

Agenda item:

# Regulatory Committee

6

## Dorset County Council



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| Date of Meeting    | 12 March 2015   |
| Officer            | Director for Environment and the Economy  |
| Subject of Report  | <b>Application to add footpaths and a proposal to add a restricted byway to the definitive map and statement from Mill Lane, Wimborne Minster in the Town Centre</b>  |
| Executive Summary  | <p>Following an application made in 2006 to add several footpaths at the Town Centre, Wimborne Minster, leading from Mill Lane (now unsupported by the absent applicant), a report was compiled to consider the evidence relating to the status of two of the routes.</p> <p>In addition, during the investigation evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen.</p> <p>Following publication of the report and immediately prior to the Committee meeting of 27 November 2014 a substantial amount of additional evidence was submitted on behalf of the landowner. The matter was therefore deferred to enable the additional evidence to be considered.</p> |
| Impact Assessment: | <p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>  |
|                    | <p>Use of Evidence:</p> <p>The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.</p>   |

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|                                    | <p>A full consultation exercise was carried out in February 2014, which involved landowners, user groups, the local county Councillor, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.</p> <p>60 user evidence forms from users of the claimed routes (but not in relation to the route A – X) were submitted during the investigation.</p> <p>Additional evidence was submitted on behalf of the landowner and has been discussed in this report.</p> <p><b>Budget:</b></p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p><b>Risk Assessment:</b></p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p><b>Other Implications:</b></p> <p>None</p> |
| <p>Recommendations</p>             | <p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record:</p> <p>(i) A footpath as shown G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D; and</p> <p>(ii) A restricted byway as shown A – B – B1; and</p> <p>(iii) A restricted byway as shown cross-hatched A – X on Drawing 14/07/3;</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>  |
| <p>Reasons for Recommendations</p> | <p>(a) The available evidence for the part of the route proposed to be recorded as:</p> <p>(i) A footpath G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D, shows, on balance, that the right of way as claimed subsists or is reasonably alleged to subsist;</p>   |

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|                                      | <p>(ii) and (iii) Restricted byways A – B – B1 and A – X, shows, on balance, that public vehicular rights subsist or are reasonably alleged to subsist. As there is no evidence that exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for restricted byways over these routes; and</p> <p>(b) The evidence shows, on balance, that these routes should be recorded as a footpath and restricted byways as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications and proposals for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieve the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> <li>• Ensure good management of our environmental and historic assets and heritage</li> </ul> <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> <li>• Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset</li> <li>• Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live</li> <li>• Enable people to live in safe, healthy and accessible environments and communities</li> </ul> |
| <p>Appendices</p>                    | <p>1 - Report to and an extract from the minutes of the Regulatory Committee 28 November 2014</p> <p>2 - Additional evidence submitted on behalf of Mr Slocock - extracts from Statutory Declaration of Horace Lett Slocock dated 18 December 1987</p>   |
| <p>Background Papers</p>             | <p>The file of the Director for Environment and the Economy (ref. RW/T418).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew. Copies (or photographs) of the documentary evidence can be found on the case file RW/T418, which will be available to view at County Hall during office hours.</p>  |
| <p>Report Originator and Contact</p> | <p>Name: Phil Hobson, Rights of Way Officer<br/>         Tel: (01305) 221562<br/>         Email: p.c.hobson@dorsetcc.gov.uk</p>  |

## 1 Background

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

## 2 Law

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

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

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

## Summary and Analysis of Additional Evidence

### Abstract of Title & Conveyance

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

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

#### **Correspondence from the County Surveyor & Highways Information Unit**

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

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

### **Preparation of the first definitive map**

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

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

### **Finance Act 1910**

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

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

- To clarify the findings from the Finance Act records, as stated in paragraph 8.1 of the November 2014 report Mill Lane, including that part of the application route as shown from point **A to B** and the route shown from **A to X**, were **excluded from valuation** and these 'parcels' of land therefore have no hereditament numbers. As a consequence there are no corresponding entries within the Field Book relating to these parcels as, being public highways, they were not liable to valuation or taxation.
- The field book entries to which Mr Cosgrove refers relate to the **adjoining properties** abutting or containing the remainder of the claimed routes as shown between points **B1 to D** and **E to G**. Although these records indicate that the owners of these parcels did not acknowledge the existence of any public right of way over them, as members will be aware, this does not necessarily indicate that no public rights existed within them. Whilst it was a criminal offence with severe penalties to falsely claim tax deduction in lieu of the existence of a public highway there were no penalties for not acknowledging the existence of a public highway over the land.

#### **Mr H L Slocock Statutory Declaration**

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

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

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

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

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

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

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



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

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

#### **Land Charges Search 1992**

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

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

### **Transfer of Part 1997**

- 3.17 Mr Cosgrove included a copy of a document dated 14 June 1993, which appears to be in respect of the transfer of property from one party (Messrs C C Wilson, G B Slocock and C J Slocock) to another (Mr & Mrs C J Slocock). In his list of submission documents Mr Cosgrove refers to it as “Transfer of Part 1997” but this does not appear to correspond with the date on the document.
- 3.18 The reference number DT207640 suggests that it is a Title number and emanates from the Land Registry and the accompanying plan bears a Land Registry stamp. There are no further details provided although Mr Cosgrove refers to a “recent grant of Private rights of way”.
- There is insufficient information provided to comment meaningfully on this document. However, it may have been introduced in support of the suggestion that the existence of private rights provides evidence against the existence of any public rights over the same route. Should this be the case then the response to the evidence from the Abstract of Title at paragraphs 3.3 to 3.5 above applies.
- 3.19 Mr Cosgrove also makes reference to a **Highway Search** dated **1 October 2014**, which he describes as defining the highway. Mr Cosgrove provides no further detail as to what he concludes from the response given by the **Highways Information Unit**. The response, which includes a plan, clearly defines the extent of the maintainable highway, which terminates at approximately point A (Drawing 14/07/3).
- The letter from the **Highways Information Unit** confirms that according to their records the ***publicly maintained highway*** did not extend eastwards beyond point A. However, this response on its own does not provide confirmation that public rights did not exist beyond point A. As detailed in paragraphs 8.18 to 8.21 of the November 2014 report, the **List of Streets** and any accompanying documents, from which this information was provided, relate only to those highways that are publicly maintained. Public highways that are not publicly maintainable, or those which for one reason or another have yet to be recorded, are not and should not be recorded upon it.

