

Regulatory Committee

Dorset County Council



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| Date of Meeting | 21 March 2019 |
| <p><u>Local Member(s):</u> Cllr. Rebecca Knox, Member for Beaminster</p> <p><u>Lead Officer(s)</u> Matthew Piles, Service Director, Environment, Infrastructure and Economy</p> | |
| Subject of Report | Application for a definitive map and statement modification order to upgrade Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster, to a Byway Open to all Traffic. |
| Executive Summary | Following an application made in 2004 for a modification order in respect of the route that is the subject of this report, this report considers the evidence relating to the status of the route. |
| Impact Assessment: | <p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p> |
| | <p>Use of Evidence:</p> <p>The applicant 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 December 2009. A further consultation took place in 2018. These consultations involved landowners, user groups, local councils, other affected parties and those who had already contacted Dorset County Council regarding this application. In addition, notices explaining the application were erected on site.</p> <p>The County Councillor for Beaminster, Councillor Knox, and the Chair and vice-Chair of the Regulatory Committee, Councillor Jones and Councillor Phipps, were also consulted in 2018.</p> |
| | Budget: |

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| | <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> |
| | <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> |
| | <p>Other Implications:</p> <p>None</p> |
| Recommendations | <p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record the route shown A – B – C – D – E – F – G – H – I on Drawing 18/13 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(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee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> |
| Reason for Recommendations | <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 Corporate Plan 2017-19 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset's economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while 'keeping Dorset moving', enabling people and goods to move about the county safely and efficiently |
| Appendices | 1 - Drawing 18/13 |

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| | <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents • Beaminster Inclosure Award Plan of 1809 • Tithe Map of 1843 • 1910 Finance Act Maps. (Based on 1903 25 Inch Ordnance Survey Map). • Ordnance Survey maps <ul style="list-style-type: none"> - 1811 scale 1 inch: 1 mile - 1888 scale 6 inch: 1 mile - 1904 scale 6 inch: 1 mile - Greenwoods map, 1826 - Taylor's Maps, 1765 and 1796 - Map of Beaminster Roads, C.1800 <p>4 User evidence</p> <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use with mechanically propelled vehicles. |
| Background Papers | <p>The file of the Service Director, Environment, Infrastructure and Economy (ref.RW/T354).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file, which will be available to view at County Hall during office hours.</p> |
| Report Originators and Contact | <p>Name: Vanessa Penny, Definitive Map Team Manager, Planning and Regulation Team</p> <p>Tel: (01305) 224719 Email: v.penny@dorsetcc.gov.uk</p> |

1 Background

- 1.1. On 21 December 2004 Mr J Stuart on behalf of Friends of Dorset Rights of Way (FoDRoW) made an application to upgrade Bridleway 17, Beaminster, to a byway open to all traffic, from its junction with the C102 highway at Beaminster Down, running south eastwards to the C67 highway, Whitesheet Hill; to add a byway open to all traffic from the C67 highway at Whitesheet Hill running south-eastwards to its junction with Bridleway 35, (Crabb's Barn Lane, currently recorded as a publicly maintainable unclassified road); to upgrade Bridleway 35 to a byway open to all traffic from its junction with the unclassified road running south-eastwards to its junction with Bridleway 33; and to add a byway open to all traffic from its junction with Bridleway 33 running south-eastwards to its junction with the road at the Corscombe parish boundary leading to Dirty Gate, as shown between points A, B, C, D, E, H and I on Drawing 18/13 (Appendix 1). The application was accompanied by a map showing the length of path that is the subject of the application.
- 1.2. The following evidence was submitted to support the application:
 - (i) Isaac Taylor Map 1796
 - (ii) Plan of roads in neighbourhood of Beaminster c.1800.
 - (iii) Greenwood 1826
 - (iv) Beaminster Tithe Map
 - (v) Beaminster Inclosure Map and Award
 - (vi) OS Old Series 1"
 - (vii) Isaac Taylor Map, 1765
- 1.3. Accompanying the application is a note from FoDRoW giving an analysis of the documentary evidence they have submitted in support of the application. This evidence is considered in section 8 below.
- 1.4. On 31 December 2004 Mr Stuart wrote to clarify that the intention of FoDRoW was 'to claim a byway from ST 49105 03415 south-east to the point where the claimed route becomes a county road'. Mr Stuart adds that is 'it is fairly ridiculous to have so many different classifications on one route, which range from no public right of way to a public right for vehicles'.
- 1.5. Twenty two completed Public Rights of Way Evidence Forms were later submitted in support of the application. These forms are dated in 2008, 2009 and 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 Claimed Byway:

The claimed byway runs from point A on the county road C102, in a south-easterly direction alongside the field boundary, on a grass surface, to the road at Whitesheet Hill at point C. There are gates at A and B. From point C the route crosses the road

and continues along a lane, Crabbs Barn Lane, which has a stone and soil surface, via point D to point E, where there is a gate. The way continues south-eastwards, as an unsurfaced track, to point F, at its junction with the access road to Higher Langdon. From this point the route continues south eastwards on a tarmacked road to Point I, the parish boundary. This tarmacked road continues to the junction at Dirty Gate.

1.8. Ownership:

A land registry search indicates that the part of the claimed byway running over Bridleway 17, between A, B and C, is owned by Penitrust. The land in which the remaining length of the claimed byway runs 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/T354)

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/T354)

4.1 Between 10 November 2008, and 1 April 2010, 25 Public Rights of Way Evidence Forms (Form E) were sent to the Council. These forms contain statements from 22 users of the way and are summarised in the table at Appendix 4. Also at Appendix 4 are charts showing the periods and level of use contained in the information given in the forms. An analysis of the user evidence is contained in section 9 of this report.

5 **Additional evidence in support of the application** (copies available in the case file RW/T354)

5.1 On 15 September 2006 the following items, together with the comments noted below, were sent to the Council by Mr D Oickle on behalf of the Trail Riders Fellowship. A further submission in support of a modification order was made by Mr Legg of the Open Spaces Society on 1 February 2010.

| Name | Comments |
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| Mr D Oickle, Trail Riders Fellowship | On 15 September 2006 the following items and comments were sent to the Council by Mr D Oickle on behalf of the Trail Riders Fellowship: |
| | Map of Dorset by J Stockdale 1805: shows the claimed route in full as a highway |
| | Map of Dorset by J Bayley 1773: shows the claimed route in full as a cross road |
| | Taylor's map of 1776: shows the claimed route in full. |
| | Beaminster Inclosure Award 1809: Shows the route from ST 4957 0299 south eastwards to be a public highway. |
| | Mudge's map of 1811: shows the claimed route in full as a highway. (First Edition Ordnance Survey map) |

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| | Greenwood's map of 1826: shows the claimed route in full as a highway |
| | Richmond's map of shows the claimed route as a highway and is shown as other public roads are shown |
| | OS map of 1906: shows the claimed route as a third class highway. |
| | OS map of 1913: shows the eastern section of the claimed route as a 'other road'. |
| | OS map of 1919: shows the claimed route in full, as a 'minor road' and 'road under 14 feet wide.' |
| | Ministry of Transport Road Map of 1923: Shows the western section of claimed route as an 'other road,' Mr Oickle points out that a note on the rear of the map indicates that no roads shown are private roads. |
| | OS map of 1934: shows the claimed route as an 'Other Metalled Road'. |
| | Johnstones Motoring Atlas of 1937: shows part of the claimed route as a minor road. |
| | Philips map from the 1930's: shows the claimed route as a minor road. |
| | Bartholomew's maps of 1911 and 1920 show the route from the road junction at ST4957 0299 eastwards as 'recommended for cyclists.' |
| | Bacon's map for cyclists from the early 1900's shows the route from ST 4957 0299 eastwards as a minor road. |
| | Crutchley's map from C.1920's shoes the claimed route in full crossing Beaminster Downs. |
| | The Geographia road map of 1940-50 shows the route eastwards from ST 4957 0299 as an 'other road.' |
| | 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.' |

| Name | Comments |
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| R Legg, Open Spaces Society | Mr Legg of the Open Spaces Society has written on 1 st February 2010 'in 1950 local people assumed it was already...an unclassified road', which Mr Legg believes is the reason for the unrecorded status of parts of the claimed byway. Mr Legg also refers to the showing of the way on a road map from the 1970's, and to its reference in other sources. |

6 Evidence opposing the application (copies available in the case file RW/T343)

6.1. Nineteen submissions have been received opposing the application, and these are summarised in the table below.

| Name | Comments |
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| Mr G Plumbe, Green Lanes Protection Group | <p>In a letter dated 6/8/18 Mr Plumbe objects to a modification order on the grounds that ‘although the application for the modification order was made on 21st December 2004 it was not lodged with the County Council until 6th February 2005. It was thus after the cut-off date on 20th January 2005 and does not benefit by way of section 67(3) of the Natural Environment and Rural Communities Act 2006.’</p> <p>In this letter Mr Plumbe has also challenged the submission of evidence in support of the claimed public rights by the applicant for the modification order. In submitting the application FoDRoW referred to further evidence which ‘may be submitted at a later date’. ‘Mr Plumbe’s view is that this results in the application failing to qualify, and in referring to the <i>Winchester</i> judgement emphasised that....’when a BOAT application does not satisfy paragraph 1 of Schedule 14 ...it fails to qualify for exemption from section 67 (1) NERC under the terms of section 67 (6).’</p> |
| | <p>In a letter of 5th November 2010 Mr Plumbe raised the issue of compliance, and in referring to the <i>Winchester</i> judgement asserted that ‘when a BOAT application does not satisfy paragraph 1 of Schedule 14 ...it fails to qualify for exemption from section 67 (1) NERC under the terms of section 67 (6).</p> |
| Mr J Cheal, Thring Townsend, Solicitors | <p>Mr Cheal sent a detailed submission on 21 July 2005 inviting the Council to ‘dismiss the claim and make no order’. This submission contains documentary evidence and other information regarding the status and use of the path in question, and an analysis of the evidence that has been submitted in support of the application. Mr Cheal challenges the evidence that has been submitted by FoDRoW, and maintains that this and other evidence does not show that public vehicular rights exist over the way in question. Mr Cheal also points out that a provision in a written tenancy agreement by which the landlord obliges the tenant to prevent trespass and the acquisition of public rights of way is good evidence of his lack of intention to dedicate.</p> |

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| | <p>Mr Cheal has subsequently written to the Council on several occasions questioning whether the dedication and acceptance of vehicular rights has occurred, whether the existence of tenancies removed the owner's capacity to dedicate, that there is no legal proposition requiring cul de sacs to be joined up and that for various reasons the applications do not benefit from the exceptions in the Natural Environment and Rural Communities Act 2006 to preserve rights for mechanically propelled vehicles.</p> |
| <p>Major R Hanbury, for Council for the Protection of Rural England.</p> | <p>Sent an email on 4 August 2018 explaining that he has 'ridden along both bridleways and no one has tried to prevent me using these Bridleways. They are good/ useful Bridleways and to allow motorised vehicles to use them would spoil them.'</p> |
| <p>Mr Edey</p> | <p>Has written a letter explaining that he is opposed to 'any alterations' to the route subject to this application, but does not supply any information that is of assistance in determining the status of the way.</p> |
| <p>Mrs Jones</p> | <p>Has sent an email on 31 August 2018 explaining that she has known the route for 23 years and does not consider that 'modification of the BRs into a ... definitive byway (17 & 35) is appropriate or justifiable.' However, no evidence has been supplied which refers to the status of the path.</p> |
| <p>Mr Dupont, Director of Langdon (Dorset) Farms</p> | <p>Mr Dupont has written on 25 August 2018 to ask that Mr Cheal's representations, are taken into account by the Council in making its decision as to whether to make a modification order.</p> |
| | <p>Mr Dupont points out that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights.</p> |
| | <p>Mr Dupont has given information regarding the nature of the use of the claimed byway</p> |
| <p>Mrs Mackenzie-Green</p> | <p>In a letter dated 10 September 2018. Mrs Mackenzie-Green asks that Mr Cheal's representations, are taken into account by the Council in making its decision as to whether to make a modification order. Mrs Mackenzie Green refers to Mr Cheal's submission and points out that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights.</p> |

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| Mr Mackenzie-Green | Wrote on 19 February 2005 registering 'my strongest objection to this application'. |
| Mr Streatfeild, Director of Denhay Farms Ltd. | Has sent a letter dated 17 September 2018, in which Mr Streatfeild asks that Mr Cheal's representations, are considered by the Council, and emphasizes that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights. Mr Streatfeild makes the same comments in respect of the use of the way, and attempts to discourage use by the public in motor vehicles, as those made by Mr Dupont and Mrs Mackenzie-Green. |
| | Mr Streatfeild had also contacted the County Council's Rights of Way Manager by email on 19 March 2005, opposing the application. |
| Mr Clunes | Wrote on 11 January 2010 to say that the paths are 'used by pedestrians and horse riders daily', and 'the only motor vehicles to use them are farm vehicles and this only occasionally.' |
| Mr Burton | <p>Has written in a letter of 7 September 2018 to say that he does not wish to see the claimed route made available for use by motor vehicles.</p> <p>Mr Burton has explained in a further letter of 11 September 2018 that Bridleway 17 crosses common land that was covered in gorse and heather, and that 'all the people I have spoken to who were youngsters at the time cannot recall any bridlepath or official footpath.'</p> |
| Mr and Mrs Block | Mr and Mrs Block have sent a copy of a letter to Beaminster Town Council, dated 29 August 2018: 'Historically these bridleways have been used by walkers and horse riders in the safe knowledge that no vehicles have access.' Mr and Mrs Block express concerns with regard to the use of the way by motor vehicles. |
| Mrs Cook, Chair of Beaminster Ramblers | Has sent a copy of a letter of 14 August 2018 to Beaminster Town Council. Mrs Cook explains that parts of the claimed byway are used as part of promoted routes by Beaminster Ramblers, and that 'we do not consider their use to be compatible with off road vehicles.' |
| Mr Hudspith, Mosterton Ramblers | Has written on 22 August to 'register an objection.....on the grounds of amenity, safety and traffic congestion, but does not supply any evidence or information that assists in determining the status of the path. |

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| Beaminstertown Council | Has sent a letter dated 19 September 2018 to say that their position has not differed from that previously submitted in 2010 in that the Town Council 'would not support a change from the current status of bridleway. |
| The Beaminstertown Society | Has written on 10 April 2005, 23 May 2006, 24 May 2006, and 18 January 2010. The Society has expressed concerns in the event that the path was to be recorded as a BOAT. In their letter of 24 May 2006 the Society makes reference to the presence of gates and private ownership of the way did not indicate the existence of public vehicular rights, and took the view that there was insufficient proof of public vehicular rights. |
| Mr Gelfs | In an email of 19 January 2009 Mr Gelfs explained that 'To my knowledge the route using Crabbs Barn Lane is only used by walkers, horses and farm vehicles for access to their fields.' |
| Miss Izard | Has written on 3 January 2009 expressing concerns in the event that the route was to be used by motor vehicles, but does not supply any information that assists in determining the status of the claimed byway. |
| Claire Pinder, Senior Archaeologist, Dorset County Council | In an email of 31 August 2018 Ms Pinder has explained that the route is recorded in the Historic Environment Record as a hollow way. The way would appear to be at least medieval in origin. Any adjacent banks surviving as earthworks and any historic surface/metalling should be regarded as sensitive. Concerned that any change in status might lead to more frequent use by heavier traffic and consequent deterioration of the historic feature. |

