

# Regulatory Committee

**Dorset County Council**



Date of Meeting	21 March 2019
<p><u>Local Member(s):</u>            Cllr Jill Haynes – Member for Three Valleys            Cllr Nick Ireland – Member for Linden Lea</p> <p><u>Lead Officer(s)</u>            Matthew Piles, Service Director, Environment, Infrastructure and Economy</p>	
<b>Subject of Report</b>	<b>Application for a definitive map and statement modification order to upgrade Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish to Byway Open to all Traffic.</b>
Executive Summary	This report considers an application to record the route from to Doles Hill Plantation running eastwards to Chebbard Gate as a byway open to all traffic on the definitive map and statement. The route is currently recorded as part of Bridleway 8, Cheselbourne and Bridleway 8, Dewlish.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application. Use of Evidence:</p> <hr/> <p>Use of Evidence:</p> <p>The applicant has submitted documentary evidence in support of this 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 January 2006 and again in September 2009. A further consultation took place in August and September 2018. These consultations involved landowners, user groups, local councils, other affected parties and those who had already</p>

	<p>contacted Dorset County Council regarding this application. In addition, notices explaining the application were erected on site.</p> <p>User evidence forms from 18 users of the claimed route have been submitted in support of the application. Any relevant evidence provided has been discussed in this report.</p> <p><b>Budget:</b></p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p><b>Risk Assessment:</b></p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p><b>Other Implications:</b></p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) the application be accepted and an order made to modify the definitive map and statement of rights of way to upgrade part of Bridleway 8, Cheselbourne and Bridleway 18, Dewlish from Doles Hill Plantation to Chebbard Gate as shown A – B – C – D – E on Drawing 18/11 as a Byway open to all traffic 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>Reasons for Recommendations</p>	<p>(a) The available evidence submitted and/or discovered demonstrates that on balance a highway shown on the definitive map and statement ought to be shown as a highway of a different status; and</p> <p>(b) Lack of objection to an order may be taken as acceptance that the byway open to all traffic does in fact subsist as described and if so the order should be confirmed.</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</p>

	<p>Corporate Plan 2017-19 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> <li>• To help and encourage people to adopt healthy lifestyles and lead active lives</li> <li>• We will work hard to ensure our natural assets are well managed, accessible and promoted.</li> </ul> <p>Dorset's economy is Prosperous:</p> <ul style="list-style-type: none"> <li>• 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</li> </ul>
Appendices	<ol style="list-style-type: none"> <li><b>1</b> Drawing 18/11</li> <li><b>2</b> Law</li> <li><b>3</b> Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence that has been considered in the production of this report.</li> <li>• Extracts from key documents: <ul style="list-style-type: none"> <li>▪ 1844 Cheselbourne Inclosure Award</li> <li>▪ 1819 Dewlish Inclosure Award</li> <li>▪ 1840 Cheselbourne Tithe and apportionment</li> <li>▪ 1845 Dewlish Tithe Map and Apportionment</li> <li>▪ 1910 Finance Act Records</li> <li>▪ 1928 The Bladen Estate Map</li> <li>▪ Ilchester Farm Sketch</li> <li>▪ Manor of Dewlish map</li> <li>▪ Ilchester Estate map 1847</li> <li>▪ Ilchester Estate Roads map</li> <li>▪ Ordnance Survey Maps: <ul style="list-style-type: none"> <li>• 1811 First Edition scale 1:2500</li> <li>• 1887 First Edition Six inch scale 1:10560</li> <li>• 1902 Second Edition 25 inch 1:2500</li> </ul> </li> <li>▪ Taylor's map 1765</li> <li>▪ Greenwood's map 1826</li> </ul> </li> </ul> </li> <li><b>4</b> User evidence <ul style="list-style-type: none"> <li>• Table of user evidence</li> <li>• Charts to show periods and level of use with mechanically propelled vehicles</li> </ul> </li> </ol>
Background Papers	<p>The file of the Service Director, Highways and Emergency Planning (ref.RW/T339)</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>
Report Originators and Contact	<p>Name: Vanessa Penny, Definitive Map Team Manager, Planning and Regulation Team</p> <p>Tel: (01305) 224719</p> <p>Email: v.penny@dorsetcc.gov.uk</p>

## 1 Background

- 1.1. An application to upgrade part of Bridleway 8, Cheselbourne and Bridleway 18, Dewlish to a byway open to all traffic was made by the Friends of Dorset's Rights of Way (FoDRoW) on 25 September 2004.
- 1.2. The application was accompanied by a map showing the length of path that is the subject of the application.
- 1.3. The following evidence was submitted with the application form in support of the application for the modification order:
  - (i) Extract of Cheselbourne Inclosure Award and Plan of 1844
  - (ii) Extract of Dewlish Inclosure Award and Plan of 1819
  - (iii) Extract of Piddlehinton Inclosure Award and Plan of 1835
  - (iv) Extract of Piddletrenthide Inclosure Award and Plan of 1835
- 1.4. A compact disc, containing electronic copies of the documents submitted in support of the claim was sent to the Council. A note from the applicants explains that this CD is entitled 'FoDRoW Evidence, 25 Sept. 2004'. A list of the items contained on this CD was provided by the applicants, and is available for inspection at the Council's offices. The CD contained a number of Finance Act (1910) maps in addition to the inclosure award and plans noted above. None of the Finance Act maps on the CD cover the area in which the claimed byway runs.
- 1.5. Eighteen completed Public Rights of Way Evidence Forms were later submitted in support of the application. These forms are all dated in 2010.
- 1.6. In investigating this application it is the Council's duty to assess the validity of this and other available evidence, and to determine whether or not it should make a modification order. On 7 October 2010 Dorset County Council rejected this application on the ground that the map that had accompanied the application had been by computer generated enlargements of Ordnance Survey (OS) maps drawn to a scale of 1:50,000 and not by maps drawn to a scale of not less than 1:25,000. The Trail Riders Fellowship (TRF) judicially reviewed this decision and ultimately the Supreme Court held, agreeing with the TRF, that the maps accompanying the application were in accordance with the legislation.
- 1.7. Description of the Claimed Byway Open to All Traffic

The claimed Byway Open to All Traffic commences at the junction of Bridleway 8, Cheselbourne, and Bridleway 4, Piddlehinton, on the eastern side of Dole's Hill Plantation, shown at point A on Drawing 18/11, and runs in a generally easterly direction via point B to point C, its junction with Bridleway 23 Dewlish, at the parish boundary. From point C it continues in an easterly direction to point D, its junction with Bridleway 8, Dewlish, and then continues easterly along the course of Bridleway 18, Dewlish, to the County Road at point E.

## 1.8. Land Ownership

Land Registry documentation shows that part of the claimed byway runs over land in the ownership of Woodsford Farms The remaining length of the claimed byway runs on land that is unregistered.

## 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/T339)

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 to this report.

## 4 User evidence (Appendix 4) (copies available in the case file RW/T339)

4.1 A table of user evidence summarizing the evidence contained in witness evidence forms, together with charts showing the periods and levels of use referred to, is at Appendix 4. An analysis of the user evidence is contained in section 9 of this report.

## 5 Additional evidence in support of the application

5.1 On 13 September 2006 Mr D. Oickle, on behalf of the applicants, submitted the following items in support of the application for the modification order:

Date	Document	Comment
1811	First Series Ordnance Survey map	Shows the claimed route in full as a highway
1826	Greenwood's Map	The claimed route is shown in the same fashion as the 1811 OS map
1847	The Map of Dewlish	Shows the claimed route entering Dewlish parish and continuing eastwards to the highway north of Chebbard Farm. Another map from the same documents shows the road entering Dewlish Parish and at its western end is indicated as 'To Piddlehinton'.
June 1880	The Dorchester Highways Board Minutes	Includes the claimed route as 'Chebbard Drove'
1887	Ordnance Survey First Edition scale Six inch: one mile 1:10560	Shows the claimed route as a road/track and refers to benchmarks suggesting that the surveyors considered the way to be in the public domain.
1902	Ordnance Survey Second Edition map scale 25 inches: 1 mile (1:2500)	Shows the claimed route as a road/track
1903	Ordnance Survey Second Edition	Shows the claimed route as a road/track, and refers to benchmarks suggesting that the surveyors considered

	scale Six inch: one mile 1:10560	the way to be in the public domain.
1906	Ordnance Survey One inch: one mile	Shows the claimed route as an unmetalled road.
1911 & 1920	Bartholomew's maps	Show the route claimed route in full as 'indifferent', which was passable for cyclists but not necessarily recommended
Early 1900's	Bacon's map for cyclists	Shows the route as part unfenced/part fenced minor road.
1913	Ordnance Survey Half inch: one mile	Shows the western 25 % of the claimed route as an unfenced minor road, with the remainder being classified as a fenced minor road.
1919	Ordnance Survey scale 1 inch to 1 mile sheet 140	Shows the claimed route in full. The western 25% is shown as an unfenced minor road, with the remainder being classified as a fenced minor road.
1919	Ordnance Survey scale 1 inch to 1 mile sheet 130	Shows the claimed route in full. The western 25% is shown as an unfenced minor road, with the remainder being classified as a fenced minor road.'
1920's	Bacon's map for cyclists	Shows the route claimed route in full as a minor road.
Mid 1920's	Harding's map	Shows the route as an 'other road'
1923	Ministry of Transport Road Map	Shows the western section of claimed route as an 'other road,' Mr Oickle points out that a note on the rear of the map states that many of these roads are excellent but being less important channels of communication they have not been included in the classification'
1930's	Philips map	Shows the claimed route in full as a minor road
1937	Johnstones Motoring Atlas	Shows the claimed route as a minor road
1940 to 1950	The Geographia road map	Shows the route as an 'other road'
1944 & 1951	Bartholomew's maps	Show the route as a 'serviceable road'
1945	Ordnance Survey Scale 1 inch to 1 mile	Shows the claimed route in full. The western 25 % is shown as an unfenced minor road, with the remainder being classified as a fenced minor road.'
Unknown	Richmond's map	shows the route as a road

5.2 In the note dated 13 September 2006, accompanying the above evidence, Mr Oickle concludes by stating that, *'In Summary, there is a weight of evidence to indicate that it is more likely this route carries public carriageway rights than any lesser rights.'*

*'I believe there is sufficient evidence, together with the evidence put forward by FoDRoW, to support the claim that this road carries vehicular rights and should therefore be correctly classified as a byway open to all traffic.'*

**6 Evidence opposing the application** (copies available in the case file RW/T339)

6.1 Responses to consultations carried out in 2006, 2009 and 2018 are summarised in the table below.

Name	Comments
Mr C T Allen, on behalf of Allen (Hanford) Farms Ltd	<p>Letter dated 4 January 2005. Mr Allen's company owns land in several parishes, including Cheselbourne, and is concerned about to the potential for increased bio-security risks to his animals, farm security, and disturbance and interruption to normal agricultural practices.</p> <p>Officer Comments: Issues of this nature cannot be taken into account in determining the status of the path subject to the application for a modification order.</p>
Piddle Valley Parish Council	<p>2 February 2006. Object to application:</p> <p>Officer Comments: No evidence in support of this position has been provided by the Parish Council to assist in determining the status of the route.</p>
Piddle Valley Parish Council	<p>7th September 2009 raising issues with regard to the scale of the maps submitted with the application and questioning its validity. Officer Comments: This has been determined by the Supreme Court as noted in 1.8 above.</p>
Piddle Valley Parish Council	<p>17 September 2018 an email questioning whether this application remains 'open'. 'PVPC has previously opposed the above application and remains opposed to any modification. Reasons have been provided in earlier correspondence since the application was first received by PVPC on 18th November 2004.'</p> <p>Officer Comments: This has been determined by the Supreme Court as noted in 1.8 above.</p>
Rights of way Liaison Officer for Cheselbourne Parish	<p>Submitted a letter of objection to the application dated 15 February 2006. The letter was accompanied by a petition stated to have been signed by 109 residents who were objecting to the application.</p> <p>Officer Comments: No evidence accompanied the petition and no evidence has been submitted subsequently. It would appear that the objection relates to desirability, suitability and safety; issues unconnected with the determination of the legal status of the claimed byway.</p>

Cheselbourne Parish Council	<p>Email on 14 September 2018 explaining that 'Although there is no written evidence dating back to 2006 and 2009 which we can submit, the path has only been used as a footpath and bridleway in living memory'. The Parish Council has expressed 'unanimous opposition' to the recording of the way as a byway.</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 below. 'The Parish Council has raised other concerns regarding the use of the way by motor vehicles which cannot be taken into consideration in determining the application.</p>
Dewlish Parish Council	<p>Wrote on 14 October 2009 explaining that the path 'has not been used for recreational purposes by any vehicle ....(other than belonging to the landowner) at any time in the past.</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 below</p>
Dewlish Parish Council	<p>On 1 February 2018 wrote explaining that, to the best of their knowledge, was not aware that the route was being used by the public with vehicles. The Parish Council is also concerned that, as the route is narrow, it would be unsuitable for vehicular use.</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 below Issues concerning safety, desirability and suitability cannot be considered in determining the status of the way subject to this application.</p>
Puddletown Parish Council	<p>Email on 13 September 2018 explaining that the Parish Council holds no records relating to the status of the way in question. There is 'unanimous opposition' to the recording of the path as a byway from the Parish Council. The Parish Clerk has explained that 'this particular byway is still used by the public and the council is unaware of any attempt to block access to it. The public's right to use the byway without fear of being subjected to the hazards and noise of off-road vehicles should be respected and ensured.'</p> <p>Officer Comments: This is noted, but such issues of concern do not have relevance in the context of determining the status of the path.</p>
Mr Paul, of Woodsford Farms	<p>Owns land affected by the application, and has written on 23 January 2006 with information on the ownership of the land</p> <p>Officer Comments: Mr Paul has not provided evidence in this letter that assists in determining this application. Mr J. Cheal was representing Woodsford Farms at that time, and correspondence from Mr Cheal is considered in this report.</p>