### **Letter and Map from Mr D Wheelton JP**

- 3.20 The last piece of evidence offered comprises a letter and map from Mr D Wheelton, Devonport, Tasmania, Australia dated 25 November 2014, in which he makes comments and observations on the November 2014 report.
- 3.21 Mr Wheelton refers to paragraph 1.2 of the November report and questions the validity of the application as the original applicant could not be traced. He also notes that there appears to be no evidence of the original written application within the report.
- It should be noted that Mr Wheelton had already made a submission dated 6 May 2014, which is summarised and analysed from paragraph 10.7 of the November 2014 report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- On balance, the evidence suggests otherwise.

#### 4 **Conclusions**

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

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

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

**Mike Harries**  
**Director for Environment and the Economy**

February 2015

# Regulatory Committee

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## Dorset County Council



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| Date of Meeting    | 27 November 2014  |
| Officer            | Director for Environment and the Economy  |
| Subject of Report  | <b>Application to add footpaths and a proposal to add a restricted byway to the definitive map and statement from Mill Lane, Wimborne Minster in the Town Centre</b>  |
| Executive Summary  | <p>Following an application made in 2006 to add several footpaths at the Town Centre, Wimborne Minster, leading from Mill Lane (now unsupported by the absent applicant), this report considers the evidence relating to the status of two of the routes.</p> <p>In addition, during the investigation evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen.</p> |
| Impact Assessment: | <p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence:</p> <p>The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.</p>  |

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|                        | <p>A full consultation exercise was carried out in February 2014, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.</p> <p>60 user evidence forms from users of the claimed routes (but not in relation to the route A – X) were submitted during the investigation.</p> <p>Any relevant evidence provided has been discussed in this report.</p> <p><b>Budget:</b></p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p><b>Risk Assessment:</b></p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p><b>Other Implications:</b></p> <p>None</p> |
| <p>Recommendations</p> | <p>That:</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record:</p> <p>(iv) A footpath as shown G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D; and</p> <p>(v) A restricted byway as shown A – B; and</p> <p>(vi) A restricted byway as shown cross-hatched A – X on Drawing 14/07/3;</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>  |

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| <p>Reasons for Recommendations</p> | <p>(c) The available evidence for the part of the route proposed to be recorded as:</p> <p>(iii) A footpath G – F – B – B1 – B2 – B3 – C – C1 – C2 – C3 – D shows, on balance, that the right of way as claimed subsists or is reasonably alleged to subsist;</p> <p>(iv) and (iii) Restricted byways A – B and A – X shows, on balance, that public vehicular rights subsist or are reasonably alleged to subsist. As there is no evidence that exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for restricted byways over these routes; and</p> <p>(d) The evidence shows, on balance, that these routes should be recorded as a footpath and restricted byways as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications and proposals for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieve the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> <li>• Ensure good management of our environmental and historic assets and heritage</li> </ul> <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> <li>• Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset</li> <li>• Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live</li> <li>• Enable people to live in safe, healthy and accessible environments and communities</li> </ul> |
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| <p>Appendices</p>                    | <ol style="list-style-type: none"> <li>1 - Drawing 14/07/3</li> <li>2 - Law</li> <li>3 - Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ 1910 Finance Act map</li> <li>▪ 1846 Tithe map</li> <li>▪ 1878-1892 Highways Board minutes</li> <li>▪ 1903 and 1916 Wimborne Urban District Council minutes</li> <li>▪ 1613-14 Plan of Wimborne Minster by Richard Harding</li> <li>▪ 1613 Hanham Estate plan</li> <li>▪ 1832 Bankes Estate Map of the Town of Wimborne Minster</li> <li>▪ 1889 Ordnance Survey First Edition map scale 25 inches to the mile (1:2500)</li> </ul> </li> </ul> </li> <li>4 - User evidence <ul style="list-style-type: none"> <li>• Table of user evidence</li> <li>• Charts to show level and periods of use of sections of the routes</li> </ul> </li> <li>5 - Table of additional evidence and representations in support of the proposals</li> <li>6 - Table of evidence and representations opposing the proposals</li> <li>7 - Table of other submissions received</li> </ol> |
| <p>Background Papers</p>             | <p>The file of the Director for Environment and the Economy (ref. RW/T418)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T418, which will be available to view at County Hall during office hours.</p>  |
| <p>Report Originator and Contact</p> | <p>Name: Phil Hobson<br/>Rights of Way Officer</p> <p>Tel: (01305) 221562<br/>Email: p.c.hobson@dorsetcc.gov.uk</p>   |

## 1 Background

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

2 **Law**

2.1 A summary of the law is contained in Appendix 2.

3 **Documentary evidence (Appendix 3)** (copies available in the case file RW/T418)

3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

4 **User evidence (Appendix 4)** (copies available in the case file RW/T418)

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

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

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

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

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

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

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

8 **Analysis of documentary evidence**

**Finance Act 1910**

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

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

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

#### **Other documents**

##### **Inclosure and Tithe Awards**

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

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

### **Highway Board Minutes**

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

### **Wimborne Urban District Council**

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

### List of Streets

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

### Estate Maps and Town Plans

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### **Ordnance Survey Maps**

- 8.35 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Wimborne Minster was completed in **1807/8** and clearly depicts **Mill Lane**, including that part of the claimed route from point A to B, which is shown to lead to both the Mill and the Town Brewery (Millbank House), both of which are also depicted. The map is of insufficient scale to depict any of the remaining parts of the claimed route.
- 8.36 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also clearly depicts **Mill Lane** including that part of the claimed route as shown from point A to B. The road is shown to be free of any obstructions such as gates or fences but the scale of the map prevents any meaningful interpretation of the remainder of the claimed route.
- 8.37 The later revised 1 inch **Ordnance Survey maps from 1895, 1904, 1947 and 1960** provide similar information and all depict **Mill Lane**, including that part of the claimed route from point A to B in the same manner, namely as a minor road. Due to the restriction in scale they do not provide any meaningful information as to the remainder of the claimed route.
- 8.38 The **1887 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows that part of the claimed route from point A to B in exactly the same manner as the remainder of **Mill Lane**, which is currently recorded as a public carriageway. It also shows the route leading to the River Allen as shown from A to X in the same way. At point B there appears to be an extension of the main part of what is now known as Millbank House westwards across the claimed route and connecting to what is now the car body repair shop. There is no indication on this map as to whether this was a ‘solid’ building or a covered walkway similar to that located over the route at point E.

