even if it could be demonstrated, on balance, that the route was a private or occupation road, there is nothing in law to prevent the accrual and co-existence of public rights, on foot, horse or with vehicles, along with any existing private rights.

Parish Survey and County Council rights of way maps and records

- 8.18 The **Milton Abbas Parish Survey** was completed in **1951**. There are two identical copies of the Survey map with the routes claimed shown in red. However, neither map shows the route with a red line.
- 8.19 The **draft map** for the **East area 1959** shows footpaths and bridleways as purple and green lines respectively but the currently claimed route is not recorded.
- 8.20 The **provisional map 1964** again does not show the claimed route coloured but the development at Catherine's Well is shown and roads coloured brown.
- 8.21 The **first definitive map 1967** again does not show the claimed route coloured.
- 8.22 On 19 August 1971 the Clerk to Milton Abbas Parish Council wrote to the County Surveyor at Dorset County Council regarding the **review of the definitive map**. At a Parish meeting held on 6 August 1971 claims were decided in relation to a number of routes including the "Road from Council Housing Estate to Hilton Road – Claim that it should be designated a "Byway open to all traffic.""
- (a) The Parish Council submitted a claim, the form stating that "This byway has been used for very many years, well over 20 years..." As part of the Special Review of the definitive map the claim was considered by the County Council's Special Review Committee on 10 October 1973. The claim was overruled as there was "No evidence that public vehicular rights or any public rights of passage exist thereover."
- 8.23 The **revised draft map** was published in **1974**. The route claimed by the Parish Council was not shown as a public right of way, reflecting the Special Review Committee's decision.

- (a) On 28 April 1975 the Dorset Rights of Way Committee wrote to Milton Abbas Parish Council regarding three routes within the parish, including the claimed route, which had been omitted from the revised draft map. They stated that the route was “...marked neither as a minor county road nor as any other public right of Way.” They thought that many local people considered it to be public.
- (b) On 29 April 1975 the Clerk to Milton Abbas Parish Council wrote to the Secretary of State to draw attention to four omissions from the revised draft map, including the claimed route. They stated that the “...road from St. Catherines Well...to the Milton Abbas – Hilton Road...is not marked, either as a minor county road or any other public right of way.” They also stated that “At least it should be shown as a Byway open to all traffic.”
- (c) On 30 April 1975 the Ramblers’ Association Area representative wrote to the Secretary of State objecting to the omission of “well-established rights of way”, including the claimed route. She stated “This is a hard-surfaced, unmade road used freely now and as far back as people can remember by vehicles, riders and walkers. I would think it was never claimed for inclusion on the maps of public rights of way as everyone thought it was a minor county road”. A note written in red underneath by the County Council at the time states “NOT a new claim” and directs the reader to the Review file from 1971 (see 8.22(a) above).
- (d) The objections were not included in the list of objections for Milton Abbas parish.

8.24 The implementation of the **Wildlife and Countryside Act 1981** replaced the system of county-wide reviews with the current modification order process. It had the effect of **abandoning the review** in the east and south east of the County where inquiries had not been held. This meant that the surveying authority could modify the definitive map to give effect to any decision made by the Secretary of State or to which there had been no objection or to which any objections made had been withdrawn.

8.25 As the review for Milton Abbas was abandoned the evidence regarding the status of the claimed route was not investigated at the time. The claimed path had not been included in the revised draft map and therefore was not included in the following **current definitive map**, which was published in **1989**.

Aerial Photographs

8.26 Aerial photographs of the area from the years **1947, 1972, 1997, 2005 and 2014** have been examined. The eastern section of the route is clearly visible and the western section from approximately point B1 to point D is covered by trees. Whilst these aerial photographs demonstrate that the route was in existence at those times, it is considered that they provide no support to the application.

9 Analysis of user evidence supporting the application

9.1 A total of 72 witnesses completed **user evidence forms**, which were submitted in support of the application.

- 9.2 A summary of these forms of evidence is set out below, but reference should be made to the actual forms contained within the case file Ref. T491 for all the information.
- 9.3 66 of the witnesses state that they used the route for pleasure and 11 of those also used the route for work. Six of the witnesses only used the route for business purposes. 51 of the witnesses used the route on foot, 23 used the route on horseback, 10 used the route on a bicycle and 22 witnesses used the route in a mechanically propelled vehicle. Some of the witnesses used the route by a variety of methods.
- 9.4 The earliest date of use on foot is from 1935 and the latest date of use is 2014, this encompasses a period of 80 years. Frequency of use varies from daily to once a year. 16 witnesses did not specify frequency of use. Of the remainder, 12 witnesses used the route once a month, 11 used it twice a month and 11 used it twice a week. Seven witnesses used the route daily or nearly every day (over 300 times per year).
- 9.5 The majority of the witnesses state they were never challenged when using the route. None of the witnesses were aware of any locked gates or other obstructions, which would have prevented their use of the route. None of the witnesses refer to the erection of the fingerposts in 2007. However, 38 witnesses refer to the erection of notices in approximately May 2009. The effect of the fingerposts and notices would have been to make the public aware the route was not a public highway.
- 9.6 Only five of the witnesses report being challenged whilst using the route or otherwise being made aware that the route was not public.
- (a) Mr Johnson-Newell was stopped from picking blackberries in October 2008 by the owner's husband.
 - (b) Mr Ives was advised at a Parish Council meeting in early 2009 that the route was not public.
 - (c) Mr Thompson received a letter from the current owner in July 2009 advising him the route was not public.
 - (d) Mr McAvoy was advised by the previous owner that the route was not public.
 - (e) Mr Rayson was advised in 2010 by the owner of St Catherine's House that the route was not public.

10 Analysis of other evidence in support of the application

- 10.1 Six additional submissions were received in support of the application.
- 10.2 From 1932 the route has become much used for walking, riding and vehicular purposes. Use has never been stopped or prevented and two supporters have always assumed it to be a public right of way.
- 10.3 The owners of Steeptonbill Farm (who own the part of the route between points A5 and C) support the application and state that the track is well used by both villagers and visitors.

11 Analysis of evidence opposing the application

11.1 The email from Mr Cox, the previous landowner, indicates that he believed the route to have permissive access only and was not a public right of way.

- In order for there to be sufficient evidence that there was no intention to dedicate the way, there must be evidence of some overt acts on the part of the landowner to show the public at large that he had no intention to dedicate. (To be effective, an act of contrary intention does not need to be shown to have existed throughout the 20 year period of use.)

11.2 Mr Burdett-Clark emailed on 19 August 2014 in which he discusses his belief that the track was used by the public with the permission of the landowner. He states that it was never their intention to close the track to the public. Mr and Mrs Burdett-Clark have suffered 30 incidences of vandalism in relation to the route, which have been reported to the police.

- With respect to the vandalism, this has no impact on the existence or otherwise of public rights along the route.

11.3 Mr Burdett-Clark made a further submission in October 2017 objecting to the application and referring to a number of encounters with people who were using the route or who wished to gain access to other land in the ownership of Mrs Burdett-Clark. He asserts that the legal documents associated with the purchase of the land refer to the route as permissive. Mr and Mrs Burdett-Clark are concerned about the safety of pedestrians using the route and have approached the Parish Council for help. They also sought legal advice regarding inappropriate use of the track and were advised to put up signs stating the permissive nature of the route, which they did. Mr Burdett-Clark concludes, stating that the path has been known as a permissive footpath for decades and there is no justification for this claim to be endorsed. He also questions the accuracy of the witness evidence.

- Issues relating to safety, property damage or threatening behaviour cannot be taken into account when considering the existence of public rights.
- To prevent the acquisition of public rights over land the intention of the landowner for the route to be used on a permissive basis must be communicated to the public. These documents have not been provided by the landowner and so officers do not know whether they had been communicated to the public.

12 Analysis of other submissions

12.1 None of the submissions in section 7.1 above contained or were accompanied by any evidence requiring consideration.

13 Date public use was brought into question

13.1 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.

- 13.2 A previous owner of the route submitted evidence confirming that he believed the route had no public rights and use was by permission only. This belief was communicated to the Parish Council in an email dated 26 August 2009 (a month before the application was made). The email suggests that "Private" signs were initially erected [in the late 1970s or early 1980s] and the route was occasionally blocked to prevent public rights being acquired, but none of the witnesses recall this. It is therefore considered that these actions were not sufficient to bring home to the users that their right to use the route was being challenged.
- 13.3 The opening of a village Heritage Trail on 16 September 2007 was accompanied by the erection of wooden finger posts at points A2 and C with the word "permissive" marked on the posts. None of the of the users of the route refer to these signs.
- 13.4 In October 2008 one witness was stopped from picking blackberries along the route.
- 13.5 There is evidence of a challenge to public use of the routes in May 2009 when notices were erected, stating that use of the route was permissive. Many of the user witnesses are aware that this challenge took place.
- 13.6 The application was made on 17 September 2009 and is a further date of bringing the use of the route into question.
- 13.7 On balance it is considered that the earliest evidence of a date of a challenge to public use of the claimed route as shown between points A and D on Drawing 14/21/2, is as a result of the erection of fingerposts on the route in September 2007.

14 Conclusions

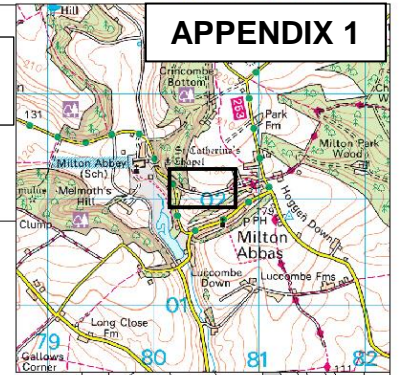
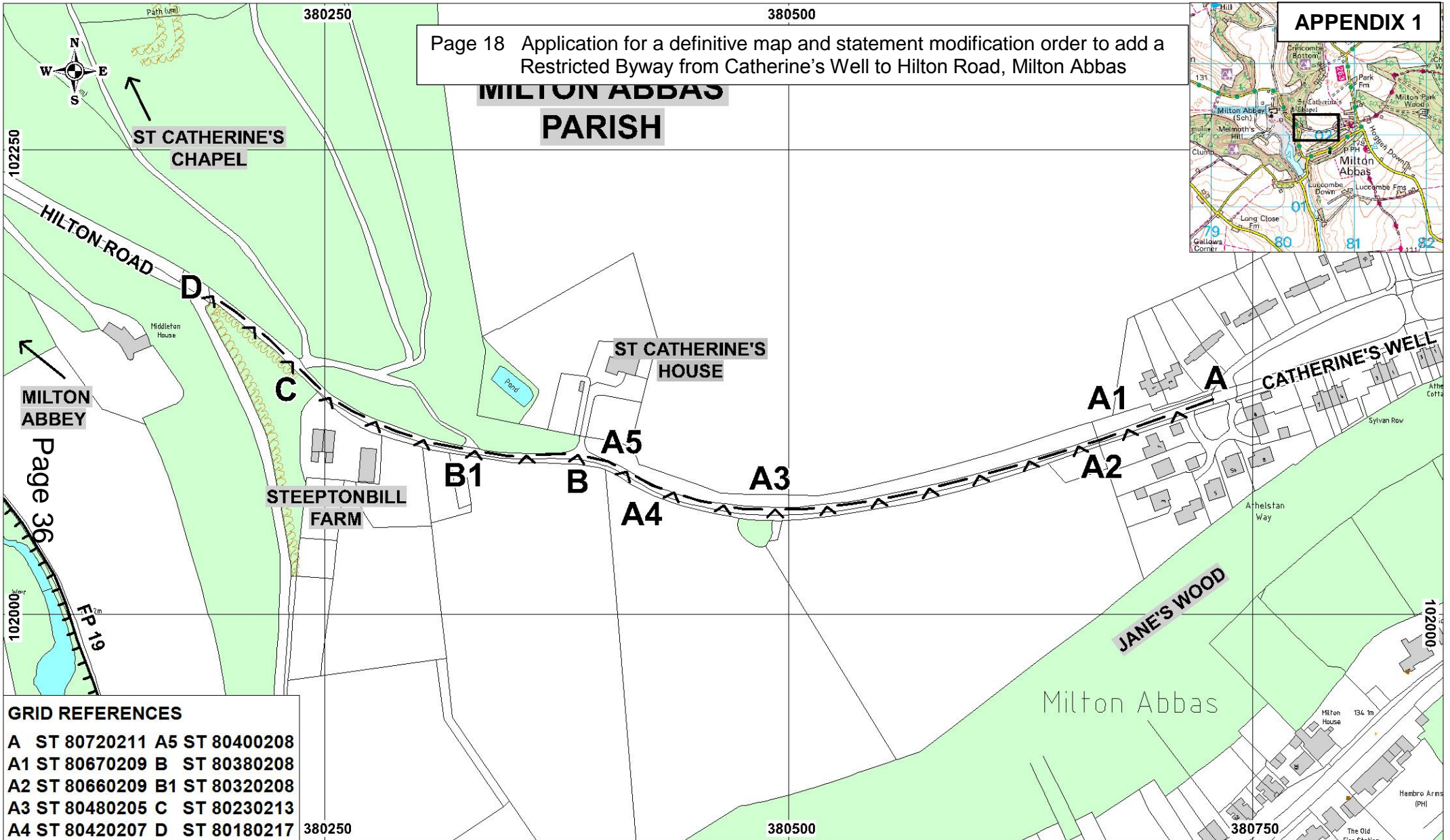
- 14.1 Part of the claimed route between points A and A1 is currently recorded on the List of Streets as a public vehicular highway. As no part of the route between points A1 and D is currently recorded as a public right of way it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist in respect of the route A1 – A2 – A3 – A4 – A5 – B – B1 – C – D.
- 14.2 The documentary evidence demonstrates that the route has been in existence along its current alignment for approximately 130 years. The Parish Council records show that claimed public rights along the route were found not to exist in 1973 due to insufficient evidence. The Parish Council made another claim in 1975, but this was never investigated.
- 14.3 In the absence of user evidence the documentary evidence is considered insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route.
- 14.4 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

- 14.5 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980 is taken to be 20 years or more prior to the erection of fingerposts on the route in September 2007. This demonstrates a lack of intention by the landowner to dedicate public rights along the route. There is no evidence of any earlier actions taken by or on behalf of the landowner which demonstrate a lack of intention to dedicate.
- 14.6 In 1987 31 people were using the route on foot, 10 on horseback, five on bicycles and 12 in motor vehicles. By 2007, 48 people were using the route on foot, 21 on horseback, nine on bicycles and 19 in motor vehicles. During this period frequency of use varied from daily to once a year.
- 14.7 The number of users and the frequency of use are sufficient to give rise to the deemed dedication of public byway rights under Section 31 Highways Act 1980. Also, the evidence of use, together with the documentary evidence is considered, on balance, sufficient to raise an inference of dedication of a public vehicular right at common law.
- 14.8 The Natural Environment and Rural Communities Act 2006 ("NERC") extinguished any public motor vehicular rights created before 1 May 2006 (by use or otherwise) but not recorded on the Definitive Map and Statement, subject to certain exceptions (see Law, Appendix 2). There is no evidence of exceptions relevant to the claimed route.
- 14.9 The County Council must make a modification order if the balance of evidence shows either (a) that a right of way subsists or (b) that it is reasonably alleged to subsist. It is considered that the evidence described above is sufficient to satisfy (a). For the reasons set out in paragraphs 14.5 - 14.7 officers consider that there was a deemed dedication under Section 31 of the Highways Act 1980 and an inferred dedication under common law. Despite being given the opportunity to, the landowner has not provided any evidence of a lack of intention to dedicate prior to September 2007. Therefore, officers' view is that the claimed vehicular right of way subsists.
- 14.10 Therefore, it is recommended that an order be made to record the route A1 – A3 – B – B1 – C – D as a restricted byway.
- 14.11 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. An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist. It is considered that the evidence is sufficient to satisfy this test.

Andrew Martin

Service Director, Highways and Emergency Planning

June 2018



GRID REFERENCES

A	ST 80720211	A5	ST 80400208
A1	ST 80670209	B	ST 80380208
A2	ST 80660209	B1	ST 80320208
A3	ST 80480205	C	ST 80230213
A4	ST 80420207	D	ST 80180217

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A RESTRICTED BYWAY FROM CATHERINE'S WELL TO HILTON ROAD, MILTON ABBAS

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

KEY

DEFINITIVE FOOTPATH

CLAIMED RESTRICTED BYWAY

A A1 A2 A3 A4 A5 B B1 C D

Ref: 14/21/2

Date: 27/02/2018

Scale 1:2750

Drawn By: ACWH

Cent X: 380465

Cent Y: 102103

GEOGRAPHICAL INFORMATION SYSTEMS



Dorset County Council

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LAW

General

1 Wildlife and Countryside Act 1981

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

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

- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.
- #### 2 Highways Act 1980
- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.4 Section 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 2.5 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 criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.

- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

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. DEFRA guidance states that 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

APPENDIX 3

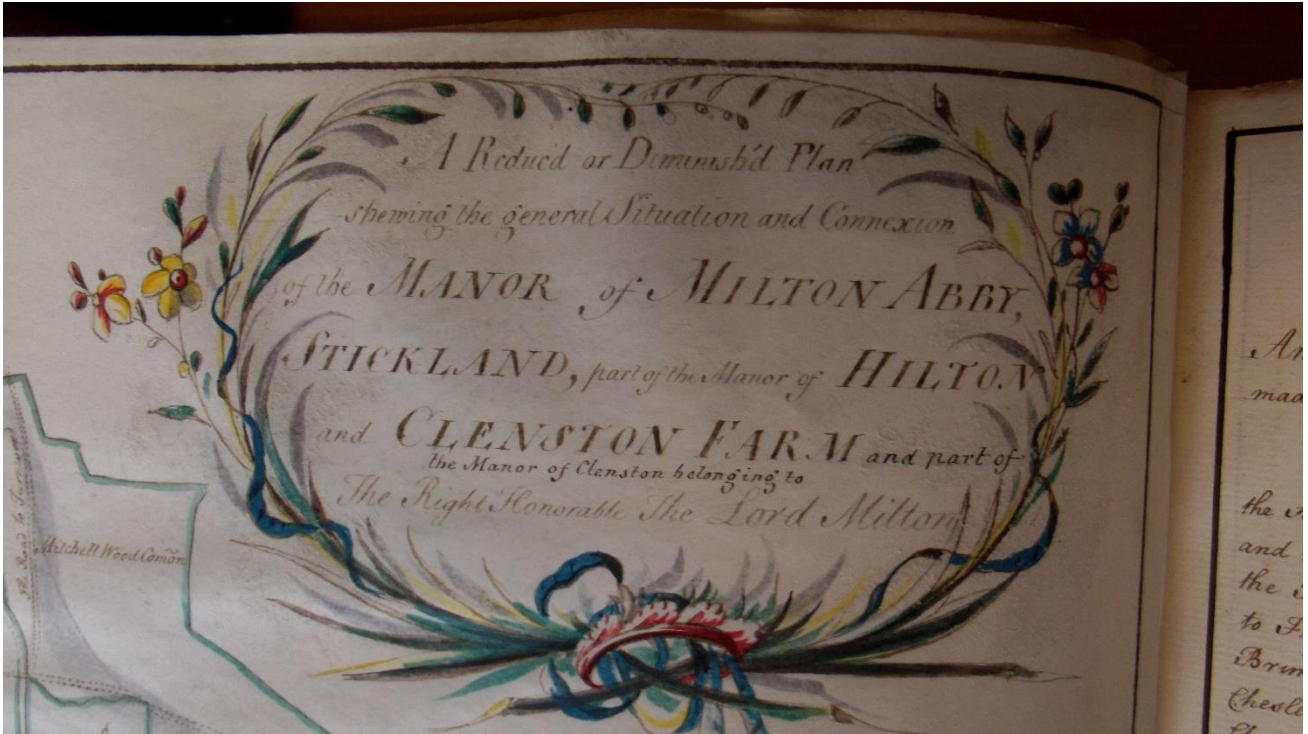
Date	Document	Comment
1769-70	Plan of the Manor of Milton Abby, Stickland, Hilton and Clenston farm accompanying the Survey	Shows a route generally corresponding to claimed route A – B (parallel pecked lines) and which does correspond to claimed route B – D (parallel solid lines). Annotated "Private Road to Whitchurch".
1805/6	Ordnance Survey Drawings Scale 2 inches: 1 mile	Route not directly corresponding to A – B1 shown, representing earlier course of claimed route. A – B1 shown with parallel pecked lines. B1 – D shown corresponding with line claimed by parallel solid lines.
1808	Map of the Manor of Hilton	Shows a route generally corresponding to that claimed through Deer Park defined by parallel pecked lines. A – B further south than route depicted on map. May be gate at point B.
1811	Ordnance Survey First Edition scale 1 inch:1 mile	Claimed route shown similar to OS drawings.
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.	
1887	Ordnance Survey First Edition map scale 6 inches: 1 mile	Shows claimed route mostly with solid parallel lines (fenced or hedged). Not shaded to one side.
1888	Ordnance Survey First Edition map scale 25 inches: 1 mile	Shows claimed route. It is defined by two parallel solid lines with another 'track' defined within by two parallel pecked lines. Southern and eastern boundaries of pecked lines are shaded heavier. Suggesting it was regarded as public road or private carriageway.
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.	
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.	
1898	Ordnance Survey Revised New Series scale 1 inch: 1 mile	Whole of claimed route shown. A – B1 with solid lines, B1 – D with pecked lines. Southern boundary is shaded, suggesting 2 nd or 3 rd class metalled road.

Date	Document	Comment
1902	Ordnance Survey Second Edition map scale 25 inches: 1 mile (1:2500)	Shows claimed route. It is defined by two parallel solid lines with another 'track' defined within by two parallel pecked lines. Southern and eastern boundaries of pecked lines are shaded heavier. Suggesting it was regarded as public road or private carriageway.
1902	Ordnance Survey Second Edition map scale 6 inches: 1 mile (1:10560)	Shows claimed route mostly with solid parallel lines (fenced or hedged). Not shaded to one side.
1910	Finance Act plans	Not shown
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1945	Ordnance Survey New Popular Edition scale 1 inch to 1 mile sheet 178	Claimed route shown, defined by solid lines, indicating fenced for almost entire length with no gates. Key suggests it may have been regarded as a minor metalled road in bad condition.
1947	Aerial Photograph	Route partially visible.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Milton Abbas Parish Survey	Not claimed
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.)	
1959	Draft map for the west area	Not recorded as public right of way
1960	Ordnance Survey 7 th Series scale 1 inch: mile (sheet 178)	Shown similarly to 1945 OS map. Key suggests regarded as un-tarred minor metalled road.
1962	Ordnance Survey Plan scale 1:2500	Shows the development of Catherine's Well east of point A. Claimed route clearly shown defined by two parallel solid lines with another 'track' defined within by two parallel pecked lines. Possible gate at point C.
1964	Provisional map	Not recorded as public right of way (development at Catherine's Well shown).

Date	Document	Comment
1966	First definitive map	Not recorded as public right of way
1969	Ordnance Survey Plan scale 6 inches: 1 mile (1:10560)	Shows the development of Catherine's Well east of point A. Claimed route shown clearly although metalled part not separately defined.
1971	Review – claimed by Parish Council	Claim for designation as byway open to all traffic.
1972	Aerial Photograph	Route partially visible.
1973	Special Review Committee considered Parish Council's claim	Claim overruled "No evidence that public vehicular rights of public passage exist thereover".
1974	Revised draft map	Not recorded as public right of way
1975	Objections made to route being omitted from revised draft map	Considered by County Council as "Not a new claim" and not added to list of objections.
1981	Wildlife and Countryside Act - undetermined review claims abandoned	As route not shown on revised draft map it was not proceeded with.
1983-89	Ordnance Survey Plan scale 1: 10000	Shows the development of Catherine's Well east of point A. Claimed route shown clearly although metalled part not separately defined.
1989	Current definitive map	Not recorded as public right of way.
1997	Aerial Photograph	Route partially visible
2005	Aerial Photograph	Route partially visible.

Extracts from key documents
(See the case file RW/T491
for copies of other documents mentioned)

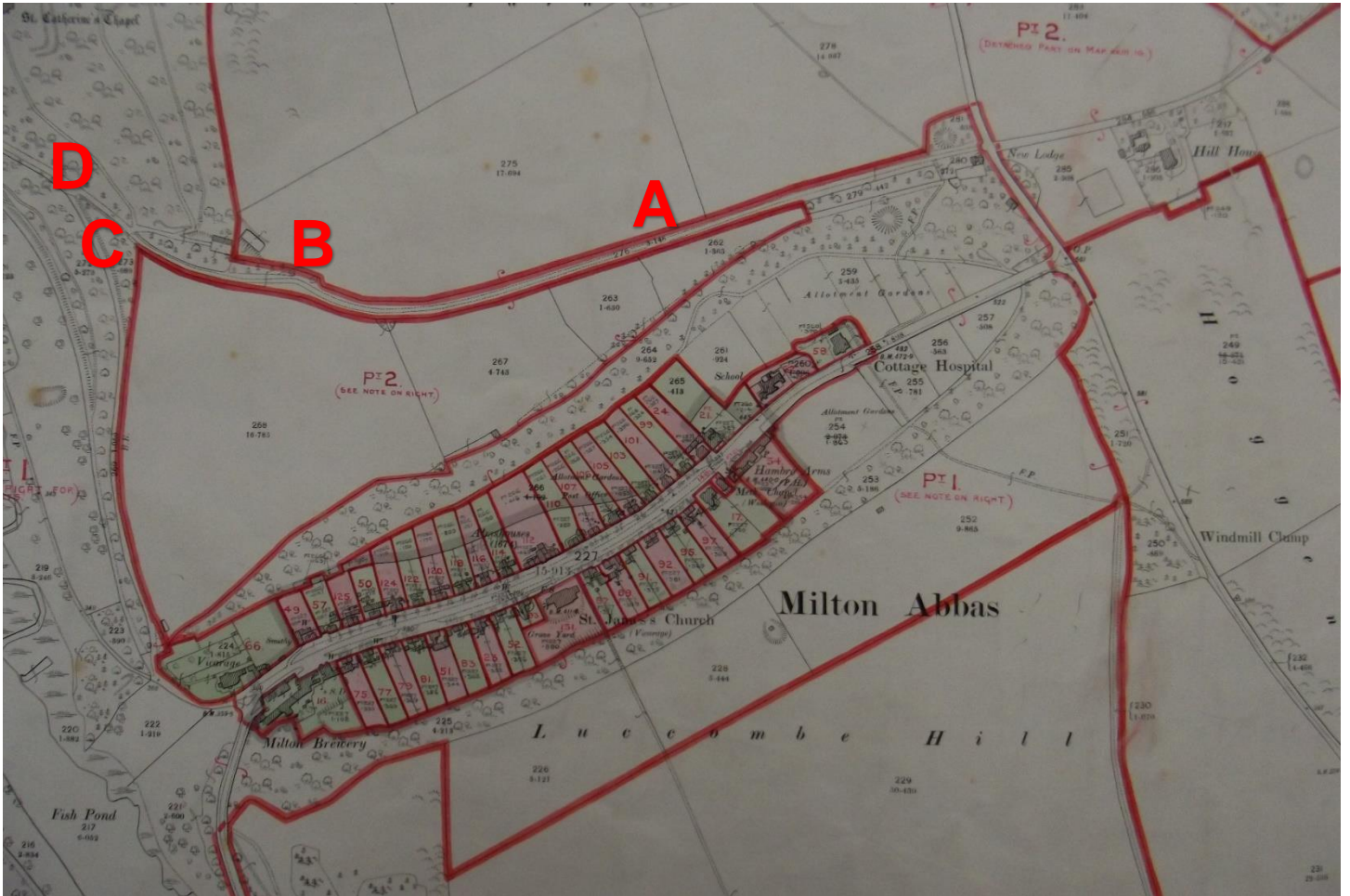
1969-70 Plan of the Manor of Milton Abby



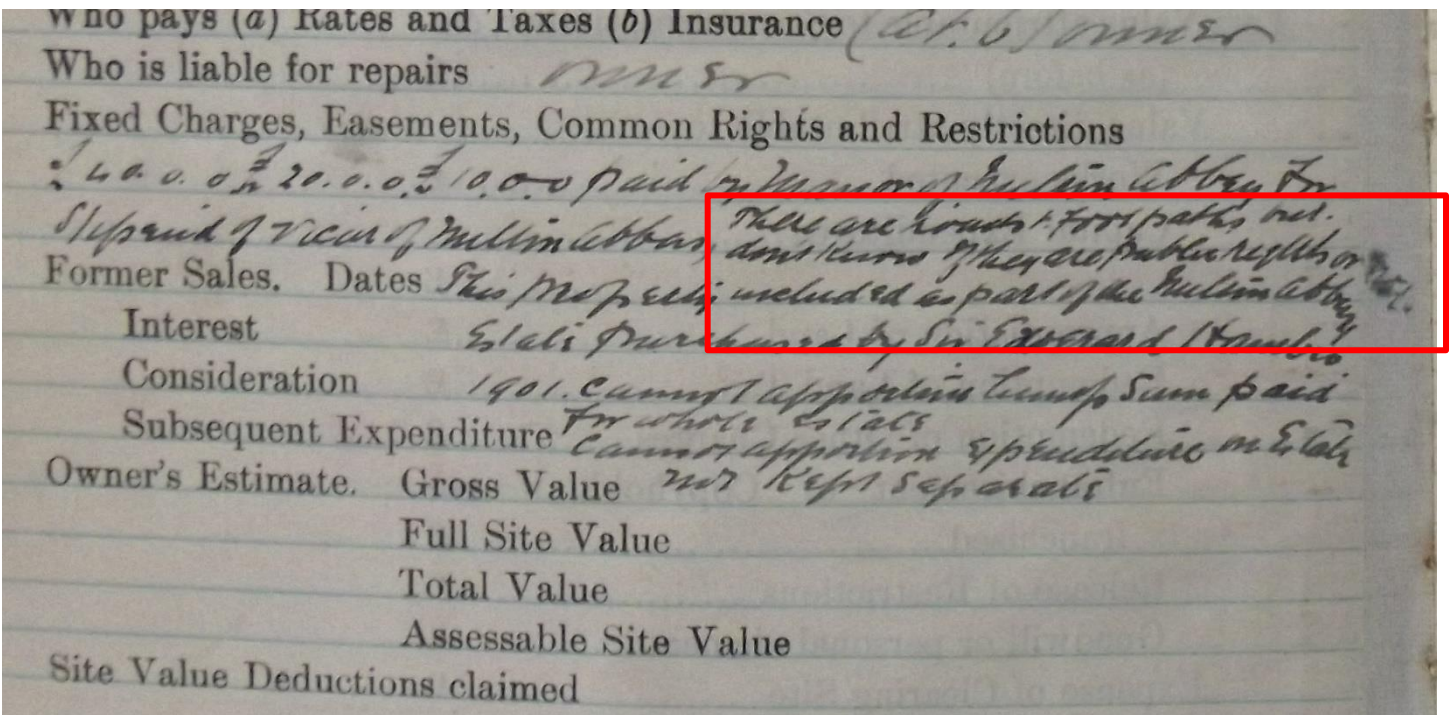
1808 Map of the Manor and parish of Hilton with part of Milton Abbas



1910 Finance Act plan



Field Book entry – extract from hereditament 1

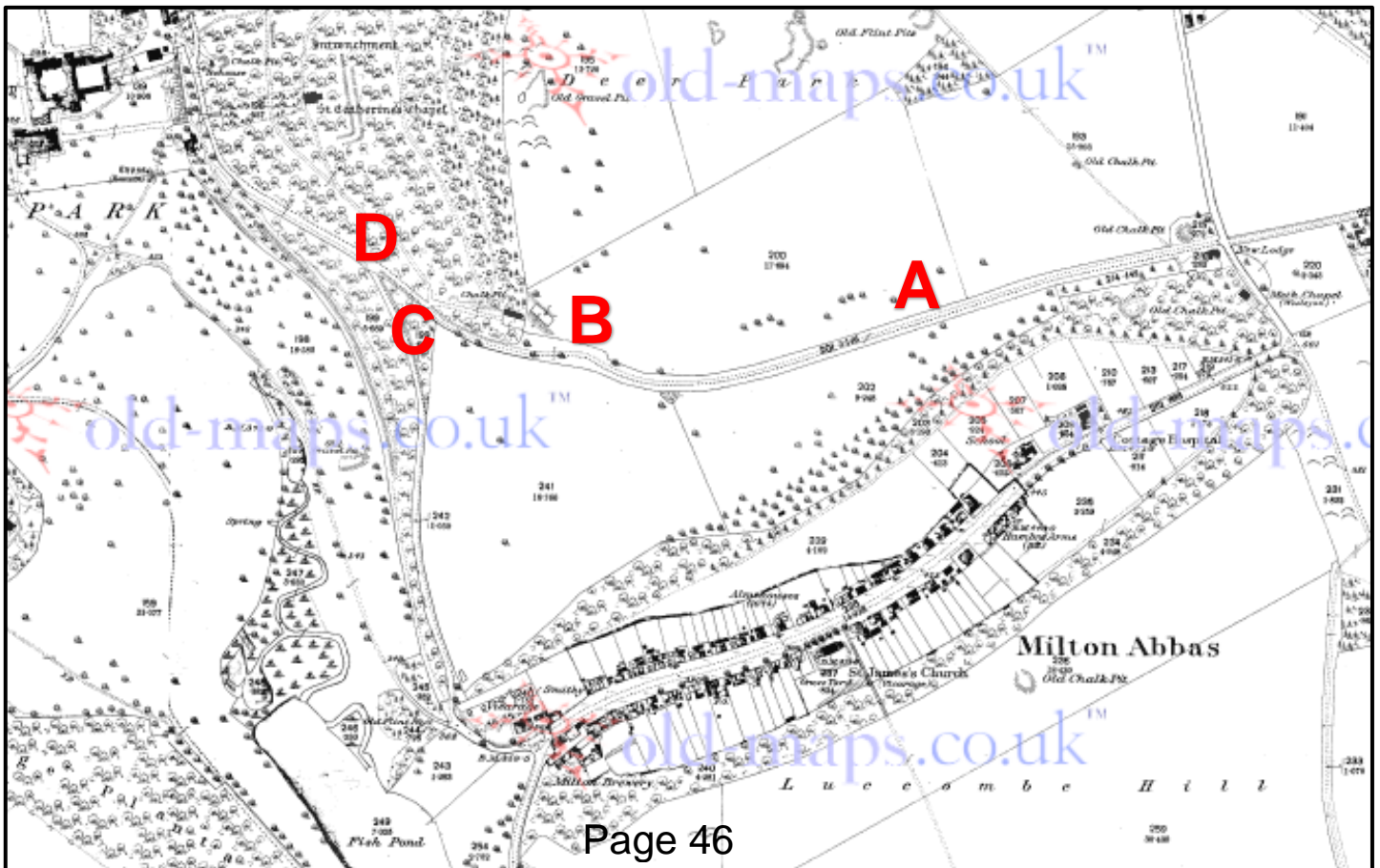


Ordnance Survey maps
1811 scale 1 inch: 1 mile

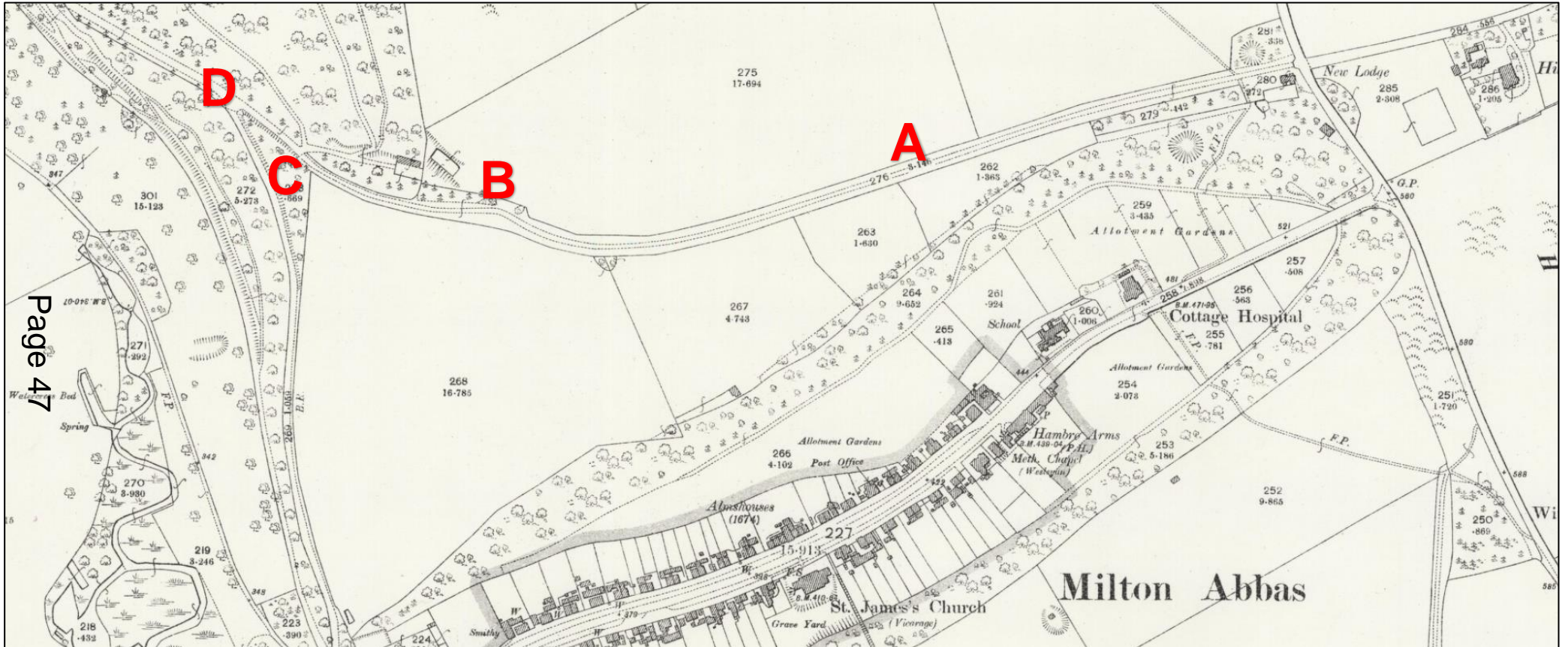


1888 First Edition scale 1:2500

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1902 Second Edition scale 1:2500