<p>Mr J Cheal, Solicitor</p>	<p>Letter representing an affected landowner, on 4 May 2006. Mr Cheal questions the reliance upon the 'presumption of regularity' with respect to the legal requirements in connection with the associated enclosure awards. Mr Cheal questions whether the Awarded roads had been fully and sufficiently formed as required by the 1801 General Inclosure Act. Mr Cheal also makes reference to the opinion he obtained on the matter from Mr J Hobson QC and cites the case of Cubitt v Maxse (1873) in support of this opinion.</p> <p>Officer Comments: These issues are considered in sections 8 and 11 of the report</p>
	<p>Mr Cheal made a further submission by e-mail dated 28 April 2009 in which he applications did not accord with the statutory requirements due to defective maps and insufficient evidence. Officer Comments: The map issue has now been resolved by the Supreme Court and the evidential issues are set out in section 8.</p> <p>Mr Cheal wrote on 4 October 2010 emphasising that his client's company's policy was to challenge any attempted use of the way, and that 'the allegation of modern user ....must be refuted strongly.' Mr Cheal asks that 'What specifically needs to be refuted is the suggestion that the landowners must have been aware of this alleged used and done nothing about it. Everything that was known about was challenged.'</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 of this report.</p>
<p>Mr S Milne</p>	<p>Wrote on 11 July 2008, 30 August 2008 and 24 September 2008 to question the validity of the map accompanying the application.</p> <p>Officer Comments: As noted elsewhere in this report, the issue of the scale of the map accompanying the application has been determined by the Supreme Court and is not reconsidered in this report.</p>
<p>Mr Plumbe of the Green Lanes Protection Group (GLPG)</p>	<p>Submitted an objection dated 1 September 2009. Mr Plumbe asserts that the application maps do not comply with the legislative requirements.</p> <p>Officer Comments: As noted elsewhere in this report, this has been determined by the Supreme Court.</p> <p>Mr Plumbe wrote on 5 October 2010 and 11 August 2018 (the latter supported by Counsels' opinion) challenging the validity of the applications because he says it was not accompanied by copies of the evidence relied on; only extracts. Extracts he says are not acceptable because they omit key elements of that evidence..</p>

	<p>Mr Plumbe adds to this with reference to the evidence submitted by FoDRoW on the CD accompanying their application in September 2004. Mr Plumbe believes that the extract from the Piddletrenthide Award itself 'records nothing meaningful, and the attached map sections appear to record nothing but existing main roads, new private roads and 'bridle and foot ways.' 'As to the Dewlish Award, there is a list of 'Public Carriage Roads and Highways' but which of these is relied on for evidence remains unknown, and the maps (which are virtually illegible) do not help. As to Cheselbourne, in the short truncated extract from the Award there is a list of 'Public and Private Carriage Roads Halter Paths and Public and Private Highways' but again no relevant passage has been identified and the 3 map extracts do not help. As to Piddlehinton, the extract from the Award identifies 4 'Public Carriage Roads ...', marked B, C, D and E, albeit C and D are incomplete. In the two map extracts the letters C, G, L(?), P and Q can be deciphered but there is no indication as to the extent of what they relate to.'</p> <p>Mr Plumbe concludes by stating that 'The applicant has failed to produce or identify any meaningful evidence which serves to prove the existence of public vehicular rights over the way. Were that evidence now to be produced by the TRF, it would be far too late'.</p> <p>Officer Comments: The documentary evidence and Inclosure Awards are considered in section 8 of this report.</p>
<p>Porter Dodson, Solicitors, representing Mr J R Boyden, the owner of Chebbard Farm</p>	<p>Submitted an objection dated 18 September 2009 on behalf of their client. They state that the objection is based on the fact that the track has not been used by the public as a byway open to all traffic in the past and provided the following evidence which they believe would support this view.</p> <p>A conveyance dated 29 September 1927 which dealt with the sale of Chebbard Farm from the vendor, Strangways Estates Ltd, to the purchaser, Mr F U Terry. Included in the sale was a 'roadway' which is the subject of this application and which is shown between points C and E.</p> <p>A conveyance dated 8 May 1978 which involved the transfer of lands comprising of Chebbard Farm and Shailes Farm in Dewlish which also included the transfer of any interest in the land comprising the 'roadway'.</p> <p>Porter Dodson also made it clear that it is the opinion of their client that during the period of his ownership, which pre-dates the conveyance of 1978, the use of the bridleway by vehicles has been restricted to agricultural use by those persons believed to have title rights to such use.</p> <p>The conveyance clearly describes the existence of a roadway suitable for the passage of vehicles including motorised vehicles.</p> <p>Officer Comments: The existence of private rights does not affect any public rights that might exist over the way in question,</p>

<p>Mr J. R. Boyden</p>	<p>Sent a letter dated 23 February 2006, explaining that he has owned some of the land bordered by the route affected by this application since 1965. Mr Boyden states that he has not observed any kind of vehicle using the route during this time and, had any vehicle attempted to use the route, he believes that his farm foreman, who lived in the Cottage, Chebbard Gate (located at the eastern end of the route at point E), would have prevented it because of fears of deer poaching.</p> <p>Mr Boyden is the present co-owner of Chebbard Farm. Mr Boyden is opposed to the route being recorded as a byway open to all traffic, and has explained that he has lived and later worked on Chebbard farm for the past 53 years. Mr Boyden has sent an email on 24 September 2018 explaining that he has ' never seen non- Chebbard farm vehicles using what we call Chebbard Drove, running from the bungalow at Chebbard gate to Doles Ash Plantation.</p> <p>Mr Boyden points out that, in accordance with his parents' wishes, the farm has been treated as a nature reserve, with 'no animals being disturbed for the past 50 years.</p> <p>Mr Boyden has obtained a number of other testimonials that he has forwarded in support of his objection, and these are included below.</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 of this report.</p>
<p>Mr M. Fletcher</p>	<p>E mail dated 21 September 2018 explaining that his parents moved into Chebbard Gate Bungalow, the property adjacent to the track, in August 1986 Mr Fletcher recalls one day, in about 2010 his mother telling a group of motorcyclists that there was no public right of way for motor vehicles on the path, upon which they 'all turned round and went back down the track. That is the only occasion I remember seeing motorcyclists using the track.'</p> <p>Officer Comments: The user evidence submitted in support of the application for a modification order is considered in section 9 of this report.</p>
<p>Mrs Grayland</p>	<p>Sent a letter dated 20 September 2018, explaining that she worked at Chebbard Farm for a long time. Mrs Grayland points out that the only motor vehicles to use the path were tractors for access to the adjacent field. Mrs Grayland also expresses concerns regarding conservation issues.</p> <p>Officer Comments: Observations regarding conservation issues cannot be considered in determining the status of the route in question. Officer Comments: The user evidence submitted in support of the application is considered in section 9 of this report.</p>

Ms King	<p>Ms King sent a letter dated 23 September 2018, explaining that she has lived and worked at Chebbard Farm for the past four years. Ms King has explained that no non-farm motor vehicles have used the path and that the previous owner of Chebbard Farm, Mrs Boyden, did not allow access for motor vehicles because of concerns about poachers.</p> <p>Officer Comments: The user evidence submitted in support of the application is considered in section 9 of this report.</p>
Mr and Mrs Dycer	<p>Have sent an e mail on 24 September pointing out that they have lived at Chebbard Gate, and in the two years they have lived here 'the only vehicle that has gone up the track is a tractor.</p> <p>Officer Comments: The user evidence submitted in support of the application is considered in section 9 of this report.</p>
Mr Pleasants, of Farnfields Solicitors, is acting for Mr and Mrs Dycer	<p>Mr Pleasants points out that: 'my Clients have only recently purchased Chebbard Gate and at the time of their purchase were not provided with any information regarding the Bridleway.'</p> <p>Officer Comments: This is noted, but does not assist in determining the status of the path in question.</p>
The Ramblers' Association	<p>In a letter dated 18 February 2006 The Ramblers have no evidence to offer but raise concerns as to safety, suitability and desirability should it "become a byway open to all traffic". Should this transpire they request that a Traffic Regulation Order (TRO) be implemented.</p> <p>Officer Comments: Issues of this nature cannot be taken into account in determining the status of the path and whether a modification order should be made. The imposition or otherwise of a traffic regulation order is not a matter that can be considered by the Council in deciding whether to make a modification order.</p>
The Council for the Protection of Rural England	<p>The CPRE's local representative, Major Hanbury, has sent an e mail on 3rd August 2018 objecting to the proposal to add the route as a byway open to all traffic. Major Hanbury has ridden along the bridleways and asks that the Council retains their status as bridleways. Major Hanbury also sent an e mail on 5th February 2006, explaining that he had been unable 'to discover any historical evidence on the ground that this bridleway has ever been improved with metaling to a standard sufficient to be adopted and used as a public highway.'</p> <p>Officer Comments: This is noted, but does not assist in determining the status of the path.</p>
Claire Pinder, DCC's Senior Archaeologist	<p>Concerned that a change in status might lead to heavier traffic using the routes and consequent deterioration in the historic feature.</p> <p>Officer Comments: Concerns of this nature cannot be taken into account by the Council in determining whether to make a modification order.</p>

Mr and Mrs MacKay	<p>Submitted an objection dated 23 February 2006. They state that the “land on the right [north] of the parish boundary BR 18 is Waterside Farm which has been in [their] family for nearly one hundred years”. To the best of their knowledge they are not aware that the claimed route has ever been used by vehicles. They feel that the use of the way with vehicles would pose a danger to the many users of the way who use the route on foot and horseback.</p> <p>Officer Comments: Concerns of this nature cannot be taken into account by the Council in determining whether to make a modification order. The user evidence submitted in support of the application is considered in section 9 of this report.</p>
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7 **Other submissions received** (Copies available in the case file RW/T339) Another three submissions were received in response to consultations.

<b>Consulted</b>	<b>Comment</b>
British Telecommunications	No evidence to submit and no comments to make with respect to the application.
Southern Gas Networks	No evidence to submit and no comments to make with respect to the application.
English Nature/ Natural England	No evidence to submit and no comments to make with respect to the application.

## 8 **Analysis of documentary evidence (Appendix 3)**

The documentary evidence which was submitted with the application is considered in paragraphs 8.1 to 8.5 below.

### **Inclosure Awards and Plans**

#### 8.1 Dewlish Inclosure Act 1815

The lands enclosed under the Dewlish Inclosure Act of 1815 were subject to the provisions of the Inclosure Consolidation Act of 1801, unless it was expressly stated that they did not apply. Reference to the Act indicates that, with respect to highways, the Commissioners did not have recourse to any additional powers.

#### 8.2 General Inclosure Act 1836

The Cheselbourne Inclosure would have been undertaken under the provisions of the General Inclosure Act 1836. The 1836 Act authorised enclosure on standard terms without the need for an Act of Parliament, provided that two thirds of the affected landowners agreed.

## **Inclosure Awards**

- 8.3 The Dewlish Inclosure Award and plan of 1819 shows that the area of land through which the claimed route passes was not subject to enclosure.
- (a) A route that corresponds with that part of the claimed byway between points D to E is shown on the Dewlish Inclosure Plan, and is depicted by two parallel broken lines. It is annotated at the position that corresponds with point D with the words “from Piddlehinton”, and continues in an easterly direction to its junction at Chebbard Gate, at the Cheselbourne Road, which corresponds with point E on drawing 18/11. The Cheselbourne Road has the awarded road number 1.
  - (b) The annotation “from Piddlehinton” and the description of that part of the claimed route in the Award as a public carriageway and entering the parish of Dewlish at Higher Chebbard Gate (point D) may suggest that, at that time, the part of the claimed route between points D to E was regarded as a public carriageway. The Dewlish Inclosure Award of 1819 indicates that the land through which the part of the claimed route between points D and E passes was not the subject of this enclosure.
  - (c) This part of the claimed route is clearly defined from point D, from where it is annotated with the words “from Piddlehinton”, through to its junction with the awarded public carriageway number 1 at Chebbard Gate, point E.
- 8.4 The Cheselbourne Inclosure Award and plan of 1844 shows two awarded public carriageways, numbered 6 and 7.
- (a) Public carriageway number 7 commenced at the south west corner of West Down, point A, and extended easterly to enter public carriageway number 6 at point B. Public Carriageway number 6 commenced at Doles Ash gate, shown at point X, and extended south easterly to point B, ‘Cheppard Peak Gate’, and then easterly to point D, ‘Cheppard Gate’, from where it is described as entering the Parish of Dewlish.
  - (b) Both carriageways were awarded widths of 30 feet, the minimum required under the Inclosure Act of 1836. Although no Justices’ Certificates have been discovered, there is no evidence to suggest that either of these ways was not set out as required by the legislation, nor to indicate that they have been the subject of any lawful diversion or stopping up since the time of the enclosure. It is difficult to draw assumptions with regard to the setting-out of the Awarded ways from what exists on the ground today. A short length of the claimed route to the west of point D on Plan 18/11 is now less than 30 feet between the hedges, and it is not possible to determine whether the hedges have been planted since the Inclosure Award. Much of the length of the claimed byway to the west of point D does not have hedges on its northern side. Caution is also exercised in drawing conclusions from Ordnance Survey and other maps. On balance, there is no evidence to suggest that the Awarded routes were not correctly laid out, and that the presumption of regularity therefore applies. The Cheselbourne Inclosure Award is thus considered to provide evidence of the existence of a way carrying public vehicular rights.