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

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

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

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

### **Commercial maps**

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

### **Parish Survey and County Council rights of way maps and records**

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

### **Site and Aerial Photographs**

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

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

### **Aerial Photographs**

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

## 9 Analysis of user evidence supporting the application

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



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

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

## 10 Analysis of evidence opposing the application

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## 11 Analysis of other submissions

11.1 The other letters contain no relevant evidence for consideration.

## 12 Date Public use was brought into question

12.1 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.

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

### 13 Conclusions

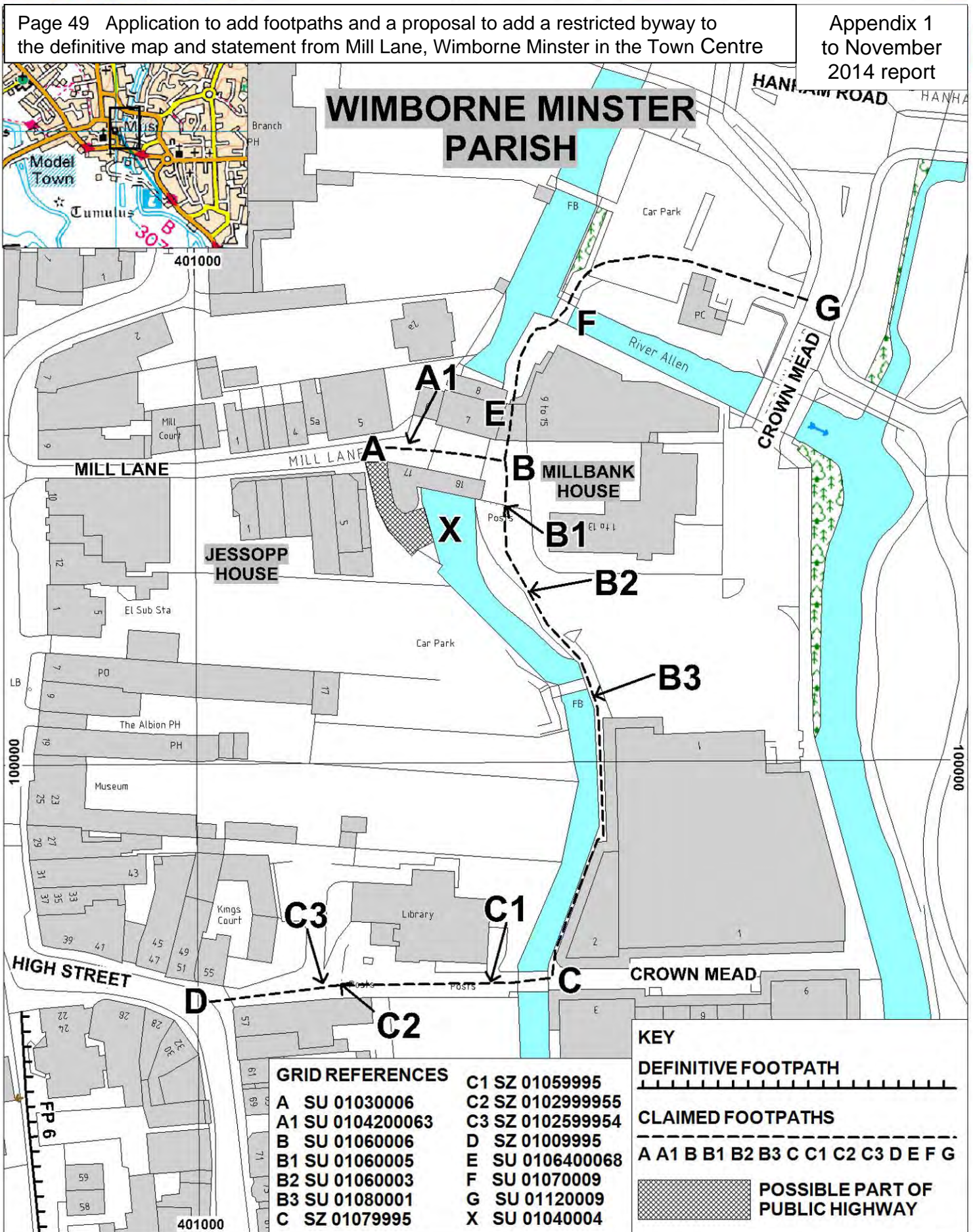
- 13.1 As no parts of the routes to be considered are currently recorded as public rights of way it is necessary for members to decide whether it can be reasonably alleged that the rights originally claimed (A – B – C – D and B – G) or proposed (A – X) do exist.
- 13.2 With respect to that part of the route as shown from **A to B1** the most important piece of documentary evidence is that of the **Finance Act 1910**, which demonstrates that this section of the route was excluded from valuation suggesting it was considered to be a public highway, part of the existing highway Mill Lane, a public carriageway. This conclusion is supported by the evidence from the **Wimborne Tithe Apportionment 1846, Ordnance Survey Maps** and several **Estate and Town Plans** and, to a certain extent, the showing of the route on the inspected layer of the **List of Streets** as far as point B.
- 13.3 Similarly, with respect to that route shown from **A to X**, this is also shown as being excluded from valuation on the **Finance Act 1910** plan, indicative of it being regarded as a public highway, most likely a public carriageway. This conclusion is supported by the evidence derived from both the **Wimborne Highway Board Minutes** and the **Wimborne Urban District Council Minutes**, in addition to that provided by **Ordnance Survey Maps** and several of the **Estate and Town Plans**.
- 13.4 With respect to the route as shown from point **E to G** the majority of the historical documents examined and the later Ordnance Survey Maps suggest that **E to F** has existed for a considerable period of time, probably since the early 17<sup>th</sup> Century. That part from **F to G** has been undefined, existing as an open field until comparatively recent times. There is no compelling evidence to suggest that the route E to G was not available to the public throughout this period.
- 13.5 With respect to that part from **B1 to D** the documentary evidence, including that provided by the **Ordnance Survey Maps** and **Aerial Photographs**, also indicate that this has existed wholly or partially from the early 17<sup>th</sup> Century. With the exception of the period during the construction of the supermarket 1979-80, there is little evidence to suggest that it was not available for public use.
- 13.6 In respect of those parts of the route shown from **A to X, A to D and E to F** the relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980 is taken to be 20 years or more prior to **1979** and, with respect to that part shown from point **F to G**, from the date of the application in **2006**.
- 13.7 With the exception of the route shown from **A to X**, there is evidence of public use of all of the routes that is considered, on balance, as being sufficient to demonstrate that public rights on foot exist along the claimed routes and which fulfils the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question in 1979.