User Evidence

Table summarising user evidence from witness evidence forms supplied between 2009 and 2015

USER EVIDENCE

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs N Adeley	1996-2007 (form completed 30/08/2009)	At least twice a month	Horseback	Used by others on foot and horseback. No stiles, gates, notices or other obstructions. Never challenged. Width 12'-15' average plus wide verge on one side
Mrs G Batchelor	1989-2009 (form completed 30/09/2009)	12 times a year	Horseback	Used by others on foot and horseback "and some vehicles". No stiles, gates, notices or other obstructions.
Mr K Battrick	From 1953-present (Form completed in 2009, but not dated. Accompanying map dated 11/08/2009)	Approx. 30 times a year	Used on foot and by car	Used route for pleasure and business. Used by others on foot and by car. No stiles, gates, notices or other obstructions. Used for pleasure and business. Believes owner/occupier was aware of public use as "have never been questioned by any owner in last 50 year+". Route 12ft width approx.
Mrs M Battrick	Over the last 70 years (form completed 11/08/2009)	30 times a year or more	Used on foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as "never be approached. by any owners". Route 4 yards width.
Ms A Beckett	Since 2004 (Form completed 02/11/2009)	100 times a year	Used on horseback	Used by others on foot, bicycle and horseback. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as "it has been used by many people". Notice "recently erected". Route 8-10 foot wide with grass verges.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R A Bolt	1959-1963 (Form completed 11/09/2014)	50 times a year	Vehicle	Used route for work. Used by others on vehicle. Was working for owner/occupier of land when using route but gives no particulars and has also crossed out "yes" for question "Have you ever obtained permission to use the route?". No stiles, gates, notices or other obstructions. Believes that the owner/occupier was aware of public use of route but gives no details.
N Brockway	1967-present (Form completed 03/08/2009)	5 days per week 48 weeks per year (at least 240 times per year)	Used on foot	Used route to go to work. Used by others on foot and horseback. Notice saying no vehicles etc. No stiles, gates, or other obstructions but notice present; "No vehicles etc". Believes owner was aware of public use as "he walks the path with his dog as do other people". Route "wide enough for a lorry plus two wide grass verges".
Miss P Burch	1997-2009 (Form completed 01/08/2009)	Regularly	Used on foot and horseback	Used by others on foot, bicycle and horseback. No stiles, gates, notices or other obstructions.
Mr S Burch	1997-2009 (Form completed 01/08/2009)	"Unknown"	Used on foot and horseback	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions. Route is "as wide as a road".
Mrs C A Callaway	2005-present (Form completed 18/09/2009)	Twice a week every week (104 times a year)	Used on foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner was aware of public use as route "used daily by villagers, throughout history".
Mr P Callaway	2005-present (Form completed 18/09/2009)	Approx. 100 times a year	Used on foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner was aware of public use as "route used daily by villagers".
Mr A G Case	1950s to early 1960s, occasionally after (Form completed 07/08/2009)	1950s – Early 1960s frequently. Occasionally after	Used on horseback	Used by others on foot and vehicle. No stiles, gates, notices or other obstructions. Believes owner was aware of public use as "he accepted it was always used by the public". Route 12ft wide with verges.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs P S Chafer	1988 to present (Form completed 22/08/2009)	Frequently	Used on foot	Used by others on foot or by vehicle. No stiles, gates or other obstructions. No notice until recently. Believes owner is Mrs Burdett-Clark.
Mrs B Cheetham	1985-2006 (Form completed 26/08/2009)	Various	Used on foot and vehicle	Used by others in "various vehicles". No stiles, gates, notices or other obstructions.
Mrs S Clarke	1996-2009 (Form completed 28/07/2009)	At least twice a week (104 times per year)	Horseback	Used by others on horseback. Notices erected in May 'No public right of way' etc. No stiles, gates or other obstructions. Route "10-12' wide of stone and gravel. Wide grass verges."
Mr M J Cox	1966-2010 (Form completed 18/03/2010)	200 plus times a year	Delivery vehicle	Used route for work – delivery vehicle. Used by others on foot, horseback and vehicle. Notices erected in last 6 months. No stiles, gates or other obstructions. Working for owner/occupier of land? - No. Given permission? - No.
Mrs E Crawford	1983 – 2009 (Form completed 30/07/2009)	"Approximately"	Horseback	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use "because I was never stopped or questioned". Route approx. 4 metres width.
Mrs V Dowding	1980 to present (form completed 20/08/2014)	6 times a year	Foot & Horseback	Used by others on foot and horseback. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as their house is next to the track.
Mrs B J Duncombe-Anderson	1987-1995, infrequently since (form completed 13/08/2009)	1987-95 regularly. Infrequently since	Horseback	Used by others on horseback. No obstructions but notices recently erected; 'Private land. No public right of way, no unauthorised vehicles. Permissive footpath only. Cyclists required to dismount. Dogs on leads at all times Users do so entirely at their own risk". No stiles, gates or other obstructions. Route 12' width + verge.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr J Fifield	1989-2012 (Form completed 22/08/2014)	Between 1 and 10 times a year	Foot, bicycle and vehicle (see details)	Used by others on foot, bicycle, horseback and vehicle. No stiles, gates or other obstructions. Believes land is owned by Mrs Burdett-Clark/Forestry Commission. Was told route was not public by Les Bunce "once between 2009-2012". Believes owner/occupier was aware of public use as "it was used as a loop for an annual fun run & general access route". Route is a gravel track "well maintained except a steep section at western end where drainage gulley requires a 2 nd vehicle to take care". Walked and cycled regularly from 1990 to 2012 and driven from 2003-2012 "on occasion".
Mr J P Fifield (deceased)	1970-2009 (Form completed 06/08/2009)	Frequently	On foot, car and previously horse	Used for "pleasure and event organiser". Used by others on foot, horseback and vehicle. No notices present 1970-2009, until last 3 months metal sign erected. No stiles, gates or other obstructions. Believes owner/occupiers are Mr & Mrs Burdett-Clark. Were you working for owner/occupier? – No. Obtained permission? – No. Route "an unmade road wide enough for a motor vehicle.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr C Fookes	1945-2009 (Form completed 22/08/2009)	Not completed	Foot, horse and vehicle	Used by others on foot, horseback and vehicle. One notice "at east end erected 2009 saying pvte road". No stiles, gates or other obstructions. "I thought the Forestry Commission" was owner/occupier. Were you working for owner/occupier – "1932-1980 my family owned the land on the south". Owner/occupier gave instructions on use by public? – "None – we owned the land on the south side". Believes owner/occupier was aware of public use as you "can't fail to see or hear people using it". Attached postcard states; "Of course was a private drive to the Abbey until 1932 when Hambros sold! Way before that in early 1700s would have been road out of the old town. Then Lady Caroline Damer made it her drive through Milton Park to Fairmile on the Stickland Blandford Road".
Mrs D Golledge	1989-2009 (Form completed 19/09/2009)	10-12 times a year	Foot	Used by others on foot (maybe also horseback and vehicle, as they appear to be underlined, whereas "foot" is written). No stiles, gates, notices or other obstructions. Stopped from using route? – "people using it all the time". Route 10-12 foot width.
Mr R Golledge	1989 to Present (Form completed 19/09/2009)	10-12 times a year	Foot	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as people "walking their dogs". Route 10/12ft wide.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs H Gordon	2006-Present (Form completed 05/09/2009)	up to 20 times a year	Foot and bicycle	Used by others on foot and bicycle. No stiles, gates or other obstructions but notices recently erected "stating it is private land & permissive path". "Anita Burdett-Clark owns the path". "I do not know of anyone personally, but I am aware that a car with villagers was turned back". Has been told route is not public "via 'The Bulletin', Milton Abbas local paper". Believes owner/occupier was aware of public use due to "recent change of ownership of a well used path". Sign recently erected states "Private Land, No Public Right of Way, No Unauthorised Vehicles, Permissive Footpath Only, Cyclists Required to Dismount, Dogs on Leads at All Times, Users at Own Risk". "Myself & my family have lived in Milton Abbas for 13 years & have regularly enjoyed walks & cycle rides along this path as well as walking through to Catherine's Chapel for events".
Mrs J Griffiths	2000 2002 (Form completed 22/10/2009)	10 to 20 times per year	Horseback	Used by others on horseback. No stiles, gates, notices or other obstructions. "It is wide enough to get a big tractor through" route.
Mrs Hannam	1986 – 2009 (Form completed 09/08/2009)	once a week	Horseback	Used by others on foot and horseback. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use "because everyone uses it all the time". Route about 15ft wide.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr T W Hawker	1984-2007 (Form completed 01/08/2009)	5 days a week 48 weeks per year (at least 240 times per year)	Foot	Used route for work. Used by others on foot, horseback "plus some vehicles especially now its on sat. nav". No stiles, gates or other obstructions but notices stating 'Permissive path, no vehicles, bicycles etc' present. Working for owner/occupier? – No. Obtained permission? – No. Been told route was not public? – "We were of the understanding it was owned by Mr Cox [the previous owner]". Believes owner/occupier was aware of public use as he "often walked his dog, as did many others". "Gravel road is wide for a dustcart to go down, plus two wide grass banks either side".
Mr R Hawkins	1993-2009 (Form completed 26/08/2009)	Various	4x4 vehicle	Used by others with various vehicles. No stiles, gates, notices or other obstructions.
Mrs S Hawkins	1995 onwards (form completed 17/07/2015)	4-5 times per year	4x4 vehicle	Used by others on foot, horseback and vehicle. No stiles or gates, but "Private Road" sign present from 2009. Route between approx. 8-12ft wide.
Mrs M P Hayward	2000-2006 (form completed 24/09/2009)	4 times a week	Horseback	Used by others on horseback. No stiles, gates, notices or other obstructions. Route 12 foot wide approx.
Mrs S Henderson	1974-2009 (form completed 06/08/2009)	Weekly	Foot	Used by others on foot, horseback and vehicle. No stiles, gates or other obstructions. No signs "not until the present notice". Believes land is owned by Mr and Mrs Burdett-Clark. Route "wide enough for vehicle".
Miss A R Hillier	All her life [1950 to present] (form completed 10/08/2009)	Many	Foot	Used by others on foot and horseback. No stiles, gates, notices or other obstructions. Believes the land is owned by Mr Burdett-Clark. Believes owner/occupier was aware of public use as "it has been used for many years".

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr N J Hodder (see below)	2007-2009 (TWO FORMS - 1 st form completed 22/08/2009)	100+ times per year 2007-2009	Foot	Used by others on foot and vehicle. No stiles, gates, notices or other obstructions until recently (since change of ownership), when notices were erected at each end. Believes the land is owned by Chris Burdett-Clark. Believes owner/occupier was aware of public use as "he has lived in house near path a lot longer than he has owned path/land". Signs erected "3-4 months ago" by new owner stating "This is not a right of way". "Signs do not mention horseriding which seems strange given that the claim "no right of way".
Mr N J Hodder (see above)	2007-2014 (TWO FORMS - 2 nd form completed 28/07/2014)	20 times per year 2007- 2014	Foot	Used by others on foot. Gates to access rear of properties in Athelstan Road (not on route). Notices present "Private Land. No Public Right of Way. No Unauthorised Vehicles. Permissive Footpath Only. Cyclists required to dismount. Dogs on leads at all times. Users do so entirely at their own risk." & "Horse riding welcome. Subject to above terms and conditions" (photo provided). Believes the land is owned by Mr & Mrs Burdett-Clark. Believes owner/occupier was aware of public use as "they put up notice referred to in Q3.c". Route approx. 2.5m wide. "Sign erected c.2009; "Horse riding welcome" added as an afterthought. I believe one of the owners rides a horse!!!"
Mrs D House	From 1964 (form completed 10/08/2009)	Not completed	Foot or car	Used by others on foot and vehicle. No stiles, gates, notices or other obstructions. Never challenged. Believes land is owned by Mr and Mrs C Burdett-Clark.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr O V House	1935-Present (form completed 03/08/2009)	For 12 years daily	Bicycle or foot	Used route for work. Used by others on foot, horseback and vehicle. Gates present (unlocked). No notices "until now". "Gates were removed many years ago (war). Gates were at Hill Lodge". No stiles or other obstructions. Working for owner/occupier? – No. Obtained permission? – No. "No restrictions ever [route] Always open". Believes owner/occupier was aware of public use as it has "always been used by anyone". "The whole thing is so childish. It's unbelievable".
Mrs N Hunter	Since 1983 (form completed 22/08/2009)	Frequently	Horseback and occasionally on foot	Used by others on foot and horseback. No stiles, gates or other obstructions but notices erected recently "No public right of way' and other things". Believes owner/occupiers are Chris & Anita.
Mr T A Ives	1998 – 2009 (form completed 09/09/2009)	50-60 times per year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions, but a notice has been erected in the past month stating 'Permissive Footpath Only' 'Private Land' etc. Believes owner/occupier is Mrs Burdett-Clark. Told that route was not public "when Parish Council meeting discussed no through road signs (early 2009)". Believes owner/occupier was aware of public use as "the track is used extensively by village and tourists". Route width 20-30 feet.
Mrs J Jackson	1983-2009 (form completed 11/08/2009)	sometimes over 200 sometimes 50 times a year	Foot	Used by others on foot, some with pushchairs. Stile "at the beginning of track, Catherine's Well side". No gates, notices or other obstructions. Believes owner/occupiers are Mr & Mrs Burdett-Clark. Believes owner/occupier was aware of public use as owners "have seen people walking along the route".

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr D Johnson-Newell	14 years and 6 months [1995 – present] (form completed 09/08/2009)	75-100 times a year	Foot and Bicycle	Used by others on Foot, Cycle, Horseback, Vehicles. No stiles, gates or other obstructions. Notices “only recently stopping use”. Believes land owner/occupier is Anita Burdett-Clark. “October '08 told by owners husband not to pick blackberries” on route. Believes owner/occupier was aware of public use due to “historic use”.
Ms A C Joyce	1977-2009 (form completed 30/07/2009)	40 times a year	Vehicle and Horseback	Used by others on foot and horseback. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as “nothing indicated otherwise”. Route 4 meters approx. width.
Mr D C Joyce	1955-2009 (form completed 09/08/2009)	Numerous (too many to count)	Bicycle and foot. Occasionally van when working at chapel	Used route for pleasure and work. Used by others on bicycle and foot. No stiles, gates, notices or other obstructions. Was working for owner occasionally from 1955 - present. Never given instructions on use of route by public.
Mr P Joyce (deceased)	1947-2004 (form completed 30/07/2009)	10-20 times per year	Foot, bicycle and car	Used route for pleasure, and to access church (including bell ringing). Used by others on foot, bicycle and by vehicle. No stiles, gates, notices or other obstructions. Route 12 foot width approx.
Mr John Kelsall	40 years (1974) (form completed 04/04/2014)	Pre 2004 – 12 times a year. After 2004 – 5 times a week (260 times a year)	Foot	Used by others on foot. No stiles, gates or other obstructions, but notices present and “obstructive person”. Believes owner/occupier is Burdett-Clark. Enjoyed a private right along route? – Yes (but never obtained permission or worked for landowner/occupier).

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs P Kelsall	1958 to 2009 (form completed 2009)	As a child used it very often, but now 12 times per year	Foot and vehicle	Used by others on foot, horseback and by vehicle. No stiles, gates, notices or other obstructions, but "it has become difficult to use a vehicle because of very deep ruts near C.Chapel entrance". "2 months ago a notice was erected stating it is not a public right of way". Believes owner/occupier was aware of public use "because it has always been used esp. by locals"
Mr R Kelso	1998 – Present (form completed 09/08/2009)	c.300 times a year	Foot	Used by others with tractor, car, horse, bicycle, delivery van, refuse truck, horse box. No stiles, gates or other obstructions but "recent notice 2009". Believes land owner/occupiers are Mr and Mrs Burdett-Clark. Believes owner/occupier was aware of public use as he "has seen them on track".
Mr D Lamb (moved abroad)	1998-2009 (form completed 02/09/2009)	10-20 times a year	Foot and vehicle	Used by others on foot, horseback and car. No stiles, gates or other obstructions, but "notice erected this year saying permissary footpath". Believes land owner/occupier is Chris Burdett-Clark. Route approx. 20' wide.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs V A Lamb (moved abroad)	1997-2009 (form completed 20/08/2009)	6 times or more per year	Car and Foot	Used for pleasure and to access church services, or events. Used by others on foot and vehicle. No stiles, gates or other obstructions except fly-tipping, but notices recently erected 'Private Land' 'No Public Right of Way' 'No Unauthorised Vehicles' 'Permissive Footpath Only' 'Cyclists Required to Dismount' 'Dogs on Leads at All Times' 'Users do so at entirely their own risk'. Believes land owner/occupier is Chris Burdett-Clark. Obtained permission from Mr Michael Cox [previous owner/occupier] in 1999 and 2001 for use as emergency access during street fair (July). Has been stopped/turned back on 20 th June 2007 on route to concert at St Catherine's Chapel.
Mr J Lillington	1950-2013 (form completed 21/06/2013)	100/150 times a year	Foot	Used by others on foot, horseback and vehicle. No stiles, gates or other obstructions, but notices erected approx. 4 years ago. Believes owner/occupier is Burdett-Clark. "I was told by Mr Michael Cox & his father Frank that they could not stop people using this route". Believes owner/occupier was aware of public use as the "route always used by the public".