- (c) It should be noted that the application for the modification order includes the whole of the awarded public carriageway number 7 and that part of the awarded public carriageway number 6 between points B and D. There has not been an application for the part of the awarded public carriageway number 6 between points X and B. There may be evidence which supports an assumption that a public right of way exists over this section of path, but this would need to be the subject of further investigations outside the scope of this report.
- 8.5 The Piddlehinton Inclosure Award and plan of 1835 reveals that a public carriage road and highway named the Milborne and Blandford Road had been awarded. The award makes reference to “Chesilborne Gate”, which is the present location of the junction of Bridleway 4, Piddlehinton and Bridleway 8, Cheselbourne at point A. This may suggest that the Milborne and Blandford Road continued along the awarded Cheselbourne public carriageways numbered 6 and 7, as shown between points A to D. It may be that the road continued beyond point D, following that part of the claimed route as shown between points D and E., but this speculative suggestion is not proved by the evidence of the Piddlehinton Inclosure Award.
- 8.6 The Piddletrenthide Inclosure Award of 1835 does not provide any evidence that indicates the existence or status of the claimed byway.
- 8.7 In order for mechanically-propelled vehicular rights to be preserved, the evidence submitted must be sufficient to raise a ‘prima facia’ case that vehicular rights exist. For the reasons set out in paragraphs 8.1 to 8.4, officers view is that it does. The extracts of the Dewlish and Cheselbourne Inclosure Awards provided with the application are considered sufficient for the purpose of showing that the exemptions contained in section 67 of the Natural Environment and Rural Communities Act do not apply. Extracts are considered themselves to raise a prima facia case and the full documentation does not contradict that position. This is further considered in the conclusions in section 13 of this report.

**Officers have also considered other documentary evidence which was not submitted with the application, but which is relevant in determining whether or not the path subject to the application for the modification order carries public vehicular rights. This evidence is considered below.**

#### **Parish Survey and Definitive Map and Statement**

- 8.8 The National Parks and Access to the Countryside Act 1949 charged the County Council, in its capacity of “Surveying Authority”, with a duty to compile a record of the public rights of way network. As part of this process District and Parish Council carried out surveys and provided the County Council with information for the purposes of recording the existence of public rights of way.
- 8.9 The Cheselbourne Parish Survey map, at a scale of 1:10560, and the accompanying schedule, was submitted to the County Council in April 1951. The schedule and map record that the Parish Council made a claim for a ‘carriageway’ between points A and D, (drawing 18/11), which was given the number 12 as a means of identification. The path is described as commencing at Doles Wood and terminating at Chebbard. The map shows that Cheselbourne Parish Council had also claimed that part of the route shown between points D and E, lying on the northern side of the parish boundary, within Cheselbourne parish. A possible explanation for this is that the parish council was indicating the continuation of the route within Dewlish.

- 8.10 The Cheselbourne Parish survey undertaken under the National Parks and Access to the Countryside Act 1949 thus indicates that the Parish Council believed that the part of the claimed route shown between points A to D was a public carriageway.
- 8.11 The Dewlish Parish Survey map, at a scale of 1:10560, is accompanied by a schedule dated 20 May 1951. The schedule and map record that Dewlish Parish Council made a claim for a bridleway between points D and E, (drawing 18/11), which was given the number 36 as a means of identification. The path is described as commencing from the "road at Chebbard" and terminating at "junction with lane leading into Cheselbourne".
- 8.12 The Dewlish Parish survey undertaken under the National Parks and Access to the Countryside Act 1949 thus indicates that Dewlish Parish Council believed that the part of the claimed route shown between points D to E was a public bridleway. On the form, the letters CRB (Carriage Road Bridleway') and the number 8 have been added, presumably at a later date.
- 8.13 There were various maps produced by the County Council leading up to the current definitive map, which was sealed in 1989. These were the draft map of 1959, provisional map of 1964, first definitive map of 1967 and the revised draft map of 1974.
- 8.14 Draft Map 1959: The claimed route is shown on the draft map as CRB 12 between points A and D in Cheselbourne, and as CRB 8 between points D and E in Dewlish.
- 8.15 Provisional Map 1964: The claimed route is shown on the provisional map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.16 First Definitive Map 1967: The claimed route is shown on the first definitive map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.17 Revised Draft Map 1974: The claimed route is shown on the Revised Draft Map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.18 Special Review 1977/1973: There are several items which make reference to the status of the route subject to the application during the Special Review process.
- (a) In a letter to the Secretary of State for the Environment, bearing a date stamp of 1975 by Dorset County Council, Mrs R. V. Edwards objected to the status of bridleway 8, Cheselbourne, on the grounds that it should be recorded as a byway open to all traffic.
  - (b) A note dated 24<sup>th</sup> October 1971 from a J. Tucker describes 'A road used by the general public, carts, cars etc.'
  - (c) A memorandum addressed to the County Surveyor of Dorset County Council, from the Divisional Surveyor, dated 24<sup>th</sup> January 1977, states 'That BR18 should be recorded as a Byway Open to all Traffic'.



- (d) A form dated 30 July 1973, relating to the Special Review, for the route within Dewlish parish, records that the Special Review Committee's decision was to retain the path on the revised draft map as a bridleway. The note on the card refers to the *'Original parish survey and draft map show as a carriage road/bridleway. Is shown on the Award Map of 1819 but is not awarded. It is a hard farm road and has been entered on the OS map as a suggested byway as it forms part of a cross country route.'* The Special Review Committee determined that, as there was no evidence of public use, it should be recorded on the revised draft map (1974) as a bridleway.

### **Highways Records**

- 8.19 No part of the claimed bridleway is shown in Dorset County Council current records as a highway maintainable at public expense. The records of preceding highway authorities are not available, and may have been destroyed.

### **Tithe Maps & Apportionment**

- 8.20 The Dewlish Tithe Map and Apportionment of 1845 shows a route that corresponds with that of the claimed byway between points D to E. It is coloured sienna and shown in the same manner as other routes on the map, some of which are known today to be public vehicular highways. At point D the route is annotated with the words "from Piddlehinton", and it runs in an easterly direction to its junction with the Cheselbourne Road, at point E. The Dewlish Tithe Map and Apportionment of 1845 post-dates the Dewlish Inclosure Award by some 26 years.
- (a) Roads are often shown on tithe maps, particularly where they form the boundaries to individual tithe areas. However, the recording of public highways was not part of the purpose of tithe maps, which were drawn up for the allocation of tithe payments. It is only occasionally that the status of a way can be clearly identified with any certainty from the evidence of tithe maps, although, as in this instance, the colouring of public roads in sienna, and their annotation as being from or leading to a particular place, can be taken as an indication that the route shown was considered to be a public highway.
- 8.21 The Cheselbourne Tithe map and apportionment of 1844 predates the Cheselbourne enclosure by 4 years. Any public rights of way shown upon it may have been subject to changes brought about by the process of enclosure.
- (a) A number of routes are shown on the Cheselbourne Tithe Map, one of which commences at point D (Drawing 18/11) and continues in a westerly direction more or less parallel to the parish boundary. This route, whilst following the general direction of the claimed route, is located somewhat further to the north. At point A the map is annotated with the words "from Piddlehinton" and at point D it is annotated with the words "to Bere". One of the other routes follows a north westerly direction from point D towards the Parish Boundary, at which point it is annotated with the words "from Cerne".
- (b) The claimed route between points A to D is not shown upon the tithe map, but the route lying to the north of it is noted. Point D is shown, and so is the point where a number of routes converge. The plan is annotated "from Dorchester" at this point.

- (c) The Cheselbourne Tithe map provides no compelling evidence for or against the existence of the claimed route between points A to D. The depiction and annotation of the routes may suggest that they were through routes, although it is not possible to define their status from this. What does appear to be certain is that they were the subject of changes following the enclosure that took place some 4 years later, which may be taken to support the conclusion that the terms of the Inclosure Award had been followed.

- 8.22 The Piddlehinton Tithe Map and Apportionment of 1840 makes no reference to the claimed route.

### **Ordnance Survey Maps**

- 8.23 The First Edition Ordnance Survey map 1811, at a scale of 1 inch to the mile, shows a route running east to west direction across West Down. Between points A to D the route is located to the north of the claimed byway.
- 8.24 The First Edition six inch Ordnance Survey map of 1887, at a scale of 6 inches to the mile, shows a route corresponding to that which is being claimed throughout its length, from point A to point E. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.
- 8.25 The Second Edition Ordnance Survey map of 1902, at a scale of 25 inches to the mile, shows a route corresponding to that being claimed throughout its length from point A to point E. Between point E to a point at the boundary immediately to the east of point C, the way is shown as a double line, in the form of a walled or fenced lane. To the west of this point the route is shown as a double-dashed line, in the form of a track.
- 8.26 The Second Edition Ordnance Survey map of 1903, at a scale of 6 inches to the mile, shows a route corresponding to that which is being claimed throughout its length, from point A to point E, in a similar way to that shown on the 1887 6 inch map.
- 8.27 The Ordnance Survey Second Edition one inch map of approximately 1906, shows the claimed route. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.
- 8.28 The Second Edition Ordnance Survey half inch map of 1913 shows the claimed route in the form of a lane, up to a point to the west of point D, To the west of this point the route is shown as a double-dashed line, in the form of a track.
- 8.29 The Ordnance Survey one inch map of 1919 shows the path in the same way as the 1913 half-inch map.
- 8.30 The Ordnance Survey one inch map of 1960 shows the whole length of the path in the form of a walled or fenced lane or road.
- 8.31 The Ordnance Survey contoured road map of Yeovil and Blandford, of 1919, at a scale of 1 inch to 1 mile shows the claimed route between points A to approximately C by two parallel broken lines, and from point C to point E by two unbroken lines. The key describes A to C as a "minor road - unfenced" and C to D as a "minor road - fenced".

- 8.32 The Ministry of Transport Road Map of Weymouth, Yeovil and Taunton published in 1923, is based on the Ordnance Survey 1 inch to 1 mile map of 1903-08 (reduced to a scale of ½" inch to one mile). It shows the claimed route throughout its length from point A to point E. The route is depicted between point A to a point just to the west of point C by two parallel broken lines and from this point to point E by two unbroken lines. The key describes the first part as an "other road – unfenced" and the latter part as an "other road – fenced".
- 8.33 The Ordnance Survey one inch map of 1945 shows the path in the same way as the 1913 half-inch and 1919 one inch maps.
- 8.34 The 1958 two and a half inch OS map shows the route in the form of a lane.
- 8.35 It is important to note that Ordnance Survey maps do not provide any conclusive evidence of the status of a route, but they are of use in that they confirm the physical existence of what was on the ground at the time of the survey.

### **Other Commercial Mapping**

- 8.36 The claimed route is shown, partly or in its entirety, on a number of commercial maps published between the late 1800's and middle years of the twentieth century. The route is sometimes shown as a track, and often in the form of a lane or road.
- 8.37 As with Ordnance Survey maps, these published maps do not provide any conclusive evidence of the status of a route. Nonetheless, they are useful in that they confirm the existence of the route subject to the application for the modification order. Bartholomew's maps were published principally for cyclists and give a certain amount of information on the ease or otherwise by which the routes shown in them might be used by those on bicycles. Many of the other maps were for reference by motorists, but caution must be exercised in drawing any conclusions as to the negotiability of the routes shown by motor vehicles.
- 8.38 An inspection of the route today shows that it has changed very little since the publication of the Ordnance Survey map in 1903. Although these maps do not provide any evidence as to the status of the route, they nevertheless indicate that the route of the claimed byway has been in existence at least since that time.

### **Early published maps**

- 8.39 Taylor's map of Dorsetshire 1765 shows a route commencing at point E and heading in a westerly direction. It would appear to straddle or be located just to the north of the parish boundary. The map does not appear to show the route extending beyond a point that lies approximately midway between points D to E. Taylor's map depicts a route which may represent part of the eastern end of the claimed route. This is of limited assistance in determining the status of the route presently under consideration.
- 8.40 Greenwoods' Map of Dorset 1826 at a scale of approximately 1 inch to 1 mile, shows the route as two broken parallel lines. Greenwoods' map shows a route similar to the 1811 Ordnance Survey map. The route depicted does not correspond exactly with that of the claimed byway. This map was published some 20 years prior to enclosure taking place in Cheselbourne, and those routes depicted on it may be represent a reasonably accurate picture of the network of roads, both public and private, that were in existence prior to enclosure taking place.

- 8.41 A number of other early published maps have been examined, including Saxtons map of 1575, Kip's map of 1607, Bill's map of 1626, Blaue's map of 1645 and Seale's map of 1732. None of these shows the claimed byway, but they are of a small scale and in most case only show settlements and significant topographical features.

**Dorchester Highways Board minutes. June 1880.**

- 8.42 These minutes, supplied by the applicant, refer to public highways in the Dorchester area. In the note for the parish of Dewlish there is mention of a road known as 'Chebbard Drove', which may refer to the claimed byway, although this cannot be assumed with certainty.

**Ilchester Estate Records**

- 8.43 A map dated 1847, showing land owned by the Earl of Ilchester's Estate, shows a route broadly corresponding with that part of the claimed route between points D to E. At point D the map shows the route crossing the parish boundary into Cheselbourne. At this point it also shows three other routes; one heading south and annotated "From Waterson", and two other routes. One of these ways corresponds with what is presently recorded as Bridleway 8, Cheselbourne and is annotated to "Chislebourne".
- 8.44 The Earl of Ilchester's archive also includes a sketch of the land comprising Chebbard Farm. This is undated, but the annotation upon it refers to part of the land as being lately enclosed. The enclosure referred to would appear to be in Puddletown, for which no records have been discovered. The sketch shows that part of the claimed route between points D to E to be annotated with the words "Road on to Dewlish". The road to Waterson is also shown, as is the present line of Bridleway 8, Cheselbourne, which is annotated with the words "Road on to Cheselbourne".
- 8.45 An undated map from the Earl's of Ilchester's archive, entitled 'Manor of Dewlish – Dorset', shows the ownership of the various landholdings in the vicinity. It also shows that part of the claimed route between points D and E, which is annotated with the words 'To Piddlehinton' at point D.
- 8.46 Although this information indicates that a route existed on part of the line of the claimed byway, it does not provide any conclusive evidence as to its status.
- 8.47 A Parish Map of Cheselbourne by A H Green, dated 1884, is accompanied by a book of reference for the Cheselbourne Manor rental. The map indicates the location of the various gates mentioned in both the Dewlish and Cheselbourne Inclosure Awards, namely Cheppards Peak Gate, Higher Cheppard Gate and Cheppard Gate.
- (a) The map also depicts the route of the awarded road number 6 in Cheselbourne, which corresponds with that part of the claimed route between points B and C and also shows a route that corresponds with that part of the claim within Dewlish, shown between points D and E.
- (b) The Parish Map of Cheselbourne provides evidence supporting the existence of a route, which is shown between points D and E in Dewlish and from a point just to the west of point C to point D in Cheselbourne. However, the plan used for this may well be from an earlier survey as, although it postdates the Cheselbourne enclosure by some 40 years, it appears to show the layout of roads prior to enclosure.

