



Strategic Planning Committee

Date: Monday, 22 November 2021
Time: 10.00 am
Venue: A link to the meeting can be found on the front page of the agenda.

Membership: (Quorum 6)

Robin Cook (Chairman), John Worth (Vice-Chairman), Shane Bartlett, Dave Bolwell, Alex Brenton, Kelvin Clayton, Jean Dunseith, Mike Dyer, Sherry Jespersen, Mary Penfold, Belinda Ridout and David Tooke

Chief Executive: Matt Prosser, County Hall, Dorchester, Dorset DT1 1XJ

For more information about this agenda please telephone Elaine Tibble on 01305 224202 or email elaine.tibble@dorsetcouncil.gov.uk



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Members of the public are invited to access this meeting with the exception of any items listed in the exempt part of this agenda.

This meeting will be held remotely as an MS Teams Live Event Link Below.

[Link to live meeting](#)

Members of the public are invited to make written representations provided that they are submitted to the Democratic Services Officer no later than **8.30am on Wednesday 17 November 2021**.

This must include your name, together with a summary of your comments and contain no more than 450 words.

If a councillor who is not on the Strategic Planning Committee wishes to address the committee, they will be allowed 3 minutes to do so and will be invited to speak before the applicant or their representative provided that they have notified the Democratic Services Officer by **8.30am on Wednesday 17 November 2021**

Please note that if you submit a representation to be read out on your behalf at the committee meeting, your name and written submission will be published as part of

the minutes of the meeting.

[For information about public speaking, filming and how to get involved in committees, please see this page.](#) In particular [Guidance to Public Speaking at a Planning Committee](#) and specifically the "***Covid-19 Pandemic – Addendum to the Guide to Public Speaking Protocol for Planning Committee meetings - effective from 20 July 2020***" included as part of this agenda (see agenda item 4 - Public Participation

Using social media at virtual meetings

Anyone can use social media such as tweeting and blogging to report the meeting when it is open to the public.

AGENDA

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1 APOLOGIES

To receive any apologies for absence.

2 DECLARATIONS OF INTEREST

To disclose any pecuniary, other registerable or personal interest as set out in the adopted Code of Conduct. In making their disclosure councillors are asked to state the agenda item, the nature of the interest and any action they propose to take as part of their declaration.

If required, further advice should be sought from the Monitoring Officer in advance of the meeting.

3 PUBLIC PARTICIPATION

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To receive questions or statements on the business of the committee from town and parish councils and members of the public.

Public speaking has been suspended for virtual committee meetings during the Covid-19 crisis and public participation will be dealt with through written submissions only.

Members of the public who live, work or represent an organisation within the Dorset Council area, may submit up to two questions or a statement up to a maximum of 450 words. All submissions must be sent electronically to elaine.tibble@dorsetcouncil.gov.uk by the deadline set out below. When submitting a question please indicate who the question is for and include your name, address and contact details. Questions and statements received in line with the council's rules for public participation will be published as a supplement to the agenda.

Questions will be read out by an officer of the council and a response given by the appropriate officer at the meeting. All questions, statements and responses will be published in full within the minutes of the meeting. **The deadline for submission of the full text of a question or statement is 8.30am on Wednesday 17 November 2021.**

4 APPLICATION WD/D/19/003181, LAND AT, HIGHER STOCKBRIDGE FARM, HIGHER STOCKBRIDGE FARM, STOCKBRIDGE

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Installation of a renewable energy scheme comprising ground mounted

photovoltaic solar arrays together with substation; transformer stations; access; internal access track; landscaping; biodiversity measures; security fencing; security measures; access gate; access improvement and ancillary infrastructure.

5 APPLICATION FOR THE REGISTRATION OF A TOWN OR VILLAGE GREEN AT HAPPY ISLAND, BRIDPORT 35 - 54

To consider an application to amend the Register of Town and Village Greens by the addition of an area of land at Happy Island, Bridport.

6 APPLICATION FOR A DEFINITIVE MAP AND STATEMENT ORDER TO ADD A FOOTPATH FROM SUNNYSIDE ROAD TO RYLAND'S LANE, WYKE REGIS, WEYMOUTH 55 - 96

In response to an application to add a footpath in the Weymouth Town Council area, this report considers the evidence relating to the status of the route.

7 URGENT ITEMS

To consider any items of business which the Chairman has had prior notification and considers to be urgent pursuant to section 100B (4) b) of the Local Government Act 1972. The reason for the urgency shall be recorded in the minutes.

8 EXEMPT BUSINESS

To move the exclusion of the press and the public for the following item in view of the likely disclosure of exempt information within the meaning of paragraph 3 of schedule 12 A to the Local Government Act 1972 (as amended).

The public and the press will be asked to leave the meeting whilst the item of business is considered.

Dorset Council

Covid-19 Pandemic – Addendum to the Guide to Public Speaking Protocol for Planning Committee meetings – effective from 20 July 2020

Due to the Covid-19 pandemic the council has had to put in place measures to enable the council's decision making processes to continue whilst keeping safe members of the public, councillors and council staff in accordance with the Government's guidance on social distancing by applying new regulations for holding committee meetings from remote locations.

The following procedures will apply to planning committee meetings until further notice, replacing where appropriate the relevant sections of the Guide to Public Speaking at Planning Committees:

1. While planning committee meetings are held remotely during the Coronavirus outbreak public participation will take the form of written statements (and not public speaking) to the committee.
2. If you wish to make a written statement it must be no more than 450 words with no attached documents and be sent to the Democratic Services Team by 8.30am two working days prior to the date of the committee – i.e. for a committee meeting on a Wednesday written statements must be received by 8.30am on the Monday. The deadline date and the email contact details of the relevant democratic services officer can be found on the front page of the committee agenda. The agendas for each meeting can be found on the Dorset Council website

[Dorset Council Committee List](#)

3. During this period the council can only accept written statements via email and you should continue to bear in mind the guidance in the public speaking guide when preparing your representation.
4. The first three statements received from members of the public for and against the application (maximum six in total) will be read out together with any statement from the town and parish council, by an officer (but not the case officer), after the case officer has presented their report and before the application is debated by members of the Committee. It may be that not all of your statement will be read out if the same point has been made by another statement and already read to the Committee. This is to align with the pre-Covid-19 protocol which limited public speaking to 15 minutes per item, although the Chairman of the Committee will retain discretion over this time period as she/he sees fit. All statements received will be circulated to the Committee members before the meeting.
5. This addendum applies to members of public (whether objecting or supporting an application, town and parish councils, planning agents and applicants).
6. Councillors who are not on the Planning Committee may also address the Committee for up to 3 minutes by speaking to the Committee (rather than submitting a written statement). They need to inform Democratic Services of their wish to speak at the meeting two working days before the meeting.

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Committee Report

Application Number:	WD/D/19/003181
Site address:	LAND AT, HIGHER STOCKBRIDGE FARM, HIGHER STOCKBRIDGE FARM, STOCKBRIDGE
Proposal:	Installation of a renewable energy scheme comprising ground mounted photovoltaic solar arrays together with substation; transformer stations; access; internal access track; landscaping; biodiversity measures; security fencing; security measures; access gate; access improvement and ancillary infrastructure
Applicant name:	Ms Clutterbuck
Case Officer:	Emma Telford
Ward Member(s):	Cllr Penfold

1.0 This application is referred to planning committee, on the basis of the significant scale of the application and the clear level of public interest in the decision.

2.0 Summary of recommendation:

2.1 That the Committee would be minded to delegate to the Head of Planning to refuse the application for the reason as follows:

1) The proposed development by reason of its location, appearance and scale would harm the character of the valued landscape, part of its importance is its setting to the heritage assets and therefore the cumulative harmful effect on the landscape and its importance to the setting of the assets would be contrary to Policies ENV 1, ENV 4, ENV 10 of the West Dorset, Weymouth & Portland Local Plan (2015) and paragraphs 174 & 199-203 of the National Planning Policy Framework (2021) thus the principle of development of the scheme is also contrary to Local Plan policy COM 11.

And recommends that the Head of Planning determines the application accordingly.

3.0 Reason for the recommendation:

- The public benefits of the development are not considered to outweigh the cumulative harm caused to the character of the valued landscape and its importance to the setting of heritage assets and their relationship with the rural landscape.
- The proposed development cannot be successfully assimilated into the receiving valued landscape. It will be visually intrusive because of its industrial character and scale and will be harmful to the setting of heritage assets and to the character of the wider landscape.

- Given the above the proposed development does not comply with local plan policy COM 11.

4.0 Key planning issues

Issue	Conclusion
Principle of Development	The proposal will need to be considered against Local Plan policy COM 11. Benefits of renewable energy are accepted.
Residential Amenity	Acceptable impact on residential amenity in compliance with local plan policy ENV 16
Heritage Assets	Less than substantial harm is identified to the significance of heritage assets.
Visual Amenity and Landscape	The proposed development cannot be successfully assimilated into the receiving valued landscape. It will be visually intrusive because of its industrial character and scale and will be harmful to the setting of heritage assets and to the character of the wider landscape.
Highway Safety	Highways raised no objections.
Biodiversity	Natural Environment Team considered that the measures proposed would ensure the development would avoid detrimental impacts and result in an overall net gain for biodiversity.
Flooding & Drainage	Flood Risk Management Team raised no objections.
Rights of Way	Rights of Way Team raised no objections in response to the amendments made.

5.0 Description of Site

- 5.1 The site is comprised of a collection of agricultural fields at Higher Stockbridge Farm, Longburton, Sherborne. The site is set within the open countryside located approximately 3 miles to the south of Sherborne and approximately 5 miles to the south east of Yeovil. The site is bounded to the north and west by agricultural land. The southern edge of the site runs parallel with Bailey Ridge Lane, beyond which are further agricultural fields. The eastern edge of the site is predominantly bounded by The Holme Bushes (woodland). Higher Stockbridge Farm is located near the northeast corner of the site.
- 5.2 The site comprises of a number of irregular shape fields of mainly improved grassland bounded by mature hedgerows and ditches. Large mature trees are present within both the hedgerows and fields themselves.
- 5.3 The nearest principal road to the development site is the A352 about 1.85km to the east as its closest point. One public right of way transverses the lower third of the site

extending west and northwest from the neighbouring property Holmbushes Farm toward the southern edge of Middle Wood.

5.4 The application site is located outside of a defined development boundary (DDB).

6.0 Description of Development

6.1 The main element of the proposal is the installation of a ground mounted solar park with a maximum export capacity of 35MW laid across various fields enclosures. This application seeks permission for the construction, operation, maintenance and decommissioning of the ground mounted solar park.

6.2 The photovoltaic panels would be laid out in straight arrays and would be static. The distance between the arrays would typically be between 3.35m to 6m. The arrays would be set within a 2m high security fence. A single main substation compound would serve the development and would be required for the duration of the development. Transformer centres that would include inverters and transformers will be located throughout the site. The transformer element would be surrounded by individual deer proof fencing and the inverters would sit inside metal cabinets that would be finished in green. The cables linking all the arrays to the inverter/transformers and then the substation would be concealed in trenches.

6.3 This application proposes that the development would export renewable energy to the grid for a minimum of 35 years.

7.0 Relevant Planning History

Application No.	Application Description	Decision	Date of decision
WD/D/17/001204	Request for EIA Screening Opinion in relation to proposed installation of ground mounted Photovoltaic (PV) arrays laid out in rows running from east to west, and associated infrastructure in the form of transformer and inverter stations, DNO sub-station and control centre.	The Local Planning Authority concluded that the proposed development is likely to result in significant environmental effects and adopted a screening opinion that the proposed development is EIA development.	16/06/2017
WD/D/18/000896	Pre-application Consultation -	Summary: The proposal should deliver wider environmental benefits by providing a considerable amount of	05/07/2018

	Ground Mounted Solar Park	<p>clean, renewable and sustainable electricity, which would contribute to national and local targets for renewable energy. In addition, it is likely that the proposal would make a valuable contribution to cutting greenhouse gas emission and help combat climate change. However, this will need to be considered in the planning balance given the size of the site and nature of development.</p> <p>Detailed landscape and conservation advice was not sought.</p>	
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8.0 List of Constraints

Outside of defined development boundary
 Contaminated Sites Buffer
 Veteran Trees 500m buffer
 Ancient Woodland 500m buffer
 Right of Way
 Setting of Listed Buildings

9.0 Consultations

All consultee responses can be viewed in full on the website.

Consultees

Original Scheme

9.1 Health and Safety Executive – *The proposed development site which you have identified does not currently lie within the consultation distance of a major hazard site or major accident hazard pipeline, therefore at present HSE does not need to be consulted on any developments on this site.*

9.2 Environmental Health – *The noise report submitted is sufficient. No further submission is required.*

9.3 Dorset Waste Partnership – *In reference to this application the DWP has no issues.*

9.4 National Air Traffic Services Safeguarding – *The proposed development has been examined from a technical safeguarding aspect and does not conflict with out safeguarding criteria. Accordingly, NATS (En Route) Public Limited Company (“NERL”) has no safeguarding objection to the proposal.*

9.5 CADENT and National Grid – *No objection to these proposed activities.*

9.6 MOD Safeguarding – *I can confirm the MOD has no safeguarding objections to this proposal.*

9.7 Highways - *The Highway Authority has NO OBJECTION, subject to a condition for the implementation of the submitted Construction Traffic Management Plan.*

9.8 Flood Risk Management Team – *We are satisfied that the supporting FRA/DS document offers an adequate assessment of the site, the proposals and a scheme of surface water management, in so far that it assesses the hydrological and hydrogeological context of both the site and proposed development. There are no grounds to object to the proposed on the basis of surface water management subject to adherence and implementation of the FRA/DS supplied to be secured by condition.*

9.9 Mineral Planning Authority – *There is safeguarded mineral land in the vicinity of the proposed development site, the site does not itself fall within the Mineral Safeguarding Area. The Mineral Planning Authority can confirm that in this case, on the site identified for this proposal, there is no mineral safeguarding objection.*

9.10 Planning Obligations Manager – *I have no comments from a planning obligations perspective.*

9.11 Countryside Access Team – *The works directly affect the line of the Bridleway 23, Lillington. The line could be changed under the planning laws or the bridleway could be allowed for in the current scheme. It will need to be 4m wide.*

9.12 Historic England – *The character, land use and experience of being within the landscape also plays an important role in how heritage assets are appreciated and therefore in their communal, aesthetic and historic value. In this case, the application sites forms the agrarian, tranquil and rural setting to the buildings which lie within and around it. Whilst the landscape is not designed, it provides the agricultural backdrop to the listed buildings at Lower Stockbridge Farm. Its use is inextricably linked with those buildings, contributing to an appreciation and understanding of the inherent qualities of the listed farmstead and its historic landscape setting. This application would transform the farmland which provides this wider environment – land which is currently undulating fields with hedgerows and individual trees would be almost entirely filled with regular, dark and highly linear array of incongruous solar cells, fenced and interspersed with other associated structures e.g. CCTV and inverters. The significance which these heritage assets derive from the unspoilt, open character of their gently agricultural setting would therefore be eroded.*

Whilst we accept that there is minimal direct intervisibility between it and the development site, the unspoilt open character of the surrounding rural landscape makes an important and positive contribution to the setting of the Grade II, late 16th century barn, and therefore to its special architectural and historic qualities. Consequently, and despite the conclusions of the heritage statement that the proposals would not result in any harm to the significance of the heritage assets, Historic England are concerned that the implementation of this development would be harmful to the setting of the building through considerable erosion of its timeless historic and agricultural setting.*

Having assessed this documentation submitted, we believe that this proposal would result in harm to the special historic qualities of the barn at Lower Stockbridge Farm. Given its II listed status this is a consideration that needs to be afforded considerable statutory weight in the determination of any planning application.*

The NPPF states that heritage assets should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. No other planning concern is given a greater sense of importance in the NPPF. Significance can be harmed or lost through alterations or destruction of the heritage asset or development within its setting.

Historic England has concerns regarding the application on heritage grounds. These concerns relate particularly to the harmful impact of the development on the significance which the grade II barn at Lower Stockbridge Farm derives from the open, unspoilt character of its agricultural setting.*

9.13 Natural England - *The application triggers a number of environmental risk thresholds for provision of a Biodiversity Mitigation and Enhancement Plan (BMEP). It is advised that the applicant provide an approved BMEP in accordance with the Dorset Biodiversity Protocol. Whilst the application has been rigorously assessed under the framework of an Environmental Statement, it is unclear what measures **will be** done within a summary document in a format which is enforceable and can be secured as a planning condition to the permission. The Dorset Biodiversity Protocol has been established to give your authority assurance that an application will not harm the environment and seek opportunities for net biodiversity gains in a format which achieves this. The BMEP should cover the construction and operation phase in addition to the details of any infrastructure, management and monitoring for the life of the development.*

Natural England would recommend that your authority take any necessary steps to ensure that mature and veteran trees that may shade the proposal site are protected from future felling.