7 Other submissions received (copies available in the case file RW/T354)

7.1 Seven other submissions have been received with comments on the application, and are summarised in the table below.

| Name | Comments |
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| Mr Aley | Has supplied information regarding the seeking of permission for the use of Bridleway 14 for events held by the Motor Cycle Club. |
| Mrs Dawn Heath, Dorset Highways | Has responded on behalf of Dorset Highways on 1 August 2018 to say that she has no objections to the application for the modification order. |
| Mr Little, Team Leader of Community Highways. | Has responded in an email on 9 August 2018 to say that he has no objections to a modification order. |

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| Mr Rob Elliott of the Green Lanes Association | Has sent an email on 4 August 2018 to say that he has asked members of the Association to provide evidence of historical use of the way. However, no further information has been received. |
| Mrs Shoopman, Secretary of the Dorset Group of the British Horse Society. | Has explained in a phone call in October 2018 and in an email on 8 January 2010 that the BHS does not have any information that assists with determining the status of the claimed path. |
| Natural England | Wrote on 14 January 2005 to say that they have no comment to make. |
| Ramblers Association | Wrote on 18 January 2005 with observations from the 1890, 1904 and 1901 Ordnance Survey maps, and from the nature of the network of highways and public paths in the area. |

8 Analysis of Documentary Evidence

8.1 The documentary evidence that was submitted with the application is considered in paragraphs 8.2 to 8.10.

Ordnance Survey Map of 1811

8.2 The one inch Ordnance Survey 1st Series map of 1811 shows the claimed byway in the form of a lane or road.

Greenwood's Map of 1826

8.3 Greenwood's map of 1826 shows the claimed byway in the form of a lane or road, part of which may be unfenced. It is noted that other routes on Greenwood's map which form part of today's established highways network are shown in the same way. The map does not tell us whether use of the way was by the public or for private purposes, but it suggests a route that was in existence on the ground in the form of a road. The road is uncoloured on Greenwood's map, and is described in the key as a 'cross road'. This definition gives no clear indication as to the rights carried by the way. Greenwood's map of 1826 shows the claimed byway in the form of a lane or road, part of which may be unfenced. It is noted that other routes on Greenwood's map which form part of today's established highways network are shown in the same way. The map does not tell us whether use of the way was by the public or for private purposes, but it suggests a route that was in existence on the ground in the form of a road. The road is uncoloured on Greenwood's map, and is described in the key as a 'cross road'. This definition gives no clear indication as to the rights carried by the way.

Taylor's Maps of 1765 and 1796

8.4 Taylor's map of 1796 appears to show the claimed byway. The map shows a lane or road running south-eastwards from Beaminster Down, and this route passes Crabbs Barn, which is noted on the map.

8.5 Taylor's map of 1765 also shows the route, as a double-pecked line, part of which is in the form of a lane.

- 8.6 These maps are of a small scale, and caution should be exercised in drawing conclusions from them. They do, however, confirm the existence of a way, of which there was presumably sufficient physical evidence to warrant its inclusion on the maps. In his submission Mr Cheal points out that many ways were shown on old maps which were not necessarily public vehicular ways or public ways of any kind. This has been noted in this report in discussing the validity of the showing of the claimed route on Ordnance Survey and other published maps, and in drawing conclusions from such information.

Plan of Roads in the Neighbourhood of Beaminster, Circa 1800

- 8.7 The applicant has supplied a sketch map of roads in the vicinity of Beaminster. The map shows part of the claimed byway as a double-pecked line. This indicates the existence of way of some kind on the route of the claimed byway, but caution should be exercised in assuming that this sketch map was a record of routes carrying vehicular rights. Mr Cheal notes that many ways were shown on old maps which were not necessarily public vehicular ways or public ways of any kind.

Tithe Map of 1843

- 8.8 The tithe map of 1843 shows those parts of the claimed byway between A, B and C and between C-D-E, the latter corresponding to Crabbs Barn Lane, as land that was excluded from tithe. This suggests that the land the way occupied may have been considered to have been 'public' land. Highways were often excluded from tithe in this way. The remaining length of the route, between E, F, G, H and I, is not excluded. Between point I and Dirty Gate, the way is shown as excluded land. Between E and I there does not appear to be a path or track shown on the tithe map. The tithe apportionments for the enclosures through which the claimed byway runs between E and I do not make any reference to a highway or public way, but it was not part of the purpose of the apportionments to refer to highways. Those parts of the route between A, B and C and between C-D-E, and between I and Dirty Gate, are shown shaded in sienna on the tithe plan. It is noted that other routes on the tithe map are shaded sienna in this way, some of which are vehicular highways, but this does not confirm its status as a public road. Tithe maps were produced to record land for the purpose of tithe payments, and the showing of highways and ways carrying public rights was not a necessary part of their compilation. Mr Cheal points out that tithe maps were produced to show land that was titheable and croppable, and they were 'not aimed at defining the status of ways'. This has been noted in drawing conclusions from the information on the tithe map. Nonetheless, this record is useful in indicating that parts of the way in question may have been exempt from tithe because of its use as a public way of some kind.

Beaminster Inclosure Award of 1809.

- 8.9 The Inclosure Award of 1809 contains a plan showing a route which corresponds to Crabb's Barn Lane, between C and E on plan 18/13. The Award describes this way as 'one other public carriage road and highway 30 feet wide leading from the north-east end of White Sheet Lane to its usual entrance on Langdon Farm in the Parish of Beaminster and adjoining the south side of the said open and common arable fields called the South Fields the same being part of the public highway towards the village of Hook...' The Inclosure map is annotated with the words 'To Hook Village' at the south-eastern end of this awarded carriage road. There is no other plan contained in the Inclosure Award, and the remaining lengths of the claimed byway, between points A, B and C, and between E, F, G, H and I, are not included in the Award.
- 8.10 Consideration needs to be given to whether this awarded public carriage road was intended to carry public rights, and whether the award of the carriage road implies that those parts of the claimed byway not subject to the award also carried such public rights in forming continuous parts of the awarded route. With regard to the Inclosure Map, Mr Cheal's view is that the words 'To Hook Village', indicating the way to the south-east, does not mean that public vehicular rights existed on that way. Mr Cheal notes that the Award confines the public carriage road and highway 30 feet wide to that length of path which corresponds to Crabbs Barn Lane, (shown between C and E on plan 18/13), that the words 'public carriage road' have to be interpreted in this context, and that 'it cannot have been a through route for the public in carriages.' Mr Cheal's opinion is that the awarded way was a wheeled vehicular road for local people needing to get to Crabbs Barn Lane, rather than a carriage road for the public at large, and that the reference in the Award to the carriage road forming 'part of the public highway towards the village of Hook' does not imply that the 'highway' was also a public carriage road. Mr Cheal Maintains that the confining of the awarded carriage road to Crabbs Barn Lane, and the absence of an award over the remaining length of the claimed byway, places a limitation on the value of the inclosure award in determining the extent of public rights over the claimed byway. Officer Comments: The awarded way gave access to Crabbs Barn, and, if the carriageway terminated at that point, it could be that it was intended for those persons who, for whatever reason, had cause to go from Whitesheet Hill to Crabbs Barn. If this was so, the meaning of 'public' in this context may not extend beyond those people. The words 'to Hook Village' on the Inclosure Plan, and the description of a 'public highway towards the village of Hook' in the Award, give weight to the assumption that the awarded carriageway was part of a route which continued, south-eastwards, in the direction of Hook. Whilst this assumption can be made with some degree of confidence, the value of the Inclosure Award in providing evidence of public status is confined to that length of the claimed route that is awarded by it.
- 8.11 Officers consider that the above evidence, which has been submitted in support of the application, raises a prima facie case that the claimed public rights exist. Accordingly, the exemptions in section 67 of the Natural Environment and Rural Communities Act 2006 do not apply. Officers have also considered other documentary evidence, which was not submitted with the application. This evidence is discussed below.

The Definitive Map

Parish Surveys

- 8.12 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.
- 8.13 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 1953, provisional map of 1964, first definitive map of 1966 and the revised draft map of 1974.
- 8.14 The parish survey map, of 1951 shows the whole length of the claimed byway as a solid green line denoting a bridleway. On the parish map the path has the number 30 where it corresponds to what is now Bridleway 17, and the whole length of the route between the north-western end of Crabbs Barn Lane has the number 58.
- 8.15 The parish survey describes path 30 thus:

'BR 30 On Beaminster Down. This BR starts at the southern corner of Beaminster down (Jn of Crabbs Barn Lane and White Sheet Hill Road) and runs in an NW direction with hedge on left to the westerly corner of down. A well defined track.'
- 8.16 The parish survey describes path 58 thus:

'BR58 Beaminster down towards Hooke. A continuation of BR30 from the southern corner of Beaminster Down. For the first half mile this BR is known as Crabbs Barn Lane. It runs between hedges (part metalled) in a SE direction to a FG and then continues as a field track with hedges on left using two FG's (passing turning on left to Upper Langdon (see BR59) and turnings on right to Longdon (see BR22, 57 and 56), then second FG being at the commencement of a lane (12 foot, metalled) which continues to Dirty Gate (Top of Hackthorn Hill on Beaminster-Dorchester Road). A well defined and frequently used BR with gates in good condition.'

Draft Map 1953.

- 8.17 The draft map of 1953 shows the whole length of the claimed byway as a solid green line denoting a bridleway. On the map the path has the number 30 where it corresponds to what is now Bridleway 17, and the whole length of the route between the north-western end of Crabbs Barn Lane has the number 58.

Provisional Map 1964

- 8.18 The provisional map of 1964 shows the north-western end of the claimed path as a bridleway, numbered 17, which corresponds to the present line of Bridleway 17 between points A, B and C on plan 18/13. The provisional map shows Bridleway 35 running between points E and F; that is, between the access road to Higher Langdon Farm and Bridleway 33, at point E, and the present north western end of Bridleway 35 at its junction with the publicly maintainable highway at point F.

First Definitive Map 1966

- 8.19 The First Definitive map shows the same detail in respect of the claimed byway as the provisional map of 1964.

Revised Draft Map 1974

- 8.20 The revised draft map of 1974 shows the north-western end of the claimed path as a bridleway, numbered 17, which corresponds with the present line of Bridleway 17 between points A, B and C. On the revised draft map, however, Bridleway 35 is not shown. The revised draft map does show any public rights of way over the route between C and Dirty Gate. Given that a number of public rights of way shown on the Revised Draft map, Footpath 28 and Bridleways 33 and 34, join the way shown on the Ordnance Survey base map between C and Dirty Gate, the assumption must be that this way carried public rights. Given that it was not deemed appropriate to record these rights on the revised draft map, it seems likely that it was considered that they were vehicular rights that did not require recording on the definitive map.

Special Review. 1977/1973

- 8.21 The Council's files contain a form, included in correspondence with the definitive map, entitled 'Dorset County Council Special Review of Definitive map of Public Rights of Way, which proposed that the way should be recorded as a byway open to all traffic. The description of the path in this form is similar to that of the awarded carriage road in the Inclosure Award of 1809. There is a reference on the form to the route being a Road Used as Public Path (RUPP). The committee's decision was that the route 'should be shown as a county road because of its origin in the Inclosure Award.' There does not appear to have been any further correspondence or submission of other evidence to back-up the proposal that the way should be recorded as a byway open to all traffic.

Sealed definitive map. 1989

- 8.22 The sealed definitive map of 1989 shows the north-western end of the claimed byway, between points A, B and C as a bridleway, numbered 17. Between points E and F the path is shown as a bridleway, numbered 35. The remaining length of the claimed byway are not shown. Mr Cheal notes that there has been no challenge to the recorded status of the ways included in the application for the modification order during the process of the drawing up and review of the definitive map. Mr Cheal refers to the original definitive statement, which described the length of the route between C and F on plan 18/13 as a bridleway; this included Crabbs Barn Lane, which is not recorded on the current definitive map, as well as the length of what is now Bridleway 35.

Highways Records

- 8.23 Part of the claimed byway is shown in Dorset County Council current records as a highway maintainable at public expense. The length of Crabbs Barn Lane between points C, D and E on plan 18/13, is shown as publicly maintainable highway. The length of way between point I and Dirty Gate is also shown in these records as publicly maintainable highway. The records of preceding highway authorities are not available, and may have been destroyed. It is important to note that these records do not confirm the extent of public rights which exist over a way shown in them. Their purpose is to list highways which the County Council has a responsibility to maintain. Notwithstanding this, it is a matter of fact that the majority of ways shown in councils' records of maintainable highways carry public vehicular rights.

Finance Act 1910 Records Valuation Map and Field Book

- 8.24 The Finance Act 1910 survey map shows the length of claimed byway between A, B and C, over Bridleway 17, to run within hereditament 495. The Field Book for this hereditament does not record any deduction for 'Public Right of Way or User'. There is nothing in the Field Book that makes reference to a highway over this part of the claimed path. The length of claimed byway over the part of Crabbs Barn Lane between C and a point to the north-west of D is shown as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of highway status. Highways were often excluded in this way as land that was not subject to taxation. The south-eastern end of Crabb's Barn Lane is not shown to be excluded in this way, and lies within hereditament 304. The Field Book for hereditament 304 does not record any deduction for 'Public Right of Way or User.' The length of claimed byway between E, F, G, H and I lies within hereditament 342, and is not shown to be excluded as a separate area of land. The Field Book records a deduction of £100 for 'Public Right of Way or User'. It is possible that this deduction was granted because of the existence of a highway through the land subject to the survey. A number of public rights of way cross the area of land included in hereditament 342, and it cannot be concluded that this deduction relates solely to the claimed byway. Mr Cheal has drawn attention to the sum of £100 which was deducted for 'pubic right of way or user; in respect of hereditament no.342, relating to Langdon estate, and argues that 'a claim of only £100 over 512 acres is on the low side', and that various footpaths traverse the farm.

Ordnance Survey Maps

- 8.25 The 1 inch Ordnance Survey 1st Series map of 1811 is noted in 8.1 above. It shows the claimed byway in the form of a lane or road.
- 8.26 The 1888 6inch Ordnance Survey map shows that part of the claimed byway between A and C in the form of a lane. Between C and E the path runs within a lane, Crabbs Barn Lane, Between E and H the path appears to be a track that is unfenced on its southern side. It then continues as a lane to point I and onwards to Dirty Gate.
- 8.27 The 25 inch Ordnance Survey map of 1903 shows the shows the part of the claimed byway between A and C in the form of a track. Between C and E it is shown as a lane, which is Crabb's Barn Lane. Between E and H the path appears as a track that is unfenced on its southern side. The way then continues as a lane to point I, and onwards in the same way to the road at Dirty Gate.

- 8.28 The 1904 6 inch Ordnance Survey map shows similar detail to the 1888 map. On the 1901 map the north-western end of the path, between points A and B, appears to be unfenced on its northern side, and the boundary has been removed.
- 8.29 The 1 inch Ordnance Survey map of 1906 shows parts of the claimed route as a 'Third Class Road'. The route between C and I is shown partly in the form of a lane and partly as a track or unfenced road. The north-western end of the path, where it runs over Bridleway 17 between A, B and C, is not shown.
- 8.30 The quarter-inch Ordnance Survey map, of 1934, shows the part of the claimed byway between C and I as a lane or road, and this is described in the key as an 'Other Metalled Road.' The north-western end of the path, where it runs over Bridleway 17 between A, B and C, is not shown.
- 8.31 The 1958 two and a half inch OS map shows the greater part of the route as a lane. A short section to the north of point G appears to be unfenced on the southern side.
- 8.32 It is important to note that Ordnance Survey maps do not provide any indication of the status of a route. They are of use in that they confirm the physical existence of what was on the ground at the time of the survey.
- 8.33 The limitations of Ordnance Survey maps in providing evidence of the status of a way is thus noted. Mr Cheal alludes to this, and emphasizes, with particular reference to the second edition 25 inch OS map published in 1903, the contrast between the nature of Crabbs Barn lane and the remaining parts of the claimed byway. Mr Cheal believes that this adds weight to the existence of Crabb's Barn Lane as 'an accommodation way serving the fields surrounding it. 'The 1903 OS map appears to indicate the presence of numerous gates across the claimed byway, which Mr Cheal believes argues against its use as a public highway for vehicles.