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

**Mike Harries**  
**Director for Environment and the Economy**

November 2014





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

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

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

GEOGRAPHICAL INFORMATION SYSTEMS



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## **LAW**

### **General**

#### 1 Wildlife and Countryside Act 1981

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

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

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

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
  - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.3 Section 31(6) of the Highways Act 1980 permits landowners to deposit with
- 2.4 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.
- 3 Human Rights Act 1998
- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
    - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
    - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
  - (b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

### **Case specific law**

#### **4 Finance Act 1910**

4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

#### **5 National Parks and Access to the Countryside Act 1949**

5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

#### **6 Natural Environment and Rural Communities Act 2006**

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

**Table of documentary evidence**

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



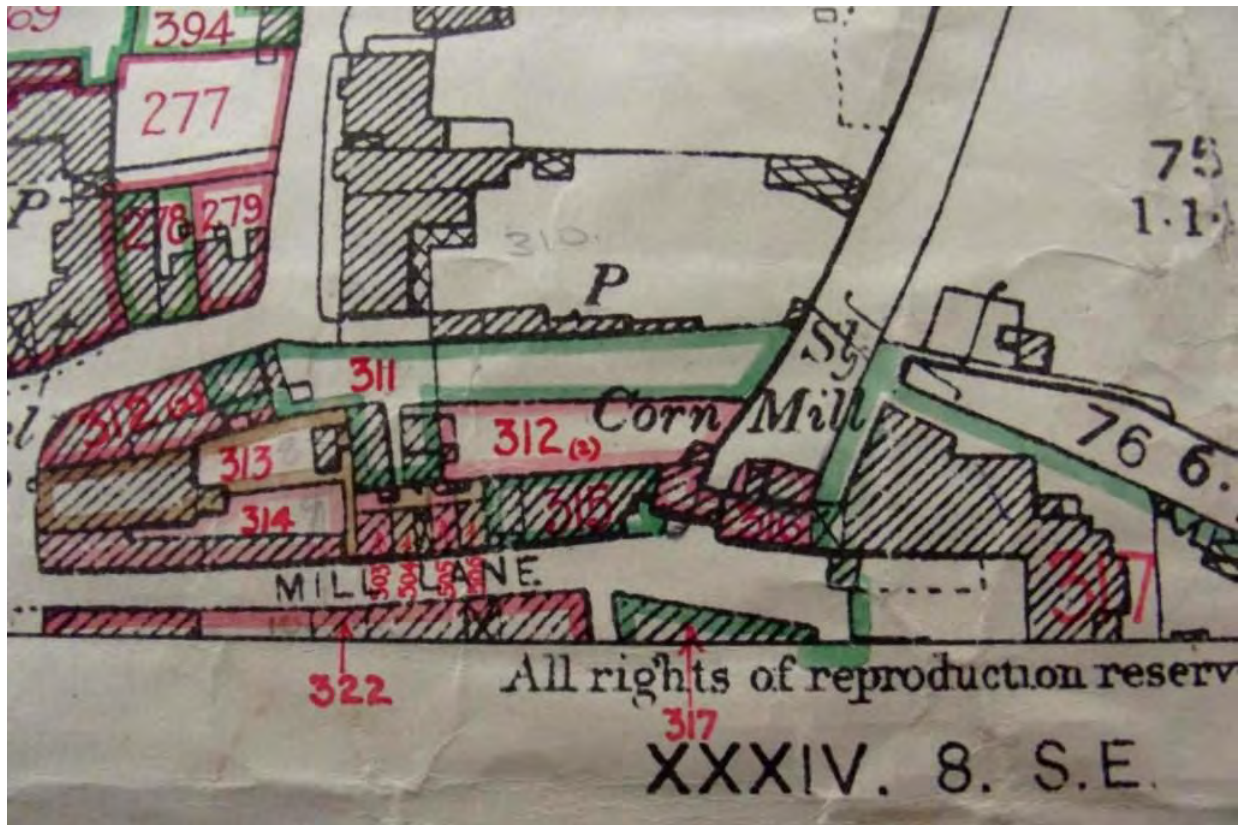
| <b>Date</b> | <b>Document</b>   | <b>Comment</b>   |
|-------------|---|--|
| 1892        | Wimborne District Highway Board Minutes   | Reference to an encroachment at the mouth of the Drinking Place in Mill Lane by Mr Ellis (Town Brewery).   |
| 1895        | Ordnance Survey Revised One Inch Map scale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