9.14 Natural Environment Team - *We recommend the application is reviewed under the Dorset Biodiversity Appraisal Protocol with documents submitted in accordance with published guidelines. The surveys can be reviewed on line from the ES however, we would expect a Biodiversity Mitigation Plan to be submitted for review.*

9.15 Technical Services - *With regards to this application i have no objection. The FRM team in their role as LLFA have provided comments with regards the management of surface water given the proposals qualify as major development, and i suggest you refer to their comments in this instance.*

9.16 Queen Thorne Parish Council - *Queen Thorne Parish Council voted unanimously at its meeting on 2nd March 2020 to object strongly to this application on the planning grounds of the unacceptable harm that it poses to this important part of the Blackmore Vale, its landscape, the setting of its heritage assets, particularly the church at Lillington and its amenity value.*

The Government has pledged to address climate change through all sensible means, including the expansion of renewable energy; Queen Thorne Parish Council endorses this pledge. Furthermore, Queen Thorne Parish Council has initiated its own efforts to support Dorset Council's policy of seeking practical ways to combat climate change.

However, as the Government has itself stressed, any measures must be proportionate and must be balanced against potential or actual harm to the countryside. In the case of this application, the geography of this particular site is such that it would threaten to disfigure the surrounding landscape. When the proposed solar farm, if approved and constructed, came to the end of its useful life, its site would be ripe for industrial or other unsympathetic development.

The proposed site for this application is some 4 miles (in a straight line) from the nearest part of Queen Thorne Parish Council's area, and is not visible from it. It must be stressed that our objection is based on the principle that sites of such obvious attractiveness and merit in several different respects should not be despoiled.

9.17 Dorset Wildlife Trust - *DWT support the comments of the Natural Environment Team (NET) at Dorset Council and Natural England in their responses dated 17th and 14th February 2020 respectively and also recommend the application is reviewed under the Dorset Biodiversity Appraisal Protocol. This requires the submission of a Biodiversity Mitigation and Enhancement Plan (BMEP) to summarise the impacts of the development upon biodiversity, and the appropriate measures to avoid, mitigate or compensate for such impacts. It is vital that independent scrutiny of the BMEP is undertaken, to ensure adequate mitigation, compensation and net gains for biodiversity are secured in accordance with the National Planning Policy Framework 2019.*

DWT recommend that the BMEP should consider all phases of the development, including construction, operation and decommissioning, as well as monitoring and management during these phases. Whilst it is accepted that decommissioning impacts are currently difficult to predict, further ecological survey to establish the status of wildlife prior to decommissioning should be included to inform the safeguarding measures required (as stated in paragraph 7.4.3, Volume 1 of the ES). DWT also recommend that permission is not granted until a Certificate of Approval is provided for any submitted BMEP, and its implementation secured through a planning condition.

9.18 Cam Vale Parish Council - *We support Dorset Council's policy of seeking practical ways to combat climate change and broadly support the government's policy of expanding the use of renewable energy per se. However, any measures must be proportionate, and must be balanced against potential harm to the countryside. We believe that the application should be refused on the following grounds:*

1. The proposed site of the solar farm is on a north facing slope in a landscape of small fields, ancient hedgerows, copses, farms and small villages. There is nothing in the area approaching this huge scale such that the solar farm would completely dominate the surrounding countryside. By comparison, the site of the Chapel Lane solar farm, some 70% larger, is next to Bournemouth Airport and Aviation Business Park within a flat landscape and is thus largely invisible from both near and far.

2. The proposed site is overlooked by The MacMillan Way, bridle ways, footpaths, parts of Bailey Ridge Hill, Batcombe and Lillington, where owners of listed buildings are themselves constrained by planning regulations. While it would barely impact upon the

Applicant's visual amenity, the solar farm would have a serious impact on specific properties including Holmbushes Farm, Lower Bailey Ridge Farm and holiday cottages, and the Grade 1 listed Lillington Church.

3. Our Parishioners expressed concern about excessive construction and maintenance traffic along local minor roads and an increased flood risk.

4. With a proposed operational lifetime of 35 years the development cannot be considered temporary. We think it unlikely that the site would ever return to agricultural use – more likely be refurbished as a solar farm or become a derelict brown field site.

9.19 Senior Conservation Officer – *We are unable to support this application.*

The application site forms part of a historic landscape which has sufficient historic and aesthetic interest to be considered a non-designated heritage asset. Furthermore, the site sits within the settings of a number of designated heritage assets.

The scale of the proposed development, combined with its incongruent materials, does not complement or respect the local landscape character and does not demonstrate that the adverse impacts on the local landscape and areas of historical interest can be satisfactorily assimilated.

Taking into account the application documentation and our own assessment below, the current proposals result in the following levels of harm:

- **substantial harm** to the significance of the historic landscape as a non-designated heritage asset, as it has serious adverse impacts on the key historical and aesthetic elements which make up that significance;
- **less than substantial harm** to the contribution made by the setting to the special architectural and historic interest of the following designated heritage assets:
 - St Antony's Convent (Leweston School) (Grade II*)
 - Lower Stockbridge Barn (Grade II*) and Farmhouse (II)
 - Italian Garden to SW of Leweston School (cumulative elements at Grade II)
 - Old Water Tower to W of Leweston School (Grade II)

With regard to non-designated heritage assets, the NPPF requires a 'balanced judgement...having regard to the scale of any harm or loss and the significance of the heritage asset', whilst less than substantial harm to a designated heritage asset' requires the harm to be weighed 'against the public benefits, including, where appropriate, securing its optimum viable use'.

The public benefits of renewable energy are not in doubt and, insofar as it meets this global need, the application would undoubtedly deliver public benefits. However, it does not follow that the public benefits grow ever larger with an ever larger size of development, but rather that the means of providing public benefits are to be provided within the weighed-up constraints of the particular site at an optimum level. Therefore, in this case, the public benefit of 'providing renewable energy' could be met by a significantly smaller development, the harm of which would either be lessened or could be more effectively mitigated within the landscape.

9.20 Senior Landscape Architect – *Unable to support.*

The visual impact of the proposed development will be an issue from locations along nearby rights of way. The proposed mitigation measures are intended to address this, but will only be partially successful. It is however the negative impact of the proposals on the character of a valued landscape and on the setting of heritage assets is that is of greater concern.

The comments of the Conservation Officer should be sought with regard to impact on the setting of heritage assets, however I include the following Historic England advice for reference, especially as it explains that impact on the setting of heritage assets is not just visual:

'The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each. The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.'

(Extract from 'The Setting of Heritage Assets - Historic Environment Practice Advice in Planning Note 3' - second edition published by Historic England 2017)

The consistency of texture, form, line and colour, and the rigidity of the pattern created by the development will strongly contrast with natural textures and form, and have a significant impact on the existing landscape pattern. The perceptual aspects of character such as rural tranquillity typically reflect the degree of value attributed to the landscape, and this will be affected by the introduction of the industrial appearance and form of the solar farm, its ancillary buildings and structures, and the large number of CCTV cameras along the length of the perimeter fencing.

The use of recessive colours for the buildings and equipment and the proposed mitigation planting will not reduce the resulting impact on landscape character to an acceptable level, and the contribution of the planting to the overall condition of the landscape is limited given the scale of impact of the development. The development is also described as being temporary and reversible, but I do not consider this sufficient justification to allow development that will cause an unreasonable degree of harm to a valued landscape throughout its 35 or more years operational life. Further reduction of the size of the solar farm would reduce landscape impact to a degree, but I am not in a position to be able to advise whether this measure could reduce the impact on heritage assets to an acceptable level.

I consider that the proposed development cannot be successfully assimilated into the receiving valued landscape. It will be visually intrusive because of its industrial character and scale and will be harmful to the setting of heritage assets and to the character of the wider landscape.

9.20 Flood Risk Management Team - *As previously stated (ref: PLN20-007) we (DC/FRM) have no grounds to object to the proposed development on the basis of surface water management, subject to adherence and implementation of the FRA/DS*

document supplied. Therefore, we recommend that an appropriate planning condition and related informative be attached to any permission granted;

The approved development shall be conducted in strict compliance with the relevant site-specific Flood Risk Assessment (FRA) & Drainage Strategy (DS) document (ref: Clive Onions CCE – P17- 2603 V3, dated 18/12/2019) supplied, specifically with regard to the suggested maintenance regime and mitigation measures (i.e. minimal ground compaction during construction, grass reseeding & land management, and reuse of existing watercourse crossings).

REASON: To prevent the increased risk of flooding and to protect water quality.

Revised Scheme

9.21 In response to the comments received the scheme was reduced in size by approximately 20%. A Landscape and Ecology Management Plan (LEMP) was submitted and the Construction Environmental Management Plan (CEMP) was revised. The application was re-consulted on and the following further comments were made in response.

9.22 **Leigh Parish Council** - *This major development is just outside Leigh parish boundary. Leigh Parish Council considers that the positive contribution that it will deliver to the regions renewable energy generation is significant.*

Despite the c.20% footprint reduction of the arrays, the proposed development will inevitably still have a negative visual impact. However, given that: it is to be sighted in a generally well screened, low lying valley that is only overlooked by relatively few houses and rights of way; it will cover only Grade 3 and 4 land; the very southern group of arrays (that were to be located immediately alongside Bailey Ridge Lane) have been erased, then Leigh PC has, by a majority vote, no objection provided that, in order to reduce the visual impact when using Bailey Ridge Lane: the east-west hedge on the north side of Bailey Ridge Lane is allowed to grow and is thereafter preserved at a height of at least 6 feet, and the trees presently embedded therein to remain unmolested.

9.23 **Senior Landscape Architect** - *Revised Voltalia plan DV_LV_101_04_01 indicates that the area of the installation has reduced by 20.89ha which very roughly equates to a reduction in size by one quarter. In addition to the reduction in the area covered by the proposed solar farm there have been changes to the proposed equipment, meaning that there is little change in potential capacity of power generated by the installation. Full details of the new equipment have not been provided, so it is difficult for me to ascertain whether there will consequently be changes to the bulk and height of individual elements making up the revised scheme. Nevertheless, the revised proposals still represent very substantial development located in a sensitive setting.*

Despite the reduction in area covered by the proposed solar farm the consistency of texture, form, line and colour, and the rigidity of the pattern created by the development will still strongly contrast with natural textures and form, and have a significant impact on the existing landscape pattern. The perceptual aspects of character such as rural tranquillity typically reflect the degree of value attributed to the landscape, and this will be affected by the introduction of the industrial appearance and form of the solar farm,

its ancillary buildings and structures, and the large number of CCTV cameras along the length of the perimeter fencing.

The use of recessive colours for the buildings and equipment and the proposed mitigation planting will not significantly reduce the wide ranging impact of the development on landscape character, and the contribution of the planting to the overall condition of the landscape is limited given the scale of impact. Although described as being temporary and reversible, I do not consider this sufficient justification to allow development that will cause an unreasonable degree of harm to a valued landscape throughout its 35 or more years operational life.

My comments of 14 April 2020 therefore remain essentially unchanged, and overall, I consider that despite the proposed reduction in size:

The proposed development cannot be successfully assimilated into the receiving valued landscape. It will be visually intrusive because of its industrial character and scale and will be harmful to the setting of heritage assets and to the character of the wider landscape.

9.24 Historic England - *Our most recent letter concluded that Historic England had concerns regarding the application on heritage grounds. These concerns related particularly to the harmful impact of the development on the significance which the Grade II* barn at Lower Stockbridge Farm derives from the open, unspoilt character of its agricultural setting.*

Whilst considerable additional information has been supplied in support of this application, the heritage addendum has not been updated since we were last consulted. The extent of the array has also been slightly reduced in the southern part of the site, however we do not consider that this minor amendment allays Historic England's concerns about the resulting erosion of the tranquil and rural character of the setting of the listed buildings at Lower Stockbridge Farm, and the consequent impact on the significance which is derived from this setting.

9.25 Senior Conservation Officer - *We welcome the 20% reduction in the footprint of the overall array relating to the areas described above, although we note that the general extent of the array across the landscape remains broadly the same. Since providing our initial comments during the COVID-19 lockdown period, we have had the opportunity of making an extensive visit to the site and surroundings.*

The main concerns raised in our previous comments were related to the selection of viewpoints (though these were to inform the LVIA, they are also relevant to the setting of heritage assets insofar as visual experience is a contributory element to significance), and non-visual impacts on the setting of designated heritage assets.

In terms of Lower Stockbridge Farm, our site visit confirmed that it and its historic landscape are most widely perceived in views from the W, particularly from areas along Higher Street between Lillington and Higher Knighton Farm; Viewpoint 12 in the revised LVIA approximates to these locations. From various locations from this direction one is able to view a wide expanse of landscape comprising Leweston Hill, a vale of irregular fields with hedgerows and patches of mature trees, and a distant ring of downland across the horizon. The application site forms the foreground of this composition and is in turn framed to one side by Lower and Higher Stockbridge Farm and to the other by

Holmbushes Farm. Within this composition, Lower Stockbridge Farm sits as a unit which reflects, illustrates and is fundamentally tied to this agricultural setting which has changed little since the enclosure of the fields in the post-medieval period. The visual experience of this aspect of the setting was, to be sure, not 'intended' in the position and design of the farm, but has arisen fortuitously owing to contemporary perceptions and enjoyment of historic landscapes. By 'seeing' this composition, we can understand the farm, its position, its use, and its connection to the land around it without detraction or distraction from incongruent elements within this setting. Not only is it possible visually to experience and understand this aspect of the designated heritage asset's setting, it also exists whether or not it is visually perceptible – 'the contribution of setting to significance does not depend on public rights or ability to access it' (Historic England). There is an intimate relationship between historic farm and historic farmed landscape which patently does not exist simply because someone can 'see' it and which continues to the present day. Attributes of development which have the potential to affect this non-visual aspect of setting include change to general character of the surroundings, changes to land use and land cover. On this basis, and noting that the revised DBA does not amend its comments relating to these relationships (cited in our previous comments) we see no reason to deviate from our previous conclusion that, although minor, less than substantial harm will accrue to the setting of Lower Stockbridge Farm.

As for St Anthony's Chapel, we had previously made comments to the effect that its park, an identified non-designated heritage asset, was specifically designed to take advantage of views to the S – i.e. over the application site – by 'the straight allées, which were subsequently employed and enhanced with the Italian Garden and the Old Water Tower'; more detailed discussion on these interconnected elements were provided in our previous comments. The Heritage DBA Addendum does not expressly address these findings, but seeks a twofold approach: i) limiting the significance of the building to its interior, which is specifically mentioned in the list description as influencing the II grading; and ii) limiting the significance of the park to its own confines. However, on these points some relevant observations might be made:*

i. Though the Art Deco interior clearly resulted in the elevated grading of the building, the list description does not specifically omit the remainder of the building and therefore, whilst its internal architectural interest clearly forms a large part of its significance, it does not affect the related significance of a late 18th century country house on a historic site with a concomitant park and, like all designated heritage assets, a setting;

ii. The DBA Addendum does highlight that 'the surrounding non-designated park' forms one of the 'principal elements of the assets' setting(s)' (p. 16). Significantly, though the Addendum does note that other 'key aspects of the assets' setting' include land to the E, W (including Lillington) and 'the expanse of undulating farmland to the north' (p. 17), it is careful to ensure that the land to the S – the application site – is not included in this list despite the obvious fact that, unlike the wider landscape to the E and N, it benefits from clearly intentional landscaped views across it as evidenced in the formal park arrangements recorded on historic maps and remaining legible in Leweston Wood.

The DBA does not provide any information to suggest that the formal landscape of the park was not constructed in the way evidenced on historic maps; nor that the conclusion of an intentional connection between the park and the landscape to which the allées point should be discounted; nor that we should disregard the cumulative significance and connection between St Anthony's Chapel, the designated elements that comprise its historic park, and the non-designated park itself. On this score, we therefore remain of the opinion that the development would result in less than substantial harm to the significance of these elements, although again, this might be minor in extent.

In our previous comments, we also set out a number of reasons why the site should be considered a non-designated heritage asset. The Cultural Heritage – First Addendum takes issue with this point: 'There would be no justification or precedent for considering this area of landscape to be of such significance that it would comprise a heritage asset in and of itself' (8.4.35), though falls short of arguing successfully against the points we raised or how this conclusion did not meet the definition of 'heritage asset' in the NPPF, which contains no implicit or explicit limits to non-designated heritage assets. However, on reviewing the evidence, and for clarity, we will modify this conclusion to identify the remains of the medieval field system as a non-designated heritage asset. This then reflects the specific comments relating to these features in the Heritage DBA (see our previous comments), whilst also assuaging the fears of the applicant as to considerations of historic landscape as heritage assets. Taking this revision into account, we do not consider that the proposals will materially affect the significance of the remnant field system owing to the relatively low physical impact of the solar array.