Early Published Maps

- 8.34 A number of early published maps have been examined, in addition to those submitted by the applicant, including Saxton's 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 the maps are of a small scale and only show settlements and significant topographical features.

Commercial Maps

- 8.35 There are a number of other commercial maps published mainly in the first half of the 20th century which show the existence of a way on the route of the claimed byway. They do not confirm the status of this way, but in some cases suggest that this route was available for use by vehicles.

Land Registry

- 8.36 Land Registry documentation does not assist in determining the status of the claimed byway. The north-western end of the path, shown between points A, B, and C on plan 18/13, is included within an area of land that is registered. The land occupied by the remaining length of claimed byway, between C, D, E, F, G, H and I is unregistered. It does not follow that this land is unregistered because of its status as a public way of some kind.

9 Analysis of User Evidence Supporting the Application

- 9.1 A total of 22 users have completed user evidence forms, which were submitted in support of the application. These forms are dated in 2008, 2009 and 2010.
- 9.2 A summary of the forms of evidence is set out below, but reference should be made to the actual forms contained within the case file Ref.T354 for all the information. The table at appendix 4 summaries the key information contained in these forms.
- 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 With the exception of three forms, a typed note on each user evidence form describes the route referred to in the form as Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125 (Route known locally as Crabb's Barn Lane'. The three remaining forms (from Paul Studley, Mathew Towill and David Wilmott) give the route as running between ST4960 0298 and ST 5093 0124. The maps accompanying the forms indicate that the route referred to runs between point C and Dirty Gate. None of the forms give any information or indication that the witness has used the length of path to the north-west of point C, between A, B and C on plan 18/13.
- 9.5 Section 31 of the Highways Act 1980 provides that where a way has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
- 9.6 The date of the application for the modification order is 21 December 2004. There are no references in any of the user evidence forms to the witnesses use of the path being brought into question during the time they have used it. In assessing the extent to which use of the path by the public might have established a public footpath statements testifying to use of the path may therefore refer to use of it up to 2004 in order to meet the requirements of section 31.
- 9.7 The minimum period of use for the purposes of dedication under Section 31 of the Highways Act 1980 is thus taken to be from 1984 to 2004.
- 9.8 The statements contained in the user evidence forms indicate that the use referred to was by vehicles, on motorcycles. The period of use recorded in the forms was between 1973 and 2010; this amounts to 31 years up to 2004.
- 9.9 Of the 22 witnesses who claim to have used the route, one had used the route for 31 years, three for between 20 and 30 years, ten for between 10 and 20 years, and 6 for between 1 and ten years. These statements show that there was continuous use of the way by motor vehicles between 1973 and 2004. Two of the users have noted that their use of the path did not commence until 2004.
- 9.10 The frequency of use varied from once or twice a year to a maximum of 20 to 25 times a year.

- 9.11 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.
- 9.12 No witness refers to any signs or notices on the claimed path that were intended to discourage their use of it in motor vehicles.
- 9.13 None of the witnesses mention their use of the path being in the exercise of a private right of access.
- 9.14 No one was a tenant or employee of the owner of the land.
- 9.15 None of the witnesses recall there being any gates along the route that were locked, or refers to any other obstructions that would have prevented their use of the way.
- 9.16 All of the witnesses mention meeting or seeing other users of the way and a number give their opinion that the landowner(s) would have been aware of their use of the way due to the visibility of tyre tracks on the ground.
- 9.17 The majority of the witnesses state that they saw or met other users on their motorcycles, but several also refer to seeing others on bicycles, horses or on foot. One refers to use by another person or people with a four-wheel drive vehicle. Mr Cheal has made comments with regard to user evidence, although the user evidence that is considered in this report had not been sent to the Council at the time of Mr Cheal's submission in 2005. Mr Cheal notes that a request for information by the County Surveyor in 1971 (see section 11 below) did not reveal any evidence of public use. Mr Cheal makes the point that the route between Point C at Whitesheet Hill and Dirty Gate 'is subject to public vehicular use very infrequently, probably no more than once or twice a year at most.' Mr Cheal explains that whenever the objectors see anyone attempting to use the route, they challenge them by 'pointing out that it is not a through-route for vehicles, and the visitor then leaves.' When Landgon (Dorset) Farms owned Beaminster Down, they pursued the same policy. On one occasion, about 15 years ago, permission was given for a motorcycle club to use the route as part of a rally. Mr Cheal emphasises that in relation to the A-B-C stretch there is 'no evidence of public vehicular use at all', and this has been confirmed by the tenant and farm manager, who would have 'immediately challenged' any attempt to use this section with a vehicle.' Mr Cheal's point here is that 'This evidence of challenges is good evidence of the lack of intention to dedicate.' Officer Comments: This must be considered alongside the statements of those who have completed the user evidence forms in support of this application. None of the witnesses refers to having been challenged whilst using the route, and there are no references to any attempts to deter them from using the way. There is, however, no user evidence with regard to the A-B-C stretch, which adds weight to Mr Cheal's assertion that this length of the claimed byway has not been used by motor vehicles.
- 9.18 Mr Cheal refers to the case of *Bakewell*,(2004). The background to that case was that before it, the Courts had held that long use by vehicles of a footpath or bridleway would not create public vehicular rights because it is a criminal offence to use a motor vehicle on a footpath or bridleway without lawful authority. The House of Lords in *Bakewell* reversed that line of cases and held that long use by vehicles could create public rights if that use did not cause a nuisance to footpath or bridleway users. Mr Cheal argues that in the present case use by motor vehicles would have been a nuisance to lawful users of the way on horseback. Mr Cheal suggests that use of mechanically propelled vehicles on a bridleway may constitute the common law offence of public nuisance if that use prevents the convenient use of the way by lawful

users. Mr Cheal also submits that in order to fall within the decision, there had to be someone with capacity to dedicate the route which is not the case if the land is leased. He points out that 'it is clear that capacity to dedicate rests in the hands of the freeholder who also occupies the land crossed by the way in question, so that in the present case all the time the farm was the subject of a tenancy, no dedication could have taken place.' Mr Cheal refers to the tenancy of Mr Streatfeild, concerning the land at Beaminster Down crossed by the claimed byway between points A, B and C. Mr Cheal also maintains that the land crossed by the length of the route between E and I was subject to a tenancy, and refers to the Finance Act Valuation Book entry for hereditament 342 which makes reference to the occupation of the land by a tenant.

- 9.19 The relevance of this is that, if vehicular use would have caused a nuisance or the owner did not have the capacity to make a dedication, evidence of use of the way by motor vehicles could not be considered in determining whether public vehicular rights had been established. If this is so, any evidence of use of the way by the public with vehicles after 1930 could not be taken into account.
- 9.20 The existence of a tenancy does not prevent a deemed dedication under section 31 of the Highways Act. It may though prevent an implied dedication under common law. For a common law dedication, the landowner must have the capacity to dedicate, but this need not be throughout the whole period of the use of the way by the public. Any periods of capacity, however short, may be sufficient for dedication to be implied. There is no evidence that the landowner acquiesced in dedication of the route; there is, equally, no evidence that they did not.
- 9.21 Part of the land has been leased to Mr Streatfeild, since 1986. The area of land subject to Mr Streatfeild's tenancy contains the section of claimed byway between points A, B and C on plan 18/13. As noted above, there is no user evidence in support of the existence of vehicular rights over this section of the claimed byway. Nonetheless, any lack of intention or capacity to dedicate the way would not affect any pre-existing public rights, vehicular or otherwise, over the claimed byway.
- 9.22 It would not have been open to the landowner to dedicate the way as a vehicular highway if use by vehicles would have constituted a public nuisance to lawful users of the way. Mr Cheal argues that use of the route by motor vehicles would have been a nuisance to lawful users of the way on horseback, and that such use may constitute the common law offence of public nuisance in that it prevents the convenient use of the way by lawful users. Due to the physical characteristics of the route, officers do not consider the public vehicular use would have constituted a nuisance. Many routes of a similar physical nature carry public vehicular rights and there are no exceptional circumstances that might apply in the case of the claimed byway presently under consideration.
- 9.23 Mr Cheal has supplied a plan dated June 1951 from deeds relating to Beaminster Down. The plan shows the sections of path A-B-C and C-E in green, which are described as bridleways. Mr Cheal makes reference to *Godmanchester Town Council and Drain v DEFRA, 2004*, and points out that a provision in a written tenancy agreement by which the landlord obliges the tenant to prevent trespass and the acquisition of public rights of way is good evidence of his lack of intention to dedicate. Officer Comments: The 'Godmanchester' case was appealed to the House of Lords where it was held that in order for a provision such as the one in this case to show a lack of intention to dedicate a highway it must be drawn to the public's attention. There is no evidence that it was.

- 9.24 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.
- 9.25 In this case it may be considered that the number of users, their frequency of use and the level of that use would be sufficient to raise a presumption of dedication of public vehicular rights over the length of the route shown on plan 18/13 between Whitesheet Hill, point C, and Dirty Gate.

10 Analysis of evidence in support of the application

- 10.1 On 15 September 2006 Mr D. Oickle submitted the documentary evidence listed in the table in 5.1 above.
- 10.2 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.'
- 10.3 The applicant's comments on the evidence he submitted have been taken into account in section 8 of this report in considering documentary evidence which relates to the status of the claimed byway.
- 10.4 Mr Legg of the Open Spaces Society has written in a note dated 1 February 2010 making a number of observations on the background and historical purposes of the claimed route. Mr Legg says that 'in 1950 local people assumed it was already...an unclassified road', which Mr Legg believes is the reason for the unrecorded status of parts of the claimed byway. Mr Legg refers to the showing of the way on a road map from the 1970's and explains that the route was a 'direct link in the ridgeway system.' Mr Legg refers to 'A History of Beaminster', published in 1984 by Marie G de Eadle, who writes that 'authority was given for the building of a turnpike house near Dirty Gate in order to block use of Crabbs Barn Lane in order to avoid tolls, but adds that it was never built. In other references, Mrs De Eadle refers to the way as a droveway.'
- 10.5 These points must be considered together with documentary evidence relating to the use of and status of the way.

11 Analysis of evidence opposing the application

- 11.1 In a letter dated 6 August 2018 Mr G Plumbe, on behalf of the Green Lanes Protection Group, has objected to a modification order on the grounds that 'although the application for the modification order was made on 21 December 2004 it was not lodged with the County Council until 6 February 2005. It was thus after the cut-off date on 20 January 2005 and does not benefit by way of section 67(3) of the Natural Environment and Rural Communities Act 2006'.
- 11.2 In order for unrecorded rights for mechanically propelled to be preserved, an application complying with the requirements of the Wildlife and Countryside Act 1981 had to be made before 20 January 2005.

11.3 Mr Plumbe submits that the applicant's statement in the application:

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

means that not all evidence was submitted that the applicant wished to rely on. So, even if the application was not too late, it would not be submitted to comply with the legislative requirements to record a byway. Mr Plumbe has obtained Counsels' opinion which says that an applicant who deliberately holds back evidence or applies before completing their research will not comply with the legislation. He submits that following Court decisions, the legislative requirements must be met strictly in order to preserve rights for mechanically propelled vehicles.

11.4 The County Council has considered these points raised by Mr Plumbe. The application was received by the County Council on 25th September 2004, and so before 20 January 2005. All of the evidence listed on the form was supplied by the applicant prior to the application. The applicant used the same wording for each of its applications submitted around this time because it was known that there was likely to be a 'cut off' date but not when it would be. Officers do not consider that the applicant deliberately held back evidence or submitted applications before they had been researched. Officers are therefore satisfied that the application has been submitted in accordance with the requirements of the Wildlife and Countryside Act 1981 so that the exceptions in the Natural Environment and Rural Communities Act are capable of applying.

11.5 On 21 July 2005 Mr J Cheal of Thring Townsend, Solicitors, sent to the Council a detailed submission inviting the Council to 'dismiss the claim and make no order'. This submission contains documentary evidence and other information regarding the status and use of the path in question, and an analysis of the evidence that has been submitted in support of the application. Mr Cheal is acting for the following:

- Langdon (Dorset) Farms (Mr C W Dupont)
- Mrs T Mackenzie Green
- Mr G Streatfield of Denhay Farms Ltd.

The issues raised by Mr Cheal in this submission are discussed below.

11.6 Mr Cheal questions whether it is technically possible for 'two parts of the claimed route to be modified to byway status if it is the case that either or both of these is already a publicly maintainable road'.

11.7 The effect of a modification order would be to record the route in question as a byway open to all traffic on the definitive map. There is no reason why the way should not appear in the Council's records as both a publicly maintainable highway and a byway open to all traffic.

11.8 Mr Cheal notes that, if the application for the recording of a byway open to all traffic is to succeed, 'the standard of proof is on the balance of probabilities. It is not a question of whether or not public vehicular rights have been reasonably alleged to subsist.'

- 11.9 Where the addition of a right of way is being considered, in order to make an order, the surveying authority must be satisfied that the evidence shows on the balance of probabilities that the right of way exists, or has been reasonably alleged to exist (section 53 (3) (c) (i)) and where the upgrading is being considered the surveying authority must be satisfied that the evidence shows on the balance of probabilities a highway shown of a particular description ought to be there shown as a highway of a different description. (section 53 (3) (c) (ii)). Mr Cheal's observation in that different tests of standards of proof must therefore be applied in considering the evidence relating to those parts of the claimed route which are recorded on the definitive map (that is, Bridleways 17 and 35) and that over the remaining, unrecorded, parts of the way, is correct. To confirm an order to add a right of way, the evidence must show that the rights of way exists (not only that it is reasonable alleged to exist).
- 11.10 Mr Cheal says that if a route is presumed to be dedicated under section 31 of the Highways Act or at common law, it must be accepted and used by the public as of right with vehicles. He also says that vehicular use exercising a private right of way is not public use. Officer Comments: Mr Cheal is correct in that both dedication and acceptance are required. Where there is a presumed dedication based on use of the route, the evidence of that use can be evidence of acceptance by the public. Evidence of use by those exercising a private right of way does not count as evidence of either a presumed dedication or of acceptance by the public.
- 11.11 Mr Cheal has supplied a copy of a plan of 1907 in respect of the Langdon Estate. This is based on the 1903 Ordnance Survey map, which is discussed above. The northern boundary of the estate is drawn across the south-eastern end of Crabbs Barn Lane, at point E on plan 18/13. Mr Cheal refers to the 'wide double-fenced area' which contains Crabbs Barn Lane, terminating at this point, and how the claimed byway continues south-eastwards as an unfenced track or path within the fields. Mr Cheal's assertion is that 'these two contrasting ways when viewed together in this way do not give the impression of the whole being a through route, certainly not at least for motor vehicles.'
- 11.12 Officer Comments: As has been noted, Ordnance Survey maps do not provide any indication of the status of a route but show what was on the ground at the time of the survey. Mr Cheal's observation that the width of the track shown on the OS map as it enters the field is 'less than a quarter of the width of the gateway at the end of Crabbs Barn Lane' does not provide any substantial evidence that the unfenced track to the south-east was not used, or could not be used, by motor vehicles. The track within the field was unfenced and there is no indication on the map that there was anything to constrict its use by vehicles. It is noted too that a track of similar width as that running in the field is also depicted on the map within the enclosed area of Crabb's Barn Lane itself. The double-pecked line representing a track is no more than an indication of a worn path on the ground.