| <b>Date</b>      | <b>Document</b>   | <b>Comment</b>   |
|------------------|---|--|
| 1947             | Ordnance Survey Revised One Inch Map scale 1 inch:1 mile  | Mill Lane depicted as minor road including A to B.   |
| 1949             | National Parks and Access to the Countryside Act 1949<br>NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB. |  |
| 1949             | Ordnance Survey Revised Edition scale 6 inches:1 mile (1:10560)   | Mill Lane, including A to B and A to X, defined in same manner. B to C undefined, footbridge at C, C to D defined. E to F defined, F to G undefined.         |
| 1951             | Parish Survey   | Route not included in Survey and not included or claimed thereafter.   |
| 1958             | NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)   |  |
| 1960             | Ordnance Survey Revised One Inch Map scale 1 inch:1 mile  | Mill Lane depicted as minor road including A to B.   |
| 1964             | Wimborne Town Improvement Plan (Wimborne Urban District Council)  | Depicts Mill Lane extending to B2, from B2 defined as car park, footbridge at C, C to D clearly defined. E to F defined, F to G undefined.                   |
| 1967             | First definitive map  | Not recorded   |
| 1971 & 1973      | Goad Town Plans   | Shows part of Mill Lane. Plan does not extend as far as point A. C to D is shown, including footbridge at C.   |
| 1974             | List of Streets   | Mill Lane recorded as D40841, a paved road 0.41 miles (0.07km) in length. A to B not shown on Maintained Highways Map but is shown on Inspected Highway Map. |
| 1975 & 1977      | Goad Town Plans   | Similar to those from 1973/75 but annotated with details of supermarket development.   |
| 1986             | Wimborne Pamphlet (B Willis)  | Plan of town shows route A to D, defined by broken line, suggesting pedestrian route.  |
| 1989             | Current definitive map  | Not recorded   |
| 1996-2004        | Wimborne Town Guide Chamber of Commerce   | Includes plans depicting Mill Lane including A to B, also B to D and E to F.   |
| 2007, 2010, 2012 | Goad Town Plans   | Depict Mill Lane including A to B. Routes from B to D and E to G both clearly shown.   |

**Extracts from key documents**

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

**1910 Finance Act maps sheets 34.8 NE and SE**





1846 Tithe map



1878-1892 Highways Board minutes

25 June 1892

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

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

26 February 1892

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

8 April 1892

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

manure heap could remain subject to these conditions.

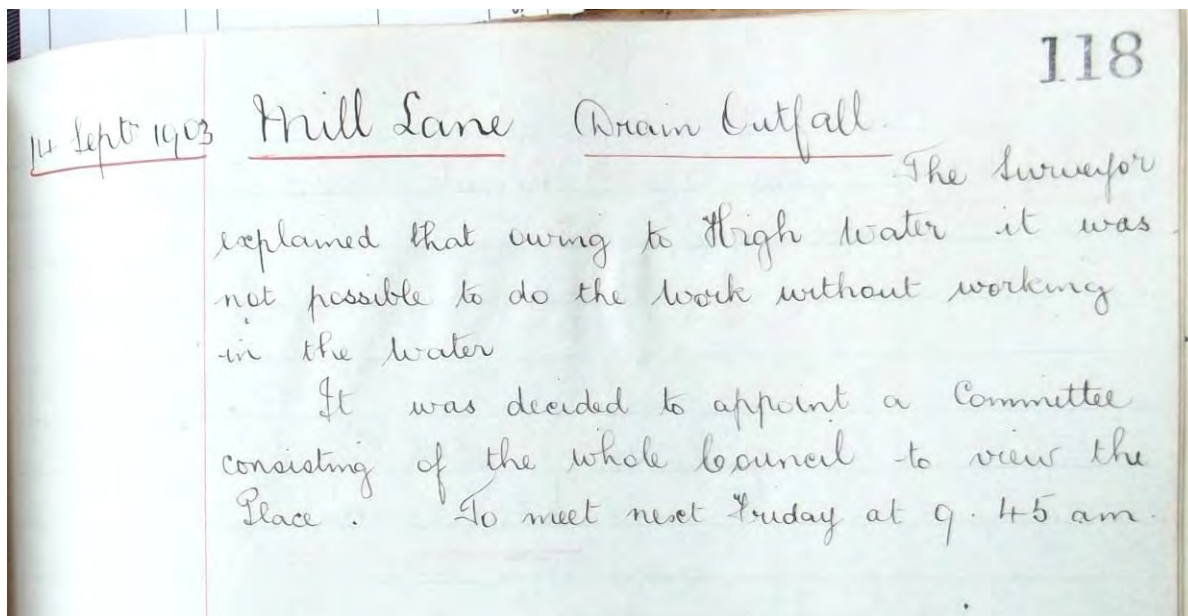
17 June 1892

Wimborne. The clerk was directed to write to Mr. Ellis requesting a reply to his letter of the 19<sup>th</sup> of April last, regarding the encroachment made by him in Mill Lane.