- 8.48 **The Bladen Estate Map of 1928** depicts various farms and landholdings held by the estate at that time. Some of these were within the parish of Dewlish and the Estate plan includes the greater part of the claimed route within Dewlish.
- (a) The plan has a key which identifies various types of land and which also identifies first and second class roads and cattle tracks. That part of the claimed route between point E and approximately point D is shown on the plan. The key describes the route as a second class road.
- 8.49 **The Ordnance Survey Boundary Sketch Map**, bearing a date of 1885, shows the claimed route, in the form of a lane, running along the boundary between Dewlish and Cheselbourne. The boundary between Piddlehinton and Piddletrenthide is shown in the same way. The letters 'RH' refer to the root of the hedge bordering the lane, but we cannot determine the status of the way shown from this record.
- 8.50 The Ordnance Survey Boundary Remark Books, dated 1885, show the boundaries between the parishes of Dewlish and Cheselbourne, and between Piddlehinton and Piddletrenthide. The books record the boundaries as being 3 feet or 4 feet from the root of the hedge. This is of no assistance in determining the status of the claimed path.

#### **Finance Act (1910) Records**

- 8.51 The claimed route is shown on the Ordnance Survey 1902 base map, at a scale of 25 inches to the mile (1:2500), which was used for the survey. The survey was carried out for the purposes of valuing the land for taxation purposes. The route was not excluded from the land for valuation purposes, and in the accompanying valuation books there are no deductions for the existence of any rights of way. This may suggest that there were no public rights over the route A to E. Equally, it should be noted that, whilst deductions in tax could be granted due to the existence of public rights of way, there were no penalties for not disclosing where public rights of way existed. It is possible that the landowner(s) considered it more preferable to pay additional tax rather than to acknowledge the existence of a public right of way. We do not know that this was the case, and this record is of no assistance in determining the status of the claimed byway.

#### **Aerial Photographs**

- 8.52 Aerial photographs are available for the years 1947, 1972, 1997, 2002 and 2005.
- (a) The 1947 photographs show the route throughout its length between points A and E. The route appears to be well defined and has no hedge or fence on its northern boundary between points A and C. Between points C and E the route is bordered on both northern and southern sides by hedges and trees.
- (b) The 1972 photographs also show the entire route, between points A to E with adjacent boundaries as shown in the 1947 photographs.
- (c) The 1997, 2002 and 2005 photographs also show the entire route between points A and E.

8.53 In summary these aerial photographs taken between 1947 through to 2005 provide evidence of the existence of a well defined route that was well established in 1947. The photographs do not tell us who used the route, but they support Ordnance Survey and other maps in showing the existence of a way that may have been used by vehicles.

## 9 **Analysis of User evidence (Appendix 4)**

9.1 A total of 18 completed user evidence forms were submitted in support of the application. These were received by the Council in February and April 2010.

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. T339 for all the information. Appendix 4 contains a table and graphs showing the user evidence that is discussed below.

9.3 Not all witnesses have been personally interviewed. The information has been taken from the forms of evidence which have been signed by each witness stating: "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true".

9.4 All of the witnesses state that they have used the route, shown between points A to E on Drawing 18/11, either individually or with other users. The statements indicate that this use was by vehicles, mostly on motorcycles. The period of use was between 1973 and 2010, a period of 37 years. Individual use of the route varied between once or twice a year and up to twenty to twenty-five times a year.

9.5 Of the 18 witnesses who have used the route, seven have used it for a period of 20 or more years, three of whom have used it for periods of between 30 and 32 years between 1973 and 2006, and five for periods of between 20 and 23 years between 1978 and 2010.

9.6 Of the remaining witnesses eight have used the route for periods between 10 and 19 years. One witness has used it for a period of seven years and the remaining witness has used it over a period of one year.

9.7 The frequency of use varied from once or twice a year to a maximum of 20 to 25 times a year.

9.8 None of the witnesses had asked for permission to use the path. None make a statement to the effect that they were granted permission to use the claimed footpath.

9.9 No witness refers to any signs or notices on the claimed path that were intended to discourage their use of it in motor vehicles.

9.10 None of the witnesses mention their use of the path being in the exercise of a private right of access.

9.11 No one was a tenant or employee of the owner of the land.

9.12 None of the witnesses recall there being any gates along the route or any other obstructions that would have prevented their use of the way. However, one witness, whilst indicating that there were no gates, nevertheless has stated that 'it' was unlocked.

- 9.13 All of the witnesses mention meeting or seeing other users of the way. Several are of the opinion that the landowner(s) must have been aware of the way being used by motorcycles.
- 9.14 The majority of the witnesses state that they saw or met other users in vehicles, predominantly motorcycles, but there are also references to the public using the path on bicycles, horses or on foot.
- 9.15 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 from the date the right to use the route was brought into question. Dedication of a way may also be inferred at common law, where it can be demonstrated that at some time in the past the landowner dedicated the way to the public, either expressly, the evidence of the dedication having been lost, or impliedly, by making no objection to the use of the way by the public.
- 9.16 For an objection to override an otherwise valid claim, an objector must show that the owner of the land had no intention of dedicating public rights over the path, and had taken steps to prevent the accrual of public rights. There are various means of achieving this, including submitting a declaration to the Council under s31(6) of the Highways Act, informing users that the route is not public (verbally or using signs), physically blocking the route (e.g. a locked gate or fence) or actively granting permission to use the route.
- 9.17 There is no clear evidence of a challenge to the public use of the way with vehicles prior to the application being made, and the date of challenge is taken to be the date of the application, which is 25 September 2004. Use of the way up to this date may be considered in order to meet the requirements of section 31.
- 9.18 Some of the representations, including those from landowners and the parish councils state that they are not aware of any use by motor vehicles. Further they say that others would have or were told to challenge any public use they knew about. These statements absent any direct evidence about challenging users are not considered sufficient to outweigh the evidence from the users.
- 9.19 The minimum period of use for the purposes of dedication under Section 31 of the Highways Act 1980 is therefore taken to be from 1984 to 2004. The number of users with vehicles during this period varies from a minimum of four for the period between 1984 to 1985, and a maximum of 15 for the periods between 1997 to 2001 and 2003 to 2004.
- 9.20 A byway open to all traffic is a right of way for vehicles. The definition of a BOAT is that of a right of way for vehicular traffic but which is used mainly for the purposes for which footpaths and bridleways are used, that is to say by walkers and horse riders.
- 9.21 In this case it may be considered that the number of users, their frequency of use of the way, and the level of that use would be sufficient to raise a presumption of dedication of a byway open to all traffic.

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

- 10.1 The applicant representing FoDRoW submitted an email dated 21 October 2008 which made comments with regard to the scale of the maps that were submitted with the application. Officer Comments: The issue of the validity of the application has been determined by the Supreme Court, and is not considered in this report.
- 10.2 On 13 September 2006 Mr D. Oickle of the Trail Riders Fellowship wrote to the Council with comments on the evidence submitted by the applicants. The points made by Mr Oickle are summarized in the table in paragraph 5.1 above, and have been taken into account in considering the documentary evidence which relates to the status of the claimed byway.

## 11 **Analysis of Evidence Opposing the Application**

- 11.1 The submissions received in response to consultations carried out in 2006, 2009 and 2018 are summarized in section 6. Officers' consideration of the relevant and substantive submissions is set out below.
- 11.2 Mr J Cheal, Solicitor, representing an affected landowner, submits that the Inclosure Awards are not evidence that vehicular rights exist because he does not consider that the Awarded roads had been fully and sufficiently formed as required by the 1801 General Inclosure Act. Mr Cheal submits that the 'presumption of regularity' does not therefore apply and draws support on this point from Counsel's advice he obtained (from John Hobson QC) which refers to the case of *Cubitt v Maxse* (1873).
- 11.3 Officer Comments: The presumption of regularity applies where there has been a long term enjoyment of a right which can only have come into existence by virtue of a grant or some other legal act. In the absence of any evidence to the contrary, then the law presumes that there was a lawful origin. This applies to the Award itself and to the laying out of the Awarded roads. No evidence has been discovered to suggest that the Awarded ways contained in the Cheselbourn Inclosure Award were not laid out in accordance with the legislation.
- 11.4 There is no evidence to suggest that the enclosure roads were not fully and sufficiently formed, although it is difficult to determine this from the evidence on the ground today. This issue is considered in 8.4 above.
- 11.5 Unlike this application, the case of *Cubitt V Maxse* involved evidence provided by witnesses who had lived at the time of, or shortly after, the enclosure and who had first hand knowledge of what had taken place. Without evidence such as this the findings of *Cubitt v Maxse* have limited relevance to this particular application.
- 11.6 Mr Cheal also makes reference to case law and the requirement that an application must be accompanied by copies of all of the documents on which the applicant wishes rely in order for the statutory exception to extinguishment of motorized vehicular rights to apply. Mr Cheal believes that in this case the wording used by the applicant clearly indicates that further evidence exists, which the applicant has chosen not to submit but reserves the right to do so at a later date. In Mr Cheal's view this cannot satisfy the requirement placed upon the applicant and so the route cannot be recorded as a byway open to all traffic.



- 11.7 The applicant submitted several applications around the time of this application which included the wording about which Mr Cheal objects. Officers' advice is that this general statement does not prevent the statutory exception from applying if the evidence listed on the application form is supplied with the application and is sufficient on its own to raise a 'prima facie' case that the route should be recorded as a byway open to all traffic.
- 11.8 Objections have been made, including by Mr Plumbe that the application was not made in accordance with paragraph 1 of schedule 14 of the Wildlife and Countryside Act 1981 so that public vehicular rights have been extinguished. Questions have been raised about whether the evidence submitted with the application was sufficient, particularly when in the form of extracts of documents.
- 11.9 Officer Comments: As noted above, the Council is satisfied that the application has been made in accordance with the requirements of section 53 and Schedule 14.
- 11.10 Conveyances have been provided by the owners of Chebbard Farm which it is submitted shown that public vehicular rights do not exist.
- 11.11 Officer Comments: The conveyance of 1927 related to the sale of the land comprising of Chebbard Farm and consists of two schedules with an accompanying plan. The conveyance includes land, located at the northern boundary of the property and described as a 'roadway' being coloured brown on the accompanying plan, subject to the rights of any adjoining landowners.
- (a) The conveyance clearly describes the existence of a roadway suitable for the passage of vehicles including motorised vehicles. The existence of private rights does not preclude the existence of public rights as is demonstrated by the route currently being recorded as a bridleway upon the definitive map.
  - (b) The second conveyance of 1978 makes it clear that the land which was the subject of the conveyance was being managed in a partnership arrangement which included other parcels of land in addition to that land comprising of Chebbard Farm. Reference to the claimed route is contained within the conveyance, it being described as a roadway.
  - (c) As with the first conveyance of 1927, the existence of private rights does not preclude the existence of public rights.
  - (d) Consideration should also be given to the fact that conveyances are, by their nature, private affairs between vendor and purchaser. They may set out the status that the owner believes a route has but they cannot extinguish public rights which have already been established.

## 12 **Analysis of other submissions received**

- 12.1 In response to a further consultation letter sent out on 31 July 2018. The only substantive response was emails from Sally Collings, who has cycled the route in question, and has seen other cyclists on the path.

## 13 Conclusions

- 13.1 It is necessary for members to decide whether the way shown on the definitive map ought to be shown as a way of another description. To reach this decision members must consider whether they are satisfied that, on the evidence presented, the way should be recorded as a way of another description. In making the application for the modification order the applicant has claimed the path as a byway open to all traffic.
- 13.2 If members are not satisfied on the basis of the documentary evidence that public vehicular rights have been shown to exist, then they should consider whether those rights have been dedicated either:-
- (a) Under Section 31 of the Highways Act 1980 by having been used by the public as of right and without interruption for a period of 20 or more years, ending with the date on which the public right to use the way was brought into question; or
  - (b) At common law where it can be shown that the landowner at some time in the past dedicated the way to the public either expressly, the evidence of the dedication being lost, or by implication in making no objection to the use by the public of the way.
- 13.3 Under Section 31 of the Highways Act 1980 and under common law the public right of way must be shown to follow a defined track and not be an area over which the public have wandered at large.
- 13.4 It is considered that public rights were brought into question by the application to modify the definitive map and statement, which was made in September 2004.
- 13.5 Thus, the relevant period of use of the way by members of the public, as of right and without interruption, in order to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years, or more, prior to 2004.
- 13.6 There is evidence of use by the public with vehicles, predominantly motorcycles, contained in the user evidence forms that were submitted during the investigation. Taken together these would seem to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date that public rights were brought into question.
- 13.7 In order to be satisfied on the question of 20 or more years use of the way by the public, Members will need to consider not only the number of users but also the overall frequency of use. The evidence suggests that the number of users and the frequency of that use would satisfy these requirements.
- 13.8 For an objection to override an otherwise valid claim, an objector must show that the landowner had no intention of dedicating public rights over the path in question, and had taken steps to prevent the accrual of such rights.