- 11.13 Mr Cheal has supplied copies of plans contained in conveyances of 1925 and 1939 relating to the Langdon Estate. These plans show the claimed byway as it passes through the estate, partly in the form of a walled or fenced lane, and partly as dashed line, in the form of a track or path. Mr Cheal has also referred to a 1980 conveyance in which Higher Langdon was split from Langdon Farm, and explains that the title to Higher Langdon 'also includes the express grant of private access rights on the Claimed Route.' Mr Cheal has expressed his view that 'If the Claimed Route as a whole had historically been dedicated to the public use with motor vehicles, it is highly unlikely that the central section would have been within private ownership and occupation and been the subject of detailed provision as to private access and repair.'
- 11.14 It is indeed possible that, had the way in question carried vehicular rights, there may have been no requirement for a conveyance providing for such private use and maintenance. Nonetheless, routes carrying public rights of all kinds commonly pass over private land, and a landowner may transfer land subject to whatever conditions they think fit. It cannot be asserted with any degree of confidence that private provision for the use and maintenance of the way was due to the absence of public rights over it.
- 11.15 Mr Cheal has supplied a plan dated June 1951 from deeds relating to Beaminster Down. The plan shows the sections of path A-B-C and C-E in green, which are described as bridleways. Mr Cheal makes reference to *Godmanchester Town Council and Drain v DEFRA, 2004*, and points out that a provision in a written tenancy agreement by which the landlord obliges the tenant to prevent trespass and the acquisition of public rights of way is good evidence of his lack of intention to dedicate. The implications of the existence of any tenancies is discussed elsewhere.
- 11.16 Mr Cheal makes reference to the various classifications of highway which lie over the route of the claimed byway and asserts that this suggests the absence of public vehicular rights throughout the route rather than the presence of such rights. Two parts of the route are recorded as public bridleway, one part carries no recorded public rights, and part of it is shown in the County Council's records as an unclassified county road (UCR). Mr Cheal points out, correctly, that the showing of a way as a UCR in these records does not confirm the extent of public rights over it. Records of unclassified highways are kept by highway authorities for purposes relating to a way shown therein, but they are not a legal record of public rights. The records of the preceding highway authority are not available.
- 11.17 Mr Cheal describes the topography of the claimed route and makes several observations. The name 'Crabb's Barn Lane', the fenced nature of the lane, and the fact that the barn itself lies towards its southern end, Mr Cheal suggests, indicates that the lane gave access from the road at its north-eastern end to the barn, but not to the land lying to the south-east. Mr Cheal also notes the presence of a number of gates across the length of the claimed byway and suggests that this 'indicates the absence of a public through-route'.
- 11.18 Officer Comments: Caution should be exercised in drawing any assumptions from this. Crabb's Barn lane may have the physical make-up of a lane, in that it is fenced on both sides; the reasons for this are unknown but may be a result of the inclosure processes the land was subject to. It is not uncommon for vehicular highways to be unenclosed, nor for gates to exist across them.

- 11.19 Mr Cheal has commented in detail on the evidence that has been submitted by FoDRoW in support of the application for the modification order. The points made by Mr Cheal are considered in analysing the documentary evidence in section 8.
- 11.20 *Eyre v New Forest Highway Board 1892*. In making the application for the modification order FoDRoW assert that the *Eyre* case is a key precedent in that a highway which entered a common and emerged the other side with no record of a highway across the common could be presumed to exist. Mr Cheal questions the relevance of this, in that in the *Eyre* case there was no doubt of public use across the common. Mr Cheal believes this is not a 'key precedent', nor is it a true interpretation of *Eyre*, to assume with confidence that 'a public carriage way must exist in the gap.' In making this point Mr Cheal says that whilst a way approaching a ring-fenced farm or estate might be approached at either end by ways carrying public vehicular rights, it does not follow that any such public rights must continue through the estate or farm.
- 11.21 Officer Comments: This is acknowledged, and in drawing conclusions from the available evidence no presumption has been made with regard to the ruling in the *Eyre* case.
- 11.22 Mr Cheal has referred to the Ordnance Survey Object Names Book, and notes that the Object Names Book entry for Crabbs Barn Lane records the lane as being 32 chains (0.4 miles) in length, and that it terminated at a gate.
- 11.23 Officer Comments: This coincides with the awarded carriage road in the Inclosure award, but it should be noted that the object names book was to record the names of physical features to be shown on Ordnance Survey maps, and had no role recording the legal status of any ways described. Referring to spot heights and bench marks shown on Ordnance Survey maps, in particular that of the 1903 25 inch OS map, Mr Cheal rightly points out that these have no bearing on the status of a way. Included with Mr Cheal's appendix is a copy of a letter from the Ordnance Survey dated 6th April 2005 in which this is made clear.
- 11.24 Mr Cheal makes reference to correspondence from 1971 between the County Surveyor and the District Surveyor, in which the former asked the latter for information as to whether the County Council had maintained the route between E,F,G,H and I 'as a through road and (whether there was) any evidence that it is used by the public as a through road.' The County Surveyor further asks whether there were any obstructions on the route and explains that 'At present no public status exists but it is necessary that some public status is given to it at Review to link up bridle roads.' The response from the District Surveyor gives details of the physical make-up of the section of route referred to, and suggests that it should be recorded as a 'Byeroad(sic) open to all traffic', but fails to give any evidence as to why the route should be so recorded.
- 11.25 In drawing conclusions on the available documentary evidence, Mr Cheal states that 'Since this claim must be decided on the balance of probabilities, it must surely be the case that on balance it is more likely that the Claimed Route as a whole has never been public vehicular, and thus this claim must fail.'

- 11.26 Mr Cheal has made comments with regard to user evidence, which are taken into account in section 9 of this report. Mr Cheal has also made the same points as Mr Plumbe, that in his view the exception in the 2006 Act is not available to preserve any public vehicular rights due to the deficiencies in the evidence accompanying the applications. Officers do not agree that his is the case for the reasons set out above. Mr Cheal also refers to DERFA guidance on the NERC Act, which states that 'Inclusion of a route on the list of streets is not conclusive evidence of the rights it carries and there can be no presumption that any highway shown on the list of streets carries vehicular rights. Each case must be considered on its own merits.'
- 11.27 Mr Cheal stresses in this letter that 'it is extremely difficult for FoDRoW to argue that this is in effect a through route. Clearly, it was the intention that whatever public status there was in Crabbs Barn Lane should finish at the entrance to Langdon Farm'. Mr Cheal maintains that 'If it were already a through route, there would have been no need to set out a new public carriage road on the first stretch as far as the farm entrance.'
- 11.28 A further point made by Mr Cheal in the letter of 15 January 2010 refers to the Eyre case, and claims that this is not sufficient grounds for the 'proposition that cul de sacs ought to be joined up, that gaps ought to be bridged'. Mr Cheal supports this statement with reference to *Williams-Ellis V Cobb, 1935*, in which the Court of Appeal held that 'it is no longer the case (if it ever was) that a highway must end in another highway.' In referring to the relevance of this to Crabb's Barn Lane, Mr Cheal adds that 'it was always in essence a farm access road, accommodating the farm.'
- 11.29 Officer Comments: This is acknowledged, and the conclusions in this report are based on available evidence relating to the status of the route in question, and not on an assumption that a 'gap' in the recording of public rights over different sections of the way is somehow incorrect. Crabb's Barn Lane may have been a way that was used for the purposes of farming activities and to provide access to land for those purposes, but this private use would not affect the existence of any rights of the public to use it.
- 11.30 Major R Hanbury, for the Council for the Protection of Rural England (CPRE), has sent an email on 4 August 2018 explaining that he has 'ridden along both bridleways and no one has tried to prevent me using these Bridleways. They are good / useful Bridleways and to allow motorised vehicles to use them would spoil the condition and the safe use of these by Horses and people on their feet. Therefore, there is no need for DCC to modify their status and turn them into BOATs.' However, no further information has been supplied by the CPRE that alludes to the status of the claimed byway.
- 11.31 Claire Pinder, Dorset County Council's Senior Archaeologist, has responded in an email of 1 August 2018 explaining that the route subject to the application is recorded in the Historic Environment Record as a hollow way.
- 11.32 Ms Pinder notes that the route would appear to be at least medieval in origin, but there is no detailed information about it in the Council's records. Any adjacent banks surviving as earthworks and any historic surface/metalling should be regarded as sensitive. Ms Pinder would be concerned that any change in status might lead to more frequent use by heavier traffic and consequent deterioration of the historic feature. Ms Pinder also sent an email on 4 January 2010, making these points regarding the sensitivity of the route from an archeological perspective.

- 11.33 These concerns are noted, but issues of archaeological concern cannot be taken into account by the Council in deciding whether to make a modification order.
- 11.34 Mr Edey has written a letter explaining that he is opposed to 'any alterations' to the route subject to this application but does not supply any information that is of assistance in determining the status of the way.
- 11.35 Mrs Elizabeth Jones has sent an email on 31 August 2018 explaining that 'The previous owner of this land maintained a headland for the usage of horseriders and dogwalkers', and that 'the Eastern gate onto Whitesheet Hill has been used by walkers and riders and farm machinery for the last 23 years, but never by other vehicles'. Mrs Jones also points out with regard to Bridleway 35 that 'At no time during my knowledge of this track (23 years) has it ever been used other than by walkers, the occasional cyclists, horseriders and farm machinery.'
- 11.36 'From my knowledge of the 3 BRs over a period of 23 years I do not consider that modification of the BRs into a ... definitive byway (17 & 35) is appropriate or justifiable.'
- 11.37 This is helpful in considering whether use of the way has established public vehicular rights.
- 11.38 Mr Dupont, Director of Langdon (Dorset) Farms asks that Mr Cheal's representations, are taken into account by the Council in making its decision as to whether to make a modification order.
- 11.39 Mr Cheal makes a further submission to the effect that, as part of the claimed route (on Beaminster Down) is on land held within a family settlement, questions arise as to capacity to dedicate. Issues about capacity to dedicate only arise in relation to an implied dedication at common law and depend on the type of any settlement.
- 11.40 Mr Dupont points out that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights. Mr Cheal has emphasised this in paragraph 7 of his 2005 submission and is noted.
- 11.41 Mr Dupont has given the following information regarding the nature of the use of the claimed byway: this must be considered by the Council in assessing whether use of the way has established public rights for motor vehicles.
1. The route from Point A (on plan 18/13) to Dirty Gate is used by the public as a footpath, and local people use it to exercise horses. The road from Dirty Gate to point H is used 'by vehicles having access to Langdon Manor Farm and Langdon Manor only and the road from Dirty Gate to point F... is used by vehicles having access to Higher Langdon Farm only. Only farm and gamekeeper vehicles use parts of the entire length of the route.'
 2. 'There is an iron gate which is closed at all times at point E.' The DCC fingerpost at Dirty Gate, which was knocked down recently, was clearly worded 'Langdon No through Road'. There was historically a closed road gate at point H, which was removed when Higher Langdon House was built and the road to it tarmacked. 'Mr Dupont explains that 'on the rare occasion over the past few years whenever a vehicle has been met attempting to drive along the route they have been turned back. An inspection of the ground at point E on 6th August showed no sign of the recent passage of vehicles at all.'

3. Mr Dupont points out that parts of Crabbs Barn Lane between points D and E are overgrown, and that there are iron gates at both ends of Bridleway 17 which are kept shut at all times. 'There is no evidence of vehicles travelling between these gates apart from Denhay Farm's tractors.'
- 11.42 Officer Comments: This information must be considered by the Council in assessing whether use of the way has established public rights for motor vehicles. The user evidence that has been submitted in support of the modification order is discussed above. None of the users who have completed user evidence forms have referred to being turned back whilst using the route, but the information from Mr Dupont indicates that other users of the way in or on motor vehicles have been. The presence of the 'No through Road' sign at Dirty Gate may have discouraged some potential users of the way, but none of those completing the evidence form have referred to any deterrent signs. The presence of the 'No Through Road' sign does not refer to the existence or otherwise of public rights over the route, nor request that it is not used by motor vehicles. The sign does not therefore negate public rights. Users refer to the presence of gates across the claimed path, and it appears that it has been possible for these to be opened by anyone using the path. The statements of those who have completed user evidence forms, do not make any reference to their use of the way being prevented or discouraged. The number of witnesses who have not been challenged, and the lack of evidence to support the objectors' assertions, are sufficient on balance to show that use of the path by the public with motor vehicles has established public vehicular rights. This is further addressed in the conclusion in section 13 below.
- 11.43 On 19 January 2010 Mr Dupont wrote referring to Mr Cheal's submission of 2005, and requesting that the Council 'dismiss the claim and make no order'. Mr Dupont points out that he has lived in the area since 1942 and 'throughout that time the only vehicular use on BR 17 and BR35 has been for agriculture and gamekeeping purposes.'
- 11.44 Mrs Mackenzie-Green, of Higher Langdon Farm objects to the application. She makes similar points to Mr Dupont and also asks that Mr Cheal's representations are taken into account by the Council in making its decision as to whether to make a modification order. Mrs Mackenzie Green points out that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights. Mrs Mackenzie-Green has given information regarding the nature of the use of the claimed byway, which is the same as that given by Mr Dupont, and noted above.
- 11.45 Mr Streatfeild, Director of Denhay Farms Ltd. opposes the application and has made representations making the same points as Mr Dupont and Mrs Mackenzie-Green. Mr Streatfeild also asks that Mr Cheal's representations are considered by the Council, and emphasizes that the showing of a way as an unclassified county road in the Council's records does not in itself confirm the existence of public vehicular rights. Mr Streatfeild makes similar comments to those made by Mr Dupont and Mrs Mackenzie-Green in respect of the use of the way, and describes the attempts that have been made to discourage use by the public in motor vehicles.
- 11.46 Mr Clunes wrote on 11 January 2010 to say that the paths are 'used by pedestrians and horse riders daily', and 'the only motor vehicles to use them are farm vehicles and this only occasionally.'