9.26 Cam Vale Parish Council - *We welcome the recent revised planning application to reduce the scale of the site by up to 20% due to the use of higher performance solar panels, however the fact cannot be ignored that this site is still HUGE by any standards and will dominate this beautiful vale. The unanimous view of Parish Councillors is to support local opposition and to reiterate our strong objection to the scheme. Our previous comments remain extant.*

9.27 Natural Environment Team - *We are satisfied that our comments have been incorporated into the revised LEMP and CEMP documents and that the measures contained within the documents will ensure that the development will avoid detrimental impacts and result in an overall net gain for biodiversity. Implementation in full of both the LEMP and CEMP should be secured by planning conditions to ensure the biodiversity mitigation measures and net gains are delivered.*

Representations received

9.28 392 comments were received in response to the application with 369 objecting and 23 in support although multiple comments were submitted by individuals. The objections are summarised below:

- Negative visual impact
- Damaging to the landscape character of the area
- Impact on rights of way

- Benefits are considerably less than the harm to neighbourhood amenities and the landscape setting
- No local financial gain
- Inappropriate use of greenfield land
- Increases pressures on existing road network
- Increases traffic on road network
- Negative impact on wildlife and loss of wildlife
- Increased risk of flooding and negative impact on watercourses
- Inappropriate location
- Excessive in scale
- Obtrusive security measures
- Glare to neighbouring properties
- Loss of tourism
- Increases risk of water contamination
- No restoration or decommissioning plans
- Detrimental to heritage assets
- Detrimental to ancient farmland
- Irreversible harm to the landscape and local distinctiveness
- Loss of local amenity
- Loss of agricultural sector jobs
- Inadequate road network for construction phase
- No public consultation
- Negative impact on viewpoints
- No urgent need for additional solar farms in Dorset
- Detrimental to woodland
- Detrimental to food production
- Appearance and scale would significantly harm the character of the valued landscape
- Negative impact on historic value of the landscape
- Endangers biodiversity/ loss of ecological value
- Unreversible loss of local amenity
- Negative long-term impact on environment
- Poor design
- Loss of bird wildlife
- Negative impacts on water drainage
- Negatively impact on ancient woodland
- May set a negative precedent for further applications
- Detrimental to wellbeing
- Detrimental to natural ecosystems

- Inappropriate solution to defeat climate change
- Renewable target already met
- Unsustainable construction materials
- Too many existing solar developments in the area
- Loss of protected species
- Insufficient demand
- Adverse impact on the setting of listed buildings
- Already solar farms in vicinity
- Intrusive security measures and construction process
- Reduced use of the area by ground nesting birds
- Fails to protect and preserve the countryside
- Negative noise impacts during both construction and operation
- Emission of hazardous chemicals
- Comprises access routes during construction and maintenance phases
- Lack sufficient assessments
- Less efficient solar panels
- Creation of toxic waste
- Biased/inaccurate impact assessments
- Inadequate tree and hedge protection

9.29 Comments were also received regarding the proposal resulting in a negative impact on houses prices however this is not a material planning consideration and will not be considered as part of this application.

9.30 The comments of support are summarised below:

- Will meet future energy demands
- Will help in the climate crisis
- Provide diversity in the landscape
- A sustainable energy source
- Will enable us to reach net zero
- Increased biodiversity
- Benefit local economy
- Obscure location
- Appropriate use of poor quality agricultural land
- All forms of green energy should be supported
- Helps to provide clean energy for future generations
- Solar farm would generate enough energy to power up to 10,605 homes a year

10.0 Relevant Policies

West Dorset, Weymouth & Portland Local Plan

ENV 1 – Landscape, Seascape and Sites of Geological Interest
ENV 2 – Wildlife and Habitats
ENV 4 – Heritage Assets
ENV 5 – Flood Risk
ENV 9 – Pollution and Contaminated Land
ENV 10 – The Landscape and Townscape Setting
ENV 12 – The Design and Positioning of Buildings
ENV 15 – Efficient and Appropriate Use of Land
ENV 16 – Amenity
SUS 2 – Distribution of Development
COM 7 – Creating a Safe and Efficient Transport Network
COM 9 – Parking Standards in New Development
COM 11 – Renewable Energy Development

National Planning Policy Framework

2. Achieving sustainable development
4. Decision-making
11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

Other material considerations

Design and Sustainable Development Planning Guidelines (2009)
West Dorset Landscape Character Assessment 2009

11.0 Human rights

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property.

This recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

12.0 Public Sector Equalities Duty

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics

- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove or minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the Public Sector Equalities Duty.

The proposal is for a renewable energy scheme comprising ground mounted photovoltaic solar arrays and it is considered that the proposal would have no impact on people with protected characteristics.

13.0 Financial benefits

- Jobs created from construction

14.0 Climate Implications

14.1 NPPF paragraph 158 sets out that when determining planning application for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. It also sets out that applications should be approved if the impacts are (or can be made) acceptable.

14.2 Dorset Council accepts that energy needs to be produced from renewable sources and the Council must aim to provide this within its administrative area. The Council recognised this by declaring a climate emergency at a meeting on May 16th, 2019 with the aim of taking a lead as an authority in tackling climate change. In November 2019, this was updated to a Climate and Ecological Emergency.

14.3 The proposed development involves the installation of a renewable energy scheme comprising of ground mounted photovoltaic solar arrays. The scheme will have a maximum export capacity of 35MW which equates to the generation of clean renewable energy for approximately 10,605 homes a year and anticipated CO2 displacement is circa 11,610 tonnes per annum.

15.0 Planning Assessment

Principle of Development

15.1 The proposed development is for the installation of a renewable energy scheme comprising ground mounted photovoltaic solar arrays together with substation; transformer stations; access; internal access track; security fencing; security measures and ancillary infrastructure. West Dorset, Weymouth & Portland Local Plan policy COM 11 covers matters relating to renewable energy development. It states that proposals for generating heat or electricity from renewable energy sources (other than wind energy) will be allowed wherever

possible providing the benefits of the development, such as the contribution towards renewable energy targets, significantly outweigh any harm. It also states that permission will only be granted provided any adverse impacts on local landscape, townscape or areas of historic interest can be satisfactorily assimilated; the proposal minimises harm to residential amenity by virtue of noise, vibration, overshadowing, flicker or other detrimental emissions, during construction, its operation and decommissioning; adverse impacts upon designated wildlife sites, nature conservation interests, and biodiversity are satisfactorily mitigated.

15.2 Dorset Council accepts that energy needs to be produced from renewable sources and the Council must aim to provide this within its administrative area. The Council recognised this by declaring a climate emergency at a meeting on May 16th, 2019 (updated to a climate and ecological emergency in November 2019) with the aim of taking a lead as an authority in tackling climate change. Local Plan policy COM 11 (as above) explains how the Council will assess renewable energy applications. Section 14 of the National Planning Policy Framework (NPPF) states, amongst other requirements, that Councils do not expect applicants to justify the need for renewable energy development. They are recognised as providing a valuable contribution to gutting greenhouse gas emissions. But it also states approval should only be granted for renewable and low carbon development if its other impacts are acceptable.

15.3 The maximum export capacity of the solar arrays would be 35MW laid out across various field enclosures. This would allow the solar park to generate clean renewable energy for the equivalent of approximately 10,605 homes a year and the anticipated CO₂ displacement is circa 11,610 tonnes per annum. As such, the development would lead to a source of renewable energy and cut in greenhouse gas emissions.

15.4 The proposal for the generation of renewable energy is acceptable in principle by virtue of the broad support for renewable energy development under policy COM 11 of the adopted Local Plan. However this is caveated that planning permission will only be granted provided that any adverse impacts can be mitigated and the benefits that the scheme will deliver outweigh the adverse impacts that remain which will be considered in the following sections of this report.

15.5 In response to initial concerns raised the overall footprint of the site was reduced in size by 20% whilst still maintaining the same output. Modules have been removed from the rectangular shaped field bounding Bailey Ridge Lane and the irregular shaped field along the western periphery of the site. Modules have also been drawn back from higher ground along the south easterly periphery of the development site. Hedgerow planting with trees has been introduced to north and south of Stockbridge Drove and an extended area of new native woodland mix within the field north of Holmbushes Farm. This report will consider the amended reduced scheme.

Residential Amenity

15.6 Local plan policy ENV 16 refers to protecting the amenity and enjoyment of residents. The nearest properties to the site are those situated to the south-east at Bailey Ridge Farm Cottages and a cluster of properties on Bailey Ridge Lane, the farmhouse at Holmbushes Farm and the properties at Stockbridge Farm. A critical issue to address in considering the impact on residential amenity is not whether there will be a change in the outlook from nearby

dwellings, but whether the extent of that change and any activity associated with the proposed development is such that it is overtly harmful to neighbours' living conditions such that it would warrant refusal of an application. It is recognised that from residential properties near to the site, it may be possible to view parts of the solar farm. However, that would not automatically make it unacceptable. The proposal is not considered to have a significant impact in terms of visual intrusion, overshadowing or loss of daylight. Third party concerns have also been raised regarding glint and glare from the proposed solar panels. However, owing to the separation from the proposed solar arrays and the residential properties and intervening vegetation it is not considered that glint and glare from the arrays would cause any issues and detrimentally affect neighbouring amenity. Noise and disturbance during construction would be mitigated by the measures outlined in the Construction Management Plan. A noise report was submitted in response to initial comments from Environmental Health which concluded that the operational noise during the likely operation hours would comply with the operational noise target which ensures there would be no exceedance of WHO sleep disturbance limits for early morning periods at all noise sensitive receptors. Environmental Health were reconsulted on the noise report and considered it to be sufficient. With these points in mind, it is considered that the impact upon neighbouring amenity would not be significantly harmful and warrant a reason for refusal. The proposal would therefore comply with local plan policy ENV 16.

Heritage Assets

15.7 The application site forms part of a historic landscape which has both historic and aesthetic interest. The site sits within the setting of a number of designated heritage assets and would impact on the following heritage assets:

- On the contribution made by the setting to the special architectural and historic interest of the following designated heritage assets:
 - St Antony's Convent (Leweston School) Grade II*
 - Lower Stockbridge Barn Grade II* and Farmhouse Grade II
 - Features of the Italian Garden to SW of Leweston School (cumulative elements at Grade II)
 - Old Water Tower to W of Leweston School Grade II

15.8 In terms of Lower Stockbridge Farm its historic landscape is most widely received in views from the west, particularly from areas along Higher Street between Lillington and Higher Knighton Farm. From various locations from this direction one is able to view a wide expanse of landscape comprising Leweston Hill, a vale of irregular fields with hedgerows and patches of mature trees. The application site forms the foreground of this composition and is in turn framed to one side by Lower and Higher Stockbridge Farm and to the other by Holmbushes Farm. Within this composition, Lower Stockbridge Farm sits as a unit which reflects, illustrates and is fundamentally tied to this agricultural setting which has changed little since the enclosure of the fields in the post-medieval period. The visual experience of this aspect of the setting was, to be sure, not 'intended' in the position and design of the farm, but has arisen fortuitously owing to contemporary perceptions and enjoyment of historic landscapes. By 'seeing' this composition, we can understand the farm, its position, its use, and its connection to the land around it without detraction or distraction from incongruent elements within this setting. Not only is it possible visually to experience and understand this

aspect of the designated heritage asset's setting, it also exists *whether or not* it is visually perceptible – 'the contribution of setting to significance does not depend on public rights or ability to access it' (Historic England). There is an intimate relationship between historic farm and historic farmed landscape which patently does not exist simply because someone can 'see' it and which continues to the present day. Attributes of development which have the potential to affect this non-visual aspect of setting include change to general character of the surroundings, changes to land use and land cover. Therefore, although minor, less than substantial harm will accrue to the setting of Lower Stockbridge Farm.

15.9 In relation to St Anthony's Chapel, its park, an identified non-designated heritage asset, was specifically designed to take advantage of views to the south over the application site by 'the straight *allées*, which were subsequently employed and enhanced with the Italian Garden and the Old Water Tower'. NPPF paragraph 203 sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm and the significance of the heritage asset. It is considered that the development will result in less than substantial harm to the significance of this element although again minor in extent.

15.10 Travelling from the south along Bailey Ridge, the prominence of Leweston Wood above the agricultural vale is an appreciable element of the experience of the historic landscape. The prominence of this outcrop was likely fundamental to its location for a Saxon farmstead and later a manor house. With regard to the manor house it would have made use of views across the vale to the south and southwest demonstrated by the straight *allées*, which were subsequently employed and enhanced with the Italian Garden and the Old Water Tower. The latter has a viewing platform which affords views to the west and south over Leweston Wood and the lower ground of the vale. These designated heritage assets are inextricably linked to their experience of and from the landscape and the proposal would result in harm to these elements of their setting.

15.11 The Senior Conservation Officer in response to the submitted Heritage Assessment – First Addendum set out that the remains of the medieval field system are a non-designated heritage asset but concludes that the proposals will not materially affect the significance of the remnant field system owing to the relatively low physical impact of the solar array.

15.12 NPPF para 202 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset like concluded above with the different heritage assets, this harm should be weighed against the public benefits of the proposal. The public benefits of the development in this case include a source of renewable energy with a maximum export of 35MW which would generate renewable energy for the equivalent of approximately 10,605 homes and a CO₂ displacement is circa 11,610 tonnes per annum, and therefore the application would undoubtedly deliver significant public benefits. In weighing up the public benefits against the great weight given to the conservation of heritage assets, in this case the less than substantial harm, when considered in isolation is not considered to outweigh the public benefit of the scheme. However, it is the combination with the landscape impacts and the importance of the rural landscape to the setting of the assets, the cumulative impact is considered to outweigh the public benefits which will be considered further in the following section.

Visual Amenity and Landscape

15.13 The proposal is for the installation of solar arrays on agricultural land in contiguous fields with a minimum output life of 35 years. The dark blue solar modules will be mounted on grey frames and would include a number of transformer/inverter centres across the site. It would also involve a number of CCTV cameras, fencing and access tracks. The reduction in footprint by 20% for the overall array is welcomed however the general extent of the array across the landscape remains broadly the same. The scale of the proposed development, combined with its incongruent materials, does not complement or respect the local landscape character.

15.14 The site lies in an area of low-lying farmland within the Blackmore Vale, which is bordered to the north by higher ground where the small village of Longburton and the hamlets of Lillington and Knighton are located. To the south the land rises more gradually, and the nearest settlement is Leigh along with the hamlets of Totnell and Higher Totnell. There are 4 significant areas of ancient woodland and 3 important veteran trees within a 1km radius of the site. The overall character of the nearest settlements is rural. The site is not within an Area of Outstanding Natural Beauty (AONB) however it is picturesque and evokes the image of quintessentially English countryside. The site is within the Blackmore Vale and Vale of Wardour National Character Area, the NCA profile describes the area as being steeped in a long history of pastoral agriculture, characterised by hedged fields with an abundance of hedgerow trees, many of them veteran and productive pastureland.

15.15 The Senior Landscape Architect set out that the proposed solar arrays would be visible from 9 public rights of way (high sensitivity visual receptors) within 1km of the site. It was considered that the photographs submitted in the Landscape Visual Impact Assessment (LVIA) were not wholly representative of the overall views available along the selected routes. The Senior Landscape Architect also considered that the LVIA did not fully recognise the significance of the visual impact of the proposed development by indicating that the effects are temporary and reversible however in this case temporary will mean 35 or potentially more years which is a significant length of time. It was considered that the proposed solar farm would be a significant detracting element in views from a number of well used local rights of way and that whilst the proposed mitigation planting will provide effective screening in some views in others it will not. The overall appearance of the solar arrays and associated paraphernalia would be industrial in character, and whilst the whole of the development will not be visible from any one location the scale and appearance of the development mean that it would be visually intrusive in this rural setting.

15.16 Paragraph 174 of the NPPF sets out that *Planning policies and decisions should contribute to and enhance the natural and local environment by:*

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)*

The text in brackets indicates that land within statutory landscape designations should be regarded as of the greatest value, but the value of non-designated landscapes still needs to

be considered. Case law (Stroud DC v SSCLG) (2014) identified that there was no agreed definition of valued landscape and that in the absence of any formal guidance it was considered that 'valued' would require the site to show some demonstrable physical attribute rather than just popularity. The Guidelines for Landscape Visual Impact Assessment provides a series of criteria assessing these demonstrable attributes of landscape value and include the following:

Landscape Quality

15.17 The Senior Landscape Architect considered that there are few detracting elements in the landscape setting of the proposals, and the presence of the majority of the original field boundaries indicates that the landscape is fairly intact and condition therefore good. There are no major transport routes traversing the landscape. The local byways consist of tree and hedge-lined country lanes which are often single track, and ancient drove roads which are now bridleways or tracks. The local villages and hamlets have retained much of their historic form and character when viewed from this part of the clay valley. The HV powerline and pylons that pass through the site and extends along the valley to the east and west are detracting elements. In summary, it was considered that the landscape of this area to be in good condition and to be of moderate/good quality.

Scenic Quality

15.18 The application site and wider valley area is a picturesque and undeveloped setting with open views across a pastoral landscape, which is enhanced by the meandering river. Wider views are available and prominent features include Leweston Wood to the north, Bulbarrow Hill to the south east, and Knighton Hill to the north west. The area has a high level of tranquillity that is only slightly disturbed by traffic along the A 352. Powerlines and incongruous, modern, large-scale farm buildings are detrimental elements within views. The Senior Landscape Architect considered the landscape of this area to have moderate scenic quality.