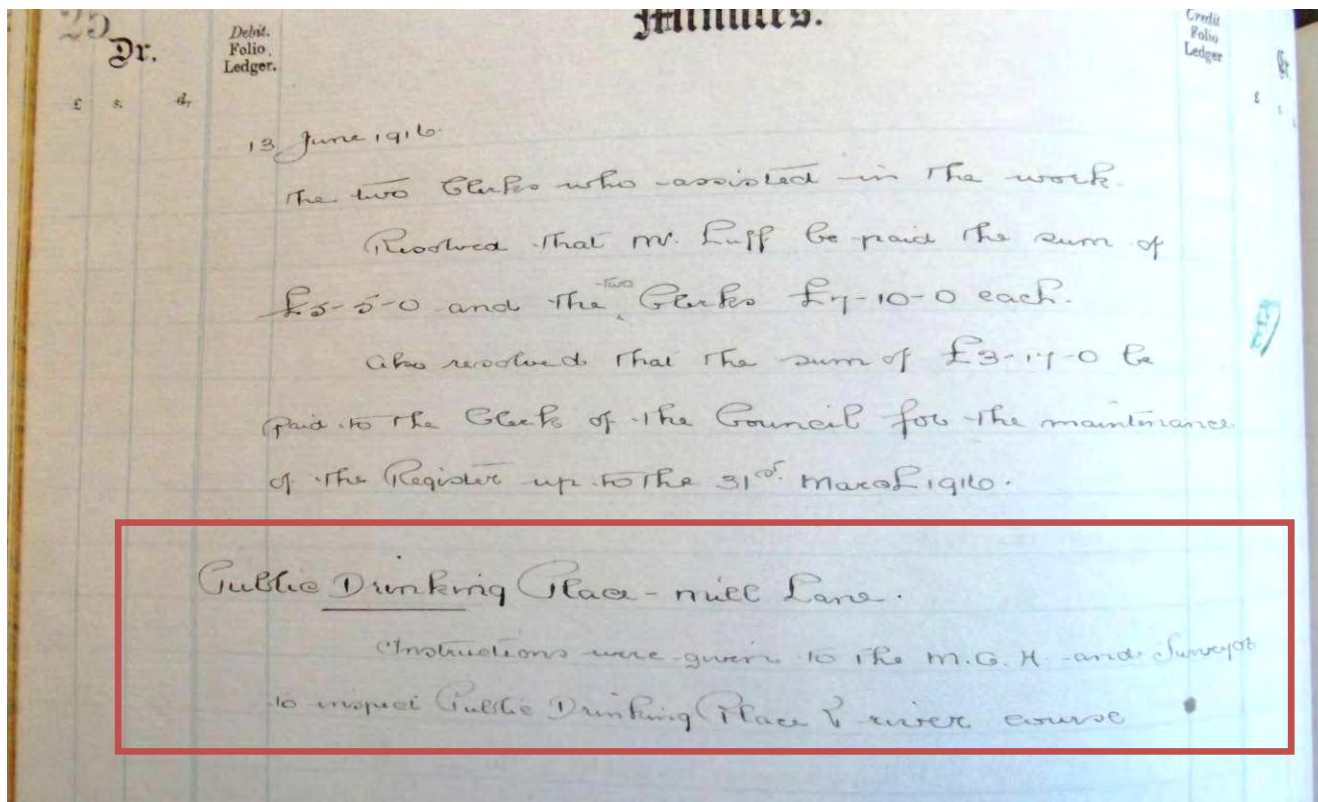


1903 and 1916 Wimborne Urban District Council minutes

14 September 1903



13 June 1916

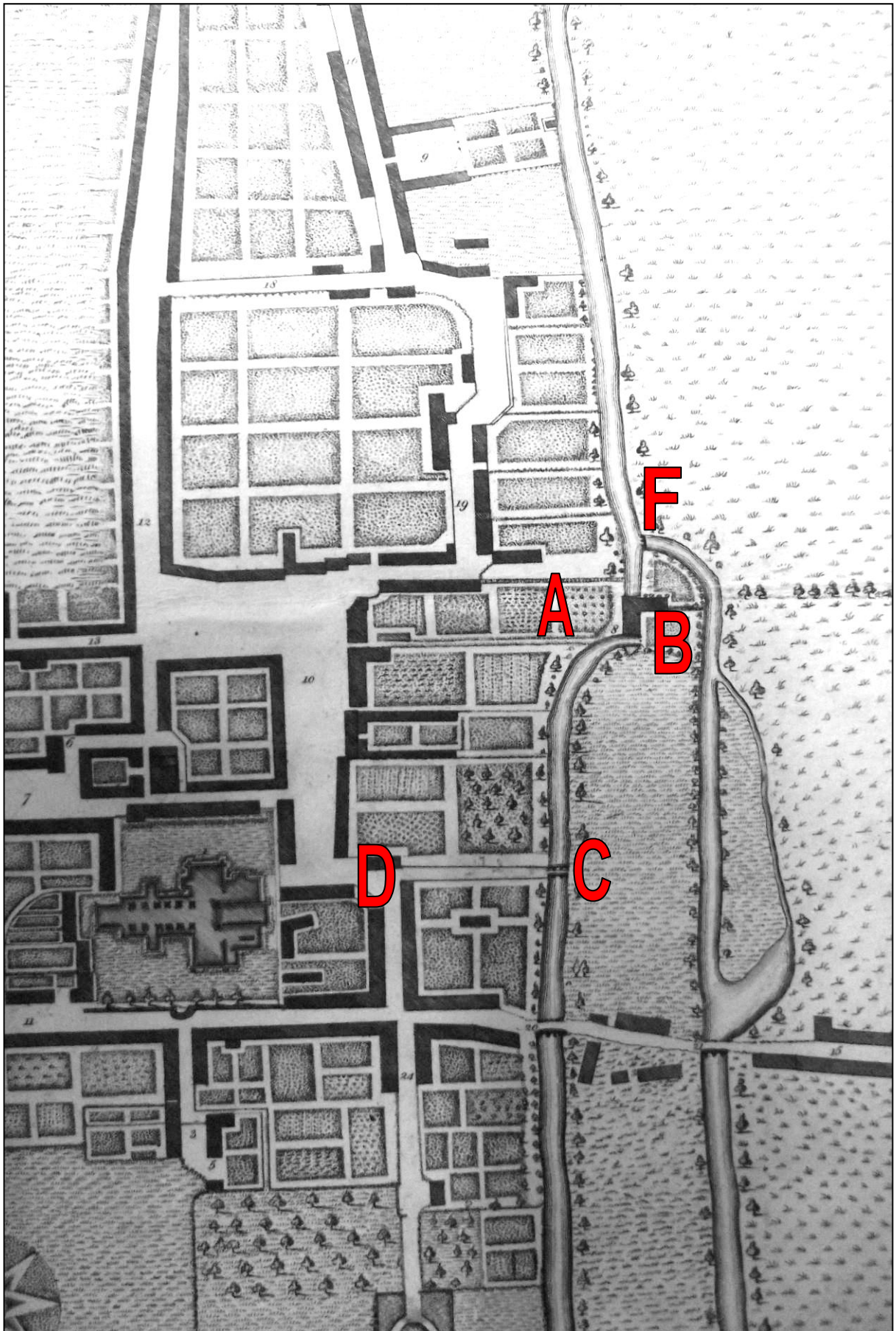


**1613-14 Plan of Wimborne Minster by Richard Harding**



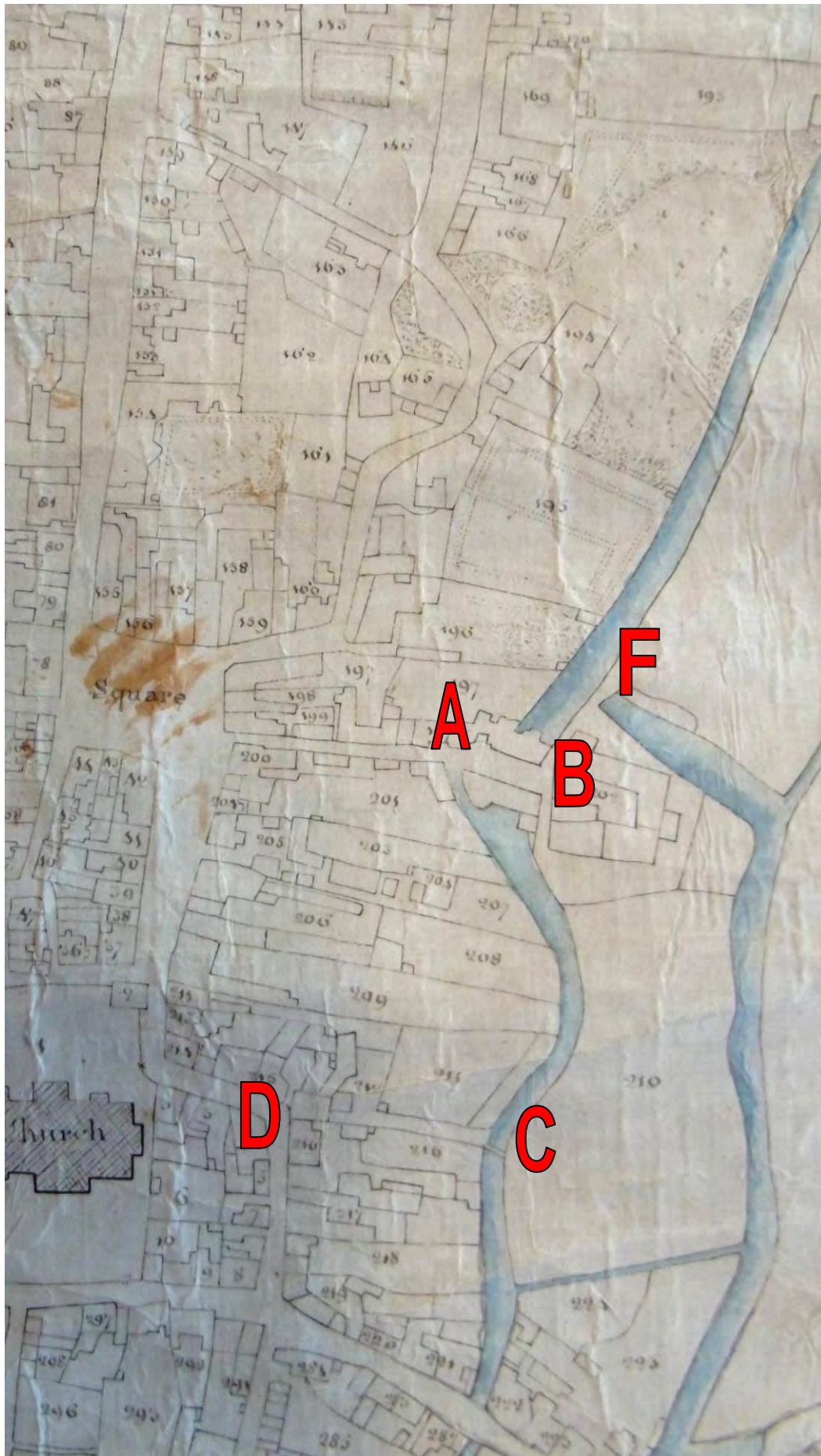


1613 Hanham Estate plan





**1832 Bankes Estate Map of the Town of Wimborne Minster**



Page 64 Application to add footpaths and a proposal to add a restricted byway to the definitive map and statement from Mill Lane, Wimborne Minster in the Town Centre