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr I R Maxwell	1977 – Present (form completed 09/08/2009)	On average 2 times a month. Over last 5 years twice a day	Foot	Used route for the last 5 years to access Milton Abbey for work. Used by others on foot, horseback, cars and delivery vans to property. No stiles, gates or other obstructions, but notices erected “a month or so ago” (Permissive Path, Dogs on Lead etc.). Part of route owned by Mr and Mrs Burdett-Clark. Believes owner/occupier was aware of public use as “owner (very recent & previous) live locally”. “The ‘road’ surface of the route is wide enough for cars/small commercial vehicles to pass with ease. An important local amenity for walking and in some cases a walking route to work”.
Mrs S M S Maxwell	1977 – Present (form completed 09/08/2009)	On average 2/3 times per month	Foot	Used by others on foot, horseback, and cars for access. No stiles, gates or other obstructions, but notices recently erected (Permissive Path, Dogs on Lead etc.). “I have used this route for over 30 years for recreation and feel that it is a great village asset”.
Mr M McAvoy	1988-2009 (form completed 07/08/2009)	20 times per year approx	Car	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions, but “poorly maintained – ruts”. Believes land owner/occupiers are Mr Langham and Mr Burdett-Clark, “also Forestry Commission at Abbey end”. Told route was not public by “previous owner”.
Mrs P Morley	1980-2009 (form completed 01/08/2009)	80-90 times a year	Foot	Used by others on foot and horseback. No stiles, gates, notices or other obstructions.
Mrs F Oliver	1971 – 2009 (form completed 16/08/2009)	12 times a year	Horseback	Used by others on foot and on horseback. No stiles, gates, notices or other obstructions. Believes land owner/occupier is Michael Cox. Route 12-14 foot in width.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr B R Phillips (see below)	2002 – 2009 (2 Forms – 1 st Completed 15/08/2009)	100 times a year	Foot and Bicycle	Used by others on foot, bicycle and horseback. No stiles, gates or other obstructions, but notices erected May 2009. "Trackway used by horses weekly, several dog walkers daily, locals daily, cyclists weekly".
Mr B R Phillips (see above)	2002- Present (2 Forms – 2 nd Completed 12/08/2014)	30 or more	Foot and Bicycle	Used by others on foot, bicycle, horseback and vehicle. No stiles, gates or other obstructions, but notices erected 2009. Believes owner/occupier was aware of public use as "he has approached others".
Mrs D A Potton	1983-2009 (form completed 11/08/2009)	Numerous	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes land owner/occupier is Mr Burdett- Clark. Believes owner/occupier was aware of public use due to "regular use by public".
Mr R W Randall (deceased)	Over 20 years [21 years = 1988] (form completed 24/08/2009)	3 times per year	Foot	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions. Believes land owner/occupier is Burdett-Clark. Route approx. 12ft with verges.
Mr S J N Rayson	2007-2014 (form completed 03/08/2014)	60 times per year	Bicycle	Used by others. No stiles, gates or other obstructions, but notices present; "walkers, horses or bicycles dismount". Believes land is owner/occupier is Mr Burdett-Clark. Told the route was not public by Les Bunce in 2010. Believes owner/occupier was aware of public use as "route has been in regular use for many years". See unspecified notice in "2010 near Catherine's Well end of track & further along toward Hilton". "Track is a stone surface with grassy centre. Approx 10ft wide, bumpy but navigable by bicycle".

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Ms D Reynolds	54 years [1955 – present] (form completed 11/08/2009)	Everyday	Foot, bicycles, motorbike & car.	Used by others on foot, bicycle, horseback, motorbike and car. No stiles, gates or other obstructions, but notice recently erected (2009). Believes land is owner/occupiers are Mr and Mrs Burdett-Clark. Believes owner/occupier was aware of public use as she has “seen them”. “We have always known this was a public right of way including cars”
Ms A Roberts	1945-2009 (form completed 14/08/2009)	As a child 2 or 3 times a week. Currently twice a day (last 10 years)	Foot	Used for pleasure and to access church services. Used by others on foot, horseback and occasional vehicles e.g. Dustman. No stiles, gates or other obstructions present, but notices erected in last 6 weeks ‘Permissive Path’ ‘Cyclists Dismount’ ‘Dogs on Lead’ ‘No Vehicles’. Believes land is owner/occupier is Mr C Burdett-Clark. “Dustmen were stopped from going to St. Catherine’s House”. Believes owner/occupier was aware of public use as “immediately on purchase put private notices on adjacent fields”. “Stony road, passable by vehicle, approx 10ft wide”. Additional sheet includes: “Public access was never refused by the previous owners of the land, in fact I think they welcomed it as it kept the road from being overgrown”. “Apparently the refuse collection lorry has been refused access to St. Catherine’s House by the new owner of the track. The occupants now have to ferry their rubbish to a distant collection point”. “The present owner was most definitely aware of the way the track was used by the public, as he was a regular dog-walker who used it. He also lives very close to the track.”

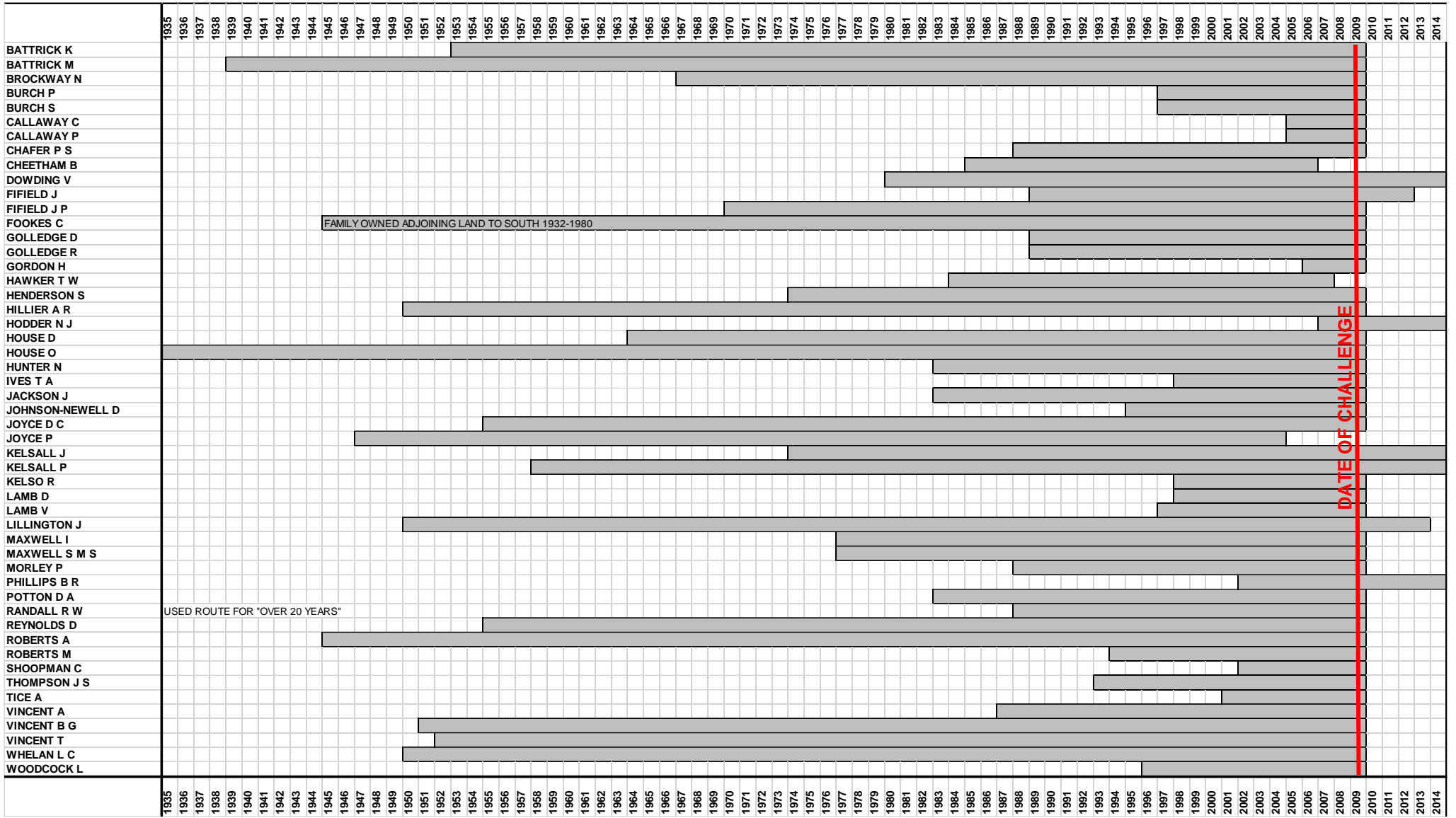
NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr M Roberts	1994 – present (form completed 11/08/2009)	60 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions.
Mrs C Shoopman	2002-2009 (form completed 10/08/2009)	2002-2006 twice a week, 2006-2009 once a month. With vehicle 5-6 times a year	Foot, Horseback and Vehicle (4x4)	Used by others on foot, horseback and vehicle. No stiles, gates or other obstructions, but notices erected May 2009. Believes owner/occupier was aware of public use as the "landowner never challenged anyone". Route approx 12-15ft narrowing to 10-12ft width.
Miss A Stanners	2007 (form completed 10/08/2009)	20 times per year	Horseback	Used route for pleasure and business. Used by others on horseback. No stiles, gates, notices or other obstructions. Worked for owner/occupier? – No. Obtained permission? – No. "When moved to area was told I could use this route".
Mr J S Thompson	1993-2009 (form completed 10/08/2009)	Between 10 and 20 times a year	By either foot, tractor or car	Used route for pleasure or work. Used by others on foot, horseback and vehicle. No stiles, gates or other obstructions, but "very recently a notice has been erected stating it is a permissive way". Believes owner/occupier is Burdett-Clark. Does not work for owner/occupier and has never been given permission to use route. Told that route was not public when "I received a letter from the current owner on 25 th July". Track in question is over 10' wide.
Mr A Tice	2001- Present (form completed 24/08/2009)	80 + times per year	Foot	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions, but notice erected in last few weeks. Believes land owner/occupier is Mr Burdett-Clark. Believes owner/occupier was aware of public use as the "route has been used for years and it is common knowledge". Route 4m wide.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs A Vincent	1987-2009 (form completed 19/08/2009)	300 times per year	Foot, Cycling	Used by others by foot, cycling. No stiles, gates or other obstructions, but notices erected recently: 'Private Land', 'No Public Right of Way', 'Permissive Path' 'No Unauthorised Vehicles' 'Cyclists Dismount' 'Dogs on Leads at All Times' 'Users Do So at Their Own Risk'. Believes land owner/occupier is Mr C Burdett-Clark.
Mr B G Vincent	1951-2009 (form completed 18/08/2009)	12-24 times a year	Foot and Vehicle	Used by others on foot, horseback and vehicle. No stiles, gates or other obstructions, but notices erected recently. Believes land owner/occupier is Mr C Burdett-Clark. Believes owner/occupier was aware of public use as there was "no point putting up a sign if not". "12 feet wide Stoney Road used by vehicles".
Mr T Vincent	1952 til now (form completed 21/08/2009)	Lots	Foot	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions, but "6 weeks ago signs went up". Believes owner/occupier was aware of public use "because he lives beside the track". "Stony track in parts 10ft wide".
Miss A Whatmore	2004-2008 (form completed 03/09/2009)	Approx twice a week	Horseback	Used by others on horseback. No stiles, gates, notices or other obstructions. "Rode along length with daughter also on horseback and with friends along track with grass verges either side approx 3 meters in width".

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs L C Whelan	1950-Now (form completed 04/08/2009)	Everyday	Foot	Used by others on Foot, Horseback and with a vehicle. No stiles, gates or other obstructions, but notices "just been erected saying 'Permissive Path' 'Dogs on Leads' 'Cyclists Dismount' etc.". Believes land owner/occupiers are Mr & Mrs Burdett-Clark. Believes route is owned by Mr and Mrs Burdett-Clark. Believes owner/occupier was aware of public use as "they often speak to people using the track". Route wide enough for vehicles.
Mrs R Wood	For the last 8 years [2001-2009] (form completed 05/08/2009)	At least 24 times per year	Horseback	Used by others on foot, bike, horseback and vehicle. No stiles, gates or other obstructions, but notice recently erected asking cyclists to dismount and stating that route is private. Believes owner/occupier was aware of public use as route a "regular thoroughfare". Route a "Single track"
Miss L Woodcock	1996-2009 (form completed 28/07/2009)	300 times per year	Foot, Horseback and Vehicle	Used by others on foot, horseback and vehicle. No stiles, gates, notices or other obstructions. Believes owner/occupier was aware of public use as "never been stopped". "10-12ft wide plus grass verges. Gravel/stone track."