- 11.47 Mr Burton has written in a letter of 7 September 2018 to say that he does not wish to see the claimed route made available for use by motor vehicles. Mr Burton has explained in a further letter of 11 September 2018 that Bridleway 17 crosses common land that was covered in gorse and heather, and that 'all the people I have spoken to who were youngsters at the time cannot recall any bridlepath or official footpath.'
- 11.48 Mr and Mrs Block have sent a copy of a letter to Beaminster Town Council, dated 29 August 2018. Mr and Mrs Block have explained that 'Historically these bridleways have been used by walkers and horse riders in the safe knowledge that no vehicles have access.' Mr and Mrs Block express concerns with regard to the use of the way by motor vehicles but have not provided any information that assists in determining its status.
- 11.49 Mr Hudspith of Mosterton Ramblers has written on 22 August 2018 to 'register an objection.....on the grounds of amenity, safety and potential traffic congestion.' Mr, Hudspith has described the reasons for these concerns, but has not provided any information that is of assistance in determining whether a modification order should be made.
- 11.50 Mrs Cook, Chair of Beaminster Ramblers, has sent a copy of a letter of 14 August 2018 to Beaminster Town Council. Mrs Cook explains that parts of the claimed byway are used as part of promoted routes by Beaminster Ramblers, and that 'we do not consider their use to be compatible with off road vehicles.' There is no information that assists in determining whether a modification order should be made.
- 11.51 Beaminster Town Council has sent a letter dated 19 September 2018 to say that their position has not differed from that previously submitted in 2010 in that the Town Council 'would not support a change from the current status of bridleway.' The Town Council does not hold any relevant information that would be of assistance in this matter.'
- 11.52 The Beaminster Society have written on 10 April 2005, 23 May 2006, 24 May 2006, and 18 January 2010. The Society has expressed concerns in the event that the path was to be recorded as a BOAT. In their letter of 24 May 2006, the Society makes reference to the presence of gates and private ownership of the way did not indicate the existence of public vehicular rights, and took the view that there was insufficient proof of public vehicular rights. No documentary evidence was supplied in support of these assertions, however.
- 11.53 Mr Aley has supplied information regarding the seeking of permission for the use of Bridleway 14 for events held by the Motor Cycle Club. This does not provide any information on the status of the route but confirms that permission has been sought and granted in the past.
- 11.54 In an email of 19 January 2009 Mr Gelfs explained that 'To my knowledge the route using Crabbs Barn Lane is only used by walkers, horses and farm vehicles for access to their fields.'
- 11.55 Miss Izard has written on 3 January 2009 expressing concerns in the event that the route was to be used by motor vehicles, but does not supply any information that assists in determining the status of the claimed byway.

12 **Analysis of other submissions**

- 12.1 Mrs Dawn Heath has responded on behalf of Dorset Highways on 1 August 2018 to say that she has no objections to the application for the modification order.
- 12.2 Mr Little, Team Leader of Community Highways, has responded in an email on 9 August 2018 to say that he has no objections to a modification order.
- 12.3 Mr Rob Elliott of the Green Lanes Association has sent an email on 4 August 2018 to say that he has asked members of the Association to provide evidence of historical use of the way. No further information has been supplied, however.
- 12.4 Mrs Shoopman, Secretary of the Dorset Group of the British Horse Society, has explained in a phone call and in an email on 8 January 2010 that the BHS does not have any information that assists with determining the status of the claimed path.
- 12.5 Natural England wrote on 14 January 2005 to say that they have no comment to make.
- 12.6 Natural England wrote on 31 December 2009 to say that they have no comment to make.
- 12.7 The Ramblers Association wrote on 18 January 2005 with observations from the 1890, 1904 and 1901 Ordnance Survey maps, and from the nature of the network of highways and public paths in the area. Ordnance Survey maps have been considered above.

13 **Conclusion**

- 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 basis of the evidence described in this report, the way should be recorded as a way of another description.
- 13.2 In summary, the showing of the way on published maps suggests that the claimed byway open to all traffic may once have been of equal status to other routes which are part of today's established highways network. These maps do not provide evidence of the status of a way, but are of some assistance in placing a route in the context of the wider highways network.
- 13.3 Ordnance Survey maps published between 1811 and 1958 show the path. The 1811 and 1958 maps show its whole length in the manner of a road or lane, and other Ordnance Survey maps show it partly as a lane and partly as a track. These maps do not tell us who used the way but confirm its existence in the form shown on them.
- 13.4 The tithe map of 1843 shows those parts of the claimed byway between A, B and C and between C-D-E, corresponding to Crabbs Barn Lane, as land that was excluded from tithe. This suggests that the land the way occupied may have been a highway. The remaining length of the route, between E, F, G, H and I, is not excluded. Between point I and Dirty Gate, the way is shown as excluded land. Between E and I there is no path or track shown on the tithe map. The evidence of the tithe map is of some substance in supporting the existence of a public highway.

- 13.5 The Finance Act 1910 map shows the length of claimed byway between A, B and C, over Bridleway 17, to run within hereditament 495. The Field Book for this hereditament does not record any deduction for 'Public Right of Way or User'. The length of claimed byway over the part of Crabbs Barn Lane between C and D is shown as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of highway status. The south-eastern end of Crabb's Barn Lane, between D and E, is not shown to be excluded in this way, and lies within hereditament 342. The length of claimed byway between E, F, G, H and I also lies within hereditament 342, and is not shown to be excluded as a separate area of land. The Field Book records a deduction of £100 for 'Public Right of Way or User'. It is possible that this deduction was granted because of the existence of a public highway through the land subject to the survey. This is of some assistance in indicating the existence of a highway, but its limitations must be noted.
- 13.6 The process of the drawing-up of the definitive map gives no information to indicate that any error was made in the recording of Bridleways 35 and 17. It is possible that the provisional map of 1964 did not include those sections of the route that were shown in the parish and draft map because these were considered to be vehicular highways, and that their showing on the definitive map was therefore unnecessary. Caution needs to be exercised in drawing any conclusions from such an assumption, and it is important to note that the listing of a way in the Council's records as a highway maintainable at public expense does not confirm the extent of public rights over it.
- 13.7 The Beaminster Inclosure Award of 1809 describes a route which corresponds to Crabb's Barn Lane, between C and E on plan 18/13. The Award describes this way as one other 'public carriage road and highway 30 feet wide and..... being part of the public highway towards the village of Hook...' The Inclosure map is annotated with the words 'To Hook Village' at the south-eastern end of this awarded carriage road. This gives weight to the assumption that the awarded carriageway was part of a route which continued, south-eastwards, in the direction of Hook.
- 13.8 It is concluded that the documentary evidence as a whole is sufficient to demonstrate, on balance, that the claimed public rights subsist.
- 13.9 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.
- 13.10 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.
- 13.11 It is considered that public rights were brought into question by the application to modify the definitive map and statement, which was made in December 2004.

- 13.12 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.
- 13.13 There is evidence of use by the public with vehicles, predominantly motorcycles, contained in the user evidence forms that were submitted in support of the application. 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.
- 13.14 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.
- 13.15 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.
- 13.16 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. Alongside the statements of those who have used the path in motor vehicles, must be considered the statements of the landowners who have taken steps to prevent use of the way by the public with motor vehicles. These actions may be evidence of a lack of intention to dedicate the path as a vehicular highway. However, neither the applicant nor any of the witnesses refer to having been challenged or obtaining permission to use the way, and neither the landowners nor objectors have provided direct evidence of attempts to prevent such use which overcomes the user witness evidence. It is therefore concluded that there has been a presumed dedication of the route under section 31.
- 13.17 In considering the common law test, it is necessary to consider whether the owner of the land had capacity to dedicate the path as a way for motor vehicles. Any periods of capacity, however short, may be sufficient for dedication to be implied. It is also considered that the use of the route is sufficient for implied dedication of public vehicular rights under common law.
- 13.18 The area of land containing the section of claimed byway between points A, B and C on plan 18/13 has been the subject of a tenancy agreement since 1986. There is no user evidence in support of the existence of vehicular rights over this section of the claimed byway. Any lack of intention or capacity to dedicate the way would not affect any pre-existing public rights, vehicular or otherwise, over the claimed byway.
- 13.19 It is concluded that there is no evidence that the owner of the land did not have the capacity to dedicate the way as a vehicular highway over the length of path for which user evidence has been submitted; that is, between points C, D, E, F, G, H and I on Plan 18/13.
- 13.20 In light of that, officers consider that for the same reasons as set out in para 13.16 there has also been a presumed dedication at common law.

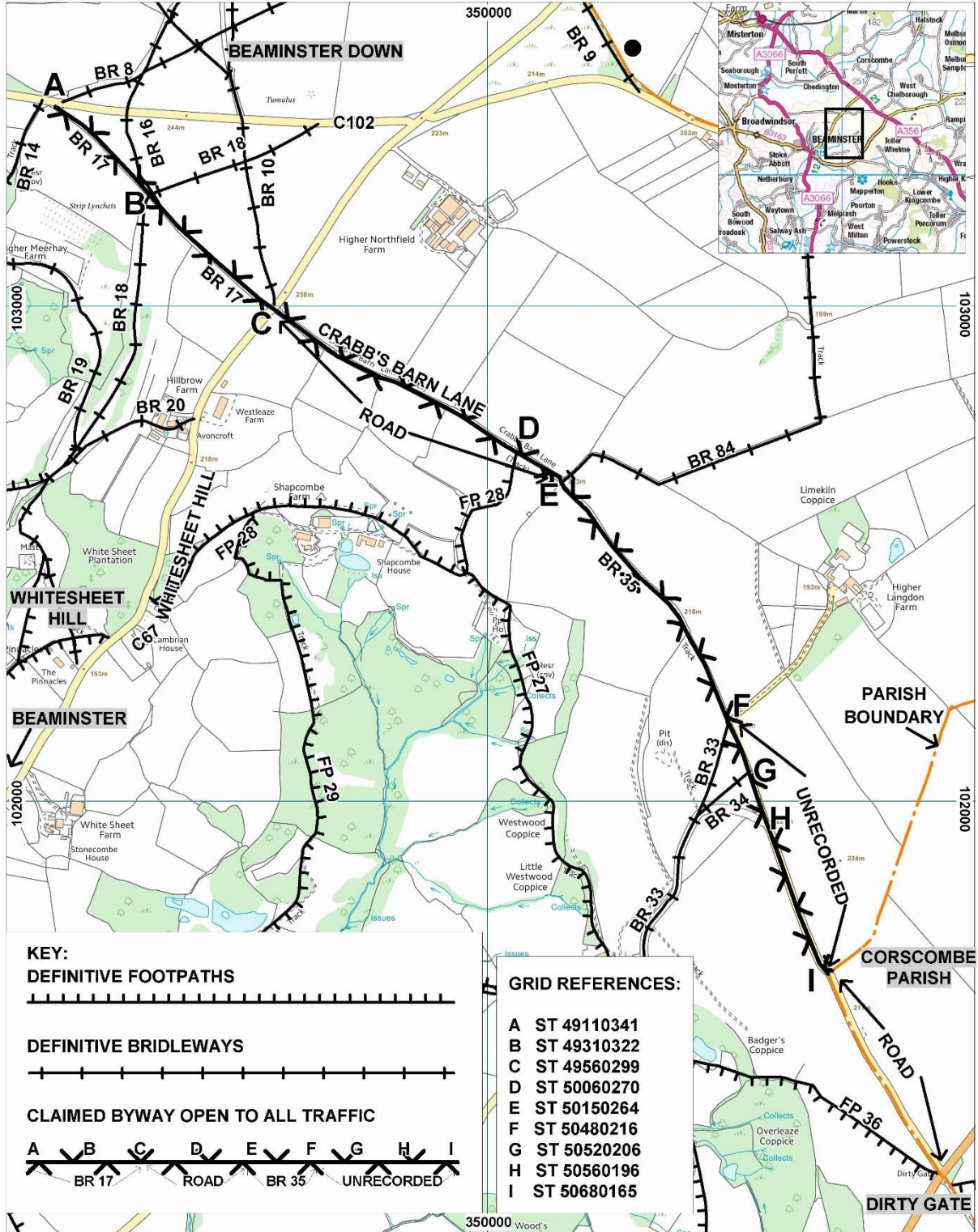
- 13.21 The Natural Environment and Rural Communities Act 2006 (“NERC”) extinguished any public motor vehicular rights created before 1 May 2006 (by use or otherwise) but not recorded on the Definitive Map and Statement, subject to certain exceptions (see Law, Appendix 2). The application for the modification order was submitted prior to the NERC Act taking effect and does not apply.
- 13.22 The County Council must make a modification order if the balance of evidence shows either (a) that a right of way subsists or (b) that it is reasonably alleged to subsist. It is considered that the evidence described above is sufficient to satisfy (b).
- 13.23 It is recommended that an order be made to record the route between Point A and Point I on plan 18/13 as a byway open to all traffic.
- 13.24 If there are no objections to a modification order, officers consider that the criterion for confirmation have been met and therefore the order should be confirmed.

Matthew Piles

Service Director, Environment, Infrastructure and Economy

Date: 6th March 2019

PLAN 18/13



WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO RECORD A BYWAY OPEN TO ALL TRAFFIC
BRIDLEWAYS 17 AND 35 AND CRABB'S BARN LANE,
BEAMINSTER

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 18/13
 Date: 18/07/2018
 Scale 1:10000
 Drawn By: AH
 Cent X: 350007
 Cent Y: 102370

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

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LAW

General1 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 add a right of way, the County Council must make an order to modify the definitive map and statement if the balance of evidence shows either:

- (a) that a right of way subsists or
- (b) that it is reasonably alleged to subsist.

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

1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.

1.6 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.

1.7 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.

1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.

1.9 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.

Documentary Evidence Table

| DATE | DOCUMENT | COMMENTS |
|--------|--|---|
| 1765 | Taylor's map | Shows the route, as a double-pecked line, part of which is in the form of a lane. |
| 1796 | Taylor's map | Shows a lane or road running eastwards across Beaminster Down and continuing on Crabbs Barn Lane. |
| C.1800 | Plan of Roads in the Neighbourhood of Beaminster. | The sketch map shows the claimed byway as a double-pecked line. This indicates the existence of way of some kind on the route of the claimed byway. |
| 1809 | Inclosure Award | The Inclosure Award of 1809 contains a plan showing a route which corresponds to Crabb's Barn Lane, between C and E on plan 18/13. The Award describes this way as 'one other public carriage road and highway 30 feet wide leading from the north-east end of White Sheet Lane to its usual entrance on Langdon Farm in the Parish of Beaminster and adjoining the south side of the said open and common arable fields called the South Fields the same being part of the public highway towards the village of Hook...' The Inclosure map is annotated with the words 'To Hook Village' at the south-eastern end of this awarded carriage road. There is no other plan contained in the Inclosure Award, and the remaining lengths of the claimed byway, between points A, B and C, and between E, F, G, H are not included. |
| 1811 | The 1 inch Ordnance Survey 1 st Series map, surveyed by Colonel Mudge | Shows the claimed byway in the form of a lane or road. |
| 1826 | Greenwood's map | Shows the claimed byway in the form of a lane or road, part of which may be unfenced. |
| 1843 | Tithe map | The tithe map of 1843 shows those parts of the claimed byway between A, B and C and between C-D-E, the latter corresponding to Crabbs Barn Lane, as land that was that is excluded from tithe. Highways were often excluded from tithe in this way. The remaining length of the route, between E, F, G, H and I, is not excluded. Between point I and Dirty Gate, the way is shown as excluded land. Between E and I there does not appear to be a path or track shown on the tithe map. The tithe apportionments for the enclosures through which the claimed byway runs between E and I do not make any reference to a highway or public way, but it was not part of the purpose of the apportionments to refer to highways. |