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





**User Evidence**  
**Table summarising user evidence from forms**

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

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

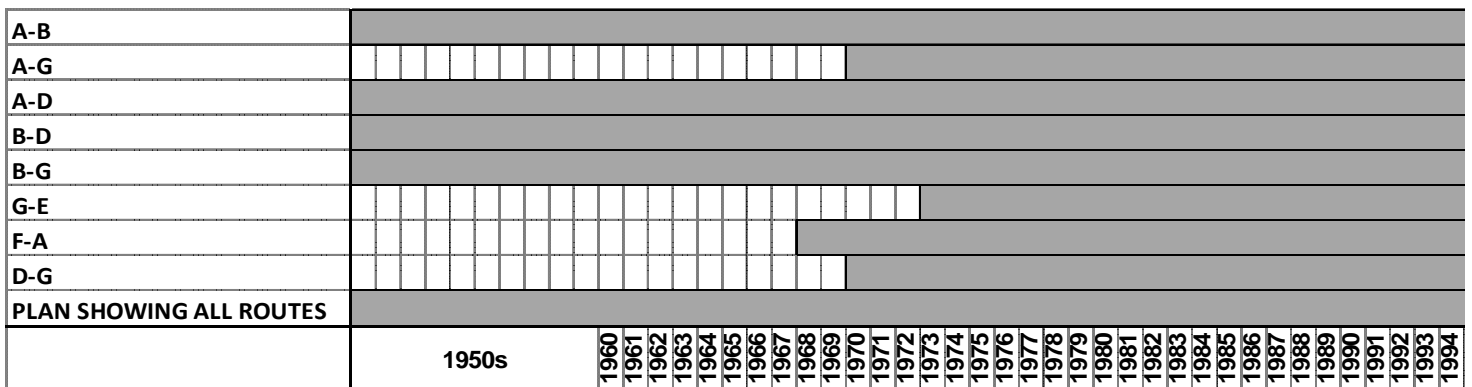
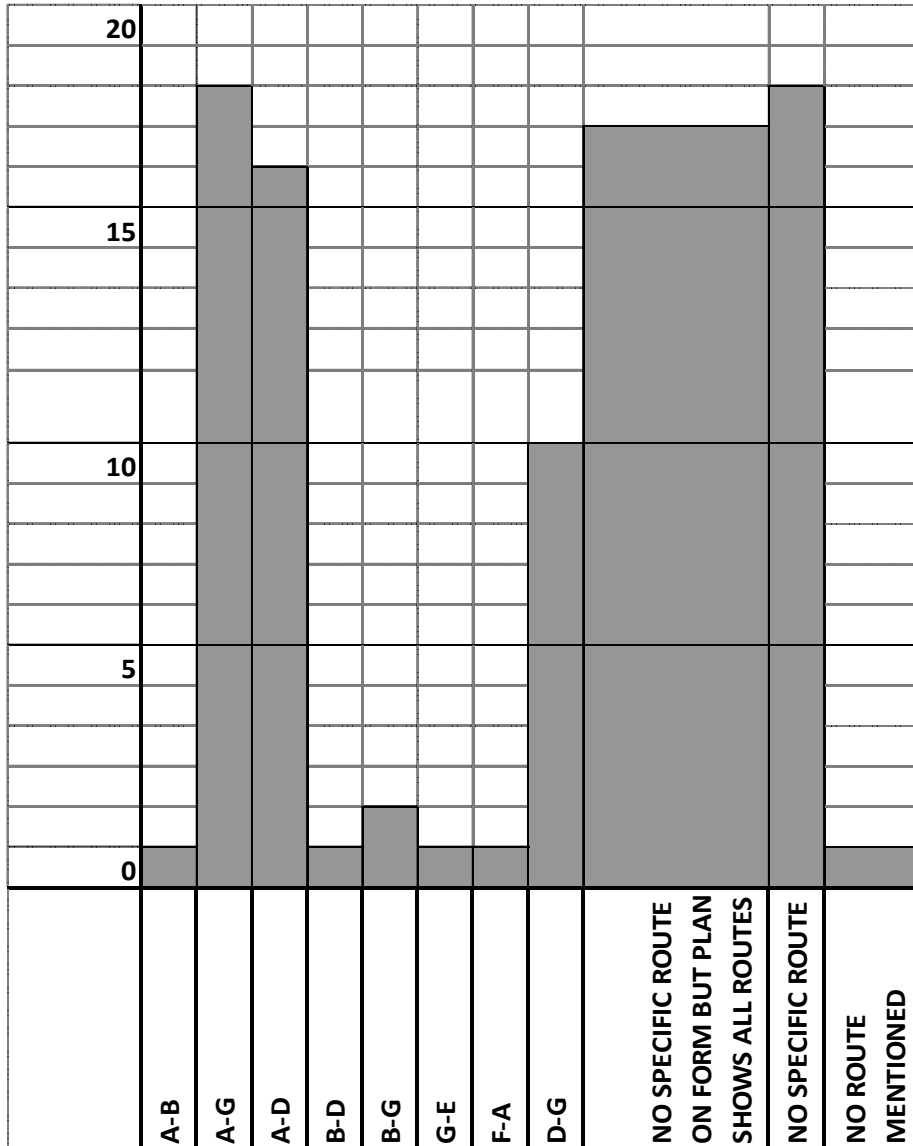
| Name  | Comments   |
|---|--|
| *Mrs K Pearce   | 2012-2013, weekly, foot, A-G no gates or notices.  |
| Mrs G Sands   | 1983-2013, 3 times weekly, foot, car and bicycle, A-D and A-G, no gates or notices, private sign recently, never challenged.                     |
| Mr R Sands  | 1983-2013, 3 times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





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

**NUMBER OF USERS**



**YEARS OF USE**

**Additional evidence and representations in support of the proposal**

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

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



**Evidence and representations opposing the proposals**

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

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

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

Appendix 7  
to November  
2014 report

**Other submissions received**

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

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

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

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

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

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

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

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

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

**Resolved**

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

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

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

5. In 1986 really to ensure the safety of children (a) from the River and (b) from investigating rubbish and materials or cars that might from time to time be parked on the pink land I erected posts on either side on the boundary at the points "E" & "F" and when the estate is closed the access is barred by a chain and padlock. No party to date has ever objected to the complete enclosure by the said chain of the pink land and I have only not enclosed it permanently because of the need to obtain access to the rubbish skip.
8. On the 10th August 1987 I instructed my Solicitors to investigate with the previous Local Authority and Council whether they had any knowledge of any documentary title or claim to rights over the pink land. There is produced and shown to me marked "H.L.S.2" copies of the letters written by my said Solicitor on 10th August 1987 to which to date no reply has been received.
9. As to the green land this abuts and adjoins land edged red which was acquired by me under the said Conveyance dated 19th July 1946. The said Conveyance carries with it the exclusive use of the water and rights in and over the Mill Pond and the green land does in fact form the bed of the River Allen and I claim ownership of the entire bed of the said River subject to any statutory rights vested as to water in the Wessex Water Authority. At the time of the Conveyance of 19th July 1946 I also acquired the adjoining land designated by the words "Old Brewery" on the plan attached and whereas I have allowed access on foot from time to time over that area of land coloured yellow I have always maintained since I owned the land a gate at the point marked "X" and have until recently made it a practise to shut that gate at least once a year to ensure that no party acquired rights by prescription over the land coloured yellow. In addition upon the post in the position marked "X" there is a plaque which indicates there is no public right of way and that the land is in fact privately owned. In the premises I claim that I am the undisputed owner of the bed of the River Allen co-extensive with the green land.