Rarity

15.19 The landscape of the application site is not rare within Dorset or nationally therefore the landscape of the application site to have low landscape rarity.

Representativeness

15.20 The application site and the wider valley area are typical of the Limestone Hills and Clay Valley landscape character types. The fields within this area contain a diverse mix of farmland with a predominant pastoral character. Dense hedgerows and old water meadows systems are apparent, as are groups of riverside trees. The valley provides an historic and cultural setting to the surrounding hamlets, villages and provides the 'borrowed landscape' setting of the parkland of Leweston School/Manor. The Senior Landscape Architect considered the landscape of this area to be highly representative of the defined landscape character types.

Conservation Interest

15.21 The setting of heritage assets has been set out in the previous section and the rich pastureland of the value is intrinsic to the historic development of many historic farms and of the area. Therefore, the landscape of this area is considered to have high conservation interest.

Recreational Value

15.22 The Blackmore Vale is a popular destination for walkers and cyclists with the main reason for visiting being to enjoy the pleasant surroundings of the countryside. The Macmillan Way is a nationally promoted route which passes through Lillington and heads southward skirting Knighton Hill which overlooks the site. Bailey Ridge Lane is part of the Dorset Cycle Network. Leweston Leisure, based at the school also has a particular reputation for sport, hosting many regional and national sporting events. It is also one of Team GB's pentathlon training centres. Though it is the facilities that are provided on the site that are the main draw, the surrounding countryside is also used for riding and cross-country training. Based on the above, the Senior Landscape Architect considers that the recreational value of the landscape that the site sits within to have moderate/high recreational value.

Perceptual Aspects

15.23 The application site and wider valley area provide a number of perceptual values that are uplifting or promote relaxation. The understanding of the past through the historic character of the landscape and surrounding settlements, the tranquillity of area and physical and emotional links to the natural environment are not uncommon within the local and wider Blackmore Vale area. It is considered the landscape of this area to have moderate perceptual quality.

Associations

15.24 There are a number of loose cultural associations with this area and the wider Blackmore Vale. Blackmore Vale, also known as the 'land of milk and honey', has also been referred to as the 'face' of Dorset. The vale, in particular the village of Marnhull ("Marlott"), is the opening backdrop for Thomas Hardy's *Tess of the D'Urbervilles*. There are also associations with Sir Walter Raleigh and with witchcraft. It is considered the landscape of this area to have low/moderate cultural associations.

15.25 The Senior Landscape Architect concluded that it is not necessary to score highly in all of the factors for a landscape to be considered to be of high value – a high score in any one of the criteria gives an indication that the landscape is valued. However, conservation and recreational value are generally considered to be of greater weight when placing value on the landscape. Overall, it is considered the application site and the surrounding landscape to be a valued landscape on the grounds of its high representativeness of the defined landscape character, its high conservation value and its recreational value.

15.26 Both the Senior Landscape Architect and the applicant were asked to consider a further reduction in the size of the scheme on top of the offered 20% reduction. The applicant

set out that with any solar development project, one of the key commercial considerations is the cost of connecting the project onto the grid. Given the amount of reinforcements that need to be completed to facilitate the connection of the project and the associated costs, any further reduction in the size of the scheme would have made it financially unviable. The Senior Landscape Architect set out that the application site is located within the Blackmore Vale Landscape Character Area the key characteristics and qualities of the landscape are highly vulnerable to change. The site also sits within what is considered a valued landscape, which raises sensitivity further. In this context, even a significantly reduced in size scheme would be difficult to support. Given the above the scheme as detailed with the 20% reduction needs to be considered.

15.27 The consistency of texture, form, line and colour, and the rigidity of the pattern created by the development will strongly contrast with natural textures and form, and have a significant impact on the existing landscape pattern. The perceptual aspects of character such as rural tranquillity typically reflect the degree of value attributed to the landscape, and this will be affected by the introduction of the industrial appearance and form of the solar farm, its ancillary buildings and structures, and the large number of CCTV cameras along the length of the perimeter fencing. The use of recessive colours for the buildings and equipment and the proposed mitigation planting will not reduce the resulting impact on landscape character to an acceptable level, and the contribution of the planting to the overall condition of the landscape is limited given the scale of impact of the development. The landscape also plays an important role in the setting of the heritage assets as set out in the previous heritage section of this report. The development is also described as being temporary and reversible, but the development that will cause an unreasonable degree of harm to a valued landscape throughout its 35 or more years operational life. It is considered that the proposed development cannot be successfully assimilated into the receiving valued landscape. It will be visually intrusive because of its industrial character and scale and will be harmful to the character of the wider landscape and therefore would not comply with local plan policies ENV 1 and ENV 10.

Highway Safety

15.28 It is proposed that all construction vehicles would access the site via the existing Higher Stockbridge farm access with the Bailey Ridge/Dyke Head. The proposal would involve some widening of the access radii to provide turning for delivery and construction vehicles. From the site access it is proposed to route all vehicles northwards along Dyke Head to the A352 junction. The solar farm layout would include permanent 4m wide access tracks throughout the site. A Construction Environmental Management Plan (CEMP) and Traffic Management Plan were submitted as part of the application. Highways were consulted on the application and raised no objection subject to a condition for the measures of the CEMP to be implemented prior to the commencement of the development and to be adhered to fully for the full length of the construction period, such a condition would be placed on any approval granted.

Biodiversity

15.29 An Environmental Statement (ES) was submitted and considered as part of this application, in line with the formal Scoping Opinion given by the Local Planning Authority. No

concerns were raised in response to the ES and Natural England considered that the application has been rigorously assessed under the framework of an ES. Natural England did however consider that the submission of a Biodiversity Plan will ensure that the proposed development would not harm the environment and seek opportunities for net biodiversity gains in a format which achieves this. Natural England also recommended that necessary steps to ensure that mature and veteran trees that may shade the proposal site are protected from future felling. In response to the comments received a LEMP was submitted and considered by the Natural Environment Team (NET). The LEMP included three main areas veteran trees in field and in hedgerows, margin widths and foraging/commuting routes for bats. In response to the comments received both the CEMP and LEMP were amended and NET were satisfied their comments had been incorporated into the revised documents and that the measures would ensure that the development would avoid detrimental impacts and result in an overall net gain for biodiversity. NET recommended that implementation in full of both the LEMP and CEMP should be secured by planning conditions to ensure the biodiversity mitigation measures and net gains are delivered such conditions would be placed on any approval granted.

Flooding & Drainage

15.30 The application site falls entirely within Flood Zone 1 (low risk of fluvial flooding) but is shown to be at some theoretical risk of surface water flooding via the formation of overland flow routes aligned with a number of ordinary watercourses which cross the site. Third party concerns have been raised regarding prevailing risk to land and property within the relevant catchment area, downstream and west of the site. The Flood Risk Management Team were consulted on the proposed development and set out that the management of surface water runoff must demonstrate that the proposed development will not be placed at risk and that any prevailing risk to adjacent or downstream areas is not exacerbated. A Flood Risk Assessment/Drainage Strategy was submitted as part of the scheme which sets out the proposed drainage strategy with associated betterment via the improvement of ground conditions and land use in terms of runoff characteristics, together with mitigation measures namely the introduction of swale features. The Flood Risk Management Team considered there was no grounds which to object to the proposed development on the basis of surface water management subject to a condition for the development to be conducted in compliance with the Flood Risk Assessment/Drainage Strategy such a condition would be placed on any approval granted.

Rights of Way

15.31 One public right of way (bridleway) traverses the lower third of the development site, extending west and northwest from the neighbouring property of Holmbushes Farm toward the southern edge of Middle Wood, where it connects to another bridleway south of Whitfield Farm/north of Bailey Ridge Lane. Several other rights of way criss-cross the landscape to the west in close proximity to the development site. The Rights of Way Team were consulted on the application and considered that the application would impact on the bridleway that crosses the site and that the line could be changed under the planning laws or the bridleway could be allowed for in the current scheme. In response to the comments received the layout plan was amended to respect the line of the public right of way. The Rights of Way Team was re-consulted and raised no objections as the bridleway was clear and 4m wide.

Planning Balance

15.32 Section 14 of the NPPF does not require applicants to justify the need for renewable energy development. This proposal for the installation of a ground mounted solar arrays with a maximum export capacity of 35MW and would allow for the generation of renewable energy for the equivalent of approximately 10,605 homes a year. The proposal for the generation of renewable energy is acceptable in principle by virtue of the broad support for renewable energy development under policy COM 11 of the adopted Local Plan.

15.33 However this is caveated that planning permission will only be granted provided that any adverse impacts can be mitigated and the benefits that the scheme will deliver outweigh the adverse impacts that remain.

15.34 In relation to the heritage assets it was considered that the proposals will lead to less than substantial harm to both designated and non-designated heritage assets. NPPF para 202 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage, this harm should be weighed against the public benefits of the proposal. In weighing up the public benefits, it was considered that the less than substantial harm to the heritage assets in isolation would not outweigh the public benefits.

15.35 Large solar farms will almost always have a visual impact of some sort. The use of recessive colours for the buildings and equipment and the proposed mitigation planting will not reduce the resulting impact on landscape character to an acceptable level, and the contribution of the planting to the overall condition of the landscape is limited given the scale of impact of the development. In this case it is considered that the proposed development cannot be successfully assimilated into the receiving valued landscape part of which is the setting of the heritage assets. It will be visually intrusive because of its industrial character and scale and will be harmful to character of the wider landscape.

15.36 The site sits within the Blackmore Value Landscape Character Area which is considered highly vulnerable to change and the landscape the site sits within is considered a valued landscape which increases the sensitivity. It is considered that whilst a further reduction in the scheme would reduce the impact on the setting of the heritage assets the landscape impacts concerns would remain. The applicant has also set out that any further reductions in the size of the scheme would make it financially unviable.

15.37 The proposed development is considered acceptable in relation to biodiversity, highway safety, flooding and drainage and the neighbouring amenity subject to planning conditions.

16.0 Conclusion

16.1 The development would offer some economic (at the time of construction) and environmental benefits, over the lifetime of the solar farm for the purposes of sustainable development. It would provide a maximum export capacity of 35MW which equates to the generation of clean renewable energy for approximately 10,605 homes a year and anticipated CO2 displacement is circa 11,610 tonnes per annum which provide a significant environmental benefit. However, the large expanse of the site means the detrimental impacts

on the designated and non-designated heritage assets, their settings, the valued rural landscape of the area (over the lifetime of the solar farm) and associated public enjoyment of these would on balance be sufficiently significant to outweigh the noted benefits of the proposal, and the 20% reduction in its scale is not deemed sufficient to overcome the adverse effects to an acceptable level.

16.2 As such the development would conflict with relevant policies of the West Dorset, Weymouth & Portland Local Plan and the National Planning Policy Framework.

17.0 Recommendation

17.1 That the Committee would be minded to delegate to the Head of Planning to refuse the application for the reason as follows:

1) The proposed development by reason of its location, appearance and scale would harm the character of the valued landscape, part of its importance is its setting to the heritage assets and therefore the cumulative harmful effect on the landscape and its importance to the setting of the assets would be contrary to Policies ENV 1, ENV 4, ENV 10 of the West Dorset, Weymouth & Portland Local Plan (2015) and paragraphs 174 & 199-203 of the National Planning Policy Framework (2021) thus the principle of development of the scheme is also contrary to Local Plan policy COM 11.

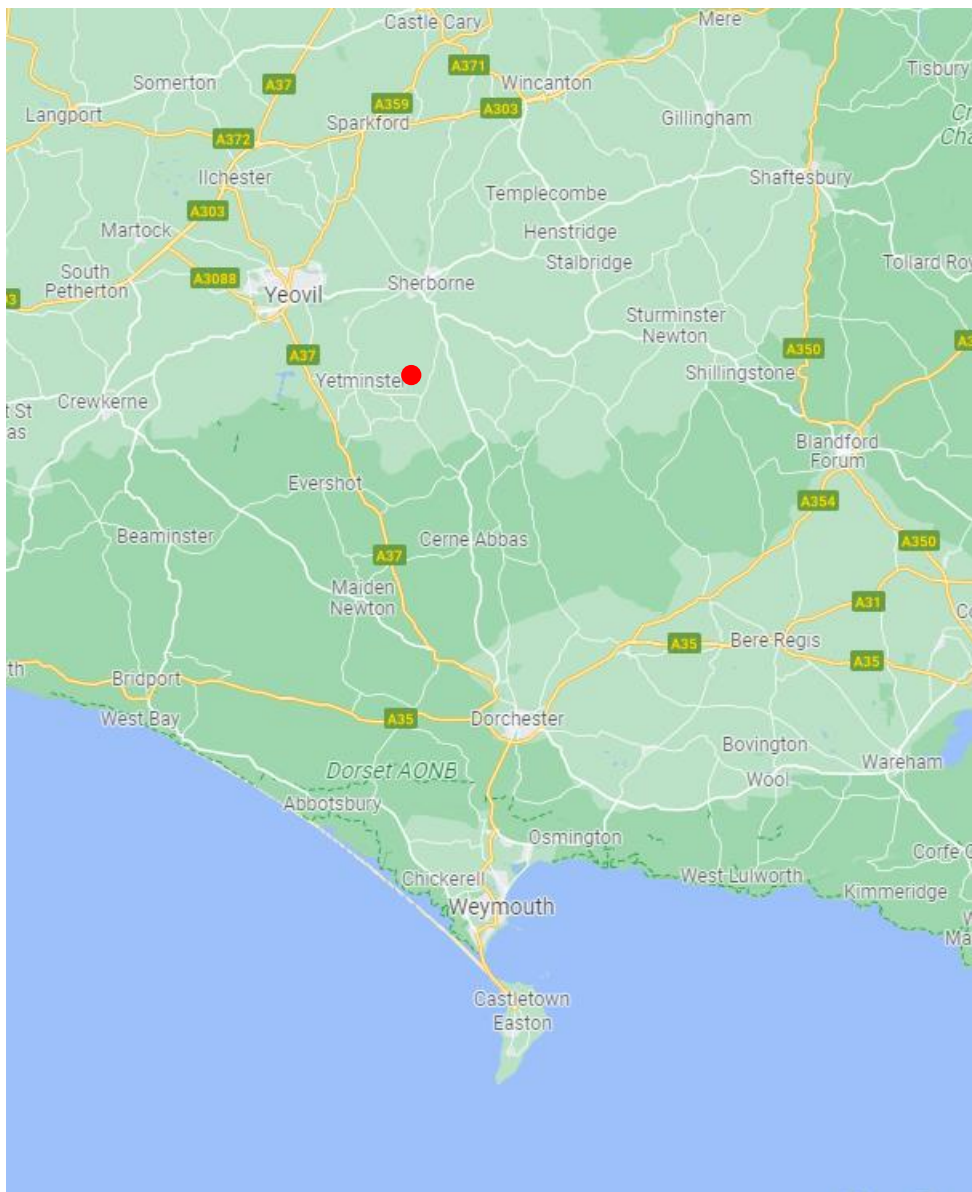
And recommends that the Head of Planning determines the application accordingly.

● Approximate Site Location

Application reference: WD/D/19/003181

Site Address: Land at, Higher Stockbridge Farm, Higher Stockbridge Farm, Stockbridge

Proposal: Installation of a renewable energy scheme comprising ground mounted photovoltaic solar arrays together with substation; transformer stations; access; internal access track; landscaping; biodiversity measures; security fencing; security measures; access gate; access improvement and ancillary infrastructure



Application for the registration of a town or village green at Happy Island, Bridport

Date of Meeting: 22 November 2021

Lead Member: Cllr Dave Bolwell, Cllr Kelvin Clayton and Cllr Sarah Williams – Dorset Council members for Bridport

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary: This report considers an application to amend the Register of Town and Village Greens by the addition of an area of land at Happy Island, Bridport as shown on Drawing 15/05 attached as Appendix 1.

Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application

Use of Evidence: The applicant submitted user evidence forms from users of the claimed green in support of the application. The landowner has submitted evidence in objection. Notices explaining the application were erected on site. Any relevant evidence provided has been discussed in this report.

Budget: A decision whether or not to accept the application to register the identified area as town or village green may result in a challenge through the Courts by way of judicial review

Risk Assessment: As the subject matter of this report is the determination of a Town or Village Green application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications: None

Recommendations:

That:

The application VG1/2014 to register land at Happy Island, Bridport as a Town or Village Green is refused.

Reasons for Recommendation:

The evidence presented to the Council demonstrates that application VG1/2014 does not meet the criteria set out in the Commons Act 2006 and should therefore be refused.

Appendices:

1. Drawing 15/05 – Area of land which is the subject of the application
2. Drawing 15/06 – Showing addresses of users
3. User evidence table and matrix showing activities in which users participated.
4. Charts to show periods and level of use
5. Drawing 21/VGAP1/2014 – Location plan
6. Photograph of notice on the Land

Background Papers:

The file of the Executive Director, Place (ref. VG1/2014).