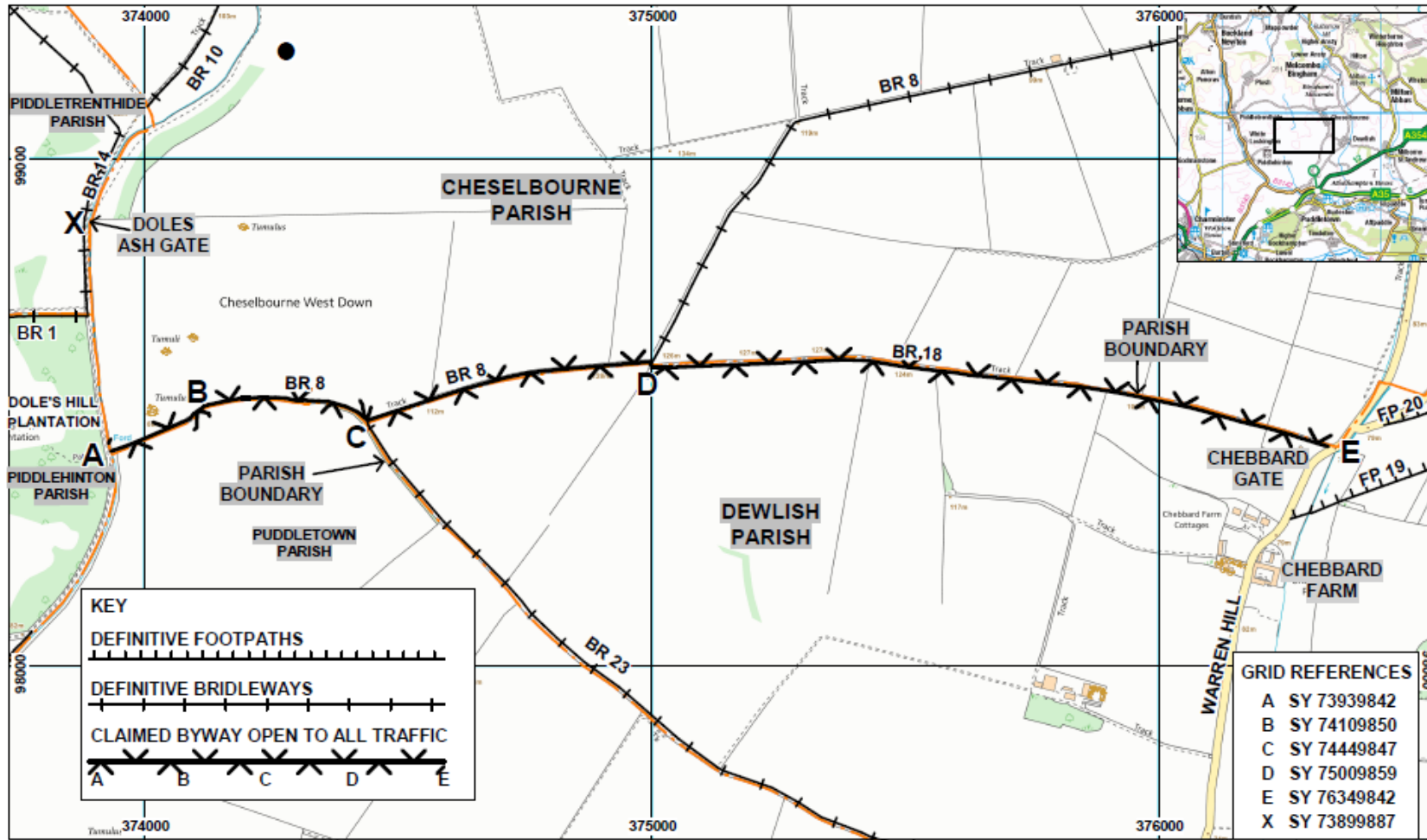
- 13.9 The evidence submitted and/or discovered suggests that the landowners took no effective steps to prevent the public from using the way with mechanically propelled vehicles. There is the suggestion that an employee of one of the landowners concerned would have taken action to prevent such use occurring. However, neither the applicant nor any of the witnesses refer to having being challenged or obtaining permission, and neither the landowners nor objectors have provided direct evidence from any employee or evidence which overcomes the user witness evidence. It is therefore concluded that there has been a presumed dedication of the route under section 31. It is also considered that the use of the route is sufficient for implied dedication of public vehicular rights under common law.
- 13.10 The documentary evidence summarised in section 8 of this report demonstrates that that part of the claimed route shown between points A and D was awarded as a public carriageway in the Cheselbourne Inclosure Award.
- 13.11 There is no Inclosure Award for the remaining part of the claimed route between points D to E in Dewlish. However, the evidence that has been submitted and discovered suggests that this part of the route was a pre-existing public carriageway unaffected by the enclosure process. As there is no record of any lawful diversion or extinguishment of this way, the evidence supports the conclusion that this part of the claimed route is also a public carriageway.
- 13.12 Some of the other documentary evidence that has been considered in this report may support the existence of a highway that was used by vehicles. The showing of the way on early maps suggests that the claimed line of byway open to all traffic may once have been of equal status to other routes which are part of today's established highways network. Ordnance Survey maps published between 1811 and 1958 show the path, either wholly or partly, in the form of a lane or road, and the path is shown as a lane or road on other published maps, although it is emphasized here that the depiction of the way on such maps does not prove it was used by vehicles. Aerial photographs taken between the late 1940's and 2001 back up Ordnance Survey and other maps in showing a road or lane on at least parts of the way. The evidence of the tithe map is of some assistance in supporting the existence of a highway.
- 13.13 There is nothing in the process of the drawing-up of the definitive map to suggest that the claimed byway was intended for inclusion at a higher status than that of bridleway. The Finance Act 1910 information does not refer to a highway, or public way of any kind.
- 13.14 It is concluded that there is sufficient documentary evidence to show that the way in question carries public vehicular rights.
- 13.15 In addition to the documentary evidence, it is considered that the user evidence is sufficient to satisfy the requirements of Section 31 of the Highways Act 1980, and, consequently, a public right of way for mechanically propelled vehicles has been dedicated. There is nothing to show that the owner of the land did not have the capacity to dedicate the way as a vehicular highway.
- 13.16 In order to record the route as a byway open to all traffic, members must be satisfied that the application satisfies an exemption within the Natural Environment and Rural Communities Act 2006. This application was made prior to 20 January 2005 and is considered to comply with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981; the supplied evidence raising a prima facie case that the route was a vehicular highway. Therefore the rights of mechanically propelled vehicles have not been extinguished. If members do not consider the

exception applies but agree with officers' conclusions about the documentary and/or user evidence, the route should be recorded as a restricted byway.

- 13.17 Having considered and weighed up the available evidence and having taken into consideration the objections and the comments of the landowners and other interested parties, it is concluded that, on balance, a highway shown on the definitive map and statement ought to be shown as a highway of a different description.
- 13.18 Therefore, with respect to the claimed route A – B – C – D – E as shown on Drawing 18/11, a public right to use a mechanically propelled vehicle has been shown to exist and a definitive map modification order should be made to upgrade the route from bridleway to byway open to all traffic.
- 13.19 If there are no objections to a modification order, the criterion for confirmation may be presumed to have been met and therefore the order should be confirmed.

**Matthew Piles**  
**Service Director, Environment, Infrastructure and Economy**  
**March 2019**

# APPENDIX 1 PLAN



## WILDLIFE AND COUNTRYSIDE ACT 1981

CLAIM TO RECORD A BYWAY OPEN TO ALL TRAFFIC - BR 8 (PART), CHESELBOURNE AND BR 18, DEWLISH

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 18/11

Date: 18/07/2018

Scale 1:10000

Drawn By: AH

Cent X: 375145

Cent Y: 98480

GEOGRAPHICAL INFORMATION SYSTEMS



**Dorset County Council**

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## **APPENDIX 2 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 For an application to change the status of an existing right of way, the County Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
  - 1.5 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.
  - 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 in to 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 land owner 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.

6.2 One of the exceptions to section 67 is that an application had been made before 20 January 2005 to record a byway open to all traffic. The Courts have held that for this exception to apply, the application must comply with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. Those requirements are that the application is made on the prescribed form and is accompanied by a) a map to the prescribed scale showing the route and b) copies of the evidence in support. The Courts have further held that any departures from these requirements other than relatively minor ones correctly quickly will prevent the exception from applying.

6.3 This application was rejected by the County Council on 7 October on the basis that the application map did not comply with the statutory requirements. The TRF judicially reviewed this decision and ultimately the Supreme Court found that the map did meet the statutory requirements.

6.4 The Supreme Court's Order went further and stated that the applications complied with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. The County Council is applying to the Supreme Court for clarification on this point.



**APPENDIX 3**  
**TABLE OF DOCUMENTARY EVIDENCE**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1765	Taylor's map of Dorsetshire	Shows a route commencing at point E and heading in a westerly direction, which appears to straddle or be located just to the north of the parish boundary. The map does not appear to show the route extending beyond a point that lies approximately midway between points D to E. Taylor's map depicts a route which may represent part of the eastern end of the claimed route.
1796	Taylor's map	Does not appear to show the claimed route.
C.1811	First Edition Ordnance Survey map	Shows a route running east to west direction across West Down. Between points A to D the route is located to the north of the claimed byway.
1819	Dewlish Inclosure Award	Shows that the area of land through which the claimed route passes was not subject to enclosure. A route that corresponds with that part of the claimed byway between points D to E is shown on the Dewlish Inclosure Plan, and is depicted by two parallel broken lines. It is annotated at the position that corresponds with point D with the words "from Piddlehinton"
1826	Greenwood's map	Shows the route as two broken parallel lines. Greenwoods' map shows a route similar to the 1811 Ordnance Survey map. The route depicted does not correspond exactly with that of the claimed byway. This map was published some 20 years prior to enclosure taking place in Cheselbourne, and those routes depicted on it may be represent a reasonably accurate picture of the network of roads, both public and private, that were in existence prior to enclosure taking place.
1832	Indenture	The Milborne and Blandford Road is referred to in an indenture dated 5 December 1832 involving the lease of a piece of land now known as Doles Ash

		Plantation. The indenture refers to the vendor, John Knight, as being the sole commissioner appointed under an Act of Parliament to divide and allot the lands within the parish of Piddlehinton (Piddlehinton Inclosure Award). The land is described as being bounded on the "East and South by a public road leading to Chesilbourne".
1835	Piddlehinton Inclosure Award	Shows that a public carriage road and highway named the Milborne and Blandford Road had been awarded. It is described as "...commencing at the upper end of London Row and extending eastward over Bank Field Higher East Field and the East Down to Druce Hedge from whence it extends north easterly by the boundary of the Parish to Chesilborne Gate branching towards Milborne and Blandford and to another gate being the entrance to Doles Ash Farm and towards Hareput Lane and Plush'

Date	Document	Comment
1840	Cheselbourne Tithe map and apportionment	A number of routes are shown on the Cheselbourne Tithe Map, one of which commences at point D and continues in a westerly direction more or less parallel to the parish boundary. This route, whilst following the general direction of the claimed route, is located somewhat further to the north
1845	Dewlish Tithe map	The Dewlish Tithe Map and Apportionment of 1845 shows a route that corresponds with that of the claimed route between points D to E. It is coloured sienna and shown in the same manner as other routes on the map, some of which are known today to be public vehicular highways. At point D the route is annotated with the words "from Piddlehinton", and it runs in an easterly direction to its junction with the Cheselbourne Road, at point E. The Dewlish Tithe Map and Apportionment of 1845 postdates the Dewlish Inclosure Award by some 26 years.

1844	Cheselbourne Inclosure Award	Shows that the part of the claimed route between points A and B was an awarded public carriage road described as “One other Public Carriage Road and Driftway of the width of thirty feet and numbered 7 on the said map or plan commencing on the south west corner of the said West Down and extending in an easterly direction over the said Down until it enters the Public Road No 6”.
1847	Map of Dewlish, Earl of Ilchester’s archive	Shows a route broadly corresponding with that part of the claimed route between points D to E. At point D the map shows the route crossing the parish boundary into Cheselbourne. At this point it also shows three other routes; one heading south and annotated “From Waterson”, and two other routes. One of these ways corresponds with what is presently recorded as Bridleway 8, Cheselbourne and is annotated to “Chislebourne”.
Undated, Circa 1840’s	Sketch of land at Chebbard Farm	The sketch shows that part of the claimed route between points D to E to be annotated with the words “Road on to Dewlish”. The road to Waterson is also shown, as is the present line of Bridleway 8, Cheselbourne, which is annotated with the words “Road on to Cheselbourne”.
1880	Dorchester Highways Board minutes.	These minutes refer to public highways in the Dorchester area. In the note for the parish of Dewlish there is mention of a road known as ‘Chebbard Drove’, which may refer to the claimed byway, although this cannot be assumed with certainty.
1884	Map of Cheselbourne	The map depicts the route of the awarded road number 6 in Cheselbourne, which corresponds with that part of the claimed route between points B and C and also shows a route that corresponds with that part of the claim within Dewlish, shown between points D and E. The plan used for this may be from an earlier survey as, although it postdates the Cheselbourne enclosure by some 40 years, it appears to show the layout of roads prior to enclosure.

1885	Ordnance Survey Boundary Sketch map	Shows the boundaries between the parishes of Dewlish and Cheselbourne, and between Piddlehinton and Piddletrenthide. The books record the boundaries as being 3 feet or 4 feet from the root of the hedge.
1885	Ordnance Survey Boundary Remark Book	Show the boundaries between the parishes of Dewlish and Cheselbourne, and between Piddlehinton and Piddletrenthide. The books record the boundaries as being 3 feet or 4 feet from the root of the hedge.
1887	Ordnance Survey six inch map	Shows a route corresponding to that which is being claimed throughout its length, from point A to point E. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.

Date	Document	Comment
Late 1800's	Richmond's map	Shows what may be a track or unfenced road running on or closely to the eastern part of the claimed route. This track continues westwards, but does not appear correspond with the line of the claimed byway.
Late 1800's	Crutchley's map	Does not appear to show the claimed byway.
1900's	Philips 'English Roads at a Glance map, of the early 1900's.	Shows the way as a lane or road.
1900's	Bacon's County Cycling map	Shows the route partly as an unfenced track, and partly in the form of a lane or road.

1902	Ordnance Survey 25 inch map	Shows a route corresponding to that being claimed throughout its length from point A to point E. Between point E to a point at the boundary immediately to the east of point C, the way is shown as a double line, in the form of a walled or fenced lane. To the west of this point the route is shown as a double-dashed line, in the form of a track.
1903	Ordnance Survey map of 1903, at a scale of 6 inches to the mile.	Shows a route corresponding to that which is being claimed throughout its length, from point A to point E, in a similar way to that shown on the 1887 6 inch map.
1906	Ordnance Survey one inch map	Shows the claimed route as an 'unmetalled road'. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.