Charts of user evidence to show periods and level of use ON FOOT

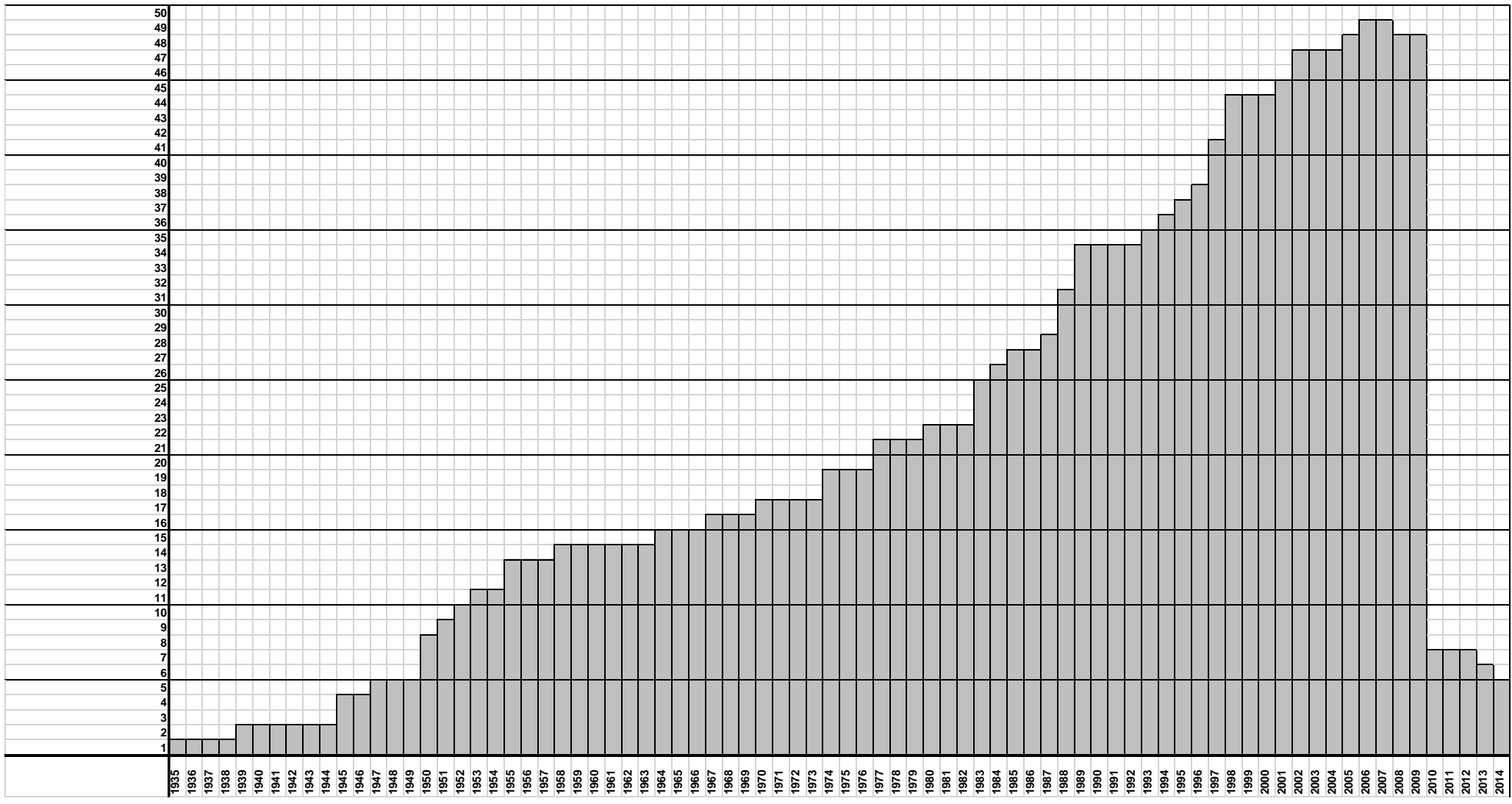
NAME



YEARS OF USE

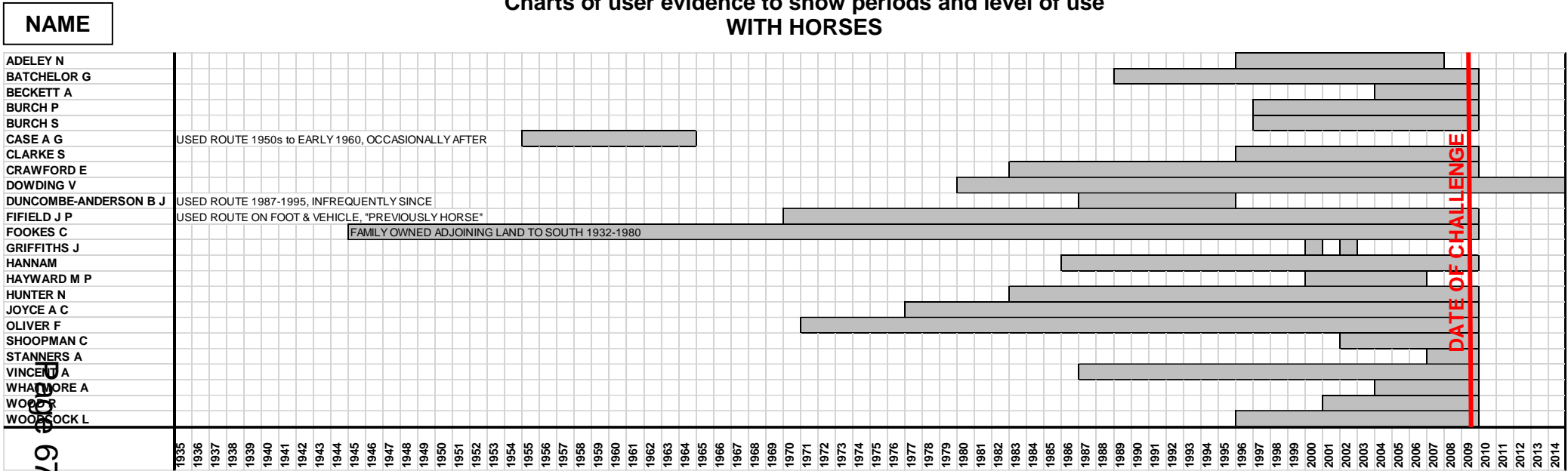
Use on Foot

NUMBER OF USERS

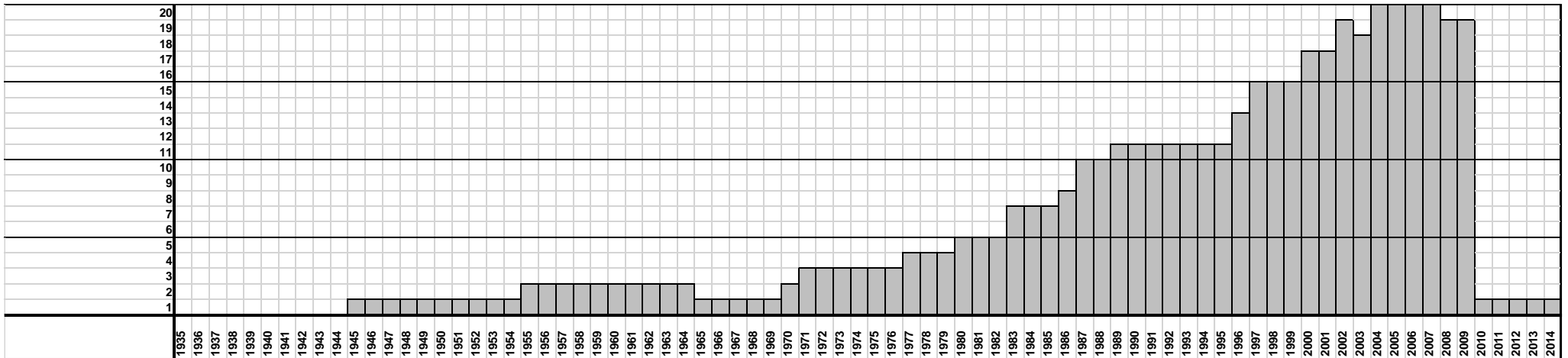


YEARS OF USE

Charts of user evidence to show periods and level of use WITH HORSES



NUMBER OF USERS

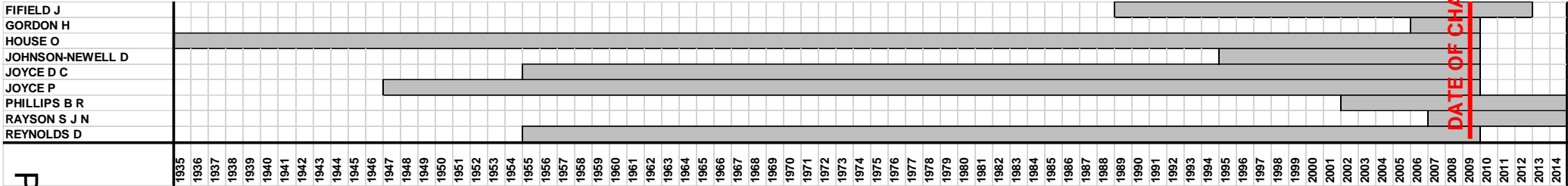


YEARS OF USE

Use with horses

Charts of user evidence to show periods and level of use WITH BICYCLES

NAME



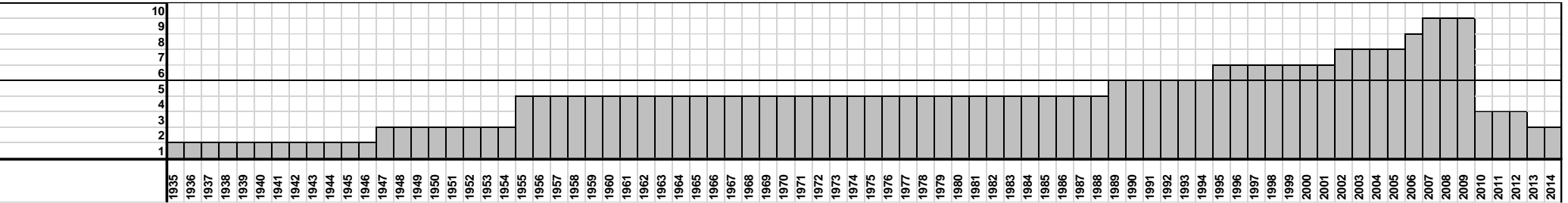
DATE OF CHALLENGE

YEARS OF USE

Use with bicycles

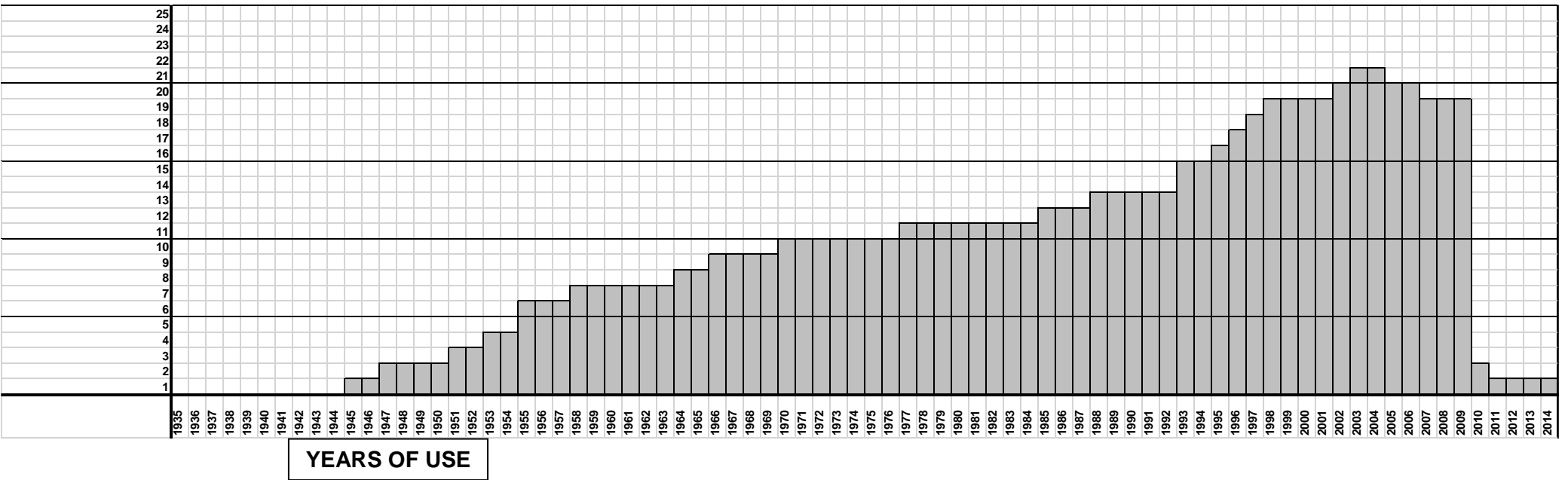
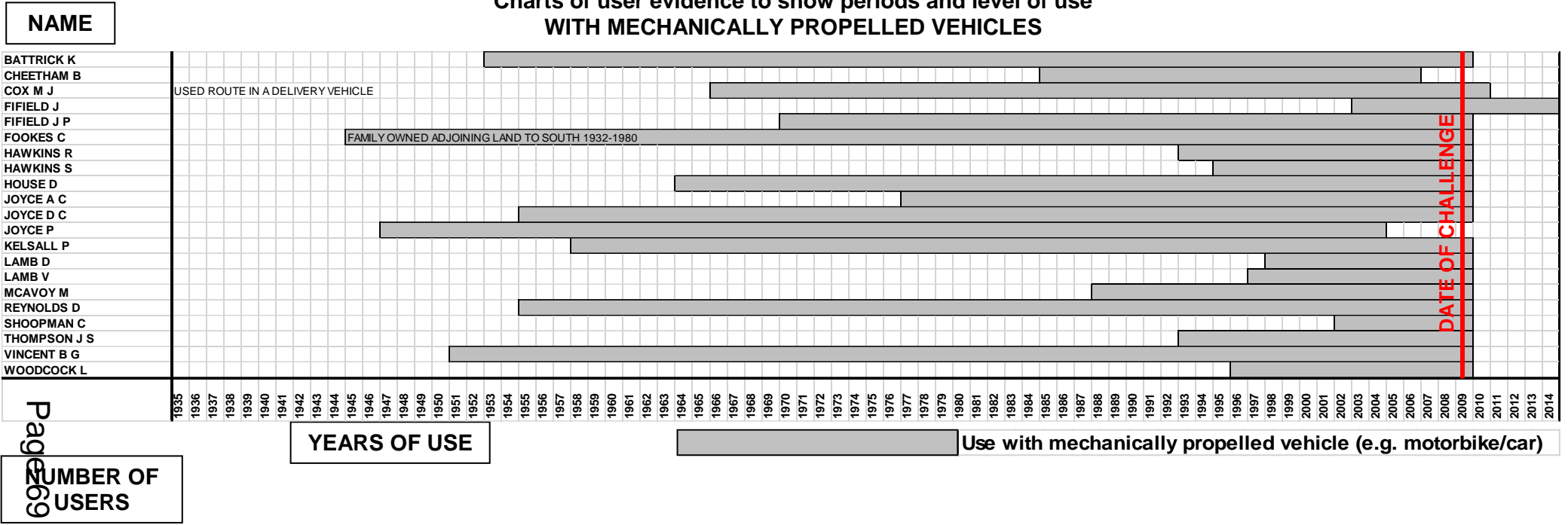
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NUMBER OF USERS



YEARS OF USE

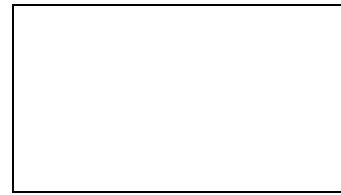
Charts of user evidence to show periods and level of use WITH MECHANICALLY PROPELLED VEHICLES



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Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling
Agenda item:

Regulatory Committee



Dorset County Council



Date of Meeting	12 July 2018
<u>Local Member(s):</u> n/a <u>Lead Officer(s)</u> Carol McKay, Senior Definitive Map Officer	
Subject of Report	Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling
Executive Summary	<p>On 7 October 2010 the Roads and Rights of Way Committee considered a report concerning the Determination of Applications to Modify the Definitive Map and Statement.</p> <p>The Committee resolved that</p> <ul style="list-style-type: none"> i) five applications for Byways Open to All Traffic (BOAT) received before 20 January 2005 (the cut off date for extinguishing vehicular rights) should be refused on the basis that they were invalid as they did not comply with the requirements set out in the Wildlife and Countryside Act 1981. The question of compliance with the requirements of the 1981 Act centred mainly around the use of computer generated maps and whether the maps used were invalid enlargements of small scale maps. ii) For all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council's stance in any further local inquiry or other process be modified to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps were not in

Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

	<p>strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.</p> <p>The Committee's decision was challenged by the Trail Riders Fellowship (TRF) in judicial review proceedings. The case went all the way to the Supreme Court; the High Court having found in favour of DCC. However, the Supreme Court, accepting the TRF's case, hold that the maps did comply with statutory requirements.</p> <p>Following the Supreme Court ruling, it is necessary for the Regulatory Committee to revisit the decision made by the Roads and Rights of Way Committee in October 2010.</p>
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence: Recommendations in this report are based on the application of relevant law and guidance.</p> <p>Budget: Financial implications arising from this issue are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment: As the subject matter of this report relates to the determination of definitive map modification order applications the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications: None</p>
Recommendations	<p>That the following applications all be accepted and investigated:</p> <p>(a) i) byway open to all traffic at Bailey Drove, Batcombe/Leigh; ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate);</p>

Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

	<p>iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and add an unclassified road in Chettle as byway open to all traffic (one continuous route); iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down); and v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route – Crabbs Barn Lane). And;</p> <p>(b) That for all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council’s stance in any further local inquiry or other process be as originally intended and unchanged by the Committee’s decision on 7 October 2010.</p>
<p>Reasons for Recommendations</p>	<p>(a) ; Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-18 Outcomes Framework: People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset’s economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while ‘keeping Dorset moving’, enabling people and goods to move about the county safely and efficiently
<p>Appendices</p>	<p>1 - Report to the Roads and Rights of Way Committee 7 October 2010 and appendices 2 - Minutes of the Roads and Rights of Way Committee Meeting held on 7 October 2010</p>
<p>Background Papers</p>	<p>R (on the application of Trail Riders Fellowship and another) v Dorset County Council [2015] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0153_Judgment.pdf</p>

Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

Report Originator and Contact	Name: Carol McKay Senior Definitive Map Officer Regulation Team, Dorset Highways Tel: (01305) 225136 Email: c.a.mckay@dorsetcc.gov.uk
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Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

1 Background

- 1.1. At its meeting on 7 October 2010, the Roads and Rights of Way Committee considered the report attached as Appendix 1.
- 1.2. The Natural Environment and Rural Communities Act 2006 extinguish unrecorded vehicular rights of way subject to limited exception. One exception is that on application to record the route as a byway open to all traffic was made before 20 January 2005, the cut-off date.
- 1.3. Members accepted the recommendations set out that five applications for Byways Open to All Traffic received before the cut-off date of 20 January 2005 be refused and that for all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council's stance in any further local inquiry or other process be modified to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps were not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.
- 1.4. The Committee decision was subsequently challenged by way of judicial review by the Trail Riders Fellowship (TRF).
- 1.5. The matter was considered by the High Court in June 2012 and the claim was dismissed. Mr Justice Supperstone upheld Dorset's decision on the basis that: (i) the application maps did not comply with the statutory requirements; and (ii) applying the decision of the Court of Appeal in the case of *R (Warden and Fellows of Winchester College) v Hampshire County Council* [2008] EWCA Civ 431, the applications were invalid because the extent of the non-compliance was not negligible (de minimis).
- 1.6. In December 2012 permission to appeal was granted to TRF by the Court of Appeal.
- 1.7. The Court of Appeal allowed the appeal, holding that (i) the maps did comply with the statutory requirements, but (ii) if the appeal had failed on the first point, the non-compliance "could not sensibly be described as de minimis".
- 1.8. The County Council then appealed to the Supreme Court. In March 2015, the Supreme Court dismissed the County Council's appeal on the basis of point (i) and upheld –by a majority of 3-2 –the Court of Appeal's decision that the maps did comply with statutory requirements.
- 1.9. Following the decision by the Supreme Court in March 2015, it is necessary to revisit the original decision made by the Roads and Rights of Way Committee in 2010.
- 1.10. This will enable Dorset County Council to investigate the five applications for Byways Open to All Traffic received before the cut off date of 20 January 2005 which have not yet been determined and to maintain its original stance with regards to those cases already investigated, some of which are awaiting submission to the Planning Inspectorate for consideration.

Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

2 Law and Guidance

- 2.1 A summary of the relevant law is contained in the earlier report attached as Appendix 1.
- 2.2 The Supreme Court Judgement R (on the application of Trail Riders Fellowship and another) v Dorset County Council [2015] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0153_Judgment.pdf details the evaluation and decision made by the Supreme Court.

3 Conclusions

- 3.1 The Supreme Court on a 3:2 majority found that the County Council was wrong in its decision to reject the five applications for Byways Open to All Traffic and that the presented scale of the map, produced by printing at a scale of not less than 1:25000, information originally capture at 1:50000 was acceptable for the purposes of paragraph 1 of Schedule 14.
- 3.2 In light of this outcome, it is necessary to revisit the decision made by the Roads and Rights of Way Committee in October 2010.
- 3.3 The following applications should all be accepted and investigated:
- i) byway open to all traffic at Bailey Drove, Batcombe/Leigh;
 - ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate);
 - iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and add an unclassified road in Chettle as byway open to all traffic (one continuous route);
 - iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down); and
 - v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route – Crabbs Barn Lane).
- 3.4 With regards to other pre 20 January 2005 applications for byways open to all traffic where the County Council has already made a decision, the County Council's stance in any further local inquiry or other process should be as originally intended and unchanged by the Committees decision on 7 October 2010.
- 3.5 In addition, applications received after 20 January 2005 which used similar mapping, can now be processed, having been previously put on hold pending the outcome of the appeals process.

Andrew Martin

Service Director, Highways and Emergency Planning
June 2018

Roads and Rights of Way Committee

4

Dorset County Council



Date of Meeting	7 October 2010
Officer	Director for Corporate Resources
Subject of Report	Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic (BOATS)
Executive Summary	<p>In 2006 the Natural Environment and Rural Communities Act introduced changes to the law so as to curtail the future scope for establishing and recording public rights of way for mechanically propelled vehicles.</p> <p>Amongst other steps the 2006 Act extinguished <u>subject to exemptions</u> any existing but unrecorded public rights of way for mechanically propelled vehicles. One of the exemptions is contained within a transitional provision the effect of which is to preserve from extinguishment an existing public right of way for mechanically propelled vehicles which before 20 January 2005 was the subject of an application to show the way as a byway open to all traffic (BOAT).</p> <p>The County Council received thirteen BOAT applications before the 20 January 2005 cut off date. Representatives of objectors to some of these applications maintain that the applications do not comply with the requirements for valid applications set out in the Wildlife and Countryside Act 1981. They contend that if the applications were not made strictly in accordance with the 1981 Act then they should be refused. The question of compliance with the requirements of the 1981 Act centres mainly around the use of computer generated maps and whether the maps used are invalid enlargements of small scale maps. The applicant maintains that he has acted in strict compliance with the 1981 Act.</p>

	<p>This report considers the respective arguments of the applicant and objectors. Both the applicant and the Green Lanes Protection Group (GLPG) were invited to comment on a draft version of this report. This report reflects some comments made on behalf of GLPG but there has been no response from the applicant to an invitation to comment.</p> <p>Having considered the transitional provisions in the 2006 Act and other possible exemptions the report recommends that the outstanding applications be refused.</p>
Impact Assessment:	<p>Equalities Impact Assessment: This report concerns the application of the legal requirements contained in the 2006 and 1981 Acts and does not give rise to the need for an impact assessment.</p> <p>Use of Evidence: Recommendations in this report are based upon the application of relevant law and guidance.</p> <p>Budget/ Risk Assessment: Any financial implications arising from proposed modifications to the definitive map are not material when considering evidence relating to the existence or otherwise of public rights and the application of the law to determine whether modifications are required to the definitive map.</p>
Recommendation	<ol style="list-style-type: none"> 1. That the following applications all be refused: <ol style="list-style-type: none"> i) byway open to all traffic at Bailey Drove, Batcombe/Leigh ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate) iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and to add an unclassified road in Chettle as byway open to all traffic (one continuous route) iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down) v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route -Crabbs Barn Lane) 2. That for those other pre 20 January 2005 applications for byways open to all traffic where the County Council has already made a decision the County Council's stance in any further local inquiry or other process be modified: <ol style="list-style-type: none"> a) to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps are not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981. b) to recognise that any failure to supply copy documents of evidence relied upon also constitutes non compliance.

Reason for Recommendation	<ol style="list-style-type: none"> 1. For the transitional provisions in the Natural Environment and Rural Communities Act 2006 to apply so that public rights of way for mechanically propelled vehicles are not extinguished the relevant application must have been made before 20 January 2005 and must have been made in strict compliance with the requirements of Schedule 14 to the Wildlife and Countryside Act 1981. The applications in question were accompanied by computer generated enlargements of ordnance survey maps and not by maps drawn to a scale of not less than 1:25,000. In each case none of the other exemptions in the 2006 Act are seen to apply and so the applications should be refused. 2. The question of compliance is in all respects an overriding factor in the determination of any application in relation to rights for mechanically propelled vehicles.
Appendices	<ol style="list-style-type: none"> 1. Report of the Director for Corporate Resources to the 12 May 2009 meeting of the Roads and Rights of Way Committee. 2. Schedule of relevant legislation. 3. Representations made by the applicant. 4. Letters dated 19 March and 10 December 2009 from the Ordnance Survey.
Background Papers	DEFRA Guidance on Part 6 of the Natural Environmental and Rural Communities Act 2006 and Restricted Byways
Report Originator and Contact	<p>Name: Jonathan Mair Tel: 01305 224181 Email: j.e.mair@dorsetcc.gov.uk</p>

1. Background

- 1.1. At its meeting on 12 May 2009 the Roads and Rights of Way Committee considered the report included as Appendix 1. Members accepted the recommendations set out including that in the case of applications to record byways open to all traffic made before 20 January 2005 each application shall be reviewed to consider whether it is strictly in compliance with the provisions of the Wildlife and Countryside Act and the Committee agreed an approach that should be followed, as set out in Appendix 3 to the report.
- 1.2. The approach previously agreed by the Committee involves considering compliance with the Wildlife and Countryside Act as part of the wider investigation of each application including detailed consideration of all of the evidence relating to each application.
- 1.3. Objectors believe that the County Council should be able to make a free standing decision on the question of compliance with the Wildlife and Countryside Act without the need to wait for a full investigation of all other factors relating to each application. If the Committee was to adopt this two stage approach then if, at stage one, members were to conclude that an application to add public rights of way for mechanically propelled vehicles to the definitive map and statement did not comply

with the 1981 Act then the application would be refused at that point without the need for further investigation and the applicant would then be entitled to appeal against the County Council's decision. The applicant can alternatively make a fresh application in a compliant form although, for the reason set out below, this could not lead to the recording of any vehicular rights for mechanically propelled vehicles.