| | | |
|--------------|-------------------------------|---|
| Late 1800's | Richmond's map | Shows the claimed byway. The part of the route which corresponds closely to Crabb's Barn Lane is shown in the form of a lane. The remaining lengths of the claimed route are shown a double-pecked lines, in the form of a track. |
| 1888 | 6inch Ordnance Survey map | Shows that part of the claimed byway between A and E in the form of a lane. Between E and H the path appears to be a track that is unfenced on its southern side. It then continues as a lane to points I and J. |
| Early 1900's | Bacons County and Cycling map | Shows the whole length of the claimed byway as a lane or road. |
| 1901 | 6 inch Ordnance Survey map | Shows similar detail to the 1888 map. On the 1901 map the north-western end of the path, between points A and B, appears to be unfenced on its northern side, and the boundary has been removed. |
| 1903 | 25 inch Ordnance Survey map | Shows the shows the part of the claimed byway between A and E in the form of a lane. Between E and H the path appears as a track that is unfenced on its southern side. The way then continues as a lane to point I, and onwards in the same way to the road at Dirty Gate. |
| 1906 | One inch Ordnance Survey map | Shows parts of the claimed route as a 'Third Class Road'. The route between C and I is shown partly in the form of a lane and partly as a track or unfenced road. The north-western end of the path, where it runs over Bridleway 17 between A, B and C, is not shown. |
| 1912 | Finance Act (1910) Records | <p>The Finance Act 1910 survey map shows the length of claimed byway between A, B and C, over Bridleway 17, to run within hereditament 495. The Field Book for this hereditament does not record any deduction for 'Public Right of Way or User'. There is nothing in the Field Book that makes reference to a highway over this part of the claimed path.</p> <p>The length of claimed byway over the part of Crabbs Barn Lane between C and a point to the north-west of D is shown as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of highway status. Highways were often excluded in this way as land that was not subject to taxation. The south-eastern end of Crabb's</p> |

| | | |
|----------|---|--|
| | | <p>Barn Lane, between D and E, is not shown to be excluded in this way, and lies within hereditament 304.</p> <p>The field book for hereditament 304 does not record any deductions for 'pubic right of way or user'.</p> <p>The length of claimed byway between E, F, G. H and I lies within hereditament 342, and is not shown to be excluded as a separate area of land. The Field Book records a deduction of £100 for 'Public Right of Way or User'. It is possible that this deduction was granted because of the existence of a highway through the land subject to the survey. A number of public rights of way cross the area of land included in hereditament 342, and it cannot be concluded that this deduction relates solely to the claimed byway.</p> |
| 1911 | Bartholomew's map | Shows the route from the road junction at ST4957 0299 eastwards as 'recommended for cyclists.' |
| 1920 | Bartholomew's map | Shows the route from the road junction at ST4957 0299 eastwards as 'recommended for cyclists.' |
| 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 indicates that no roads shown are private roads. Nonetheless, it is unlikely that the Ordnance Survey would have fully investigated the legal status of each route shown on the map. |
| C.1920's | Crutchley's map | Shows the claimed route in full crossing Beaminster Downs. |
| 1923 | Ministry of Transport Road Map of 1923. | Shows the western section of claimed route as an 'other road.' |
| 1930's | Philips' map | Shows the claimed route as a minor road. |
| 1934 | Quarter inch Ordnance Survey map | Shows the part of the claimed byway between C and I as a lane or road, and this is described in the key as an 'Other Metalled Road.' The north-western end of the path, where it runs over Bridleway 17 between A, B and C, is not shown. |
| 1937 | Johnstone's Motoring Atlas | Shows part of the claimed route as a minor road. |

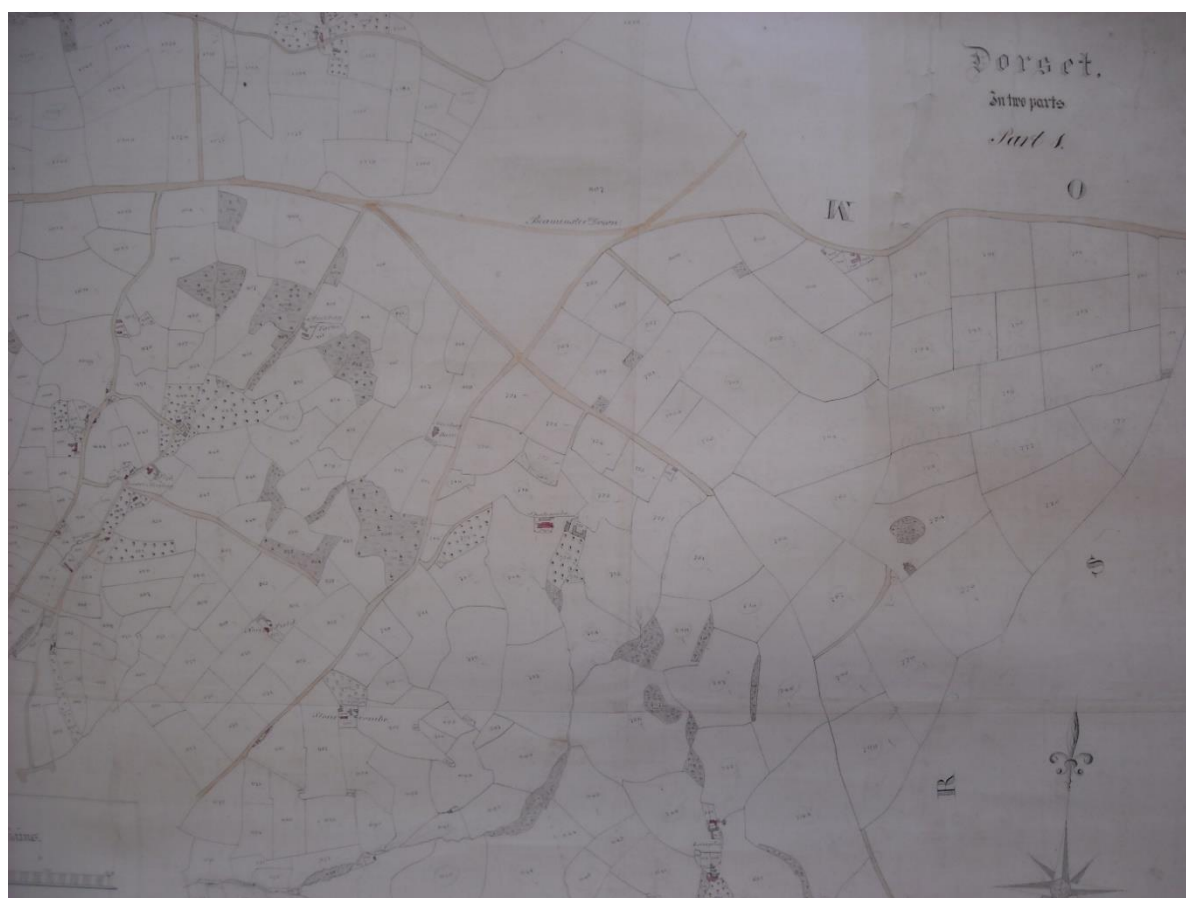
| | | |
|---------|---|---|
| 1940-50 | Geographia Road Map | Shows the length of claimed byway between C and I as a lane or road, which continues to Dirty Gate, point J. The north-western end of the path, where it runs over Bridleway 17 between A, B and C, is not shown. |
| 1944 | Bartholomew's map | Shows the route from the road junction at ST4957 0299 eastwards as a serviceable road" |
| 1951 | Bartholomew's map | Shows the route from the road junction at ST4957 0299 eastwards as a serviceable road" |
| 1951 | Parish survey map | Shows the whole length of the claimed byway as a solid green line denoting a bridleway. |
| 1953 | Draft map | Shows the whole length of the claimed byway as a solid green line denoting a bridleway. |
| 1958 | Two and a half inch Ordnance Survey map | Shows the greater part of the route as a lane. A short section to the north of point G appears to be unfenced on the southern side. |
| 1964 | Provisional map | The provisional map of 1964 shows the north-western end of the claimed path as a bridleway, numbered 17, which corresponds to the present line of Bridleway 17 between points A, B and C on plan 18/13. The provisional map shows Bridleway 35 running between points E and F; that is, between the access road to Higher Langdon Farm and Bridleway 33, at point E, and the present north-western end of Bridleway 35 at its junction with the publicly maintainable highway at point F. |
| 1966 | First Definitive map | The First Definitive map, dated 13 th June 1966, shows the same detail in respect of the claimed byway as the provisional map of 1964. |

| | | |
|---------|-----------------------|--|
| 1974 | Revised draft map | <p>The revised draft map of 1974 shows the north-western end of the claimed path as a bridleway, numbered 17, which corresponds with the present line of Bridleway 17 between points A, B and C. On the revised draft map, however, Bridleway 35 is not shown. The revised draft map does show any public rights of way over the route between C and Dirty Gate. Given that a number of public rights of way shown on the Revised Draft map, Footpath 28 and Bridleways 33 and 34, join the way shown on the Ordnance Survey base map between C and Dirty Gate, the assumption must be that this way carried public rights. As it was not deemed appropriate to record these rights on the revised draft map, it seems likely that it was considered that they were vehicular rights that did not require recording on the definitive map.</p> |
| 1973/77 | Special Review | <p>The Council's files contain a form, included in correspondence with the definitive map, entitled 'Dorset County Council Special Review of Definitive map of Public Rights of Way, which proposed that the way should be recorded that the way should be recorded as a byway open to all traffic. The description of the path in this form is similar to that of the awarded carriage road in the Inclosure Award of 1809. There is a reference on the form to the route being a Road Used as Public Path (RUPP). The committee's decision was that the route 'should be shown as a county road because of its origin in the Inclosure Award.' There does not appear to have been any further correspondence or submission of other evidence to back-up the proposal that the way should be recorded as a byway open to all traffic.</p> |
| 1989 | Sealed Definitive map | <p>Shows the north-western end of the claimed byway, between points A, B and C as a bridleway, numbered 17. Between points E and F the path is shown as a bridleway, numbered 35. The remaining length of the claimed byway are not shown.</p> |

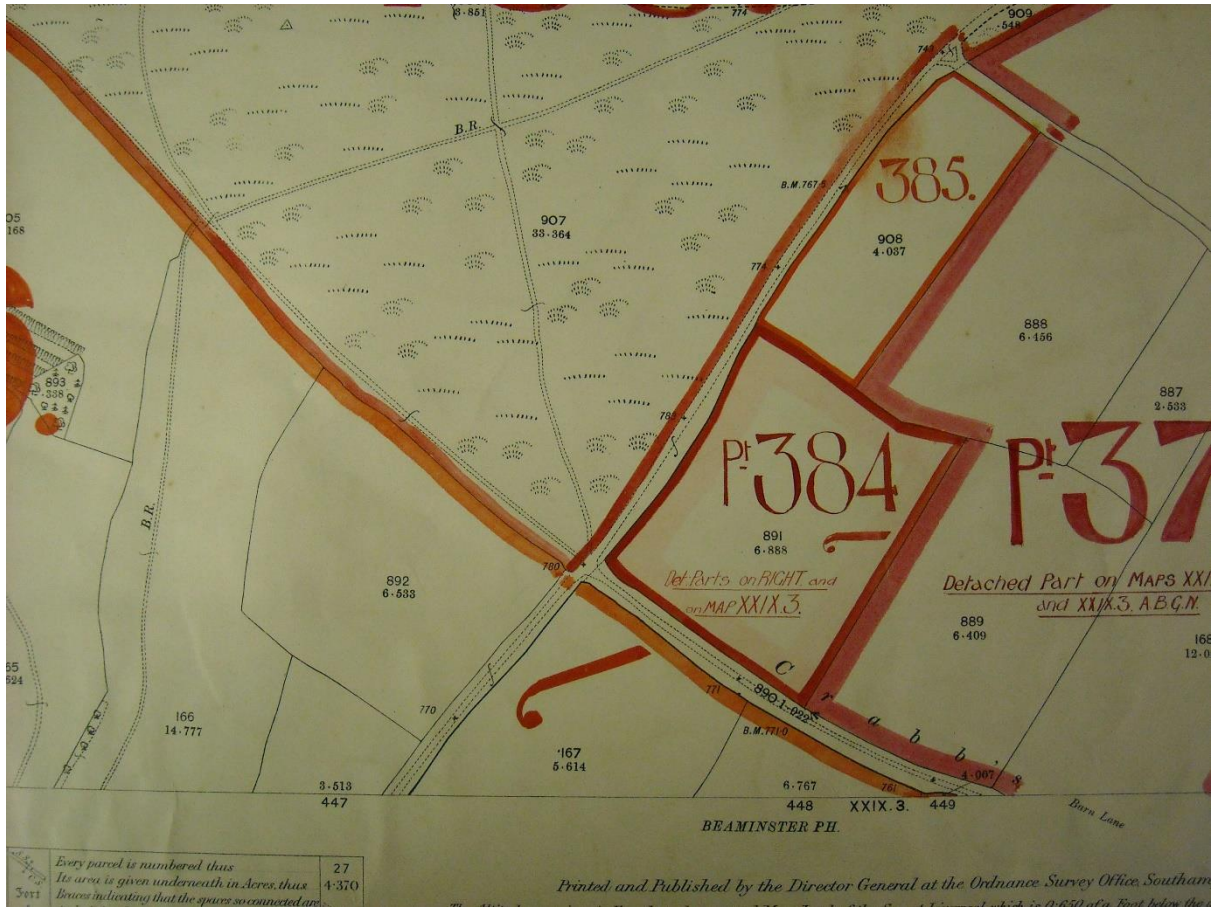
EXTRACTS FROM KEY DOCUMENTS
Beaminster Inclosure Award 1809