1912	Finance Act Records	That part of the route between points A and D in Cheselbourne passed through Hereditament 27. The remainder of the route in Dewlish passed through Hereditament 1. The route was not excluded from the land for valuation purposes and in the accompanying valuation books there are no deductions for rights of way.
1911	Bartholomew's half inch Touring and Cycling map	Show the route as a lane or road. The key to the maps explains that 'The uncoloured roads are inferior and not to be recommended. The key to the 1911 map adds that the route is not recommended for cyclists.
1913	Ordnance Survey half-inch map	Shows the claimed in the form of a lane, up to a point to the west of point D, and which the key describes as an 'other road' To the west of this point the route is shown as a double-dashed line, in the form of a track.
1919	Ordnance Survey one inch map	Shows the path in the same way as the 1913 half-inch map.
1919	The Ordnance Survey contoured road map of Yeovil and Blandford, at a scale of 1 inch to 1 mile.	Shows the claimed route between points A to approximately C by two parallel broken lines, and from point C to point E by two unbroken lines. The key describes A to C as a "minor road - unfenced" and C to D as a "minor road - fenced".

1920's	Bacon's Motoring and Cycling map, at a scale of half-inch to a mile	Shows the route as a lane or road.
1920	Bartholomews half inch Touring and Cycling map	Shows the route as a lane or road. The key to the maps explain that 'The uncoloured roads are 'inferior and not to be recommended.'
1920's	Harding's half-inch map.	Shows the route in the form of a lane or road. FoDRoW point out that this map was intended to show routes that were available for use by motorists.

1923	The Ministry of Transport Road Map of Weymouth, Yeovil and Taunton published in 1923, is based on the Ordnance Survey 1 inch to 1 mile map of 1903-08 (being reduced to a scale of 1/2 inch to one mile).	Shows the claimed route throughout its length from point A to point E. The route is depicted between point A to a point just to the west of point C by two parallel broken lines and from this point to point E by two unbroken lines. The key describes the first part as an "other road – unfenced" and the latter part as an "other road – fenced".
1928	Bladen Estate map	That part of the claimed route between point E and approximately point D is shown on the plan. The key describes the route as a second class road.
1937	Johnstone's 'Motoring and Touring Map	Shows the claimed route as a lane or road.
1940's/50's	Geographia Road Map, at a scale of half-inch to the mile.	Shows the route as a lane or road.
1944	Bartholomew's half-inch map.	Shows the route as a road, and describe it as passable for cyclists but not recommended.
1945	Ordnance Survey one inch map.	Shows the path in the same way as the 1913 half-inch and 1919 one inch maps.

<p>The National Parks and Access to the Countryside Act 1949 charged the County Council, in its capacity of "Surveying Authority", with a duty to compile a record of the public rights of way network. As part of this process District and Parish Council carried out surveys and provided the County Council with information for the purposes of recording the existence of public rights of way.</p>		
1951	The Cheselbourne Parish Survey map, at a scale of 1:10560, and the accompanying schedule.	The schedule and map record that the Parish Council made a claim for a 'carriageway' between points A and D, (drawing 18/11), which was given the number 12 as a means of identification. The path is described as commencing at Doles Wood and terminating at Chebbard. The map shows that Cheselbourne Parish Council had also claimed that part of the route shown between points D and E, lying on the northern side of the parish boundary, within Cheselbourne parish. A possible explanation for this is that the parish council was indicating the continuation of the route within Dewlish.
1951	Dewlish Parish Survey map, at a scale of 1:10560, and accompanying schedule	The schedule and map record that Dewlish Parish Council made a claim for a bridleway between points D and E, (drawing 18/11), which was given the number 36 as a means of identification. The path is described as commencing from the "road at Chebbard" and terminating at "junction with lane leading into Cheselbourne".
1958	Draft Map	The claimed route is shown on the draft map as CRB 12 between points A and D in Cheselbourne, and as CRB 8 between points D and E in Dewlish.
1958	Two and a half inch Ordnance Survey map	Shows the route in the form of a lane.
1960	Ordnance Survey one inch map	Shows the whole length of the path in the form of a fenced lane or road.
1960	Geographia half- inch map	Shows the whole length of the path in the form of a lane or road.



1964	Provisional map	The claimed route is shown on the provisional map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
1967	First Definitive map	The claimed route is shown on the first definitive map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.

1971	J. Tucker note	A note dated 24 <sup>th</sup> October 1971 from a J. Tucker in the Council's file describes 'A road used by the general public, carts, cars etc.'
1972	Aerial photograph	The 1972 photographs show the entire route between points A to E clearly, the route being defined and bounded as shown in the 1947 photographs. At point E there is now a building, 'the Bungalow' (now known as Chebbard Gate cottage), which was not present in 1947. The junction with the Cheselbourne road is shown clearly and there does not appear to be any type of structure present that would have prevented the use of the route with vehicles.
1973	Form relating to Special Review dated 30 <sup>th</sup> July 1973	Records that the Special Review Committee's decision was to retain the path on the revised draft map as a bridleway. The note on the card refers to the <i>'Original parish survey and draft map show as a carriage road/bridleway. Is shown on the Award Map of 1819 but is not awarded. It is a hard farm road and has been entered on the OS map as a suggested byway as it forms part of a cross country route.'</i> The Special Review Committee determined that, as there was no evidence of public use, it should be recorded on the revised draft map (1974) as a bridleway.

1974	Revised Draft Map	The claimed route is shown on the Revised Draft Map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
1975	Letter to the Secretary of State for the Environment, bearing a date stamp of 1975 by Dorset County Council, from Mrs R. V. Edwards	Mrs R. V. Edwards objected to the status of bridleway 8, Cheselbourne, on the grounds that it should be recorded as a byway open to all traffic.
1977	Memorandum addressed to the County Surveyor of Dorset County Council, from the Divisional Surveyor, dated 24 <sup>th</sup> January 1977.	States 'That BR18 should be recorded as a Byway Open to all Traffic'.

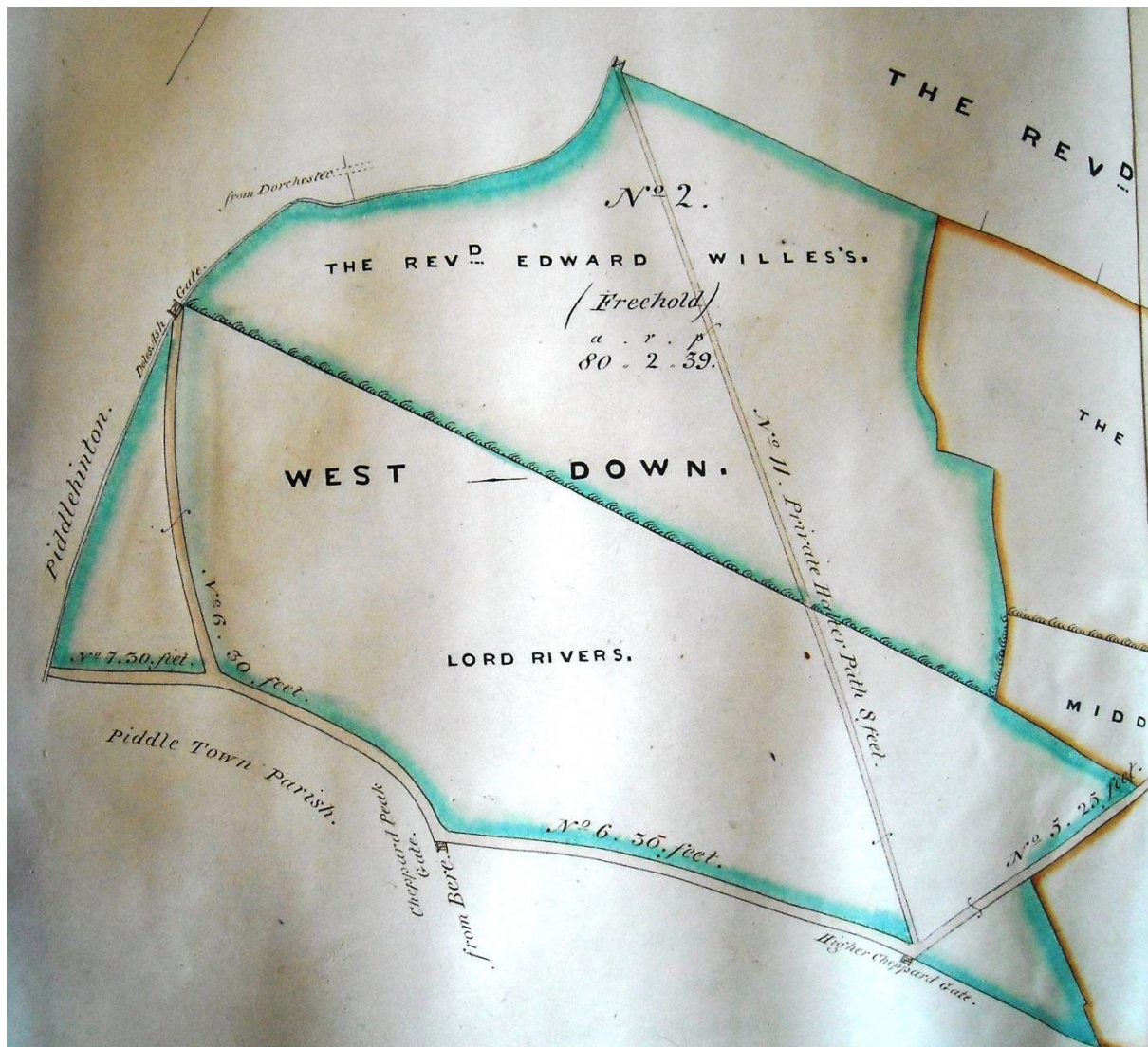
1997	Aerial photograph
2002	Aerial photograph
2005	Aerial photograph