2. The Law and Guidance

- 2.1. Appendix 2 to this report is a schedule of legislation relevant to the issues raised in this report. The schedule sets out in full sections 66 and 67 of the Natural Environment and Rural Communities Act 2006 the effect of which are to restrict the creation of new public rights of way for mechanically propelled vehicles and to extinguish, subject to exceptions unrecorded public rights of way for mechanically propelled vehicles on routes which immediately before the commencement of the Act were not shown on the definitive map and statement or were shown only as being subject to footpath, bridle way or restricted byway rights.
- 2.2. Transitional provisions contained in section 67 subsection 3 of the 2006 Act protect from extinguishment public rights of way for mechanically propelled vehicles if those rights were the subject of an application made before 20 January 2005 under section 53 (5) of the Wildlife and Countryside Act 1981.
- 2.3. Section 53 (5) of the Wildlife and Countryside Act enables any person to apply to the County Council for an order modifying the definitive map and statement as a consequence of certain events listed in subsection 3, including that a right of way which is not in the map and statement subsists or is reasonably alleged to subsist or that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 2.4. The five applications listed in the first recommendation, above, were all made under section 53 (5) and before the cut off date of 20 January 2005. On the face of it therefore these applications meet the transitional provisions in the 2006 Act, should be investigated and if the evidence justifies this then orders should be made to modify the definitive map and statement to record them as byways open to all traffic. However, the law also requires that applications must be made in a form that complies with the requirements of schedule 14 to the Wildlife and Countryside Act. This is considered below.
- 2.5. Paragraph 1 of schedule 14 to the Wildlife and Countryside Act requires that an application shall be made in the prescribed form and shall be accompanied by a map drawn to the prescribed scale and showing the way or ways to which the application relates. Regulations made under the 1981 Act provide that, consistent with the definitive map itself, the prescribed scale of the map which accompanies an application is a scale of not less than 1:25,000.
- 2.6. In May 2008 DEFRA published version 5 of Guidance for Local Authorities, Enforcement Agencies, Rights of Way Users and Practitioners on part 6 of the 2006 Act. At paragraph 39 onwards the guidance comments upon the transitional provisions in section 67 (3) of the 2006 Act and advises that:

“In every case it is necessary, under sub section 67 (6) that the application is made strictly in accordance with paragraph 1 of schedule 14 to the Wildlife and Countryside Act 1981, as prescribed by the relevant regulations.”

The DEFRA guidance goes on to refer to the important case of R (Warden and Fellows of Winchester College and Humphry Feeds Ltd) v Hampshire County Council and Secretary of State for the Environment, Food and Rural Affairs. In that case the Court of Appeal determined that in order to benefit from the transitional provisions in section 67 (3) of the 2006 Act an application must have been made in the prescribed form and be accompanied by both a map drawn to a scale of not less than 1:25,000 showing the way in question and copies of all the documentary evidence relied upon by the applicant.

- 2.7. It is clear from the Court of Appeal's decision in the Winchester case that an application not made strictly in accordance with the requirements of schedule 14 to the Wildlife and Countryside Act and the regulations is not "Winchester compliant" and hence does not benefit from the transitional provisions which would otherwise prevent the extinguishment of existing unrecorded rights of way for mechanically propelled vehicles. The DEFRA guidance supports the Court of Appeal's decision, if such support is needed.

3. Are the applications in question "Winchester compliant"?

Maps

- 3.1. Paragraph 1 of schedule 14 to the Wildlife and Countryside Act requires that an application shall be made in the prescribed form and shall be accompanied by a map drawn to the prescribed scale and showing the way or ways to which the application relates. Regulations were made under the 1981 Act and provide that, consistent with the definitive map itself, the prescribed scale of the map which accompanies an application is drawn to a scale of not less than 1:25,000.
- 3.2. The Ordnance Survey state that their data has a nominal scale of 1:50,000 and is view with best clarity at scales between 1:15,000 and 1:60,000 and that it is only outside of these recommended scales that pixilation may become an issue.
- 3.3. Each of the applications in question is accompanied by a computer generated map purporting to have been drawn at a scale of 1:25,000. However those who object to the applications contend that the maps were in fact drawn at a scale of 1:50,000 by the Ordnance Survey but have been enlarged using computer software.
- 3.4. The Court of Appeal in the Winchester case did not consider the meaning of "drawn" and whether a photographic enlargement of what was originally a 1:50,000 scale map enlarged to 1:25,000 or better would be "Winchester compliant". However, in the context of photographic enlargements DEFRA officials have concluded that where an application is accompanied by a map drawn to a scale of 1:50,000 photographically enlarged to 1:25,000 the courts would be likely to take the view that this would amount to a failure to comply strictly with the requirements of the legislation and that such a failure would not be regarded as de minimis. The officials therefore conclude that authorities should regard such applications as not qualifying under the transitional provisions in section 67 (3) of the 2006 Act.
- 3.5. The position over computer generated maps is more complex than those that are photographically enlarged. The applicant maintains that objectors have pressurised DEFRA to change their policy in relation to photographic/photocopy enlargements of maps and that there is nothing in the legislation about how maps should be drawn or what level of details should be shown. He then distinguishes computer generated map images from photographic enlargements. DEFRA have declined to be drawn on

the matter of generated maps, acknowledging that this is a technical legal matter that will be resolved by the courts.

- 3.6. The applicant maintains that the maps were printed using computer mapping software and were drawn to a minimum 1:25,000 scale. He explains how Ordnance Survey mapping is generated from large scale digital base data and that when the applicant uses his mapping software he is able to select any scale he wishes and the map is drawn (on screen and/or printed on paper) at that scale. Thus the applicant maintains that he is not taking a map at a given scale and enlarging it to a different scale and the submitted application maps only gained a scale when they were printed on his laser printer.
- 3.7. The applicant's points are set out in full in appendix 3 to this report. This information includes a technical description of the use of digital information in "RASTER" format through which mapping information is stored as a series of coloured dots suitable for printing at a scale of anything from 1:15,000 to 1:60,000.
- 3.8. On 24 May officers met with representatives of the Green Lanes Protection Group (GLPG), the main business of the meeting being to hear their representations about the invalidity of applications accompanied by computer generated maps. The applicant was invited but was unable to attend this meeting. His representations, set out in Appendix 3 to this report were put to GLPG and they were invited to comment.
- 3.9. At the meeting on 24 May, GLPG enlarged on an earlier paper provided to the County Council and explained their view that the computer software used by the applicant enabled maps to be viewed and printed at differing levels of enlargement. However, the base information being worked from was a 1:50,000 Ordnance Survey map which in these cases the applicant had enlarged using the software. GLPG were familiar with the programme used (Anquet Maps) which was clearly identified on the application maps and where, as they explained, the labelled scale 1:50,000 remains fixed whatever the enlargement. In addition Ordnance Survey letters were produced which GLPG said confirmed these facts, that they scale and detail are inherently linked and the supply of a scale based product to Anquet. In GLPG's view the key to the differences lies in the failure by the applicant to recognise that Ordnance Survey base data may carry no scale but that is not true of the products sold to agents and used by the public (including the applicant).
- 3.10. GLPG also drew attention to what they said was the applicant's confirmation in some applications that the maps submitted were blown up copies of 1:50,000 maps and a statement to the County Council that the process used "applies to all maps submitted with our applications". Furthermore DEFRA had not changed its policy, it had simply clarified an ambiguous statement.
- 3.11. At the same meeting there was a technical discussion of the difference between Raster and Vector mapping. Raster mapping involved taking a scan of a drawing. That scan is composed of a certain number of pixels. A Raster map can be magnified but the base information (the number of pixels) remains the same. In the view of GLPG such magnification of Raster mapping using computer software is much the same as photographically enlarging a map of a certain scale. Vector mapping is different as it works from co-ordinates rather than pixels and Vector mapping does enable the scale of a map to be changed electronically.
- 3.12. Officers have considered the competing points of view of the applicant and GLPG. In the absence of any determination by the Courts on the status of computer generated mapping in these circumstances, it is for the County Council through the Roads and

Rights of Way Committee to make its best determination of what it believes the correct position to be. What is absolutely clear is that as a result of the Winchester case the law requires that in order for an application to benefit from the transitional provisions in the Natural Environment and Rural Communities Act then there must be strict compliance with the requirements of Schedule 14 to the Wildlife and Countryside Act. In the view of the Head of Legal and Democratic Services the applications in question are not strictly in compliance. The taking of a 1:50,000 scale map and then through computer software being magnified and reproduced is very much like a photographic enlargement. The base information (the number of pixels making up the map and its features) remains the same and it is simply the size of the pixels rather than the original scale of the map which is enlarged.

- 3.13. In reaching this conclusion the Head of Legal and Democratic Services has advised that neither he nor any other officer is able to point to a definite decision of the Courts on this point but in his judgement the argument of GLPG is to be preferred. In reaching this conclusion he has taken account of the letters set out at appendix 4 to this report. The letter dated 19 March 2009 from the Ordnance Survey is especially clear. In that letter the Ordnance Survey write:-

“As this extract has been produced from our 1:50,000 scale Raster product, as suggested by Jonathan Stuart, this is still an enlargement of 1:50,000 scale mapping, rather than a 1:25,000 scale map. The definition of Raster data is digital material where the information is made up of pixels. An example of Raster data is a scanned image or photograph. When enlarging Raster data, it is the pixels that are being enlarged, meaning that the greater the enlargement, the more distorted and inaccurate the image becomes. It is only with Vector data, which is made up from straight lines joining 2 data points, that it is possible to enlarge the data accurately, and the extract enclosed is not a Vector image.”

It is clear from 23 March 2009 letter that the Ordnance Survey consider the maps in question to be enlarged 1:50,000 scale maps and not 1:25,000 scale maps. If this is correct then the use of such enlargements means that the applications in question are not Winchester compliant. As the data used for the original maps from which the application maps have been produced was at a nominal scale of 1:50,000 it could be argued that the application maps are at or better than the prescribed scale. However, it is the manner in which the application maps were drawn that is in issue.

- 3.14 In a follow up letter dated 10 December 2009 the Ordnance Survey comment on a number of specific points. In the fourth paragraph of their letter, the Ordnance Survey comment on the term “photographic enlargement”. This is not a term used by the Ordnance Survey themselves. However, they regard it as an acceptable term to describe what has happened in this case ie the enlargement of a map that was drawn at a scale of 1:50,000 by the Ordnance Survey. The letter also helpfully comments on the use of the term “drawn” in relation to mapping. The legislation requires that an application is accompanied by a map drawn at a scale of not less than 1:25,000. The applicant argues that the application maps were drawn when he printed them from his computer. GLPG maintain that the maps were drawn and the scale therefore set when they were produced by the Ordnance Survey. Again, “drawn” is not a term used by the Ordnance Survey but in the penultimate paragraph of their letter they do comment helpfully on the process of digital map production. Digital mapping is “produced” and any printing of that map is a “redrawing” or a “facsimile”.
- 3.15 A redrawing of an Ordnance Survey map is a printing of the map at its original scale.

A facsimile is an image which is printed or copied, where the mapping is identical to that produced by the Ordnance Survey but the mapping has been enlarged or reduced in size or has had additional information added by a third party. It is clear to me that what the applicant has provided are not drawings at a scale of not less than 1:25,000 or redrawings but instead he has provided enlarged facsimiles of maps produced by the Ordnance Survey at a scale of 1:50,000.

4. Next steps

4.1 In the light of the above conclusions the Committee are advised that the applications listed in the first recommendation should be refused on the basis that they are not Winchester compliant and therefore do not benefit from the transitional provisions in the Natural Environment and Rural Communities Act. Consistent with this the second recommendation relates to the County Council's stance in relation to similar applications already determined by the County Council.

4.2 Refusal of the applications gives the applicant an entitlement to appeal to the Secretary of State. If the Committee was to reach the conclusion that the applications are Winchester compliant then the applications would be the subject of individual reports making recommendations about the claimed vehicular rights.

Copy Documents

4.3 In their representations GLPG make the point that the requirements relating to applications are not confined to maps. The applicant must also attach copies of all evidence relied upon in support of the application, a requirement which was also confirmed in the Winchester case as calling for strict compliance. In the case of *Maroudas v Secretary of State for Environment, Food and Rural Affairs* the Court of Appeal held that all such documents must be supplied within a very short period from the date of the application. In determining the County Council's stance in relation to the pre 20 January 2005 applications where a decision has already been made the Committee are invited to conclude that a strict approach should be taken under which the County Council opposes any reliance by the applicant upon documentation which was not provided at the time of the application or shortly afterwards.

4.4 In addition to the transitional provisions the Natural Environment and Rural Communities Act contains a number of exceptions which preserve from extinguishment certain public motor vehicular rights not already recorded as such on the definitive map and statement, as follows:-

- The first exception relates to ways that are part of the ordinary roads network i.e. those that have been lawfully used more by motor vehicles than by other categories of user.
- Ways that are both recorded on the list of streets as being maintainable at public expense and which are not recorded on the definitive map and statement.
- Ways that have been expressly created or constructed for motor vehicles.
- Ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles.
- The final exception preserves from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive off road.

The applicant has not relied in the applications upon any of the above exceptions. Accordingly, if the Committee concludes that the applications are not Winchester compliant and if the applicant is unsuccessful in any appeal then there will be no question of public vehicular rights over any of the routes in question.

- 4.5 The five applications listed in the first recommendation should be refused on the basis that they are not compliant with the regulations in respect of maps. In the case of all other pre January 2005 BOAT applications the County Council's stance should be to resist the establishment of rights for mechanically propelled vehicles on the basis that the applications are not Winchester compliant as to maps. In addition such rights should be resisted where evidence relied upon by the applicant was not made available at the time of the application or shortly afterwards

Elaine Taylor
Director for Corporate Resources
September 2010.

Agenda Item:

12

Roads and Rights of Way Committee

Dorset County Council



Date of Meeting	12 May 2009
Officer	Director for Corporate Resources
Subject of Report	Applications to modify the definitive map and statement of rights of way to record byways open to all traffic (BOATS)
Executive Summary	The purpose of this report is to consider, in the light of Counsel's advice, the Council's approach to outstanding applications for BOATS to be added to the definitive map and statement of rights of way; with particular reference to the effect of the Natural Environment and Rural Communities Act 2006 (NERC) following the Court of Appeal decision in <i>The Queen on the Application of Warden and Fellows of Winchester College and Humphrey Feeds Limited V Hampshire County Council -and- The Secretary of State for Environment, Food and Rural Affairs [2008] EWCA Civ 431 (Winchester)</i> .
Budget/Risk Implications	Any financial implications arising from proposed modifications to the definitive map are not material when considering evidence relating to the existence or otherwise of public rights and applying the law to determine whether modifications are required to the definitive map. The number of outstanding applications to be determined has resource implications and timescale implications and consequent delay in considering applications may lead to complaints against the County Council.
Recommendations	That: <ol style="list-style-type: none"> 1. Applications continue to be investigated and submitted to this Committee for determination in accordance with the Committee's Statement of Priorities; and, 2. In the case of applications to record byways open to all traffic made before 20th January 2005 each application

	<p>shall be reviewed to consider whether it is strictly in compliance with the provisions of paragraph 1 of Schedule 14 Wildlife and Countryside Act 1981 (WCA) in accordance with the decision of the Court of Appeal in Winchester, in particular that the approach outlined in Appendix 2 be used in relation to considering application maps.</p>
Reason for Recommendations	<p>The County Council has a duty to make modifications to the Definitive Map and Statement to record the correct status of public rights of way.</p> <p>The Committee's Statement of Priorities for Definitive Map Modification Orders sets out the Committee's policy for the order in which applications to modify the definitive map and statement should be investigated and reported to the Committee.</p> <p>NERC extinguished public rights for motorised vehicles in certain circumstances. Exceptions apply and the Court of Appeal in Winchester has clarified that applications made before the 20th January 2005 must be strictly in compliance with the provisions of paragraph 1 of Schedule 14 WCA in order to benefit from the exception in section 67(3) NERC.</p>
Appendices	<ol style="list-style-type: none"> 1. Table: "Outstanding Byway Claims Received Before The 'Cut-Off Date' Of 20 January 2005"; 2. Opinion of Brian Ash QC: February 18th 2009 In the Matter of the Validity of Applications for Definitive Map Modification Orders; 3. Approach to application plans when considering whether section 67(3) NERC applies to an application to record public vehicular rights;
Background Papers	<p>DEFRA publication entitled "Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways: A guide for local authorities, enforcement agencies, rights of way users and practitioners Version 5 - May 2008"</p>
Report Originator and Contact	<p>Name: Sarah Meggs Tel: 01305 225104 Email: s.l.meggs@dorsetcc.gov.uk</p>

1. Background

- 1.1. The definitive map and statement for an area is a conclusive record of public rights of way referred to in it, but is without prejudice to any other or higher rights that may exist.
- 1.2. Section 53(2) WCA places a duty on the County Council, as surveying authority, to keep the definitive map and statement under continuous review. This includes the making of any modification orders that appear necessary as a result of the occurrence of any of the events specified in section 53(3) WCA.
- 1.3. Section 53(3)(c) WCA includes the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that an amendment should be made to the map and statement.
- 1.4. Section 53(5) WCA provides that any person may apply for a modification order to be made. Schedule 14 WCA provides that such an application must be in the prescribed form and be accompanied by (a) a map drawn to a scale of not less than 1/25,000 and showing the way or ways to which the application relates, and (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.
- 1.5. NERC extinguishes any public vehicular rights not recorded on the definitive map and statement on 2 May 2006 subject to specified exemptions. One exemption is that an application for public vehicular rights to be recorded on the definitive map and statement had been made to the County Council before 20 January 2005.
- 1.6. Appendix 1 lists the outstanding byway applications received before the 'cut-off date' of 20 January 2005. Some have been determined by the County Council but are subject to ongoing proceedings. Six of the applications listed have not yet been investigated and/or finally determined by the County Council and one is to be reconsidered by the Committee.
- 1.7. The applications are in the prescribed form but are accompanied by plans which are generally digitally enlarged copies of smaller scale OS plans.
- 1.8. The applications enclose electronic copies of the primary sources of evidence relied on. Some applications, however, also refer to further evidence that does exist and may be submitted at a later date.
- 1.9. At its meeting on 4 July 2007 the Committee approved a statement of priorities for dealing with applications for definitive map modification orders. Essentially, applications shall be dealt with in order of receipt unless one of the listed exceptions applies. In fact this means that the applications in question will be dealt with next, depending upon the Committee's decision in relation to this report.