Officer Contact

Name: Vanessa Penny, Definitive Map Team Manager

Tel: 01305 224719

Email: vanessa.penny@dorsetcouncil.gov.uk

1 Background

- 1.1 Dorset Council (“the Council”) is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. An application has been made on behalf of ‘King Charles Estate Residents Association’ for the registration of land at Happy Island, Bridport as a town or village green.

2 Description of the land

- 2.1 The area of land, which is the subject of the application (“the Land”), is shown in red on Drawing 15/05 attached as Appendix 1. It consists of approximately 2.3 hectares of land, which forms an open grassy area known as Happy Island Field on the King Charles Estate in the parish of Bradpole. Bounded to the south west by Happy Island Way, to the south east by Jessopp Avenue, to the north west by Footpath 8 adjacent the River Asker and to the north east by open fields.
- 2.2 The Land consists of one section, crossed from north west to south east by Footpath 9, Bradpole.

3 Law

Commons Act 2006

- 3.1 Under Section 15(1) of the Commons Act 2006 any person may apply to the Commons Registration Authority to register land as a town or village green in a case where subsection (2), (3) or (4) applies (according to whether the use continued at the date of the application or not).
- 3.2 This application was made under Section 15(2) which requires that:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood in a locality, have indulged as of right in lawful sports and pastimes on the Land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

- 3.3 These Regulations set out the procedure to be followed by the Council on receipt of an application:
- (a) The Regulations require that the application is publicised, giving at least 6 weeks for any objections to be made. Following the end of the objection period, the Council is required to proceed to the further consideration of the application as soon as possible and the consideration of statements (if any) objecting to that application.
 - (b) The Regulations also require that the Council:

- (i) Consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application; and
 - (ii) May consider any such statement which it receives on or after that date before the authority finally disposes of the application.
- (c) The Council must not reject the application without giving the applicant a reasonable opportunity of dealing with –
- (i) The matters contained in any statement of which copies are sent to him...; and
 - (ii) Any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

Human Rights Act 1998

3.4 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.

4 **General Issues**

- 4.1 The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 set out the procedures to be followed in respect of such applications. In accordance with those Regulations, advertisements on site and in the local press invited objections to the application within the period specified in the Regulations: in this case the objection period expired on 8 May 2015. Objections were received from a local resident and the Farmers Club Charitable Trust as landowner. The Applicant has made comments on those objections.
- 4.2 In its capacity as Registration Authority, the Council is required to adjudicate on the application and to register the application land if there are sound reasons for doing so or, if not, to reject the application. It is for the applicant to prove his or her case and there is no requirement for the Registration Authority to instigate its own research into the application. Nonetheless, there may be disputes of fact and/or issues of law to be resolved or considered before a decision can properly be made. Further, the Council has discretion to deal with the application on the basis of the evidence available to it and not necessarily solely on the basis applied for.
- 4.3 The decision to accept or reject an application rests with the Council alone and can only be challenged through the Courts by way of judicial review. It is therefore particularly important that the Registration Authority's scrutiny of the application and any objections is thorough and that this Committee is well informed and advised before the application is finally determined.

5 **The application**

- 5.1 The application was initially received on 22 February 2013. The applicant was given opportunity to make corrections and a revised application was submitted on 4 June 2013. The application was formally acknowledged by the Council on 17 December 2014. The application states that the Land should be registered as a town or village green because it has been used "...for many types of lawful leisure activities over a period of many years by local residents...well in excess of the minimum period of 20 years...without any objection by the Land Owner(s) or Occupiers...". The application is "duly made" for the purposes of the Commons Act 2006.
- 5.2 The application was accompanied by a map showing Happy Island Field, an aerial photograph of the field and the King Charles Estate and 14 forms of evidence detailing use of the Land by 16 witnesses. Drawing 15/06 illustrates the addresses of users who completed evidence forms and statements in relation to the Land and is attached as Appendix 2.

5.3 The user evidence is summarised together with a matrix showing the activities in which people participated at Appendix 3 and charts showing periods and level of use from Appendix 4. Typical uses described by witnesses are walking, picking blackberries, picnicking, sledging and kite flying most of which are certainly lawful sports, pastimes and activities capable of supporting registration of land as a town or village green; there is debate about whether picking berries is a lawful pastime.

6 **Objections to the application**

6.1 An objection was received from a resident of Bradpole on 17 April 2015. He states that:

- (a) The field may have been previously regarded as a recreational area, but this is no longer the case since the island in the river changed.
- (b) The top eastern portion of the field was never regarded as a public recreational area.
- (c) If the top eastern part of the field is developed, the landowner may allow the bottom western portion to go into local government ownership as a public area.

6.2 Nantes Solicitors Ltd made a submission objecting to the application on behalf of the owner of the Land, The Farmers Club Charitable Trust, on 7 May 2015. They raise a series of points:

- (a) The quantity of user evidence is insufficient – significant user is not made out for the locality
- (b) There is not evidence of 20 years use up to the date of the application in 2014.
- (c) The user evidence is predominantly of linear user
- (d) Use for lawful sports and pastimes is wholly anecdotal. No photographic evidence of qualifying user has been produced.
- (e) Use of the Land was not raised when the Parish objected to the development of the Land.
- (f) Since at least 17 April 1997 and continuing, the land has been in agricultural use.
- (g) The Parish of Bradpole has been identified as the locality. There is no evidence suggestive of user Parish wide.
- (h) The pro forma user evidence forms do not provide a proper basis for this application.

- (i) The user evidence dates to around February 2013, whereas the application was made on 17 December 2014. Therefore, user to the date of application is not evidenced.
- (j) The Farmers Club became owners of the Land in approximately 1996. Since that time the Land has been let to various individuals for agricultural use which included grazing and growing crops. The agricultural activities would have interrupted any public use of the Land save for the use of the public footpath.
- (k) In 2008 signs were erected on site stating "PRIVATE LAND This land is privately owned by the Farmers Club Charitable Trust. There is no public access to this land other than along the route of the Public Footpaths. For any enquiries please contact the owners' agents: Faulkners Tel: 01923 264264". They were subsequently torn down but were replaced and some still remain. (See Appendix 6.)

6.3 The objection is accompanied by paperwork relating to Footpath 9 and a deposit under Section 31(6) of the Highways Act 1980, photographs of the Land and a copy of the West Dorset, Weymouth and Portland Draft Local Plan. The Land was initially included in the Draft Local Plan but was subsequently removed.

7 Response to objections (dated June 2015)

7.1 The applicants' response to the objection raised by the local resident is summarised below:

- (a) The objection has no substance in law and is merely opinion.
- (b) The river is not part of the application.
- (c) The field has not been included in the West Dorset District Council Development Plan and therefore cannot be developed.
- (d) No evidence has been provided to support the objection and it should therefore be dismissed.

7.2 The applicants' response to the objections raised by the landowner is summarised below:

- (a) The application was made on 4 June 2013 which should be used a reference point. The letter from Dorset County Council confirming receipt was 17 December 2014.
- (b) There is no requirement to produce a proportional number of evidence forms and witness statements are not required.
- (c) The dates the evidence forms were signed are the relevant ones showing that the land was used in the preceding 20 years.
- (d) Evidence does not have to be photographic.

- (e) There has been no 'Trigger Event'. Objections to the land being included in the development plan had to be based on planning considerations.
- (f) They object to the inclusion of one of the photographs as it is of a private property and the owner did not give consent to its inclusion.
- (g) The inclusion of the draft Local Plan is irrelevant and out of date. The site is outside the development boundary and is included in an Area of Outstanding Natural Beauty.

8 Issues to be considered

- 8.1 The objector has raised a number of points which need to be addressed. The main issue is whether the test in section 15(2) of the Commons Act set out in paragraph 3.2 has been satisfied: that the Land has been used by a significant number of inhabitants of the locality (or neighbourhood within the locality) as of right for sports and pastimes for at least 20 years. The constituent parts of the test are considered in more detail below.

Locality or neighbourhood within a locality

- 8.2 The locality or neighbourhood within a locality should be identified by reference to a recognised administrative area or an obvious geographical characteristic. For example, a particular parish or a housing estate.
- (a) The applicant has identified the locality in respect of which the application is made as the Parish of Bradpole. A location plan of Bradpole is attached at Appendix 5.
 - (b) Objectors consider that "it appears likely that "Bradpole Parish" will represent an administrative area". However, they also state that no argument is put forward for there being a "neighbourhood within a locality" and that this is fatal to the application.
 - (c) Officers consider that the applicant has adequately identified a locality. The application form requires that a locality or neighbourhood within a locality is identified. It is not a requirement to identify both, one is sufficient.

Significant number of inhabitants

- 8.3 A significant number does not need to be a considerable or substantial number. The number of people using the Land has to be sufficient to signify that the Land is in general use by the local community; in this case by those within the identified locality.
- (a) The objectors have determined that according to the census records for 2011, the population of Bradpole Parish then was 2,339. The 14 user evidence forms submitted is not even close to a significant number of the Parish and this too is fatal to the application.

- (b) They also state that the user evidence is from a much narrower geographic area than the locality claimed and is limited to a few roads near the application Land.
- (c) Officers consider that the evidence of use from 16 people is not sufficient to demonstrate that the Land is in general use by the local community. Case law suggests “one in two hundred would not be significant”, which is a similar proportion to the evidence of use under consideration here.

Use as of right

- 8.4 Use is as of right if it is without force, without secrecy and without permission.
- (a) Access to the land must be free. Use by force could be by breaking down fences, climbing over gates or by ignoring effectively worded signs prohibiting access.
 - (b) The objectors have provided written and photographic evidence that notices were erected on site in 2008 stating “PRIVATE LAND This land is privately owned by the Farmers Club Charitable Trust. There is no public access to this land other than along the route of the Public Footpaths. For any enquiries please contact the owners’ agents: Faulkners Tel: 01923 264264” which demonstrate that use of the Land by the public was effectively by force. Seven of the witnesses have mentioned in their forms that they saw signs on site in recent years.
 - (c) Officers consider therefore that the use evidenced in support of the application indicates that use was not as of right.
 - (d) A deposit was made by the landowners in 2001 under Section 31(6) of the Highways Act 1980 demonstrating that they acknowledge the presence of the existing public right of way across the Land, and no other ways over the land have been dedicated as highways. This has no effect on the use of the Land for the purposes of accruing town or village green rights.

Lawful sports and pastimes

- 8.5 The use evidenced in support of the application indicates that the activities qualify as lawful sports and pastimes. One objector states that use of the Land for lawful sports and pastimes is “wholly anecdotal” but concedes that dog walking is a qualifying activity and is the predominant activity alleged by the witnesses.

For a period of 20 years

- 8.6 The test for a continuous period of use over 20 years appears to be satisfied on the basis of the applicant’s evidence.

Use continued at the date of application

- 8.7 The user evidence forms were completed in January and February 2013 and the application was first received on 22 February 2013. In accordance with the Regulations, the applicant was given the opportunity to make corrections and an amended version was received on 4 June 2013. The Council acknowledged receipt on 17 December 2014. Case law has held that corrections have retrospective effect, therefore the official date of the application is 22 February 2013 and the evidence indicates that use was continuing.

Trigger Event

- 8.8 One of the objectors raised the issue of the Draft West Dorset, Weymouth and Portland Local Plan and the potential effect on the Land. The Draft Local Plan was published for consultation in March 2012 and initially the Land was put forward to be considered as an “alternative site” for housing development but following a consultation process was removed from the Draft Plan later in 2012. At the time of the application for the Green, the Land was not included in the Draft Local Plan and therefore no trigger event was in effect.
- 8.9 The final Local Plan was adopted in 2015. The application Land is not included within any area allocated for residential development or employment uses.

9 Discussion

- 9.1 There are three main options available to the Committee:

- To accept the application;
- To refuse the application;
- To defer a decision pending a public inquiry.

- 9.2 Conflicts in personal evidence should be tested at a public inquiry where witnesses may attend to give evidence and be available for cross-examination. The Committee is not in a position to hear evidence in this way. This will ensure that a decision is made in the knowledge that the evidence has been fully tested and both the applicant and the objector have had the opportunity of exploring the evidence in public.

- 9.3 If a public inquiry is held, the Inspector will hear all of the evidence from the applicant and objector and prepare a report setting out his or her conclusions on the evidence and whether the test for registration is satisfied. The Inspector’s report will recommend to the Committee how the application should be determined. The ultimate decision remains with the Committee and so a further report would be made to the Committee following receipt of the Inspector’s recommendation.

- 9.4 As discussed in section 8 above, there are two instances where the evidence does not meet the legal tests required for the successful registration of a town or village green. It is considered that there is insufficient evidence of use to demonstrate that a significant number of inhabitants have used the Land. Also, the landowner has taken action by putting up effective signs in previous years which means that use of the Land was by right not as of right. Several of the witnesses of use state that they saw the signs and so officers do not consider that there is a conflict of evidence on this point.
- 9.5 As a result, officers do not consider that there are conflicts of evidence which need to be resolved at a public inquiry before the Committee is in a position to reach a decision.

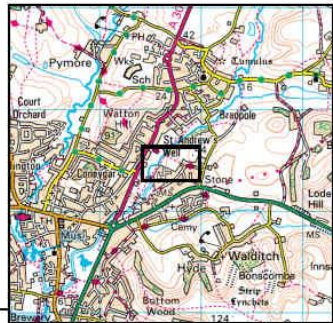
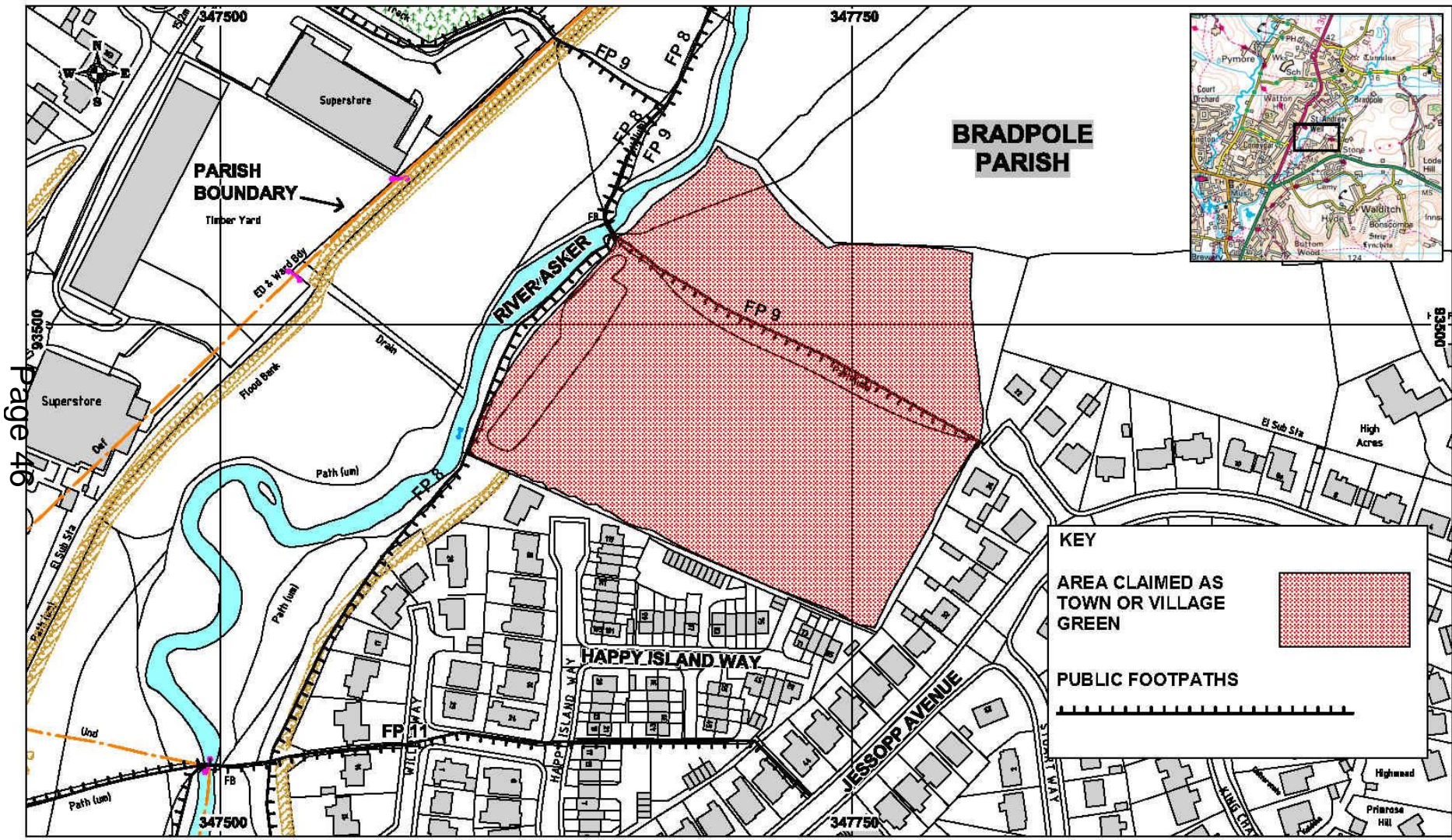
10 **Conclusion**

- 10.1 The evidence indicates that signs erected on the Land by the landowner in 2008 demonstrate that use of the Land was not as of right. It is also considered that the evidence of use of the Land does not represent a significant number of inhabitants. As such, the legal tests for the registration of a new town or village green are not met and it is therefore recommended that the application is refused.