Key Documents

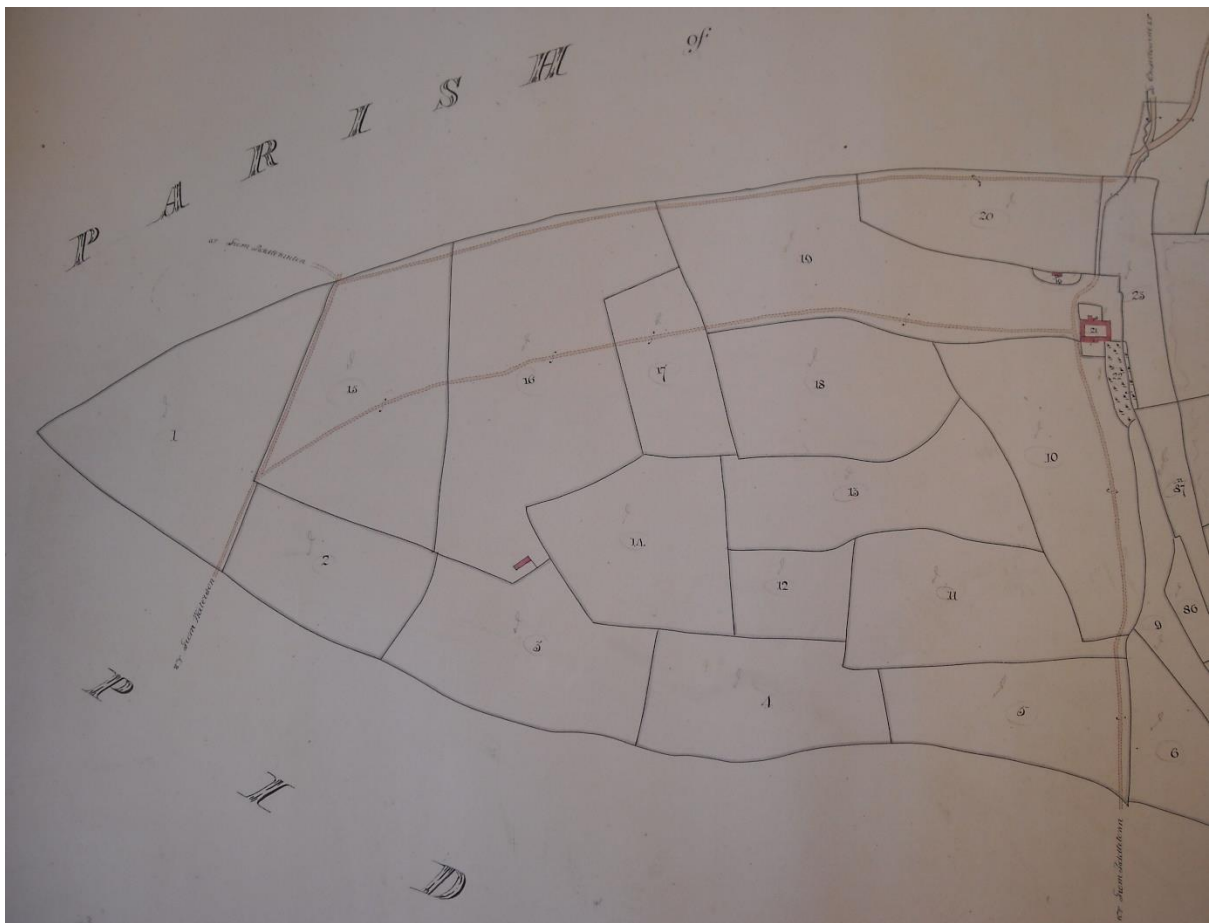
Dewlish Inclosure Award Plan 1819



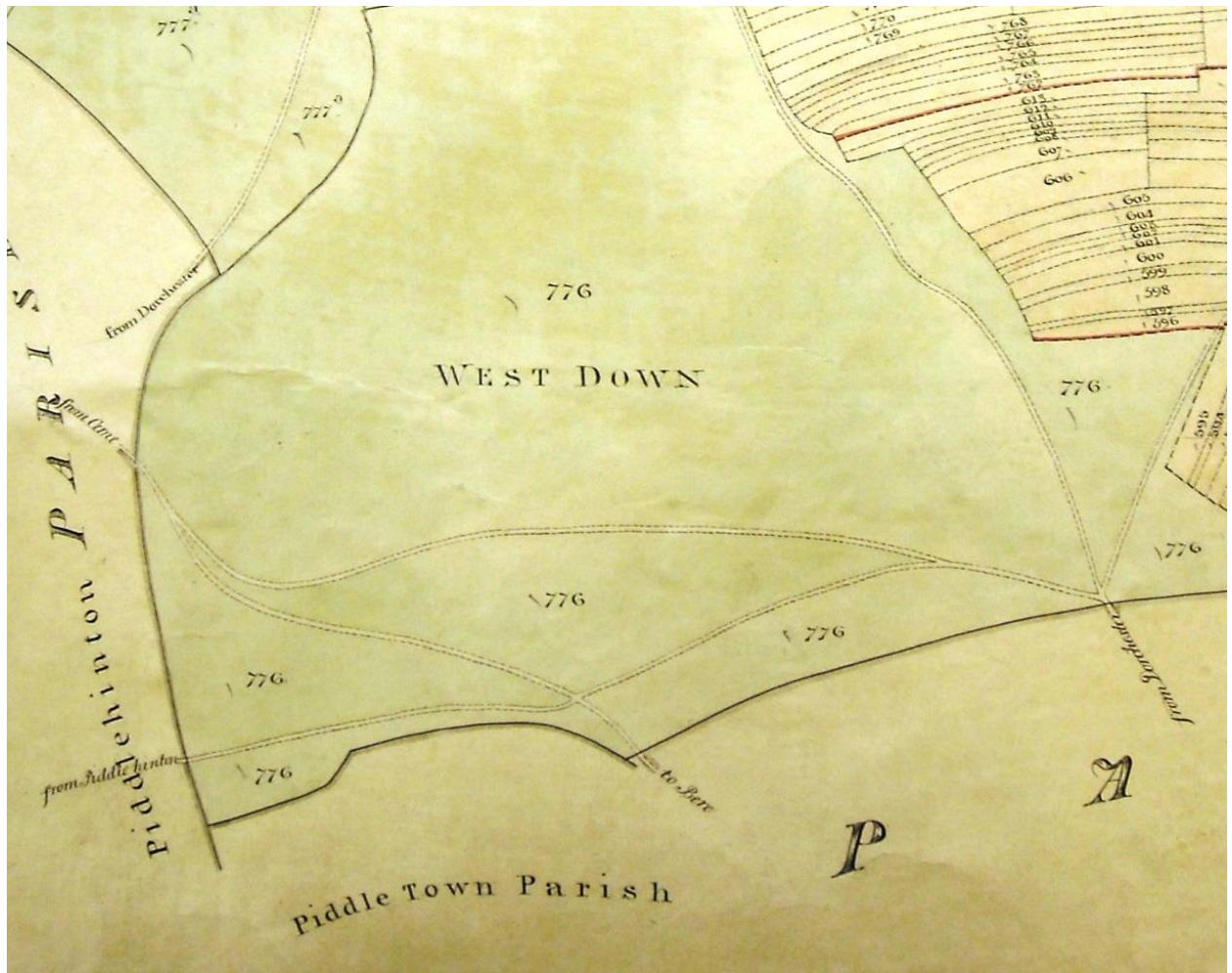
Cheselborne Inclosure Award Plan 1844



Dewlish Tithe Map 1845



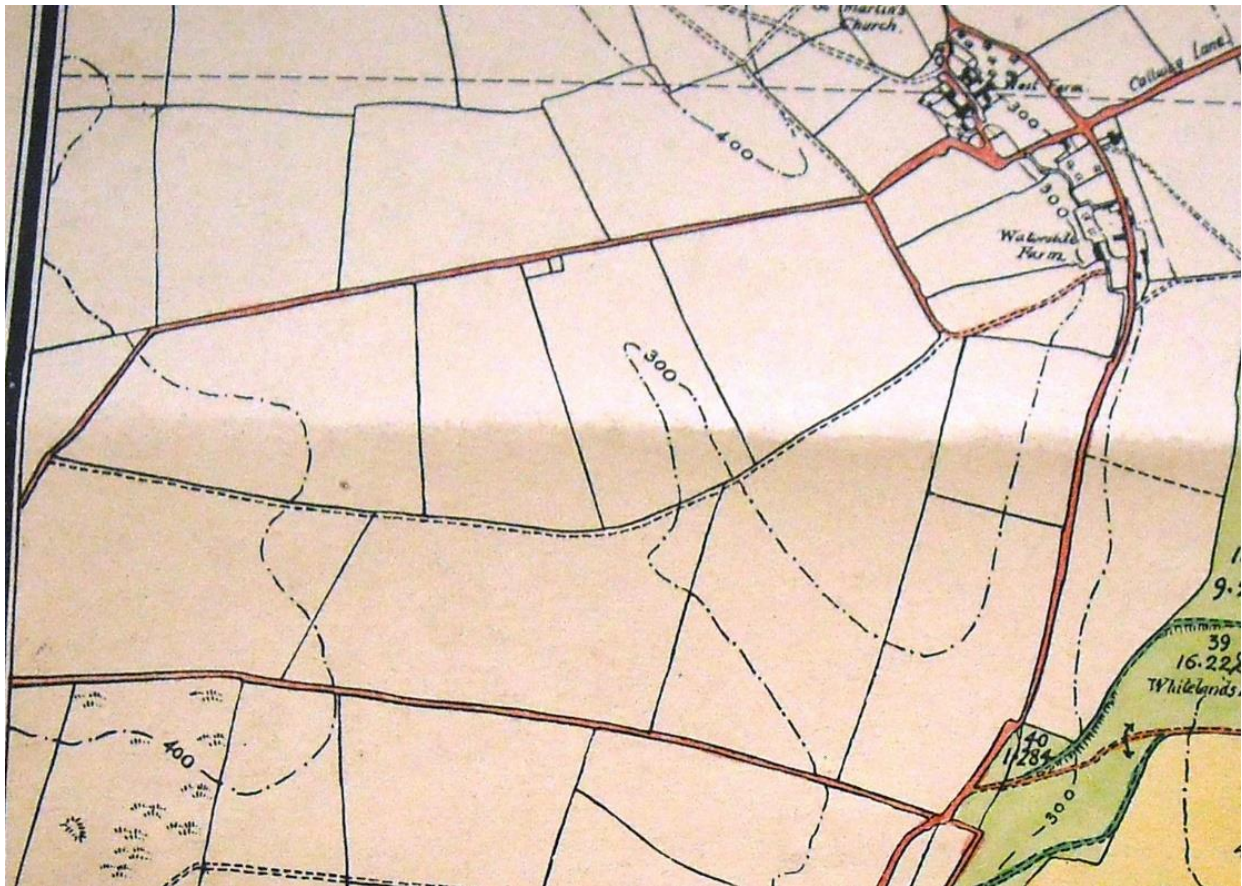
Cheselbourne Tithe Map 1840



Finance Act maps 1912

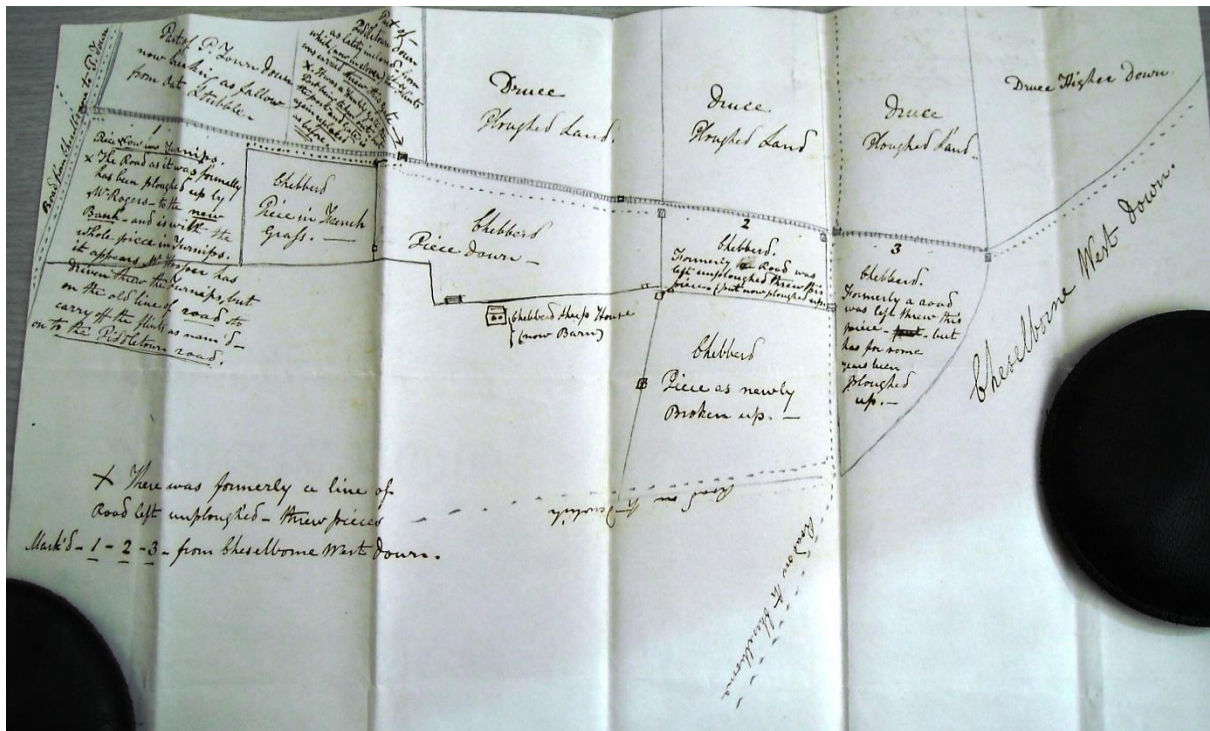


Bladen Estate map 1928





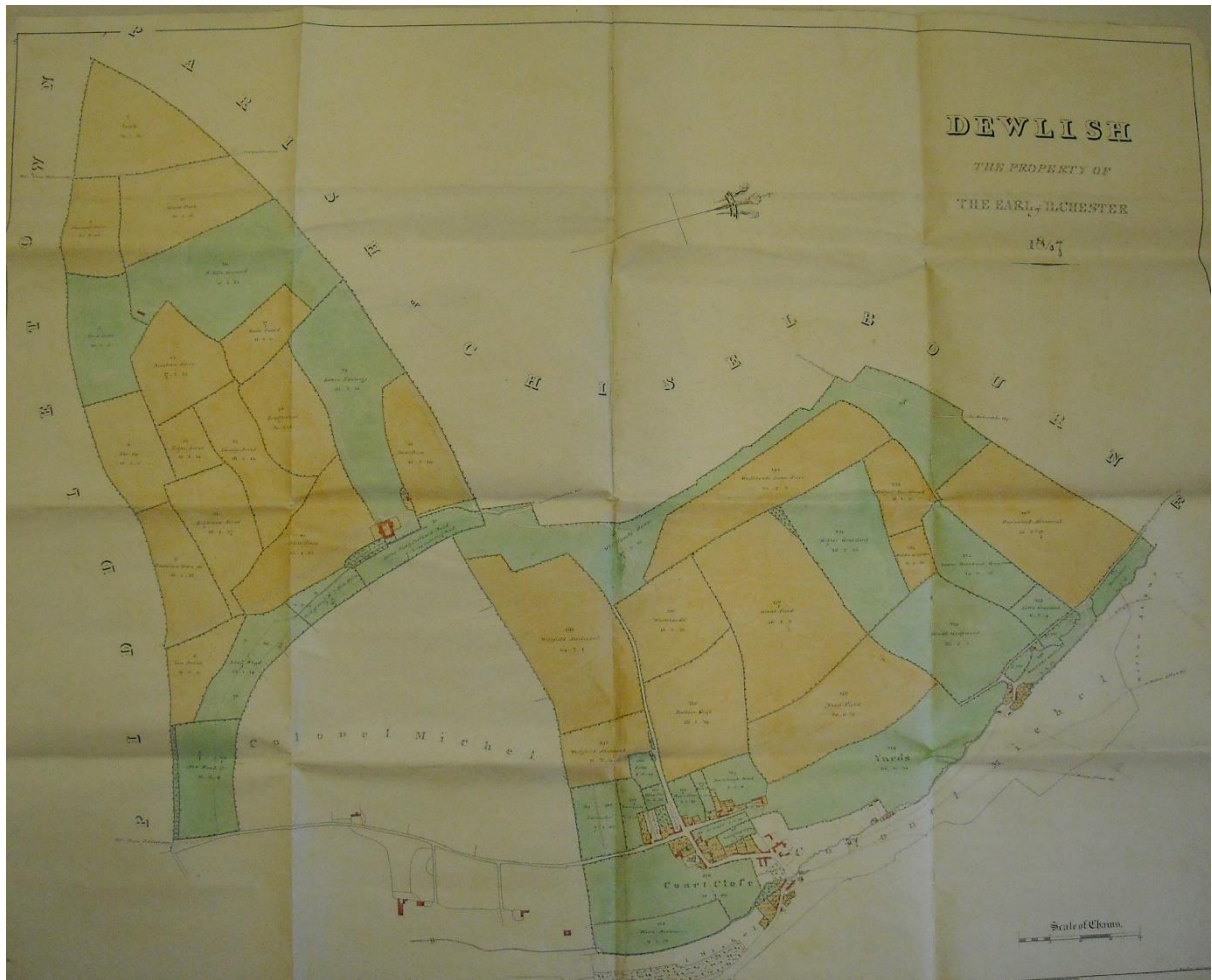
Ilchester Farm Sketch (Undated)