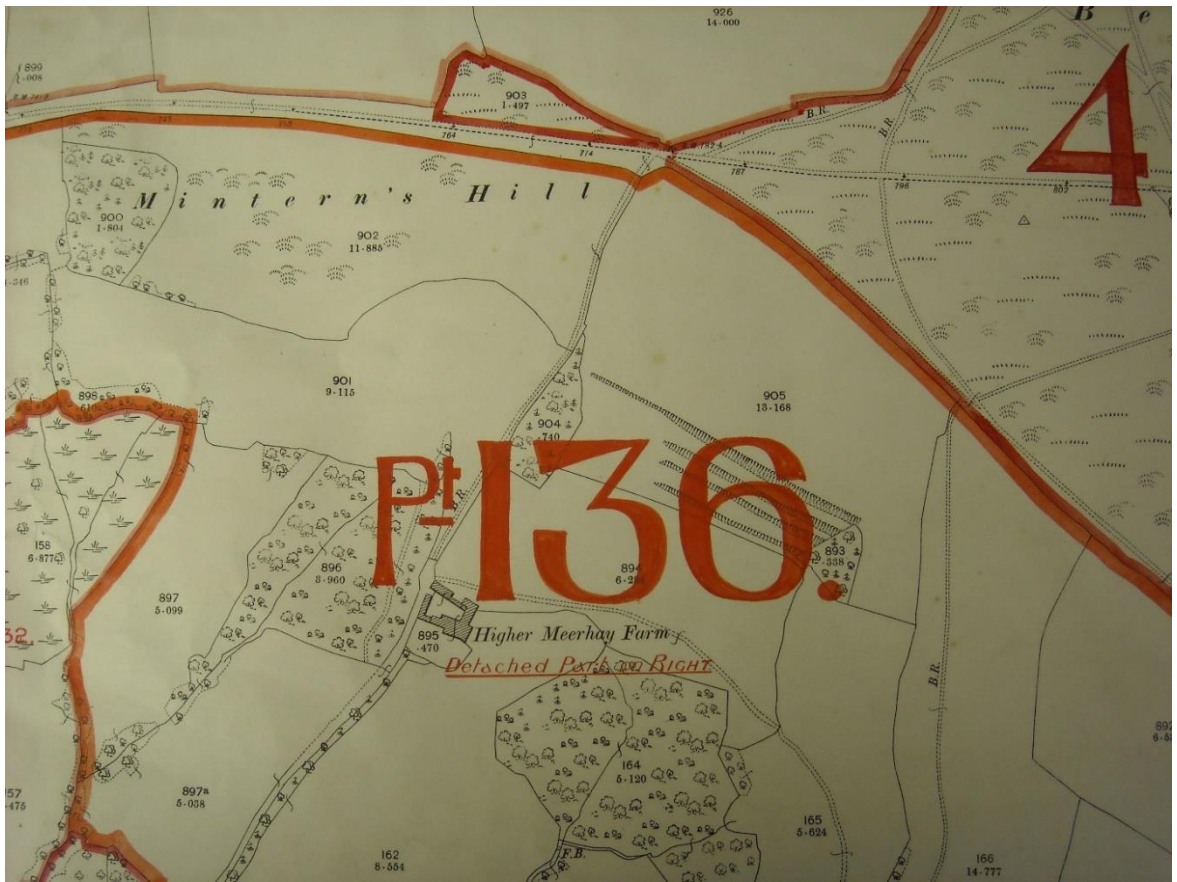


Beaminster Tithe map 1843



Finance Act Maps and Field Book entry for Hereditament 342





342 Reference No. 277 HSE
 Map No. 20-10 R
 Situation London
 Description House 2 Cottages & Dairy House
 Extent 5 1/2 x 2 1/2 x 21 P. STR. 1.38 acres
 Gross Value Land, £ 240 Rateable Value Land, £ 250
 Buildings, £ Buildings, £ 50
 Gross Annual Value, Schedule A, £
 Occupier Messrs. Bagnall and Johnson
 Owner Messrs. Commissioners
 Interest of Owner I hold
 Superior interests
 Subordinate interests
 Occupier's tenancy, Term *Agreement* from *Updell Oct 11*
 How determinable
 Actual (or Estimated) Rent, £ 375
 Any other Consideration paid
 Outgoings—Land Tax, £ *Redeemed* paid by *
£ 2.4.2 Tithe, £ 36.10.1. paid by
 Other Outgoings *none*
 Who pays (a) Rates and Taxes (b) Insurance *Leaseholder*
 Who is liable for repairs *Sub-tenant - he has to find labour.*
 Fixed Charges, Easements, Common Rights and Restrictions
Rights of way are claimed
 Former Sales, Dates *Commissioner R. D. G. Wood - 144 of this farm (not included in Schedule) on lease 99 yrs from Lady Day 1907 at £ 25 p.a.*
 Interest
 Consideration
 Subsequent Expenditure
 Owner's Estimate. Gross Value
 Full Site Value
 Total Value
 Assessable Site Value
 Site Value Deductions claimed
near Station, 5 St. George's Street, Westminster
 Roads and Sewers. Dates of Expenditure
 Amounts
*Cash paid dated 27 Sept 1823 S.R. No. 113253 G.C. No. 13600 5% redemption
 paid for of £ 250 consideration of 1816. 9.4 in 3% Stock which at 77 1/2 = £ 783
 Cash paid dated 27 Oct 1823 S.R. No. 113254 G.C. No. 13600 5% redemption
 of £ 200 shares on four market of the same date (dividend only)
 consideration of £ 200 in 3% Stock which at 77 1/2 = £ 550 cash paid 1841*

Reference No. 342
 Particulars, description, and notes made on inspection 99/12-20
 A house from west side of 132 acres estate. The building was constructed about the year 1820 mostly a calcareous loam. Plans for land & water, & proposed to lower fields as meadows and give good pasture. The farm is well watered by gravels, and has a good water mead. The stock of farm includes 2 very good and convenient. There is 5 cows and 2 pigs housed in barn. The farm house which is stone built, contains a living room, parlor, breakfast room, kitchen, two bedrooms, dressing room, & sitting room, cellar, pantry, 6 beds, 2 bathtubs, bath room with hot water appliances and W.C. In very good repair throughout.
 Charges, Easements, and Restrictions affecting market value of Fee Simple
 Valuation.—Market Value of Fee Simple in possession of whole property in its present condition

| | |
|---|----------|
| Land | £ 8340 |
| Buildings and Structures | £ 2000 |
| Machinery | £ |
| Timber | £ 250 |
| Fruit Trees | £ 25 |
| Other things growing on land | £ 286 |
| Market Value of Fee Simple of Whole in its present condition (as before) | £ 10,900 |
| Add for Additional Value represented by any of the following for which any deduction may have been made when arriving at Market Value:— | |
| Charges (excluding Land Tax) 26.6.1. 26 day | 950 |
| Restrictions Footpaths | £ 100 |
| GROSS VALUE | £ 11,950 |

How determined

Actual (or Estimated) Rent, £ 57

Any other Consideration paid

Outgoings—Land Tax, £ Redeemed

6m. 52.4.3 Tithe, £ 36.10.1.

Other Outgoings none

Who pays (a) Rates and Taxes (b) Insurance Tenant.

Who is liable for repairs Subholder. He tenant funds labour.

Fixed Charges, Easements, Common Rights and Restrictions

Rights of way are claimed

Boundaries R. D. G. held 144 of this farm (not included in Schedule) on lease 99 yrs from Lady Day 1907 at £25 p.a.

Former Sales. Dates

Interest

Consideration

Subsequent Expenditure

Owner's Estimate. Gross Value

Full Site Value

Total Value

Assessable Site Value

Site Value Deductions claimed

Water Gutter. 5 St. College Street. Westminster

Roads and Sewers. Dates of Expenditure

Amounts

Certificate dated 27 Sept 1823 S.R. No 113253 G.C. No 13600 5% redeeming
Lane tax of £25. Consideration £916.12.4 in 3% Stock which at 79 = £783
Certificate dated 27 Oct 1823 S.R. No 113254 G.C. No 13600 5% redeeming
L.T. of £20.6 sh as per m. fairs + markets of Beanningston (demised in 1823)
Consideration £74.5.0 in 3% Stock which at 79 = £58 cash (1824)

its present condition

Repairs & L.T.

Deduct Market Value

but if divested of other things

Land

Difference Balance, available to

Divided as follows

Buildings and

Machinery

Timber

Fruit Trees

Other things

Market Value of Land (as before)

Add for Additions for which at

arriving at Market Value

Charges (including)

Restrictions

| Index Letter | Description of Buildings | Dimensions | | | Cubical Contents | Condition | Remarks |
|--------------|--------------------------|----------------------|---------------|--------|------------------|--------------------------------|---------|
| | | Frontage | Depth | Height | | | |
| A | Wagon shed | 3 bay | left over | | fair | stone & glass stone & slate | |
| B | | 2 | | | | good | |
| C | shed | hand | | | | stone & slate | |
| D | Smithy | | | | fair | stone & slate | |
| E | Stable | 6 stalls | 2 horses room | | good | stone & slate | |
| F | Washing rm. | W.C. box & left over | day room over | | good | | |
| G | 50m barn | | | | | stone & slate | |
| H | house | 3 | lean to | | | stone & slate | |
| I | W.C. outage | left above | | | fair | | |
| A | W.C. house | 4 | front floor | | good | wood & slate | |
| B | | | | | | | |
| C | W.C. shed | | | | | | |
| D | W.C. house | 20 | handy | | fair | | |



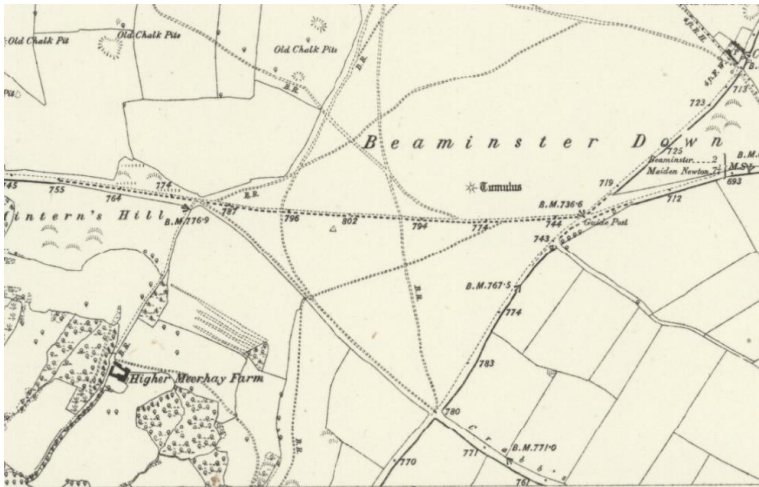
| | |
|---|--------|
| GROSS VALUE.....£ | 11,950 |
| Less Value attributable to Structures, timber, &c. (as before) £ | 2560 |
| FULL SITE VALUE.....£ | 9390 |
| Gross Value (as before).....£ | 11,950 |
| Less deductions in respect of— | |
| Fixed Charges, including— | |
| Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize | £ |
| Any other perpetual rent or Annuity | £ |
| Tithe or Tithe Rent Charge | £ 950 |
| Other Burden or Charge arising by operation of law or under any Act of Parliament £ | |
| If Copyhold, Estimated Cost of Enfranchisement | £ |
| Public Rights of Way or User | £ 100 |
| Rights of Common | £ |
| Easements | £ |
| Restrictions | £ |
| | £ 1050 |
| TOTAL VALUE.....£ | 10900 |

| | |
|--|---------|
| Less Value attributable to Structures, timber, &c. (as before) | £ 2560 |
| Value directly attributable to— | |
| Works executed | £ |
| Capital Expenditure | £ |
| Appropriation of Land | £ |
| Redemption of Land Tax | £ 841 |
| Redemption of Other Charges | £ |
| Enfranchisement of Copyhold, if enfranchised..... | £ |
| Release of Restrictions | £ |
| Goodwill or personal element | £ |
| Expense of Clearing Site | £ 3406 |
| ASSESSABLE SITE VALUE.....£ | 7499 |
| If Agricultural land, the value for Agricultural purposes including— | |
| Sporting Rights..... | £ 10650 |
| excluding | |
| Value of Sporting Rights | £ 250 |
| If Licensed Property, the annual license value | £ |
| Liable to Undeveloped Land Duty as from | £ |
| For further reference as to Apportionments, &c., see | |

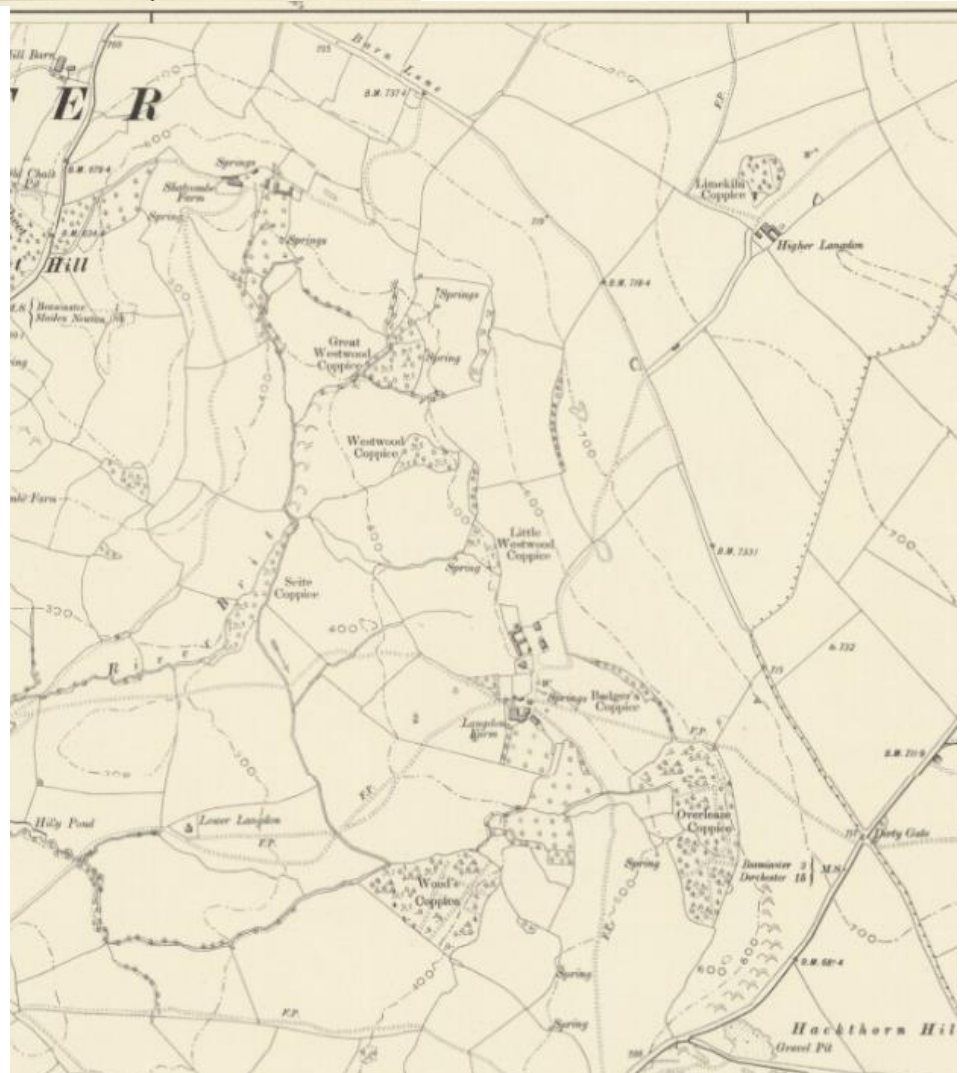
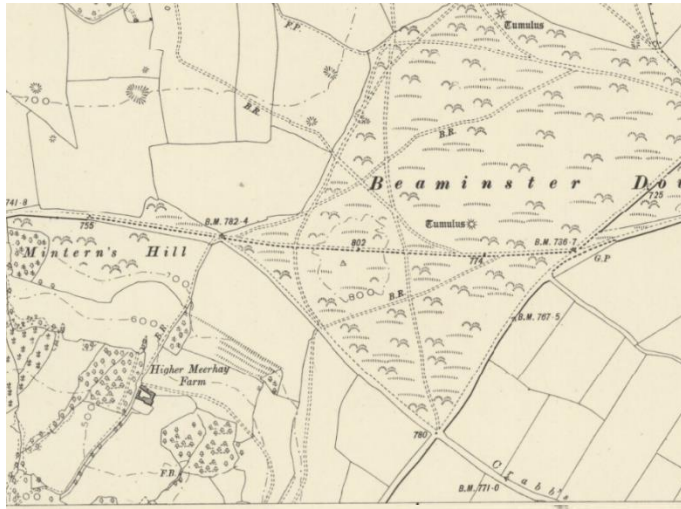
1811 Ordnance Survey Map