Matthew Piles

Corporate Director for Economic Growth and Infrastructure

November 2021



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SECTION 15, COMMONS ACT 2006

APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT HAPPY ISLAND/ KING CHARLES ESTATE, BRIDPORT (BRADPOLE PARISH)

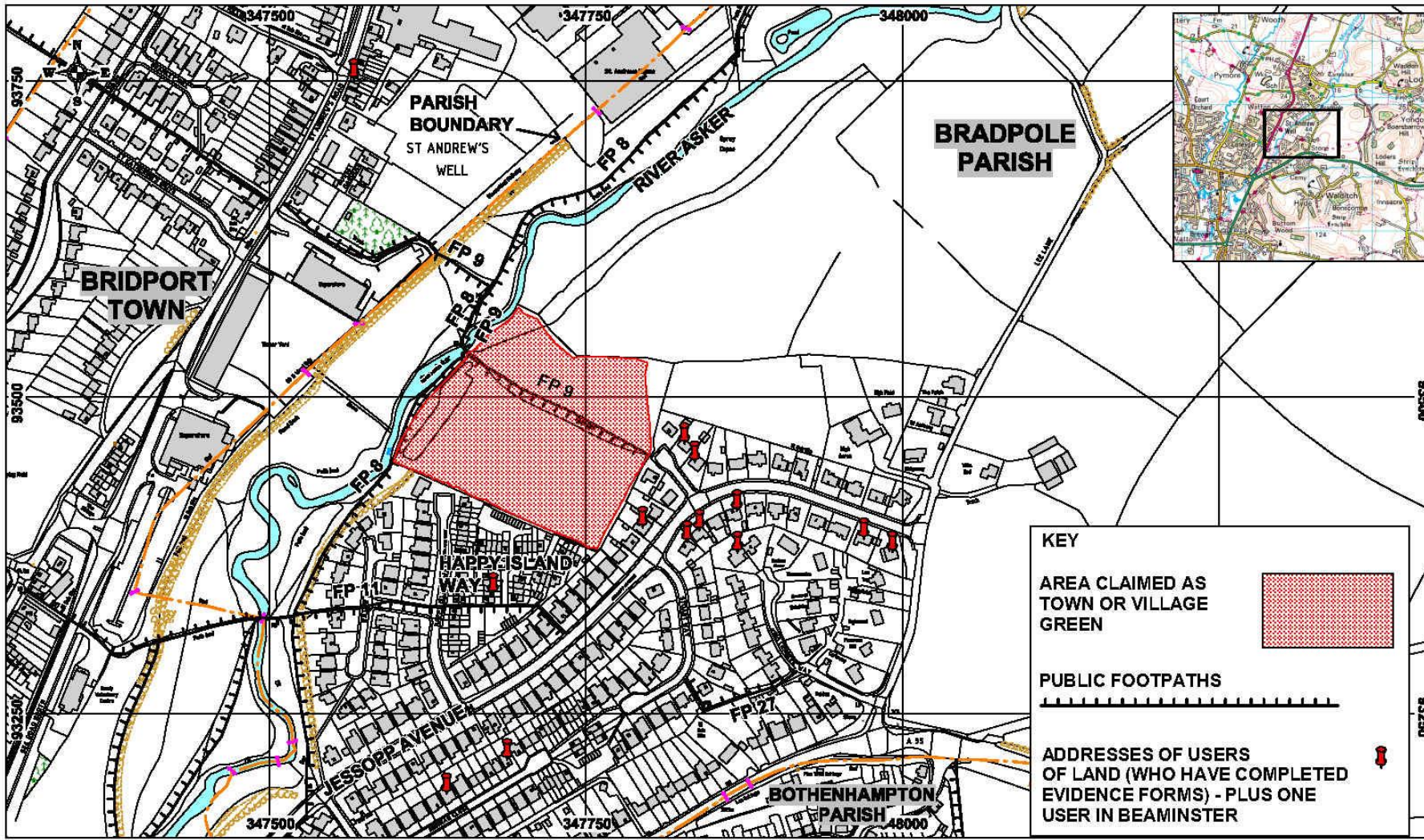
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 15/05
 Date: 14/01/2015
 Scale 1:2000
 Drawn By: AP
 Cent X: 347706
 Cent Y: 93462

GEOGRAPHICAL INFORMATION SYSTEMS



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SECTION 15, COMMONS ACT 2006
 APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT HAPPY ISLAND/ KING CHARLES ESTATE, BRIDPORT (BRADPOLE PARISH) - LOCATION PLAN OF USERS
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 15/06
 Date: 15/01/2015
 Scale 1:4000
 Drawn By: AP
 Cent X: 347857
 Cent Y: 93481

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

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**APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN
– HAPPY ISLAND, BRIDPORT.**

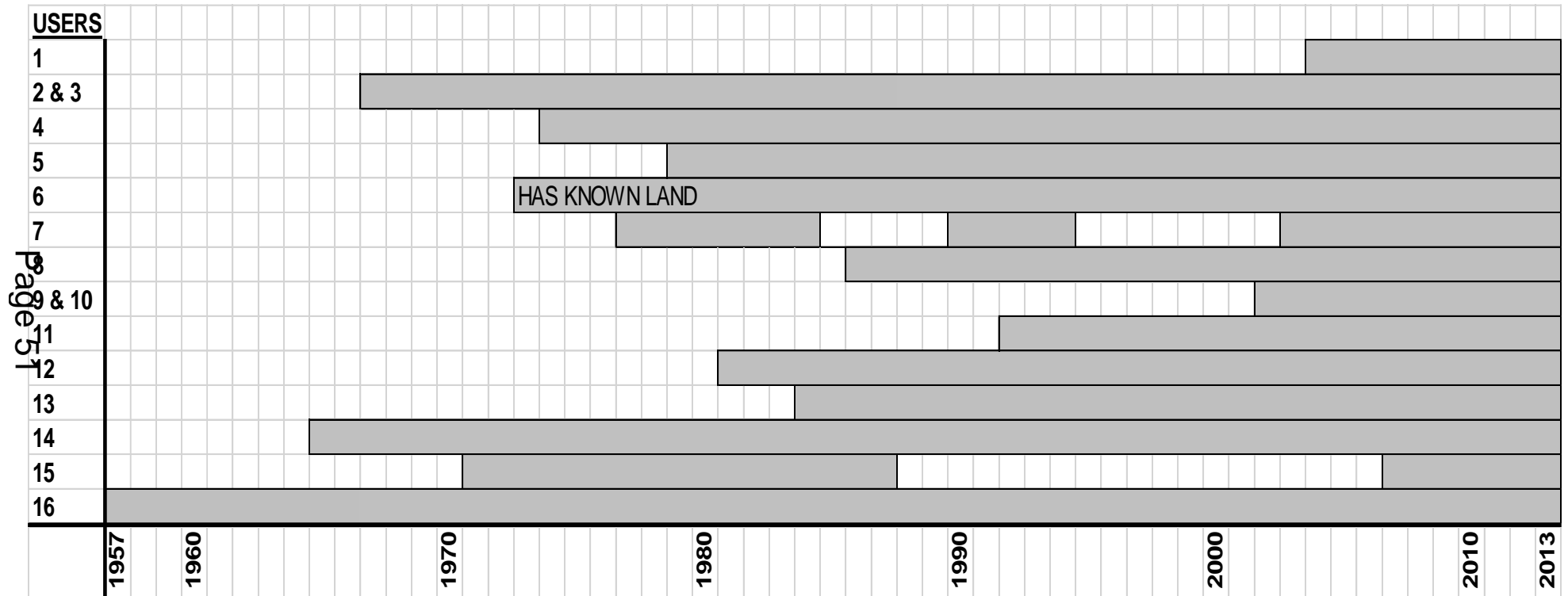
Table of user evidence – Forms completed in 2013

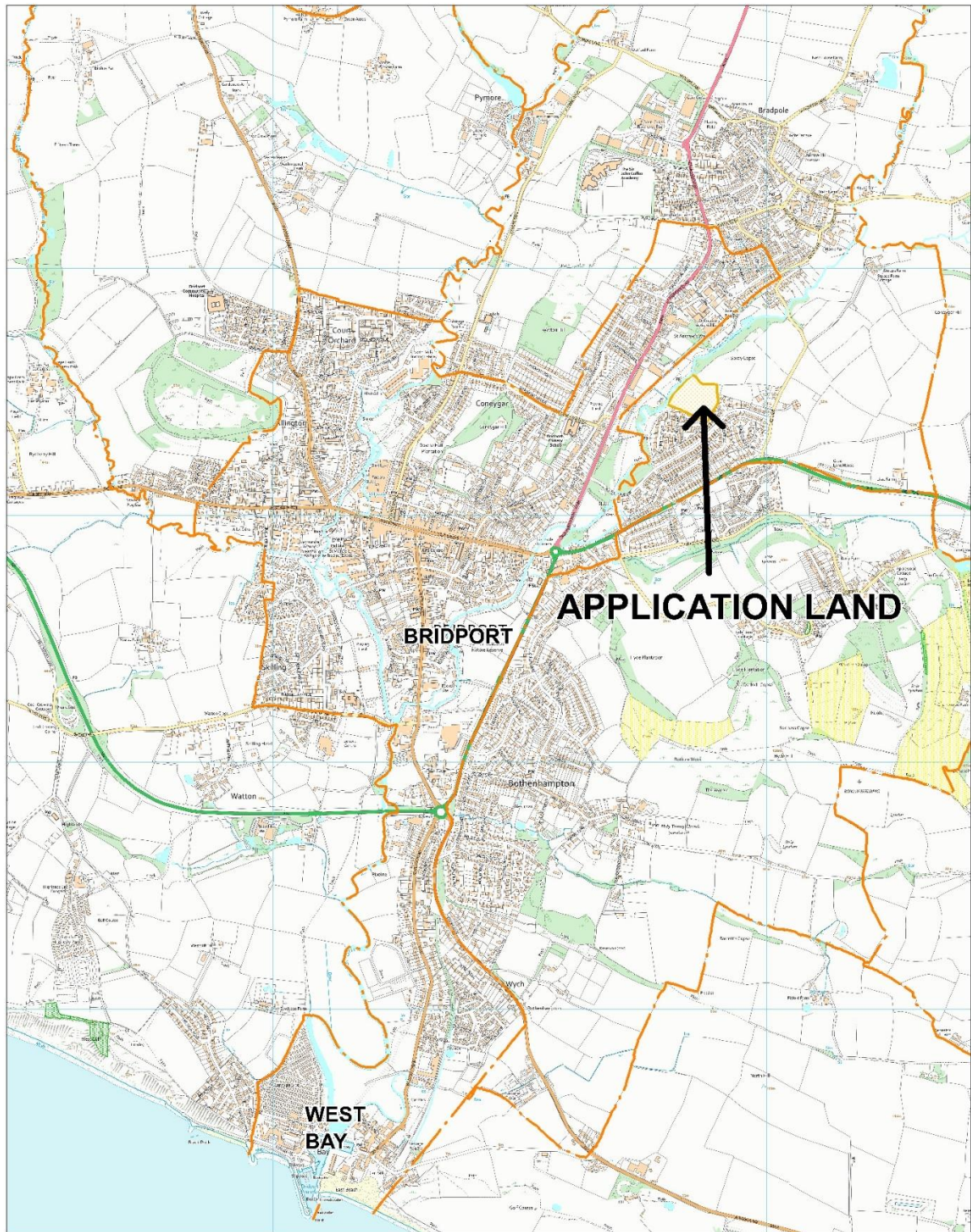
USERS	DATES OF USE	DETAILS OF USE
1. (Applicant)	2004 – 2013	Land used quarterly on average to use the footpath, bird watch, fly kites, play football and pick fruit. Other activities include sledging in winter snow. Notice to keep to paths erected in recent years.
2. & 3.	1967 – 2013	Gained access to land for many years over a stile. Land used two or three times a day walking to and from work.
4.	1974 – present	Land used twice daily to walk to local shops and to walk dogs. Family uses the land for cross country and charity runs. Sledging also takes place there.
5.	1979 – 2013	Land used between 2-3 times a week and twice a month for walking and recreational use. Took part in general family games.
6.	Has known the land from 1973 – 2013	In 1970s and early 1980s cattle were grazed on the land. He used land for walking. Also used to exercise dog 1972-1976 and for his children to play 1973 – 1980. Notice present regarding footpath.
7.	1977 – 1984 1990 - 1994 2003 – 2013	Land used almost daily for walking, dog walking and bird watching. Also on nature rambles with children, blackberry picking, children's games, flying kites, sledging in snow and model aircraft. Notices state 'Private Land Access to Public Footpaths Only'.
8.	1986 – 2013	Access from road. Land used daily for social activities and dog walking. Land is also used by a running club. Schools use land for nature study and field studies. Seasonal activity – sledging also takes place on the land. Notice and fencing used to prevent / discourage use.
9. & 10.	2002 – 2013	Land used every day for dog walking. There are well used footpaths across land in addition to the official footpath.

USERS	DATES OF USE	DETAILS OF USE
11.	1992 – Present (form completed in 2013)	“A welcome green, breathing space to all on the estate, fine views.” Land used to get to supermarket, to exercise dogs and to enjoy a walk in only local green space. Used more often in summer than winter as sometimes looked after other people’s dogs every day. There are many dogs on the estate, all of which are exercised on this land. Picnics in summer. Motor cyclists club rarely used the land. In recent years, only since the Farmers Trust took it over, “it has been made more explicit that we keep to the footpaths”. The owners gave him permission to go onto the land, latterly the Famers’ Trust.
12.	1981 – 2013	Land used 4-5 days a week for exercise, walking dog, enjoying the view and flying kites. Now uses land with grandchildren to watch birds and play in the snow. Seasonal activities take place here such as sledging and building snowmen. Spoke to other dog walkers whilst using land. When the Farmers Trust acquired the land they put up a notice saying the right of way was confined to the public footpath and put a gate near the bridge. Prior to that there was no restriction on use. Must have been using land by tractor drivers. Other paths on land in addition to public footpath.
13.	1984 – 2013	Used land quite often walking for pleasure. Has copies of postcards showing evidence of use of the land. Has been told by one of their members of the Postcard Club that the field has been the same for over 70 years.
14.	1965 – 2013	Land used regularly for dog walking and for going to the shops. Also used land for sledging and general recreation. Notice present.
15.	1971 – 1987 2007 - 2013	Land used several times a week for dog walking. Also used taking children/ grand children to play in river at Happy Island. Stated he was given permission to go onto the land. Also says that if owner/occupier saw him using it nothing was said by anyone.
16.	1957 to date (form completed in 2013)	Used land weekly for recreational walks. Cub and Scout activities took place here such as picnics, barbeques and fishing.

ACTIVITY	USERS															
	1.	2. & 3.	4.	5.	6.	7.	8.	9. & 10.	11.	12.	13.	14.	15.	16.	TOTAL	
CHILDREN PLAYING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
ROUNDERS		✓					✓					✓				4
FISHING		✓	✓						✓					✓		5
DRAWING AND PAINTING		✓	✓			✓			✓			✓				6
DOG WALKING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
TEAM GAMES		✓	✓				✓					✓				5
PICKING BLACKBERRIES	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
COMMUNITY CELEBRATIONS																0
FETES																0
FOOTBALL	✓	✓		✓		✓	✓		✓		✓	✓				9
CRICKET							✓					✓				2
BIRD WATCHING	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓		✓	✓	13
PICNICKING		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	14
KITE FLYING	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓				12
PEOPLE WALKING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
BONFIRE PARTIES																0
BICYCLE RIDING	✓					✓	✓					✓				4
CAROL SINGING																0
OTHER	Picking sloes											Picking sloes & hazelnuts, golf practice				2

Chart showing periods of use





Location Plan - Bradpole

Ref:
21/VGAP1/2014
Date: 17/09/2021
Scale 1:20000
Drawn By:
Cent X: 346874
Cent Y: 92577



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Date of Meeting: 22 November 2021

Lead Members: Cllr Clare Sutton, Cllr Kate Wheller, Cllr Brian Heatley – Lead Members for Rodwell and Wyke Ward

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary:

In response to an application to add a footpath in the Weymouth Town Council area, this report considers the evidence relating to the status of the route.

Equalities Impact Assessment:

An Equalities Impact Assessment is not a material consideration in considering this application.

Budget:

Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.

Risk Assessment:

As the subject matter of this report is the determination of a definitive map modification order application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications:

None

Recommendation:

That the application be refused.

Reason for Recommendation:

The available evidence does not, on balance, show that the claimed right of way subsists or is reasonably alleged to subsist

Use of Evidence:

The applicant submitted documentary evidence in support of this application.

Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.

A full consultation exercise was carried out in September – November 2019, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. The Councillors for Rodwell & Wyke Ward, Cllr Wheller, Cllr Sutton and Cllr Heatley, were also consulted. In addition notices explaining the application were erected on site.

36 user evidence forms from users of the claimed route and the previous claim were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

Appendices:

1. a) Drawing 19/21(current application T516),
b) Drawing 20/02 (old application T392)
2. Law
3. Documentary evidence
 - Ordnance Survey Map (1901) 1:2500
 - Ordnance Survey Map (1959) 1:2500
 - Ordnance Survey Map (1965 - 73) 1:1250
 - Conveyance Plan (1936)
 - Conveyance Plan (1949)
 - Dorset Council Freehold Plan All Saints' School Playing Field (2020)
 - Sign at Point B1 photographed 2005

- Aerial photo (1947)
- Aerial photo (1972)
- Aerial photo (2005)
- Aerial photo (2017)

4. User evidence - Charts to show periods and level of use

Background papers:

The case files of the Executive Director of Place (ref. RW/T516 and T392).

Most of the original historic maps and documents 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/T516, which will be available to view by arrangement.

Officer Contact:

Name: Anne Brown

Tel: 01305 221565

Email: anne.brown@dorsetcouncil.gov.uk

1 **Background**

Applicant

- 1.1. An application to add a footpath as shown A – A1 – A2 – A3 – A4 – B – B1 – C on Drawing 19/21 (Appendix 1a) was made by Mr R. B. Price on 14 September 2011, and was subsequently taken on by Ms C Price on 16 September 2019.

Description of the route

- 1.2. The route claimed starts at point A on the footway of Ryland's Lane. It passes through a 1.1 metre wide pedestrian gate into the school grounds, there is a sign on the gatepost reading "PRIVATE PROPERTY, THIS IS NOT A PUBLIC RIGHT OF WAY."
- 1.3. Between points A and A1 the 2 metre wide tarmac path runs between bushes / trees with grass beneath and its total available width between fences is 8.7 metres.
- 1.4. At A1 the path deviates north westerly by about 3 metres towards the boundary fence at A2 then continues parallel with the boundary fence. The surface is still tarmac. On the southern side there is a steep bank covered in dense, well established brambles, and a building.
- 1.5. At A3 the route deviates from a straight line by about 5.5 metres in a south westerly direction to point A4. The surface is still tarmac. At A4 the path turns in a more westerly direction and continues, with mown grass either side, to the school drive at point B.
- 1.6. There is a sign to the south of point B directing to "Sunnyside Rd, No cycling" on one side and "Ryland's Lane, No Cycling" on the other side.
- 1.7. At point B the route crosses the school drive via a 'zebra' pedestrian crossing to a pavement opposite. It then turns easterly and follows the curving drive, on the pavement to point B1. Here there is a remotely lockable pedestrian security gate, 1.3 metres wide, adjoining a vehicle security gate.
- 1.8. The route continues to follow the pavement adjoining the school drive to point C where there is a 1.1 metre wide pedestrian gate. Here it joins the footway of Sunnyside Road. There is a sign on the outside gatepost reading "PRIVATE PROPERTY, THIS IS NOT A PUBLIC RIGHT OF WAY."

Background to the application

- 1.9. There was a previous claim for a similar route in 2005, based on user evidence (case file T392). The route claimed on this occasion was directly from A – A1 – A4 – B, then continuing B – B1 – C as in this claim (see Drawing 20/02 Appendix 1b).
- 1.10. The case was withdrawn by the applicant in 2009 because he felt that, if successful, the application would simply result in closure of the path on school security grounds.
- 1.11. The direct route A1 – A4 is no longer available because the building of a school sports hall in 2005 resulted in cutting away of the path to form a steep bank. The new section A1 – A2 – A3 – A4 of the current application route was set out and tarmacked following the building of the sports hall in 2005.
- 1.12. The land over which the application route passes is owned freehold by Dorset Council and was acquired by Dorset County Council in 1949. The land was leased to Ambitions Academies Trust in June 2019.
- 1.13. To address the conflict of interest arising from Dorset Council being the landowner, it is considered that the decision should be made by the Strategic Planning Committee.

2 Law

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

3 Issue to be decided

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

3.3 Historical documentary evidence and user evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

4 **Documentary evidence (Appendix 3) (copies available in the case file RW/T516)**

4.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below. Information on the background and evidential weight which should be attached to particular historical sources is discussed in this section.

Inclosure Award

4.2 The Wyke Regis Inclosure Map of 1797 covers the area of the claimed route but no roads or paths are depicted which correspond to the claim.

Tithe Map

4.3 The Wyke Regis Tithe Map and Award of 1841 cover the area of the claimed route but no roads or paths corresponding to the claim are depicted or described.

Finance Act 1910

4.4 The area of the application route is covered by the Finance Act Map held at National Archives under reference IR125/2/571. It does not show a path / road corresponding to the application route.

Ordnance Survey Maps

4.5 The Ordnance survey map of 1901 at a scale of 25 inches : 1 mile is the first map to show the road now called Sunnyside Road (it was then called Fairview Road). Ryland's Lane was also shown, but no path is shown between them. There is a footpath shown to the south, running between Williams' Avenue and Ryland's Lane.

4.6 The corresponding maps of 1926 and 1937 show a similar situation.

- 4.7 The map of 1959 shows the buildings of All Saints' School and the drive to it corresponding to the application route from B – B1 – C. There is no path shown from A to B.
- 4.8 The first map to show a path between A and B is the Ordnance Survey Plan of 1965 – 1973 at a scale of 50 inches : 1 mile. It shows a drive with possible footway from B – B1 - C and a direct path from A – A1 – A4 – B, lined with trees to the south. Lines across the route at A and C suggest the route may have been gated.
- 4.9 A similar situation is depicted on various maps up to 1992 although these are of a smaller scale so do not show as much detail.
- 4.10 None of the Ordnance Survey maps showed a public right of way in the vicinity of the application route. However, this is not prejudicial to the existence of any unrecorded rights.

Dorset Council Records

- 4.11 The Weymouth Parish Survey (1950's) for this area did not claim a right of way corresponding to the application route, nor was it shown on the Draft Map (1954), Provisional Map (1964), Revised Draft Map (1974), First Definitive Map (1966-7) or Current Definitive Map (sealed 1989).
- 4.12 A footpath was claimed between William's Avenue / Fairview Road and Ryland's Lane but this was to the south of the application route. This became Footpath 76, although its original route claimed on the parish survey was slightly different from the current definitive line.
- 4.13 Ryland's Lane was recorded as a footpath (Footpath 115) on the Draft, Provisional and First Definitive Maps.
- 4.14 Ryland's Lane and Sunnyside Road are both now recorded on the list of streets.

Conveyance Documents

- 4.15 The Conveyance Document for land known as "Broadmead" Wyke Regis (1936) details a right of adjoining owners and occupiers to pass and repass over a portion of the land being sold "with or without wheeled vehicles horses and other animals". This right applied only to two small parts of the land (illustrated on a plan and coloured yellow) approximately corresponding to the eastern end of Sunnyside Road and another small parcel lying south of this, near the western end of Footpath S1/76.

4.16 The adjoining owners affected were not specified but it is indicated that they were to the left (west) of the land over which they had a right. The accompanying plan included the names of three landowners.

4.17 The same right appears in the Conveyance Documents (1949) for the same land when it was sold to Dorset County Council. This document was submitted by the applicant as evidence of public rights.

4.18 Officer comments:

The right described relates to the application route only in that it applies to the highway maintainable at public expense to which the application route joins, at point C. Therefore in this respect, the land specified in the conveyance does today, have public vehicular rights.

4.19 In the Requisitions on Title Document (1949), in answer to the question "Is the property subject to any and what rights of way, light, or drainage, or other easement" the answer is recorded as "Not so far as is known otherwise than disclosed by Contract and Plan".

4.20 The Conveyance of 111 Ryland's Lane (1983) does not refer to private rights over the land.

4.21 Officer comment:

These documents make no mention of public rights of way being in existence at the dates of the documents.

Dorset Council Property Services Plan All Saints' School Playing Field (2020)

4.22 The plan shows that the application route runs exclusively over land owned by Dorset Council.

Aerial photographs

4.23 The aerial photo of 1947 shows various structures on the area now crossed by the application route. It is possible that the area was being used for small-holdings. There is no sign on the ground of a path in the location of the application route.

4.24 The aerial photo of 1972 shows the school, and the school playing field, the approach road to the school (points B – B1 – C on Drawing 20/02) and the original application route laid out (A – A1 – A4 – B on Drawing 20/02). There is some suggestion that there might be gates / barriers of some sort at points A and C.

- 4.25 A similar situation is seen in the aerial photos of 1997 and 2002 although by 2002 a tree is obscuring point A so it is not possible to see if a gate or barrier was there.
- 4.26 In the aerial photo of 2005 (summer) work is being carried out on the site and the new route A – A1 – A2 – A3 – A4 – B appears to be being set out. The application route appears to be obstructed with fencing.
- 4.27 In the aerial photos of 2009, 2014 and 2017 there is a large building next to where the original application route A – A1 – A4 – B was located, and this route is not in existence. The new application route is in existence: A – A1 – A2 – A3 – A4 – B – B1 – C (Drawing 19/21). There appears to be a gate at point C in each photo (sometimes open), but point A is obscured by a tree.

Summary of documentary evidence

- 4.28 Documentary evidence suggests that there was no path in existence in the area of the application route prior to the building of All Saints' School in the 1950's.
- 4.29 None of the documents available are suggestive of public rights along the application route.

5 User evidence (Appendix 4) (copies available in the case file RW/T516)

- 5.1 Charts showing periods and level of use form Appendix 4. Evidence submitted in 2005 as part of the original application, T392, has been included in this analysis, as well as that submitted in 2011 with application T516 and that submitted in response to consultation in 2019.
- 5.2 Across the two applications a total of 36 witnesses claimed to have used one or both of the application routes.

However 7 of these witnesses were discounted because they:

- did not sign their evidence
- did not adequately describe the route they used
- did not describe when they used the route
- gave evidence on behalf of others
- used the route to get to All Saints School.

Efforts were made to contact these witnesses to clarify but not all could be contacted. Thus 29 witnesses were considered to have used one or both application routes. One further witness claimed to have used a route that did not correspond with either of the application routes.

- 5.3 It is considered that the two routes: A – A1 – A4 – B – B1 – C and A – A1 – A2 – A3 – A4 – B – B1 – C are sufficiently different that evidence for each must be considered separately.

Use of the original route A – A1 – A4 – B – B1 – C (Drawing 20/02, Appendix 1b)

- 5.4 12 witnesses declared they had used the original route and a further 13 described using a route between points A and C during the years that the old route was laid out and available. Although via their maps they claimed use of the new route A – A1 – A2 – A3 – A4 – B – B1 – C.

- 5.5 Officer Comment:

It is considered likely that witnesses have simply forgotten that the route originally followed a more direct line. Therefore, two possible scenarios will be considered; a 'least evidence scenario' (only considering declared users of the original route), and a 'most evidence scenario' (declared and presumed users of the original route). When considering a 'most evidence scenario', all 25 of these witnesses will be presumed to have used the old route for the years when this was available and laid out.

Least evidence scenario for use of the original route A – A1 – A4 – B – B1 – C, Declared Use only.

- 5.6 Between 1986 and 2005 there were between 10 and 12 declared users of the original route.
- 5.7 The frequency with which each witness used the route ranged from once a year to 360 times per year. Between the dates 1986 – 2005, on average the route was used between 1.7 and 2.8 times per day by a witness who declared they used the original route.

Most evidence scenario for use of the original route A – A1 – A4 – B – B1 – C, Declared and Presumed Use.

- 5.8 Use of the original route A – A1 – A4 – B – B1 – C was first claimed in 1955 but only 3 witnesses used the route before 1961.
- 5.9 There were 17 witnesses claiming to use the route in 1986 and this rose to 25 in 2005 just before the layout of the route was changed to accommodate a new sports hall.
- 5.10 The frequency with which each witness used the route ranged from once a year to 800 times a year. Between the dates 1986 – 2005, on average the route was used between 3.6 and 6.9 times per day.
- 5.11 All witnesses claimed that they used the route on foot, and in addition, 3 of them used the route on a pedal cycle.
- 5.12 Officer Comment:
- Use with pedal cycles is considered insufficient to result in a deemed dedication of a restricted byway.
- 5.13 All witnesses except one had seen other people using the route although many described seeing school children.
- 5.14 Officer Comment:
- This use by people accessing the school would not contribute towards use by the public.
- 5.15 All witnesses except 2 described gates on the route, but none remembered the gates being locked in the period prior to the change of the route in 2005. All witnesses that specified said the gates were at Points A and C.
- 5.16 22 witnesses remembered there being signs on the route but only 2 thought these were in place prior to 2005. One of these witnesses described the sign prior to 2005 as reading “Not a right of way but you are welcome to walk through” and the other described “No dogs”.
- 5.17 Officer Comment:
- A sign reading “Not a right of way but you are welcome to walk through” would be sufficient to prevent acquisition of public rights, but the fact that the sign was only seen by one person during the time this route was laid out makes its presence open to question.

5.18 Two witnesses thought they had a private right to use the route although one had only discovered this recently. It was not possible to contact the second witness who declared a private right, and neither was it clear that he understood the question. Consequently, the use of both witnesses with a private right has been included in the analysis. No witnesses were aware of having permission to use the route.

5.19 No witnesses reported being challenged in their use of the route prior to the temporary closure of the path in 2005 when the sports hall was built and the path diverted.

5.20 Officer Comment:

The temporary closure of the path in 2005 is considered to be a date when the public use of the route was brought into question.

Use of the new route A – A1 – A2 – A3 – A4 – B – B1 – C (Drawing 19/21, Appendix 1a)

5.21 25 witnesses declared they had used the route since 2005 and most drew the new route A – A1 – A2 – A3 – A4 – B – B1 – C on their map.

5.22 Officer Comment:

All 25 of these witnesses will be assumed to have used the new route from 2005 when this was available and laid out.

5.23 There were 22 witnesses claiming to use the route in 2005 and this rose to 23 before declining to 6 in 2019.

5.24 The frequency with which each witness used the route ranged from twice a year to 800 times a year. Between the dates 2005 and 2019, on average the route was used between 3.1 and 7.9 times per day.

5.25 All witnesses claimed that they used the route on foot, and in addition, 3 of them used the route on a pedal cycle.

5.26 Officer Comment:

Use with pedal cycles is considered insufficient to result in a deemed dedication of a restricted byway.

5.27 All witnesses except two had seen other people using the route although many described seeing school children.

5.28 Officer Comment:

This use by people accessing the school would not contribute towards acquisition of public rights.

5.29 All witnesses except 2 described gates on the route, all witnesses that specified said the gates were at Points A and C and later at B1. No witnesses remembered the gates being locked prior to December 2010 but dates when the gates began to be locked ranged from December 2010 to 2019. Some witnesses said that initially the gates were locked occasionally but that by 2018 they were locked all the time except at the beginning and end of the school day.

5.30 Officer Comment:

The locking of gates is considered to bring use of the route by the public into question. This was first reported in December 2010.

5.31 22 witnesses remembered there being signs on the route. 10 of these witnesses recalled the signs reading "Not a right of way but public welcome to use it" or similar wording. 2 witnesses recall "No dogs" signs, one "Private property", one "No right of Way" (2019) and one "Footpath to Sunnyside Rd".

5.32 The application from 2005 reported in April 2005 (before the path was diverted) that "until very recently there was no notice anywhere that would give any impression that it was not a Right of Way"

5.33 Officer Comments:

- a) A sign reading "This is NOT a Public Footpath however, you are welcome to walk via the pathway" was seen and photographed by a Dorset County Council Officer in 2005, when the first application was received. Such signs would be effective in granting permission for the public to use the route and as such would prevent acquisition of public rights. This would also bring public use of the route into question.
- b) The letter from the applicant suggests that such a sign might have appeared before the route was diverted in summer 2005 although this can only be inferred.

5.34 Two witnesses thought they had a private right to use the route although one had only discovered this recently. The other did not elaborate, and it was not clear whether he understood the question fully. No witnesses thought they had been given permission to use the route although one stated in other communications that the route was "permissive".

5.35 Officer Comments:

- a) Private rights cannot be considered here, but given that one witness did not realise that they had a private right, and it was not possible to establish if the other understood the question, their evidence will still be considered.
- b) The fact that witnesses did not realise they were using the route with permission does not alter the effect of the permission given via the signs.

5.36 Several witnesses were challenged in their use of the route between 2018 – 2019 by school staff.

5.37 Officer Comment:

This represents another date when use of the route was brought into question.