Ilchester Estate Manor of Dewlish Map Undated



Ilchester Estate Map 1847

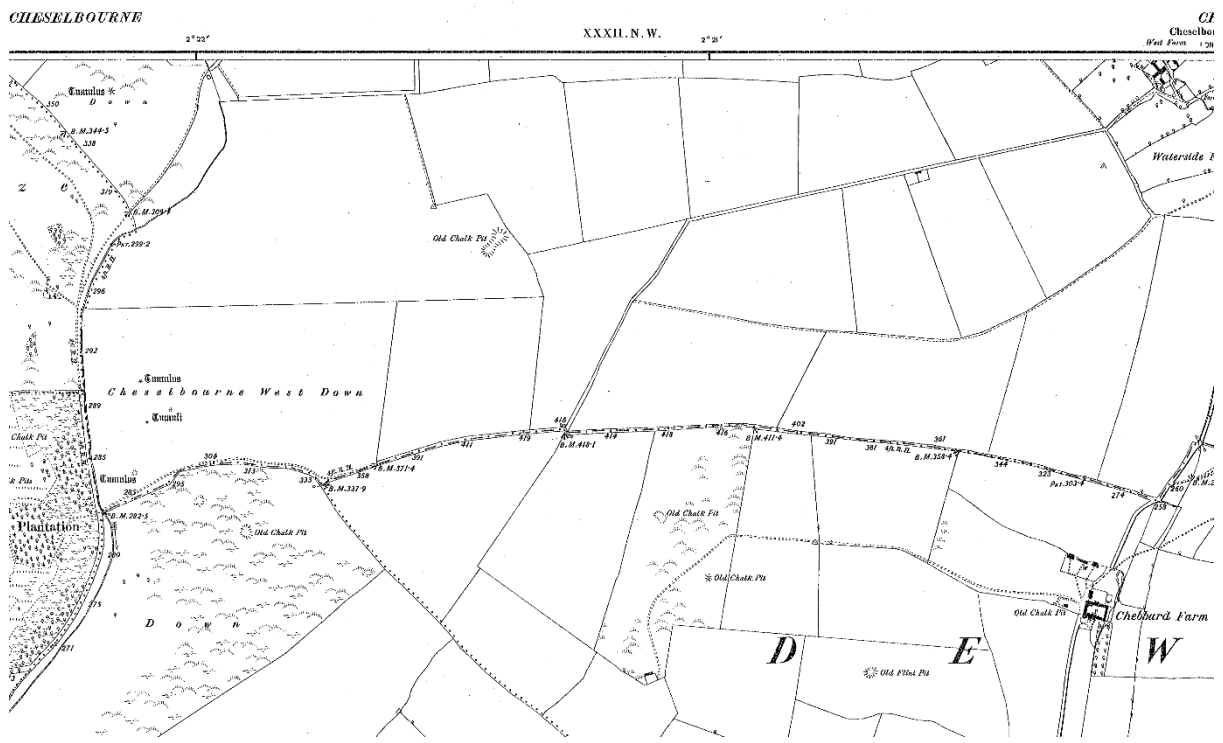


One inch Ordnance Survey map 1811

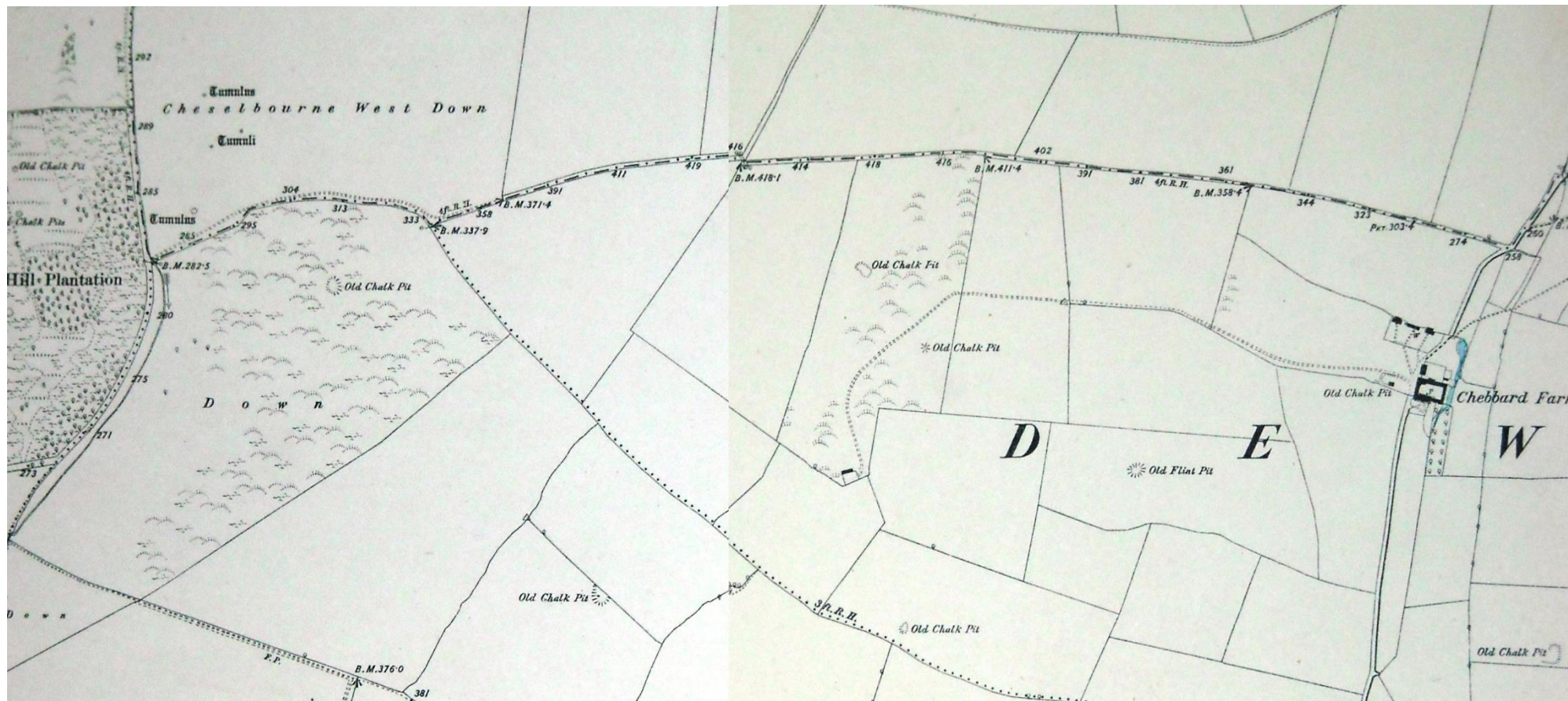


# Six Inch Ordnance Survey map 1887

FIRST EDITION WITHOUT CONTOURS



25 inch Ordnance Survey map 1902



Taylor's Map 1765



Greenwood's map 1826



**APPENDIX 4  
USER EVIDENCE**

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr N Baverstock	1990-2006 (form completed 3/02/2010)	Appx.10 times a year	Motorcycle	Used for pleasure. No Gates. No stiles No notices. No obstructions. Used by others on foot, motorcycle and horseback. Never been prevented from using the way. Width 7 metres approx. Believes owner/occupier was aware of public use because of 'Regular Use' Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr J W Chesshire	1978-2001 (Form completed 12/02/2010)	2-3 times a year	Motorcycle	Used for pleasure. Used by others on foot and motorcycles Believes owner/occupier was aware of public use as "Seen by occupier of Bungalow, Chebbard Gate. No gates. No stiles. No notices or obstructions. Never been prevented from using the way. Width: 10 metres Chebbard Gate slightly narrower at the west end. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm
Mr M Diamond	1986- 2006 (Form completed 6/02/2010)	6-8 times a year	Used on Motorcycle	Used for pleasure. Used by others on foot, horses and motorcycles. No stiles, no gates no notices, no obstructions, never been



				<p>prevented from using the way.          Believes owner/occupier was aware of public use as "Tyre tracks on ground, noise of engine. 'Fairly open track, hedge at eastern end, open until it drops into Doles Hill Plantation.' Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.</p>
Mr M Gardner	1976 -2006 (form completed 10/01/2010)	1-2 times a year	Motorcycle	<p>Used for pleasure. Used by others on motorcycles and horses. No stiles, no gates, no notices or obstructions. Never been prevented from using the way. Believes owner/occupier was aware of public use as "Never was questioned'. Width 5-10 metres. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.</p>

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr D A Greening	1975-2005 (Form completed 30/1/2010)	5-10 times a year	Motorcycle	<p>Used route for pleasure. Used by others on motorcycles, foot and horses. No stiles, no gates on path, no notices no obstructions. Never been prevented from using the way. Believes that the owner/occupier was aware of public use of route because of 'tyre tracks'.</p> <p>Width 5-10 metres. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.</p>
Mr R T Howe	1988-2010 (Form completed 07/03/2010)	4-5 times a year	Used on motorcycle	<p>Used route for pleasure Used by others on motorcycles No notices. No stiles. No Gates on path. No obstructions. Never been prevented from using the way. Believes owner was aware of public use as "Never been challenged"</p> <p>Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.</p>

Mr D. J. Greenslade	1988-2006 (Form completed 03/02/2010)	4-5 times a year	Used on motorcycle	Used by others on motorcycles, foot and horses. No stiles. No Gates. No notices. No obstructions. Never been prevented from using the way. Believes owner was aware of use of path because 'Used by motorcycles as a popular route.' Map accompanying form shows route referred to as between points A and E on plan 18/13. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr P. Legg	1990-2010 (Form completed 04/02/2010)	5-6 times a year	Used on motorcycle	Used for pleasure. Used by others on motorcycles. No stiles. No Gates. No notices. No obstructions. Never been prevented from using the way. Believes owners was aware of use because of 'tyre tracks'. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr J. Long	1994 -2004 (Form completed 07/02/2010)	Appx.4 times a year)	Used on motorcycle	Used for pleasure. Used by others on motorcycles. No stiles, gates, notices or other obstructions. Never been prevented from using the way.

				Believes owner was aware of public use as route "tyre tracks visible". Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr M. Mason	2003-2004 (Form completed 27/02/2010)	3 or 4 times a year	Used on motorcycle	Used for pleasure. Used by others on motorcycles. No stiles. No Gates on path, No notices. No obstructions. Never been prevented from using the way. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.

Mr A. Mcleod	Used during 2006 only (Form completed 09/02/2010)	5 times a year	Used on motorcycle	Used for pleasure. Used by other people on motorcycles. No stiles. No gates on path. No notices. No obstructions. Never been prevented from using the way. Width 6-8 metres. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
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NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr D. Oickle	1987 to 2004 (Form completed 23/01/2010)	4-6 times a year	Used on motorcycle	Used for pleasure. Used by others on foot, horseback and motorcycles No gates. No stiles. No notices. No obstructions. Never been prevented from using the way. Believes owner was aware of use of way because of 'Many years of use plus tyre tracks left in soft ground. Appx. 30 metres wide for most of the way.' 'Route Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr J Pearson	'Late 1980's to mid 1990's' (Form completed 02/02/2010)	1 or 2 times a year	Used on motorcycle	Used for pleasure. Used by others with motorcycles. No stiles. No gates. No notices. No obstructions. Never been prevented from using the way. Believes owner was aware of use because 'tyre tracks left in soft ground.' Width: 'At least tractor width.' Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at

				junction with county road, north of Chebbard Farm.
Mr T Stapleton	1990-2006 (Form completed 15/02/2010)	6 times per year	Motorcycle	Used for pleasure. Used by others on motorcycles. No Notices. No stiles. No gates. Never been prevented from using the way. Believes owner was aware of use by public because 'Others saw me on my motorcycles.' Width 3-10 metres. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr D Studley	1990-2009 (Form completed 10/02/2010)	20-25 times a year	Motorcycle	Used for pleasure Used by others on motorcycles. No notices. No stiles. No gates Never been prevented from using the way. Believes owner was aware of use by public because 'Used regularly by other motorcyclists, tracks etc.'" Wide track with firm surface, wide enough for tractors and vehicles to use' Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.

Mr P Studley	1973-2005 (Form completed 30/01/2010)	5-6 times a year	Motorcycle	Used for pleasure Used by others on motorcycles. No notices. No stiles. No gates. Never been prevented from using the way. Believes owner was aware of use by public because of 'tyre marks on soft ground'. '30 feet wide drove'. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
Mr S Teuber	1997 to 2007 (Form completed 04/02/2010)	2-3 times a year	Motorcycle	Used for pleasure Used by others on motorcycles and horseback. No notices. No stiles. No gates. Never been prevented from using the way. Believes owner was aware of use by public because 'tyre tracks in mud.' 'Open track-not overgrown-and in good passable condition'. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.



Mr W J Williamson	1996 to 2006, (form completed 27/01/2010)	5-6 times a year	Motorcycle	Used for pleasure Used by others on motorcycles and horses. No notices. No stiles. No gates (unlocked). Believes owner was aware of use by public because 'Many tyre tracks always showing'. Width: 'at least 30 feet for the whole length'. Map accompanying form shows route referred to as between points A and E on plan 18/11. Route described on form as running from SY 7393/9842 at junction with track, east side of Doles Hill Plantation to SY 7634/9843 at junction with county road, north of Chebbard Farm.
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Charts showing period and level of use.

NAME	Charts of user evidence to show period and level of use														WITH MECHANICALLY PROPELLED VEHICLE																					
	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006		
Mr. N. Baverstock																																				
Mr. J.W. Chesshire																																				
Mr. M. Diamond																																				
Mr. M. Gardner																																				
Mr. D.A. Greening																																				
Mr. R.T. Howe																																				
Mr. D.J Greenslade																																				
Mr. P. Legg																																				
Mr. J. Long																																				
Mr. M. Mason																																				
Mr. A. Mclead																																				
Mr.D.Oickle																																				
Mr. J. Pearson																																				
Mr. T. Stapleton																																				
Mr. D. Studley																																				
Mr. P. Studley																																				
Mr. S. Teuber																																				
Mr. W.J. Williamson																																				
	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006		
	<b>YEARS OF USE</b>														<b>USE WITH MECHANICALLY PROPELLED VEHICLE</b>																					

DATE OF CHALLENGE