2. Impact of Winchester

- 2.1. The Court of Appeal in Winchester considered the extent to which an application must comply with paragraph 1 of Schedule 14 WCA in order to be exempt from the general extinguishment provisions of NERC.

- 2.2. The Court ruled that such an application must comply with the strict requirements of paragraph 1 of Schedule 14 WCA in order to benefit from the exception in section 67(3)(a) NERC.
- 2.3. In that case, the applications had been accompanied by a list of the documentary evidence relied on but not copies of the documents. Accordingly, the Court considered that the strict requirements of paragraph 1 of Schedule 14 WCA had not been complied with and, for the purposes of section 67 NERC the application was not valid.
- 2.4. The Court of Appeal did not consider the meaning of “drawn” or the nature of the plan required to be submitted with the application.

3. DEFRA guidance

- 3.1. Paragraph 6 of the DEFRA publication entitled “Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways: A guide for local authorities, enforcement agencies, rights of way users and practitioners Version 5 - May 2008” makes it clear that NERC does not relieve local authorities of their obligation to process all definitive map modification order applications for BOATs to a full determination.
- 3.2. The guidance suggests that in the case of applications made after 20 January 2005, where a public right of way for vehicles can be established, but has been extinguished by NERC, such determinations may give rise to a restricted byway. This suggestion would apply equally to cases where an application was made before 20 January 2005 but was not “Winchester valid”.
- 3.3. Paragraph 42 of the guidance clarifies that, in the context of BOAT applications, local authorities should make the decision as to whether applications are exempt under subsection 67(3) NERC as part of processing of the definitive map modification order applications.
- 3.4. Essentially the guidance supports a two part sequential process:
 - 3.4.1. First establishing whether a public right of way for mechanically propelled vehicles existed immediately before commencement on 2 May 2006;
 - 3.4.2. Second, if it is established that a public right of way for vehicles exists, is to apply the tests in subsections 67(2) and 67(3) NERC to establish whether that public right of way for mechanically propelled vehicles was extinguished.

4. Submissions to the County Council and Counsel’s opinion

- 4.1. The validity of the outstanding applications has been challenged on 2 grounds. That:
 - 4.1.1. as the applications plans are enlarged copies of a plan to a smaller scale than 1/25 000, it is not “drawn” to the requisite scale, and
 - 4.1.2. the applications refer to the possibility that further evidence may be submitted at a later date.
- 4.2. On the basis that the applications are, therefore, invalid in Winchester terms it has been requested by objectors that all outstanding applications to record public vehicular status are dismissed without further investigation.

- 4.3. In order to assist the County Council in considering these representations officers asked Brian Ash QC to advise the County Council in its role as a neutral decision making body. In particular the following questions were asked:
 - 4.3.1. whether it is within DCC's power to refuse to investigate at all the status of the routes the subject of the applications, either on the basis of a defective plan, or that all evidence is not enclosed with the application; and
 - 4.3.2. Whether plans are "drawn" for the purposes of WCA if they are enlarged copies of smaller scale plans and/or computer generated;
 - 4.3.3. Whether applications are duly made and/or "Winchester compliant" if some documents are copied with the applications and others are not.
 - 4.3.4. Whether, the applications appear duly made such that the evidence should be considered by DCC in the usual way; or
 - 4.3.5. Whether, in any event, DCC has a duty to investigate the status of the application routes in accordance with section 53(2)(b) WCA;
 - 4.3.6. If DCC must (or chooses to) consider the routes subject to the applications and considers that, on the balance of probabilities the evidence shows that public motor vehicular use is shown to exist before 2 May 2006, whether the applications received before the relevant date appear compliant for the purposes of benefiting from the exemption in section 67(3)(a) NERC.
- 4.4. Counsel's advice is attached at appendix 2. In particular, Counsel:
 - 4.4.1. does not come to a final conclusion on the validity of the application plans but gives guidance on the approach to be adopted when considering the plans. This has informed preparation of the document at appendix 3.
 - 4.4.2. considers that there is a sound basis upon which the Council can find the applications to be valid in relation to the documentary evidence.
 - 4.4.3. advises that if any of the applications are found to be invalid for the purposes of WCA, the Council is empowered to determine them if it can conclude that any procedural irregularities can be waived. Further, notwithstanding any question of validity of the applications, the material which accompanies the applications constitutes evidence discovered by the Council within the meaning of section 53(3)(c) Wildlife and Countryside Act 1981. It, therefore, has a duty to consider the applications under section 53(2)(b).
 - 4.4.4. advises that if the applications are found to be valid in relation to section 67 NERC the Council is obliged to determine them on the basis that there has been no statutory extinguishment of any existing motor vehicular rights. If not valid for the purposes of section 67 NERC, as now interpreted by the Court of Appeal in Winchester, then evidence of public vehicular rights will result in restricted byway status.
- 4.5. Counsel has subsequently been asked to comment on the proposed approach to application plans set out at appendix 3. Counsel is satisfied that the proposed approach is acceptable.

5. Conclusions

- 5.1. Irrespective of whether an application is Winchester valid, an application for BOAT status still needs to be investigated to determine whether restricted byway or some other status should be recorded. The evidence accompanying these applications has been brought to the County Council's attention and even if, for technical reasons, an application is defective the County Council has a duty to investigate evidence of which it is aware.
- 5.2. In view of this it seems appropriate that the applications are managed in accordance with the Statement of Priorities and that the validity issue is considered as part of that process.
- 5.3. The practical importance of Winchester validity means that a defective application cannot benefit from the exception in section 67(3)(a) of NERC. If no other exception applies to the route in question, public rights for mechanically propelled vehicles will have been extinguished. There may, however, be a basis upon which a restricted byway should be recorded.

Table: "Outstanding Byway Claims Received Before The 'Cut-Off Date' Of 20 January 2005"

PARISHES	DETAILS	CLAIMED STATUS
CHESELBOURNE / DEWLISH	UPGRADE BR 8, CHESELBOURNE (PT) AND BR 18, DEWLISH TO BYWAY	BYWAY
PIDDLEHINTON / PIDDLETRENTHIDE	UPGRADE BR 18 (PT), PIDDLEHINTON AND BR 18, PIDDLETRENTHIDE TO BYWAY	BYWAY
PIDDLETRENTHIDE	UPGRADE BR 2(P.T) AND BR 14 (PT) TO BYWAY AND ADD BYWAY LINKING TO BR 2	BYWAY
TARRANT GUNVILLE & CHETTLE	UPGRADE BR 12, TARRANT GUNVILLE TO BYWAY AND ADD UCR IN CHETTLE TO DEF MAP	BYWAY
BEAMINSTER	UPGRADE BR 14, BEAMINSTER TO BYWAY	BYWAY
BEAMINSTER	UPGRADE BRs 17 AND 35 AND ADD PART UCR AND PART UNRECORDED AS BYWAY – CRABB'S BARN LANE	BYWAY
CORFE CASTLE	UPGRADE BR FROM CORFE CASTLE TO CHURCH KNOWLE ROAD BR 70 (PART)	BYWAY
CHESELBOURNE/ DEWLISH	UPGRADE BR 6 CHESELBOURNE AND BR 3, DEWLISH TO BYWAY	BYWAY
PIDDLEHINTON	UPGRADE BR 3(P.T) TO BYWAY	BYWAY
BATCOMBE / LEIGH	UPGRADE FP 11(P.T) BATCOMBE, ADD BYWAY FROM FP 3 TO BR 18, LEIGH & UPGRADE BR 59, LEIGH TO BYWAY	BYWAY
PIDDLEHINTON / PIDDLETRENTHIDE / CHESELBOURNE	UPGRADE BR 4,, PIDDLEHINTON, BRs 14(P.T) & 5, PIDDLETRENTHIDE AND BR 11, CHESELBOURNE TO BYWAY	BYWAY
STOURPAINE / IWERNE STEEPLETON	UPGRADE BR 1, STOURPAINE AND BR 8,. IWERNE STEEPLETON TO BYWAY – SMUGGLERS' LANE	BYWAY

OPINION OF BRIAN ASH QC: FEBRUARY 18TH 2009 IN THE MATTER OF THE VALIDITY OF APPLICATIONS FOR DEFINITIVE MAP MODIFICATION ORDERS;

**IN THE MATTER OF
THE VALIDITY OF APPLICATIONS FOR
DEFINITIVE MAP MODIFICATION ORDERS**

OPINION

1. I am asked to advise Dorset County Council ("The Council") as to the validity of a number of applications for Definitive Map Modification Orders made pursuant to section 53(2) of the Wildlife and Countryside Act 1981. The particular concern relates to the question whether the form of the applications in each case is sufficient to preserve any unrecorded rights of way for mechanically-propelled vehicles which would otherwise have been extinguished under the Natural Environment and Rural Communities Act 2006. ("NERC")

2. Such extinguishment occurs by virtue of section 67(1) of NERC subject to certain exceptions including those set out in section 67(3) which, so far as is relevant for present purposes, provides that:-

"(3) Subsection (1) does not apply to an existing public right of way over a way if -

a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic..."

3. The 'relevant date' in England for the purpose of section 67(3) is January 20th 2005 (sub-section (4)) and sub-section (6) provides that:-

"For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

Paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981 ("WCA") provides that:-

"An application shall be made in the prescribed form and shall be accompanied by -

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application."

4. The prescribed form for such an application is set out in Schedule 7 to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 and, by virtue of Regulation 8(2), the prescribed scale for the accompanying map is "not less than 1/25,000".
5. In the present case the disputed applications upon which my opinion is sought are, as I understand it, those set out in the third category of cases identified in the schedule at the beginning of document 1 in my instructions. These applications were all made before the relevant date and were set out on what I assume to be the Council's own pro forma version of the prescribed form. The suggested basis for the invalidity of the applications is, firstly, that the accompanying maps were not "drawn to the prescribed scale", because they were enlargements of base maps of a smaller scale. It appears that the Applicant disputes this claim as a matter of fact and says that the plans were computer generated from Ordnance Survey base data. This means that there is no original printed map from which any scale can be identified. The scale of the submitted plans is determined by the resolution at which they were printed and this "equates to a given physical map scale" which was, in each case, "always greater than 1:25K".
6. The second suggested basis for invalidity is that the applications refer to the existence of further evidence in support of the claim which may be submitted at a later date. This is said to contravene the requirement of Paragraph 1 of Schedule 14 to WCA (*supra*) that the application must be accompanied by any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.
7. In R (Warden & Fellows of Winchester College) v Hampshire County Council [2008] EWCA Civ 431 the Court of Appeal adopted a strict approach to the requirements of paragraph 1 of Schedule 14 to WCA in the context of section 67 of NERC. In summary, the court decided that, whilst there may be circumstances in which non-compliance with the paragraph 1 procedural requirements would not invalidate a modification application for all purposes, such non-compliance is fatal to any claimed exception to extinguishment of rights under section 67(3), save in cases of insignificant minor departures from the requirements or where compliance is

impossible. In Winchester the applications were accompanied by lists of documents but no copies of the documents were attached.

8. In relation to the issue of the maps, the question is essentially a matter of fact, namely, whether, in each case, the attached map showing the way is properly described as being drawn to a scale of not less than 1:25,000. Although the Winchester Case means that a failure to provide such a map invalidates the application for the purposes of section 67, it does not, in my opinion, imply that a more strict approach should be adopted to the question of construction of the ambit of the relevant statutory provisions than would otherwise be the case. This means, for example, that it would be permissible to adopt a purposive construction, if necessary.
9. It is not clear to me whether any of the maps in the present case are enlargements of 1:50,000 base maps. The letter from the Ordnance Survey dated May 29th 2007 says explicitly that the two maps which they have inspected are "in fact copies of 1:50,000 mapping which have been blown up to the 1:25,000 scale". The letter from Vanessa Penny dated July 28th 2008 says that the Council does not dispute that the maps are enlarged copies of 1:50,000 OS maps. However, the Report at document 3 of my instructions appears to accept that the contested plans are digitally produced without any enlargement from a base plan and that any references to "1:50K symbols" are "a selection made in the digital map process."
10. It may be that the Report indicates that the Council's officers now accept the explanation which was given on behalf of the applicant in the email of October 21st 2008, which postdates the correspondence with the Ordnance Survey. However, the views expressed in the earlier letters to which I have referred are quite definitive. I assume that the Council has officers with expertise in the interpretation of maps and it could be that their advice has led to the change in the approach to this matter in the Report. If this is not the case, such advice should be taken before any decision is made as to the validity of the applications so that members can be informed of the officers' professional opinion on this issue.
11. Turning to the approach to the construction of the statutory requirements concerning the map, the purpose of those requirements must be to ensure that the location and extent of the way to which the application relates can be identified to at least the same

degree of accuracy as that of the definitive map itself. However, I have considerable doubt as to whether this purpose would qualify or override the basic requirement that, in order to assess the validity of the map, it must be possible to identify its actual scale. I would also assume, in the absence of professional advice to the contrary, that a map whose actual scale is unknown would not provide the requisite degree of accuracy.

12. Against this background, the phrase "drawn to" does not, in my opinion, exclude any form of electronic manipulation or processing. It does not require that the attached plan must be hand drawn, which would be impracticable. It need not be a marked up original OS plan. I assume that photocopies of such plans are capable of being produced which do not materially distort the scale of the original and that such photocopies are routinely provided in support of modification applications.
13. Since I do not claim any expertise in the interpretation of maps, I am unable to say whether an enlargement of a map of less than 1:25,000 could properly constitute a map of the prescribed scale. However, I would attach considerable weight to the view expressed in the Ordnance Survey letter that an enlarged map would only be accurate to the scale of the original. Unless the Council is advised by its officers that any maps in this case which are enlargements to 1:25,000 of an original at a 1:50,000 scale are, for all practical purposes relevant to a modification application, the equivalent of a 1:25,000 scale map, it would be difficult to justify accepting such maps as being "drawn to the prescribed scale".
14. Similar considerations apply to a computer generated map. The fact that it is created electronically and then printed does not take it outside the meaning of "drawn", properly construed in its context. However, the Council must, again, be satisfied that the scale of the map can be identified and that it is not, in relation to its intended use, materially inferior in terms of its detail and accuracy to a map produced by what might currently be described as more conventional means.
15. As to the question of the accompanying documents and evidence, the short point is whether the submitted material constitutes "copies of any evidence...which the applicant wishes to adduce in support of the application." The majority of the contested applications contain an introductory paragraph which says:-

"FoDRoW believes enough evidence is being submitted to justify this claim. Further evidence does exist and may be submitted at a later date. However, having considered the volume of claims likely to be submitted in the coming years this claim is being submitted now in order to avoid a future flood of claims when they are all fully researched."

16. In each case there follows a review of the documents submitted and in some of them this is preceded by a list of documents introduced by the phrase: "The following evidence is being submitted to support our DMMO application". It should also be noted that, in every case, the paragraph set out above follows an indication that "on the basis of the evidence presented below FoDRoW believes the route should today be a byway."
17. There is no statutory requirement that all of the evidence known by the applicant to be available to support the application must accompany it. The requirement is limited to the provision of the evidence which the applicant wishes to adduce. A statement to the effect that there is further evidence to be adduced which does not accompany the application would mean that the application would be incomplete and, therefore, invalid for the purpose of section 67 of NERC. An unqualified statement reserving the position as to the evidence which the applicant wishes to adduce would also render the application incomplete.
18. Although the meaning of the last sentence of the introductory paragraph set out above is not entirely clear, the overall sense is that the applicant is content for the application to be determined upon the basis of the submitted material. There is an element of reservation of the position in the reference to the existence of further evidence which may be submitted at a later date but this is not, in my opinion, sufficient to negate the other indications that the material which the applicant wishes to adduce is that which has been submitted. The words "on the basis of the evidence *presented* below" (my emphasis) must be a reference to the material analysed and not some prospective, unspecified further evidence. This point is reinforced in those cases where the document list is repeated and is preceded by the indication to which I have already referred that: "The following evidence is being submitted to support our DMMO application".

19. My conclusions on the status of the contested applications for the purposes of section 67 of NERC is that there is a sound basis upon which the Council can find them to valid in relation to the documentary evidence. I have given guidance on the approach to be adopted when considering the maps but, in view of the need for further clarification of the factual issues, I am unable to advise as to their validity in this respect on the information available to me at present.

20. I am asked about the powers and duties of the Council to determine the applications depending upon their status. If they are found to be valid in relation to section 67 of NERC, the position is straightforward. The Council is obliged to determine them and to do so on the basis that there has been no statutory extinguishment of any existing motor vehicular rights.

21. If any of the applications are found to be invalid, the Council is empowered to determine them, provided that it can reasonably conclude that any procedural irregularities can be waived. I can see no reason, in principle, why such a course would not be available. This would be the position if the maps are technically defective but are sufficiently accurate to provide a reliable indication of the location and extent of the way in question both on the ground and on the definitive map. Similarly in relation to the evidence, the Council would be entitled to conclude that it has received sufficient information to enable it to make a reliable determination. If it considers that the information is insufficient but that further relevant material is available to the applicant, I can see no reason why it cannot ask the applicant to produce it.

22. Even if I am wrong in this respect, the material which accompanies the applications constitutes evidence discovered by the Council within the meaning of section 53(3)(c) of WCA. It therefore has a duty to consider it under section 53(2)(b).



BRIAN ASH Q.C.

**4-5 Gray's Inn Square
Gray's Inn
London WC1R 5AH**

February 18th 2009

**IN THE MATTER OF
THE VALIDITY OF
APPLICATIONS FOR
DEFINITIVE MAP
MODIFICATION ORDERS**

OPINION

**Dorset County Council
County Hall
Colliton Park
Dorchester
Dorset DT1 1XJ
Ref: SLM/D879**

APPROACH TO APPLICATION PLANS WHEN CONSIDERING WHETHER SECTION 67(3) NERC APPLIES TO AN APPLICATION TO RECORD PUBLIC VEHICULAR RIGHTS

As part of the process of investigating an application:

1. Consider application plan and consider OS maps at different scales:
 - 1.1. Check for distortion;
 - 1.2. Check/compare base information available;
 - 1.3. Obtain statement from the applicant as to the method of production of the plan and its scale;
 - 1.4. If possible, check with OS for comments on issues of distortion and method of production.

2. The following outcomes may be possible:

2.1. If:

- 2.1.1. Correct scale application map; and
- 2.1.2. As much base information as the os map at the appropriate scale; and
- 2.1.3. No distortion;

Then it is recommended to the Committee that the plan is deemed acceptable for these purposes.

2.2. If

- 2.2.1. Inappropriate scale; or
- 2.2.2. Distortion, then

Then it is recommended to the Committee that the plan is not acceptable for these purposes

2.3. If different, or less, base mapping information is included in the application plan when compared with appropriate scale OS plans the case officer's judgment of the acceptability of the plan will be indicated in the recommendation to the committee.