Ordnance Survey six inch map. Surveyed 1886 Published 1888



Ordnance Survey six inch map Revised 1901 Published 1904



Greenwood's map 1826



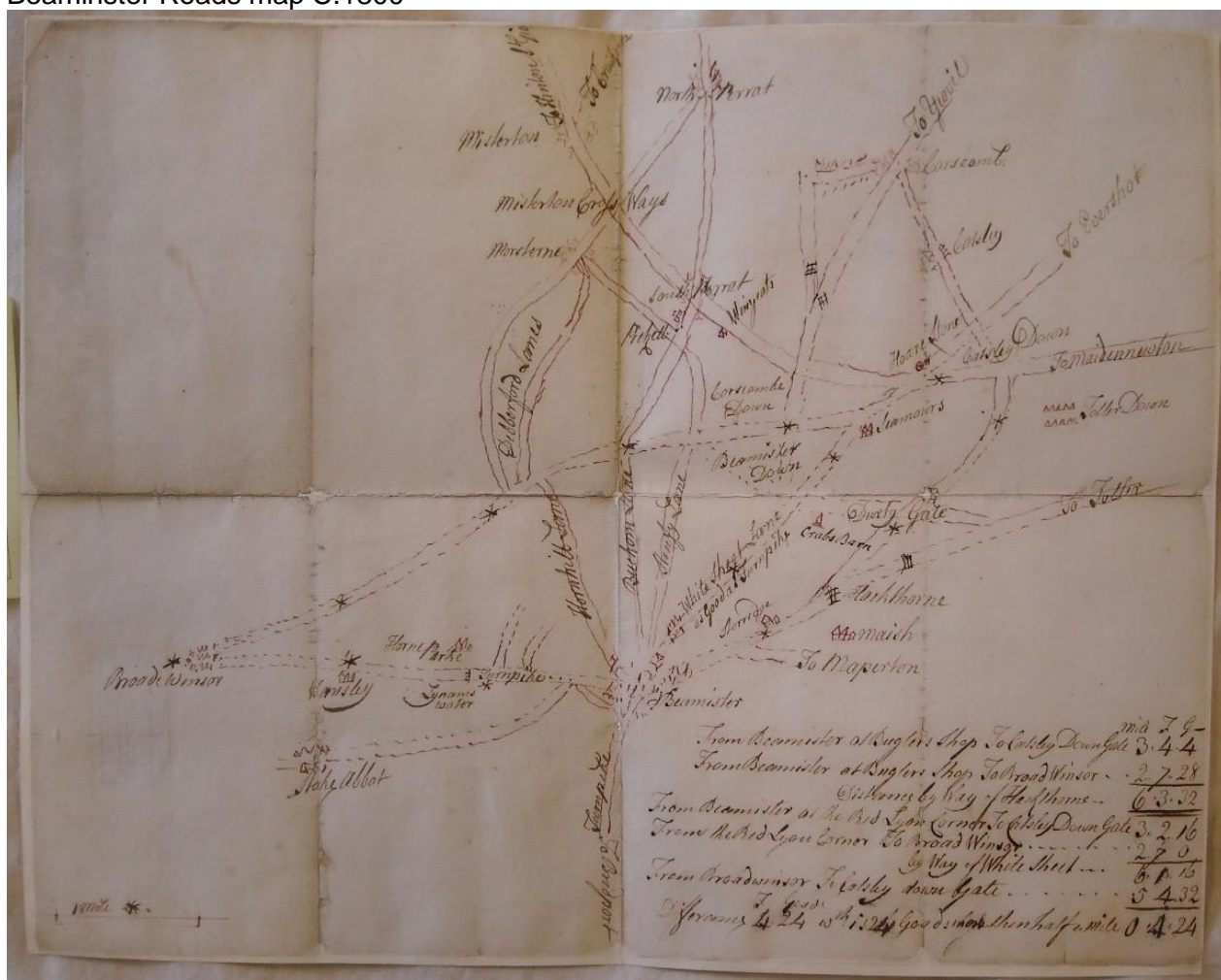
Taylor's Map 1765



Taylor's map 1796



Beamister Roads map C.1800



USER EVIDENCE

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------------|---|---|-------------|--|
| Mr N Baverstock *1 | 1999-2010 (form completed 2/03/2010) 1999-2008 (Form Completed 22/12/2008) | 5-10 times a year 6-8 times a year | Motorcycle | Used for pleasure. Gates unlocked. No stiles No notices. No obstructions. Used by others on foot. Use of way not challenged. Width '20 feet plus track'/Tarmac at southern end. '5-7 metres approx'. (Form completed 22/12/08) Believes owner/occupier was aware of public use because of 'Constant Use' Maps accompanying forms show route referred to as between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr J. Chesshire | 1978-2006 (Form completed 12/02/2010) | 2-3 times a year | | Used for pleasure. Used by others on horses and motorcycles. No stiles, gates not locked, no notices, no obstructions, never been prevented from using the way. Believes owner/occupier was aware of public use as "used by other motorcyclist, seen by horse riders'. Width: 'The central section is about 5-6 metres wide narrowing at west end slightly (Crabbs Barn Lane) due to vegetation'. Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |

| | | | | |
|----------------|---|------------------|--------------------|--|
| Mr M Diamond*1 | <p>1986-2005 (Form completed 6/2/2010)</p> <p>1990-2008 (Form completed 12/11/2008)</p> | 2-4 times a year | Used on Motorcycle | <p>Used for 'pleasure/sight seeing/exploration/trail riding' Used by others on foot and horseback Believes owner/occupier was aware of public use as "Tyre tracks on ground'. No stiles, gates on path unlocked, no notices or obstructions. Width: 15-20 feet. Map accompanying form shows route referred to as between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.</p> |
| Mr S. Dobinson | 2004-2008 (Form completed 21/11/2008) | 2-4 times a year | Motorcycle | <p>Used route for pleasure. Used by others on motorcycles. No stiles, gates on path, no notices no obstructions. Believes that the owner/occupier was aware of public use of route because of 'horse hoof prints, mountain and motorcycle tracks'. Width approx. 3-4 yards. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' No map supplied with form.</p> |

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|----------------|---|----------------------|------------|---|
| Mr M. Gardiner | 1976-2006 (Form completed 10/2/2010) | Once or twice a year | Motorcycle | Used route for pleasure Used by others on trail motorcycles. No notices. No stiles. Gates on path. No obstructions. Believes owner was aware of public use as "we were never stopped by farming personnel' Width around 8 metres all the way. 'In regular use by farm tractors/trailers. Easy for small groups of motorcyclists to follow. Tarmac start at southern end,' Map accompanying form shows route between point C on plan 18/13 and Dirty Gate.' |
|----------------|---|----------------------|------------|---|

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|------------------|---|------------------|-------------|---|
| Mr D. A Greening | 1975 -2005 (form completed 30/01/2010) | 3-4 times a year | Motorcycle | Used for pleasure. Used by others on foot, horseback and motorcycle. No stiles, gates on path, no notices or obstructions. Believes owner/occupier was aware of public use as "wheel tracks". Width 5-7 metres. Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125. |

| | | | | |
|---------------------|---|---|--------------------|---|
| Mr D. J. Greenslade | 1988-Present day (Form completed 11/11/2008) | 2-3 times a year | Motorcycle | Used by others on motorcycles. No stiles. Gates not locked., No notices. No obstructions. Believes owner was aware of use of path because 'tyre marks would have been left.' Map accompanying form shows route between point C on plan 18/13 and Dirty Gate Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125. |
| Mr R. T. Howe | 1988-2010 (form completed 7/03/2010) | 4-5 times a year | Motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates on path. Believes owner was aware of use by public because 'Never been challenged'. Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr P. Legg*1 | 1989 to 2008 (Form completed 24/12/2008) 1990 to 2010 (Form completed 4/02/2010) | 3-4 times a year (Form completed 24/12/2008) 5-6 times a year (Form completed 4/02/2010) | Used on motorcycle | Used for pleasure. Used by others on motorcycle or by vehicle. No stiles. Gates not locked. No notices. No obstructions. Does not believe owner was aware of use of way by the public. (Form completed 24/12/2008) Believes owner was aware of use by the public because 'Tyre tracks left in soft ground'. (Form completed 4/02/2010) 4 metres wide. Maps accompanying forms show route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |

| | | | | |
|----------------------|---|---------------------|---|---|
| Mr M. Mason | 2003-2006 (Form completed 11/11/2008) | 3 or 4 times a year | Used on motorcycle | Used for pleasure. Used by others with vehicles. 'Motorcycle group of 4 or 5 of us'. No stiles. Gates not locked. No notices. No obstructions. Believes owner was aware of use because 'there were tyre tracks.' Map accompanying form shows route between points C and F on plan 18/13. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125. |
| Mr D. Oickle | 1987-Present day (Form completed 10/11/2008) | 5-6 times per year) | Foot and motorcycle. 'Majority by motorcycle' | Used for pleasure. Used by others on foot, horseback, motorcycle and 4 wheel drive vehicles. No Notices. No stiles. Gates unlocked. Believes owner was aware of use by public because 'there were always visible tyre tracks'. 'Dirty Gate to Higher Langdon Farm is surfaced with tarmac. The remainder is a firm surfaced track sufficiently wide to take large tractors'. Map accompanying form shows route between points C on plan 18/13 and Dirty Gate. Route described |
| Mr Matthew D. Pemble | 2004 to Present day. (Form completed 21/12/2008) | 20 times a year | Motorcycle | Used for pleasure Used by others on motorcycles. No notices. No stiles. Gates not locked. Believes owner was aware of use by public because 'The route is a UCR and has been used for many years'. 10 to 12 feet wide. Map accompanying form shows route between points C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------------|---|------------------|--------------------|---|
| Mr Mark D. Pemble | 1998 to Present day. (Form completed 21/12/2008) | 25 times a year | Used on motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates not locked. Believes owner was aware of use by public because 'Due to part of route being UCR'. 10 feet wide, 'wider in places'. Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr T Stapleton | 1990 to 2006 completed 17/02/2010) | 6 times a year | Used on motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates not locked. Believes owner was aware of use by public because 'have spoken to worker on farm tractor.' '4-5 metres wide. Southern part is tarmacked. Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher |

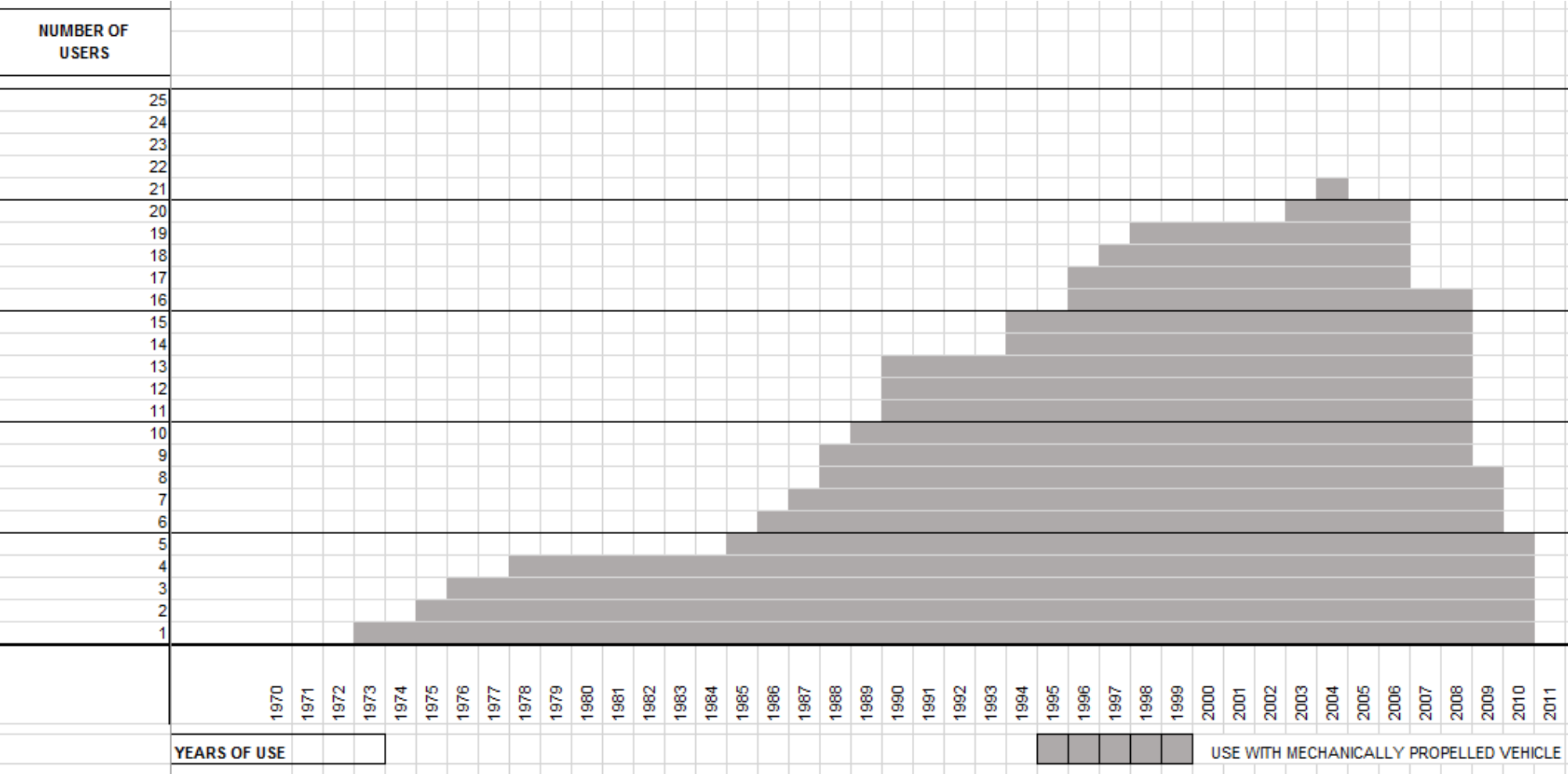
| | | | | |
|-------------------|---|--------------------|------------|--|
| Mr Paul Studley | 1994-2008 (Form completed 27/04/2009) | 6 times per year) | Motorcycle | Used for pleasure and work. Used by others on motorcycles. No notices. No stiles. Gates on path. Believes owner was aware of use by public because 'he has been feeding animals as we passed.' Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr Philip Studley | 1973 to 2005 (Form completed 30/01/2010) | 4-5 times a year | Motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates on path. Believes owner was aware of use by public because 'tyre marks on soft ground' '5-6 metres wide. Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr D. Studley | 1990 to 2009 (Form completed 10/02/2010) | 20-25 times a year | Motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates not locked. Believes owner was aware of use by public because 'lots of years use to be seen.' 'Approx 5-6 metres wide. Southern end is tarmac'. Map accompanying form shows route between points C and F on plan 18/13 and Dirty Gate. Route described on form as |

| | | | | |
|--------------|---------------------------------------|------------------|------------|--|
| Mr S. Teuber | 1997 to 2008 completed 12/11/2008) | 4-5 times a year | Motorcycle | Used for pleasure. Used by others on motorcycles. No notices. No stiles. Gates not locked. Believes owner was aware of use by public because 'he would have seen tyre tracks.' 'Well defined track. Puddles/wet in winter. Easily passable.' Map accompanying form shows route between points C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr M. Towill | 1994-2009 (form completed 16/04/2009) | 2 times a year | Motorcycle | Used by others on motorcycles. No stiles. Gates not locked, No notices. No obstructions. Believes owner was aware of public use but does not say why. Route is "used regularly by farm traffic along its whole length." Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|------------------|--|---------------------|-------------|--|
| Mr W. Williamson | 1996-2006 (Form completed 27/01/2010) | 3 or 4 times a year | Motorcycle | Used for pleasure. Used by others 'on motorcycles as group members.'. No stiles, gates on path unlocked, notices or other obstructions. Believes owner was aware of public use as route "tyre tracks on soft ground". Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |
| Mr D. Wilmott | 1985-2009 (Form completed 17/04/2010) | 4 times a year | Motorcycle | Used for pleasure. Used by others on motorbike. No stiles. Gates on path, No notices. No obstructions. Believes owner was aware of public use but does not say why. Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|----------------|--|--------------------|----------------------|---|
| Mr M. Woodward | 1996-2004 (Form completed 12/11/2008) | 0-1-2 times a year | Foot and Motor cycle | Used for pleasure. States path was not used by other people. No stiles. Gates on path. No notices. No obstructions. Believes owner was aware of public use but does not say why. Map accompanying form shows route between point C on plan 18/13 and Dirty Gate. Route described on form as running from 'County road junction at ST4958 0299 south of Higher Northfield Farm to old crossroads at Dirty Gate at ST 5092 0125.' |

Charts of user evidence to show period and level of use



YEARS OF USE

USE WITH MECHANICALLY PROPELLED VEHICLE