Schedule of relevant legislation

Natural Environment and Rural Communities Act 2006

66 Restriction on creation of new public rights of way

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—
- (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
 - (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

67 Ending of certain existing unrecorded public rights of way

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
- (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

- (2) Subsection (1) does not apply to an existing public right of way if—
- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
 - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c 66) (list of highways maintainable at public expense),
 - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

- (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means—
- (a) in relation to England, 20th January 2005;
 - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
 - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,
- the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact—
- (a) exercising the existing public right of way, or
 - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c 69) does not apply.
- (9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c 37) has effect subject to this section.

Wildlife and Countryside Act 1981:

53 Duty to keep definitive map and statement under continuous review

(1) In this Part “definitive map and statement”, in relation to any area, means, subject to section 57(3) [and 57A(1)],—

- (a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or

- (b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or
- (c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).

(2) As regards every definitive map and statement, the surveying authority shall—

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in subsection (2) are as follows—

(a) the coming into operation of any enactment or instrument, or any other event, whereby—

(i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

(iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path [or a restricted byway];

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path [or restricted byway];

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) 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, being [a right of way such that the land over which the right subsists is a public path[, a restricted byway] or, subject to section 54A, a byway open to all traffic];

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to—

(a) the position and width of any public path[, restricted byway] or byway open to all traffic which is or is to be shown on the map; and

(b) any limitations or conditions affecting the public right of way thereover.

[(4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.

(4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.]

(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

[(5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.]

(6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).

SCHEDULE 14 APPLICATIONS FOR CERTAIN ORDERS UNDER PART III

Section 53

Form of applications

1

An application shall be made in the prescribed form and shall be accompanied by—

- (a) a map drawn to the prescribe scale and showing the way or ways to which the application relates; and
- (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications

2

- (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.
- (2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
- (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

- (4) Every notice or certificate under this paragraph shall be in the prescribed form.

Determination by authority

3

- (1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall—
 - (a) investigate the matters stated in the application; and

(b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.

(2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.

(3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

Appeal against a decision not to make an order

4

(1) Where the authority decide not to make an order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.

(2) If on considering the appeal the Secretary of State considers that an order should be made, he shall give to the authority such directions as appear to him necessary for the purpose [(which may include a direction as to the time within which an order is to be made)].

Interpretation

5

(1) In this Schedule—

“application” means an application under section 53(5);

“local authority” means [a non-metropolitan district council], a parish . . . council or the parish meeting of a parish not having a separate parish council [but, in relation to Wales, means a community council];

“prescribed” means prescribed by regulations made by the Secretary of State.

(2) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Representations made by the applicant extracted from an e-mail dated 20 May 2010.

Dear Mr Mair,

Clearly, following the "Winchester case" applications for BOATs must fully comply with the relevant legislation otherwise they fail. The Wildlife and Countryside Act 1981 simply says that maps accompanying DMMO applications "shall be accompanied by a map drawn to the prescribed scale and showing the way or ways to which the application relates"; the prescribed scale is a minimum of 1:25,000. The legislation says nothing about how the map should be drawn or what level of detail should be shown. So, for example, anything from a traditional paper OS map to a hand drawn sketch would be acceptable as long as it was drawn to at least 1:25K. GLEAM have pressurised DEFRA to change their policy to state maps photocopied to larger scales (what DEFRA calls "photographically enlarged") are invalid although this is clearly at odds with the legislation. I say "pressurised" because DEFRA originally stated that "photographically enlarged" maps are valid but GLEAM continually lobbied DEFRA until this policy was changed. No-one else was given the opportunity to submit contrary arguments during this process.

GLEAM then turned their attention to applications that included maps printed using computer software, which brings us to FoDRoW's applications. However, all parties apart from GLEAM have agreed that this is different to the "photographically enlarged" cases. First, reflecting back to the actual legislation, I think it is clear that our maps are drawn to "the prescribed scale", i.e. we submitted maps drawn to a minimum of 1:25K with our applications. These maps were printed using computer mapping software. Those maps use the 1:50K mapping symbols, etc, because that is all that was publicly available 5 years ago, but they were not 1:50K scale maps. GLEAM appear to argue that our maps were originally drawn or printed at 1:50K and that we have printed "digital scans" of these maps at 1:25K, thus all that differs from "photographically enlarged" maps is the technical process used. This is incorrect. All Ordnance Survey mapping today is generated from large scale digital base data. The mapping software we use contains digital information in "bitmap" or "raster" format, which is simply a series of coloured dots. Furthermore, that is created from the OS base data and not from scans of paper maps. I know little about the law but my job is an IT Consultant and I am very clear on the technical structure of bitmap data and it cannot have a scale, it is just the digital representation of a series of dots and there is neither a mathematical formula nor physical presence to give this data a scale. Maps presented as bitmap data only get a scale when they are displayed or printed. When I use our mapping software I can select any scale I wish and the map is drawn (on screen or printed on paper) at that scale. Thus, we are not taking a map at a given scale and enlarging it to a different scale and the maps we submitted only gained a scale when they were printed on my laser printer. This is confirmed by the OS in their technical specification for the 1:50K raster data, which you can read on the following web page:

<http://www.ordnancesurvey.co.uk/oswebsite/products/50kraster/techinfo.html>

There are some key sections on that page. First, the map data's scale is described as "Nominal scale is 1:50 000. Recommended minimum to maximum scale range is 1:15 000 to 1:60 000 scale.". Note this is *nominal scale* because, as stated above, this data does not have an actual scale; if the map data had a scale then OS wouldn't use the word "nominal". Despite this, GLEAM no doubt seize on the nominal scale being 1:50K; however, this is because this map data uses 1:50K Landranger symbols and the raster dots ("pixels") are at a density that suits printing at around 1:50K but it is a complete mistake to think this means the binary map data has a scale of 1:50K. In fact, according to the OS, the raster dots' density suits printing at anything from 1:15K to 1:60K and that further demonstrates that these maps do not have a particular scale and they they are suitable for printing to a scale larger than the 1:25K required. It is true that there is a loss of quality at the larger scales but the OS's maximum recommended scale of 1:15K is larger than the 1:25K prescribed for DMMO applications. In any case, the legislation says nothing about quality, it is only concerned with drawn scale.

Another useful part of the 1:50K technical specification is the "Resolution", i.e. the pixel density of the raster data. This is "254 dots per inch = 100 dots per cm" and that is the same as for the 1:25K raster data (see following link for 1:25K technical specification that confirms this) and that raises some very difficult questions for anyone trying to argue that the 1:50K and 1:25K digital data files have different scales; if this data has a scale then it would not make sense for the resolution of 1:50K data and 1:25K data to be the same! Furthermore, presumably GLEAM would not contest computer generated maps that had been printed from 1:25K base data but what is the difference between those maps and the 1:50K maps? There is no difference in resolution and there is no scale so it is just the appearance of the maps that is difference, i.e. 1:25K Explorer vs 1:50K Landranger symbols, and that is irrelevant. Thus there is no case for the suggestion that maps printed from 1:50K digital base data are invalid for DMMO applications.

<http://www.ordnancesurvey.co.uk/oswebsite/products/25kraster/techinfo.html>

In summary, the law simply requires that we submit paper maps drawn to at least 1:25K. We clearly did that. It has been bizarrely although successfully argued that photographically enlarged maps are not only invalid but sufficiently faulty to cause an application to fail. In practice it is hard to see how such mapping is invalid and even if there are issues then these are surely *de minimis*. However, we have not enlarged maps from one scale to a new scale, rather we have printed at the required scale digital data that previously did not have a scale, so no enlargement has taken place. The OS's data files do not have a scale (if Mr Plumbe asserts that they do then I want to see where this exists in the structure of a bitmap/raster files) and they are not scans of paper maps (they are generated from the OS's base digital data) so no enlargement has occurred.

Coincidental to the emails we have exchanged over the last week, I have been in touch with Dave Waterman, DEFRA's policy officer, because some of our DMMO appeals

have been delayed and I thought this was related to the question of map scales. In fact the delays are not related to map scales but as part of that email exchange Mr Waterman has again confirmed that DEFRA's policy regarding photographically enlarged maps does not apply to computer generated maps and he has also indicated why Mr Plumbe may be incorrectly saying DEFRA has been misquoted. I will forward that email to you separately because I think the DEFRA policy is very important here and should not be ignored. DEFRA policy is not to be taken on a "pick and mix" basis and if we are all to accept the policy that photographically enlarged maps are not allowed then we should also abide by the intention that this does not apply to computer generated maps.

Thanks and regards,

Jonathan Stuart



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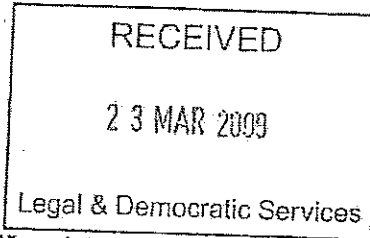
19 March 2009

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Our ref: SAP 70567
Your ref: SLM/D879



Dear Sarah

Ordnance Survey Mapping

Thank you for your letter dated 13th March regarding Ordnance Survey maps supplied to you by Mr Milne of Piddlehinton.

Of the two extracts supplied with your letter, one extract is taken from our 1:25 000 scale maps. This is the colour extract which covers a larger area.

The second extract, covering a smaller area and in black and white, is, as stated by Mr Tipler, an enlargement of our 1:50 000 scale mapping. As this extract has been produced from our 1:50 000 Scale Raster product, as suggested by Jonathan Stuart, this is still an enlargement of 1:50 000 scale mapping, rather than a 1:25 000 scale map. The definition of raster data is digital material where the information is made up of pixels. An example of raster data is a scanned image or photograph. When enlarging raster data, it is the pixels that are being enlarged, meaning that the greater the enlargement, the more distorted and inaccurate the image becomes. It is only with vector data, which is made up from straight lines joining two data points, that it is possible to enlarge the data accurately, and the extract enclosed is not a vector image.

I hope this information is helpful to you.

Yours sincerely

J. M. Chiplin

Jane Chiplin
Customer Service Advisor
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Our ref: SAP 70567
Your ref: PCH RW/T342

13 DEC 2009
REF TO ADW

Dear Mr Hobson

**Application for Definitive Map Modification Order - Piddletrenthide, Dorset
Ordnance Survey Mapping Data**

Thank you for your letter dated 4th November. Please accept my apologies for the delay in responding to your enquiries.

In the third paragraph of your letter, you say that your applicant has stated that "the concept of scale does not become an issue until such time as the map is actually printed". The issue of scale is relevant whether you are viewing a map on screen or on paper. For example, in relation to the map extract enclosed with your letter, you say this has been enlarged to 1:15 000 scale. This enlarged scale applies both to the printed extract and to the image which your applicant would have viewed on screen before printing.

In the same paragraph, you mention the information available on our web site regarding the viewing scales for 1:50 000 Scale Colour Raster as an example. These minimum and maximum viewing scales are suggested as scales at which the product can be viewed with the best clarity. Being a raster product, the product would appear pixellated and/or distorted if viewed at any larger or smaller scale than those recommended.

In the next paragraph of your letter, you refer back to my letter of 19th March, in which I said that the 1:25 000 scale extract submitted to you was an enlargement of 1:50 000 Scale Raster data. You ask whether this would be regarded as a 'photographic enlargement'. This is not a term which would be used by Ordnance Survey in this case, and we do not have a specific term for this type of enlargement, other than enlargement. However, the term 'photographic enlargement' would be an acceptable term to use.

You also ask whether it would be true to say that all data, whatever the nominal scale of the raster data used, would have originally been captured at a scale of 1:1250 or 1:2500, as advised to you by one of my colleagues. This is partially true, but we also capture data at 1:10 000 scale. For your information, the process used for producing smaller scale maps from the large scale data is a manual, rather than automatic process. Technicians examine the large scale data and decide which features need to be shown on the smaller scale mapping based upon the specifications of that scale. Many features are enhanced from the detail of the large scale data so they show prominently on smaller scale mapping. Therefore, the accuracies that apply to our large scale data do not apply to scales such as 1:50 000 and 1:25 000 scale mapping, which are a more generalised representation of the landscape.

We are proud to be holders of the Information Fair Trader Scheme, Investor in People and Disability Symbol accreditations.



Finally, you ask about the term 'drawn' in relation to modern digitally produced maps. This is not a term that is used by Ordnance Survey in relation to digital mapping. Digital mapping is produced, rather than drawn, and this process refers to the initial production of the map at Ordnance Survey, rather than the time at which a paper copy is printed. When a map is printed, we would use the terms 'facsimile' or 'redrawn'. Facsimile refers to an image which is printed or copied, where the mapping is identical to that produced by Ordnance Survey, albeit that the mapping has been enlarged or reduced in size or has additional information added by a third party (such as highlighting a line in yellow, as on the extract included in your letter). Redrawn refers to mapping that is based upon Ordnance Survey but which has been redrawn to a third party's specifications; it is not necessarily instantly recognisable as an Ordnance Survey map.

In conclusion, the map extract which you enclosed with your letter is a facsimile copy of an enlarged image taken from our digital raster mapping originally produced at 1:50 000 scale. Ordnance Survey can add no further information regarding the meaning of the terms 'photographically enlarged' and 'drawn' in relation to our mapping. I hope this information will help you to decide whether the mapping supplied by your applicant is suitable for the purpose for which it has been submitted.

Yours sincerely



Jane Chiplin
Customer Service Advisor
C454

Roads and Rights of Way Committee

Minutes of the meeting held on 7 October 2010

The Roads and Rights of Way Committee met at County Hall, Colliton Park, Dorchester on Thursday 7 October 2010.

Present:-

Rebecca Knox (Vice-Chairman in the Chair)
David Budd, David C Fox, Ian Gardner, David Jones and Peter Richardson

The following members attended by invitation:

Michael Bevan (minutes 125 to 127).

Officers attending:

Jonathan Mair (Head of Legal and Democratic Services), Vanessa Penny (Senior Rights of Way Officer - Definitive Map Team), Sarah Meggs (Senior Legal Executive) and Paul Goodchild (Democratic Services Officer).

Public Speakers – Minutes 125 to 127

Mr S Milne, Piddle Valley Parish Council

Ms N Barker, West Dorset District Councillor for Piddle Valley ward

Apologies for Absence

122. Apologies for absence were received from Alex Brenton and Tim Munro.

Code of Conduct

123. There were no declarations by members of any personal or prejudicial interest under the Code of Conduct.

Minutes

124. The minutes of the meeting held on 6 September 2010 were confirmed and signed.

Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic

125.1 The Committee considered a report by the Director for Corporate Resources which considered the arguments of the applicant and objectors in respect of five applications to modify the definitive map and statement of rights of way to record Byways Open to All Traffic (BOAT). The report also asked members to agree that applications on which the County Council had already made a decision, and which were supported by computer generated enlarged versions of Ordnance Survey maps, were not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

125.2 The Head of Legal and Democratic Services explained that he had received a series of representations from the applicant for the five undetermined applications, Mr Stuart, and Mr Tilbury of the Trail Riders' Fellowship, who had subsequently taken responsibility for the management of the applications. Mr Stuart and Mr Tilbury maintained that they had not been given enough time to comment on the report and that in the interests of natural justice consideration of the report should be deferred.

125.3 In presenting the report the Head of Legal and Democratic Services invited the Committee first of all to consider the request for a deferral. He explained that Mr Stuart had been unavailable to attend a meeting held on 24 May 2010 between representatives of

the Green Lanes Protection Group (GLPG) and County Council officers, but he had sent representations which were included in the report to the Committee at Appendix 3. Although the minutes of the 24 May meeting were not distributed until 2 August 2010, it was the view of the Head of Legal and Democratic Services that Mr Stuart had been given sufficient time to make representations. The applicant had known for some time that a report was to be presented to the committee and the report before members had been circulated in draft both to GLPG and to Mr Stuart. Both interested parties had been invited to comment but Mr Stuart had not done so. However as recommendation 2b of the report, was a new point which had not been included in the draft report when circulated for comment the Head of Service withdrew that recommendation.

125.4 The Committee did not agree to defer consideration of the report. Members felt that a sufficient opportunity had been given to comment and that the recent appointment of Mr Tilbury to manage the applications did not justify deferral.

125.5 Having decided that the report should not be deferred members went on to consider the validity of the undetermined applications. Members were asked to consider whether the applications were 'Winchester compliant', and benefited from the transitional provisions in section 67 (3) of the Natural Environment and Rural Communities Act 2006.

125.6 The Head of Legal and Democratic Services referred members to the requirement for an application to be accompanied by a map drawn to a scale of not less than 1:25,000. Officers had considered the positions advanced by the applicant and GLPG and for the reasons set out in the report the Head of Service advised that he did not believe the maps which accompanied the applications to have been drawn to a scale of not less than 1:25,000. Members were referred to letters provided by the Ordnance Survey setting out their comments and in particular to their description of an application map as a facsimile copy of an enlarged image taken from the Ordnance Survey digital raster mapping originally produced at a 1:50,000 scale.

125.7 The Committee received a written representation from Mr Plumbe, Vice-Chairman of the GLPG, in support of the recommendations in the officer's report.

125.8 The Committee received written representations from Mr Stuart, the applicant, which asked that the County Council should not make a definitive decision on the validity of the maps used by the applicant, and that the issue should be resolved in the Courts.

125.9 Mr Milne, representative of Piddle Valley Parish Council, spoke in support of the recommendations in the report.

125.10 Ms Barker, West Dorset District Councillor for the Piddle Valley ward, spoke in support of the recommendations in the report. She agreed that enlarged images of maps originally produced at a 1:50,000 scale were not 'Winchester complaint', and that 1:25,000 maps should be used as they showed a level of detail useful in determining the position of rights of way.

125.11 The Local Member for Sherborne Rural spoke in support of the recommendations in the report. He reported that Leigh Parish Council were also in favour of the recommendations, and encouraged the Committee to support them.

125.12 After discussion and having considered all of the evidence, it was proposed, and seconded, that the applications be refused, and that the Committee agree to recommendation 2a, and to the withdrawal of recommendation 2b.

Resolved

126.1 That the following applications all be refused:

- i) byway open to all traffic at Bailey Drove, Batcombe/Leigh;
- ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate);
- iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and add an unclassified road in Chettle as byway open to all traffic (one continuous route);
- iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down); and
- v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route – Crabbs Barn Lane).

126.2 That for all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council's stance in any further local inquiry or other process be modified to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps were not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

Reason for Recommendation

127.1 For the transitional provisions in the Natural Environment and Rural Communities Act 2006 to apply so that the public rights of way for mechanically propelled vehicles are not extinguished the relevant application must have been made before 20 January 2005 and must have been made in strict compliance with the requirements of Schedule 14 to the Wildlife and Countryside Act 1981. The applications in question were accompanied by computer generated enlargements of ordnance survey maps and not by maps drawn to a scale of not less than 1:25,000. In each case none of the other exemptions in the 2006 Act are seen to apply and so the applications should be refused.

127.2 The question of compliance is in all respects an overriding factor in the determination of any application in relation to rights for mechanically propelled vehicles.

Questions

128. There were no questions received in writing by the Chief Executive.

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