Summary of user evidence

5.38 Two routes have been used at different times and evidence for these must be considered separately.

Summary of user evidence, older route A – A1 – A4 – B – B1 – C

- 5.39 The older, direct route A – A1 – A4 – B – B1 – C was available and used on foot from at least 1961 – 2005.
- 5.40 For a 20 year period leading up to 2005 the route A – A1 – A4 – B – B1 – C was used by a minimum of 10 witnesses per year who declared use of this route. The route received on average at least 1.7 uses per day.
- 5.41 If the presumed users of the route are also included (because their use was at a time the original route was laid out) the minimum number of users rises to 17 people per year, and the route would have received, on average, at least 3.6 uses per day.
- 5.42 Use of the old route A – A1 – A4 – B – B1 – C prior to 2005 appears to be use as of right i.e. without force, without secrecy and without permission. However, it is considered that the number of different users is too low to be considered 'use by the public at large', particularly for an urban route where users say they were accessing shops, doctors' surgery, health centre and library.

- 5.43 The frequency of use of the old route A – A1 – A4 – B – B1 – C prior to 2005 is also considered to be too low for the use by the public to have been brought to the attention of the landowner. There would have been a large number of legitimate users of the school access path with a private right to access the school, and a small number of additional users taking a through route may not have been brought to the attention of the landowner.
- 5.44 Consequently, it is believed that public rights to use A – A1 – A4 – B – B1 – C on foot have not been acquired.
- 5.45 The presence of signs and locked gates on the route during this period is unclear.

Summary of user evidence, newer route A – A1 – A2 – A3 – A4 – B – B1 – C

- 5.46 The newer route A – A1 – A2 – A3 – A4 – B – B1 – C was available and used on foot from late 2005 – 2019. This is less than the 20 year period required for a deemed dedication under the Highways Act 1980.
- 5.47 10 witnesses described seeing signs on the route A – A1 – A2 – A3 – A4 – B – B1 – C following 2005 reading “Not a right of way but public welcome to use it”. Such signs mean that use by the public was with permission, i.e. that it was use ‘by right’ rather than ‘as of right’.
- 5.48 Consequently, it is believed that public rights to use A – A1 – A2 – A3 – A4 – B – B1 – C on foot have not been acquired.

6 Landowner correspondence (copies available in the case files RW/T392 and T516)

- 6.1 In response to a letter from the first applicant in 2005 the Church of England Diocese of Salisbury, Board of Education wrote on 3 May 2005: “The governors of All Saint’s School are particularly keen that the path currently used by members of the public with consent of the governors between Sunnyside Road and Rylands Lane does not become a Public Right of Way. Whilst the governors are happy for members of the public to use it with their consent, they believe that it is essential that they have the right to exclude individuals if they wish to do so.”

6.2 Officer Comment:

This an indication that the School had no intention to dedicate a right of way in 2005. However, there is no evidence that it was communicated to the public.

6.3 Following consultation in 2019 (for the application received in 2011) the Ambitions Academies Trust sent a Landowner evidence form (as lessees). It acknowledged that members of the public were using the route every few months, were being challenged, and that gates were being locked when pupils did not need access.

6.4 The Academies Trust was unsure of the history of signage having only recently taken over management of the school and lease of the land. It said that signs had been defaced and torn down, that drug related incidents had been reported to the police (police reports reported to be available). Photographs were provided of the signage erected following consultation in 2019.

6.5 The Academies Trust believes that a path within the boundary of the school grounds represents a safeguarding issue.

6.6 Dorset Council Premises Commissioning Team representing Dorset Council (as owners) opposed what it referred to as "the reclassification of the Student Pedestrian Access Path... to a formal public footpath". The grounds for objection were based on safeguarding concerns, and that agreeing to legislation to footpath access was in contravention of the Countryside and Rights of Way Act 2000 which makes provision to extinguish or divert public rights of way through school grounds under some circumstances.

6.7 Officer comments:

- a) Safeguarding is not a matter that can be taken into account.
- b) Extinguishment and diversion cannot be considered unless public rights have been established.

7 **Consultation responses and other correspondence (copies available in the case file RW/T516)**

Response from applicant of 2019

The following items were sent as evidence supporting the application:

7.1 A Weymouth and Portland Borough Council map of the area showing access to All Saints School from Ryland's Lane labelled 'path', and the entrance to Thornlow Playing Field not similarly labelled. The applicant interpreted this as meaning that All Saints School had public access whilst Thornlow Playing Field was private land with no access.

7.2 Officer Comment:

The Weymouth and Portland Borough Council Map does not record rights of way and the labelling of a path as 'path' is of no relevance to status of the route.

7.3 The applicant labelled a plan showing where the sign was located which gave 'permitted access'.

7.4 Officer Comment:

The relevance of signs giving permission for the public to use the route have been discussed in paragraph 5.33 above.

7.5 The applicant sent a plan of 111 Ryland's Lane and the pedestrian entrance to the school. It had a proposed road drawn on what is now part of 111 Ryland's Lane. The applicant did not explain what she felt was the significance of this plan.

7.6 Officer Comment:

The proposed road plan is of no relevance to the status of the path through All Saint's School.

7.7 The applicant sent a copy of the Weymouth, Portland and Dorchester A-Z Street Atlas. This showed the application route as a pecked line.

7.8 Officer Comment:

The A-Z Map does not have a symbol for rights of way but records features that are visible on the ground. It has no relevance to status of the application route.

7.9 The applicant sent a black and white copy of Ordnance Survey map OL15 (2004) at a scale of 1:25,000. This showed the application route with a thin pecked line.

7.10 Officer Comment:

Although the lack of colour makes it difficult to distinguish between a public right of way footpath (thick green pecked line) and a path (thin black pecked line) the route has never been recorded as a right of way. The map provides no evidence of status of the application route.

7.11 Conveyance August 1949 (copy). Conveyance 29 March 1983 (front cover copy). The applicant had underlined references to 'right of way'. The plan of the land subject to conveyance in 1949 appeared to have been hand shaded before copying, masking the distinction of different colours.

7.12 Officer comment:

These documents are discussed in paragraphs 4.15 – 4.18 above.

7.13 Epitome of Title for properties 103, 109 and 111 Ryland's Lane. This lists various documents relating to the properties.

7.14 Officer comment:

The Epitome does not contain any information of relevance.

7.15 Dorset and Bournemouth Police Authority Grant of a Right of Drainage through 107, 109, 111 Ryland's Lane.

7.16 Officer comment:

This contains no information of relevance.

7.17 Various photos of children playing on the application route, the gate from Ryland's Lane in an open position, and members of the public enjoying various social functions on the school field.

7.18 Officer comment:

Whilst some of these photos do confirm that the application route was open to the public at least some of the time, the social functions would mostly have been by invitation so do not provide evidence that the route was used as of right during the relevant period.

7.19 The applicant reported that there used to be a sign on the route stating that it was a public footpath and that no dogs were permitted.

7.20 Officer comment:

No other witnesses recall a sign with this wording. This would not have been an official Council right of way sign because dogs are a lawful accompaniment on a public footpath.

7.21 The applicant said she had evidence that the application route had been unlawfully blocked, but this evidence was not submitted.

7.22 The applicant, in emails in 2018 (before she took on responsibility for the application), referred to the application route as a 'permissive path'. The first email was headed "Permissive Footpath Closed Suddenly" and initially complained that All Saints' School had withdrawn permission without notice.

7.23 Officer comment:

If the path were permissive, the landowner would be allowed to withdraw permission at any time and use would not have been 'as of right'.

7.24 The applicant later expressed the opinion that "...at this time they [sic] were only permitted to lock the gates once a year, to keep the pathway as their land, but due to the pathway having been allowed permissive access since before the school was there, they were not allowed to always close it."

7.25 Officer comments:

a) It is not clear to which period of time this refers, but the indication that access had been permissive since before the school was there would contradict the assertion that public rights have been exercised.

b) The applicant's explanation of permissive access indicates that there was a general understanding of the principle of use with permission, and that when use began, it was with permission.

7.26 The applicant in 2019 said she had been told that the route was a "permissive pathway" but it had "never been controlled in 37 years...only in the last couple of years where the school has haphazardly begun locking the gate. Their right to do so has passed the 20 years of using is [sic] freely".

7.27 Officer comment:

If use were with permission, the duration of use is of no relevance. The dates when gates on the route were locked seem to be unclear.

Summary of evidence from the applicant of 2019

7.28 None of the documentary evidence supplied by the applicant provides support for the application.

7.29 It is unclear from communications whether the applicant was using the route as of right, or whether use was with permission, but this matter is discussed in more detail in section 5.

Other submissions (see case file T516)

7.30 Some submissions reported the locking of gates on the route. All such reports were suggesting gates were locked 2012 or later.

7.31 Other submissions concerned matters of convenience, desirability and security and did not contain any evidence which can be taken into consideration.

7.32 Officer comment:

None of the other submissions contain any relevant evidence which has not been considered elsewhere in the report.

8 **Analysis of the evidence**

8.1 There is evidence of use of two claimed routes since 1961. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.

8.2 Analysis of the evidence under Section 31, Highways Act 1980

For Section 31 of the Highways Act to give rise to a presumption of dedication, the following criteria must be satisfied:

- The physical nature of the path must be such as is capable of being a right of way at common law
- The use must be brought into question i.e. disputed or challenged in some way
- Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question
- Use must be 'as of right' i.e. without force, without secrecy and without permission
- Use must be by the public at large, and of sufficient frequency to be brought to the attention of the landowner
- There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

Physical nature of the routes

8.3 Both the original route and the new route claimed are capable of being a public right of way at common law, given that they each followed a well-defined, linear route between Ryland's Lane and Sunnyside Road.

Bringing into question the right of the public to use the path

8.4 The erection of a sign reading "This is not a right of way..." shortly prior to the original application in October 2005 is considered to have brought public use of the route into question. However, it has not been possible to establish an exact date when the sign was erected.

8.5 It is considered that the closure of the original route in Summer 2005 brought public use of the original route into question, giving a relevant period of 1985 - 2005.

- 8.6 Use of the new route was brought into question when the gates were locked in 2010. This does not give a period of 20 years prior to the bringing into question.

Twenty years use without interruption

- 8.7 Based on the documentary and user evidence, it would appear that there was no substantive interruption to public use of the original route during the period 1985 – 2005. The new route has not yet been in existence for 20 years.

Without force, secrecy or permission

- 8.8 Evidence to suggest that either route was used by force only applies to dates after the relevant 20 year period (i.e. during use of the new route)
- 8.9 Use of the original route has been mostly reported to be open but there are some unsubstantiated suggestions that gates were locked occasionally. Prior to 2005 most witnesses using the original route said they were unaware of permission, only one witness described a sign giving permission to use the route during the relevant 20 year period.
- 8.10 There is evidence to suggest that use of the new route has been with a landowner's / lessee's permission since 2005. The applicant of 2019 referred to the route as a "permissive path".

Use by the public

- 8.11 Use must be of a volume that is capable of coming to the attention of the landowner, and should be by sufficient individuals to be considered use by the public at large and not, for example, solely by staff, pupils or visitors to the school.
- 8.12 The evidence put forward in support of the application indicates only limited use by the public during the period 1986 – 2005. Declared use of the original route is not considered to be of sufficient frequency to have been brought to the attention of the landowner. Even when presumed use of the original route is included, it is considered that the frequency of use is insufficient to result in a deemed dedication. This is particularly so given the high frequency of use by legitimate visitors to the school both during school hours, and through letting of the facilities out of school hours, it could have been difficult for the landowner to perceive any further use as public use.

- 8.13 In addition, the number of different users of the route is considered to be too low to constitute 'use by the public at large' for an urban route where users say they were accessing shops, doctors' surgery, health centre and a library.
- 8.14 Use of the new route since 2005 cannot be considered because it was use with permission.

Conclusions under Section 31, Highways Act 1980

- 8.15 It is considered that the requirements of Section 31 have not been satisfied with respect to the original route A – A1 – A4 – B – B1 – C because the level of use was insufficient, bearing in mind the location and the high number of users with private rights. There is conflicting user evidence about whether use was with the permission of the landowner, and whether gates were occasionally locked on the route during the period of consideration.
- 8.16 In addition, it is considered that the requirements of Section 31 have not been satisfied with respect to the new route A – A1 – A2 – A3 – A4 – B – B1 – C because the duration of use was for less than 20 years, and use was with permission.

Analysis of the evidence under common law

- 8.17 This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied by a sufficient period of public use without force, secrecy or permission and the acquiescence of those landowners in that use. This is needed to meet the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as turning people back, putting up a physical barrier or erecting notices stating that the route is not a public right of way of the type being claimed.

Conclusions under common law

- 8.18 There is insufficient evidence due to the low level of use of the original route from which a deemed dedication at common law can be inferred. From 2005 there is evidence that the landowners did not intend to dedicate the new route.

9 Conclusions

- 9.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist. There is disagreement between the parties as to whether the test is met in this case, but on balance it is considered that there is insufficient evidence for the "reasonably alleged" test to be met.
- 9.2 The documentary evidence indicates that the route was not in existence prior to the building of All Saints' School in approximately 1957.
- 9.3 The user evidence is insufficient to satisfy a deemed dedication under Section 31 Highways Act 1980.
- 9.4 The available evidence is also insufficient for a common law presumption to be inferred.
- 9.5 Therefore, the recommendation is that the application be refused.

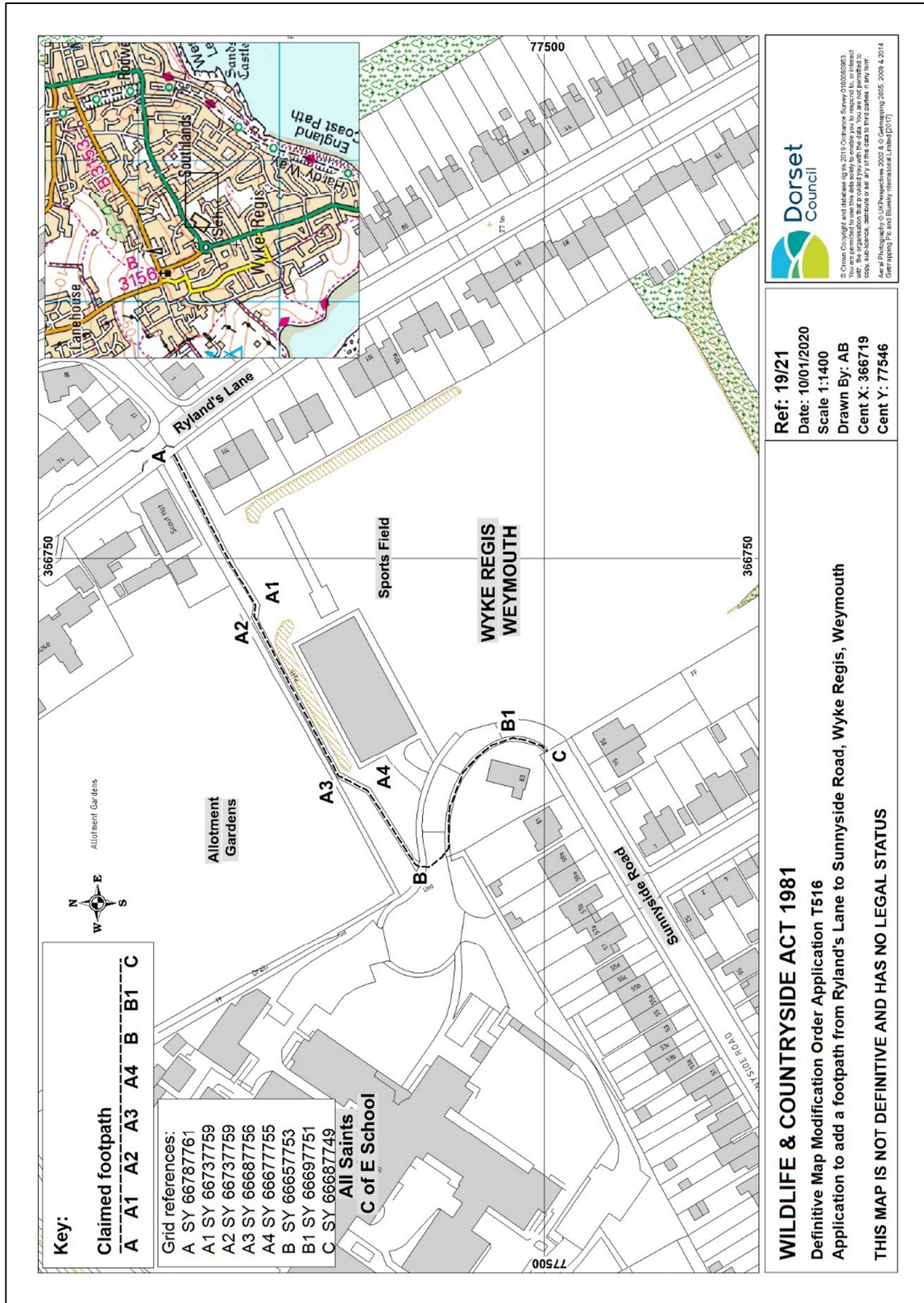
Matthew Piles

Corporate Director for Economic Growth and Infrastructure

October 2021

Drawing 19/21 (current application route, T516)

APPENDIX 1a

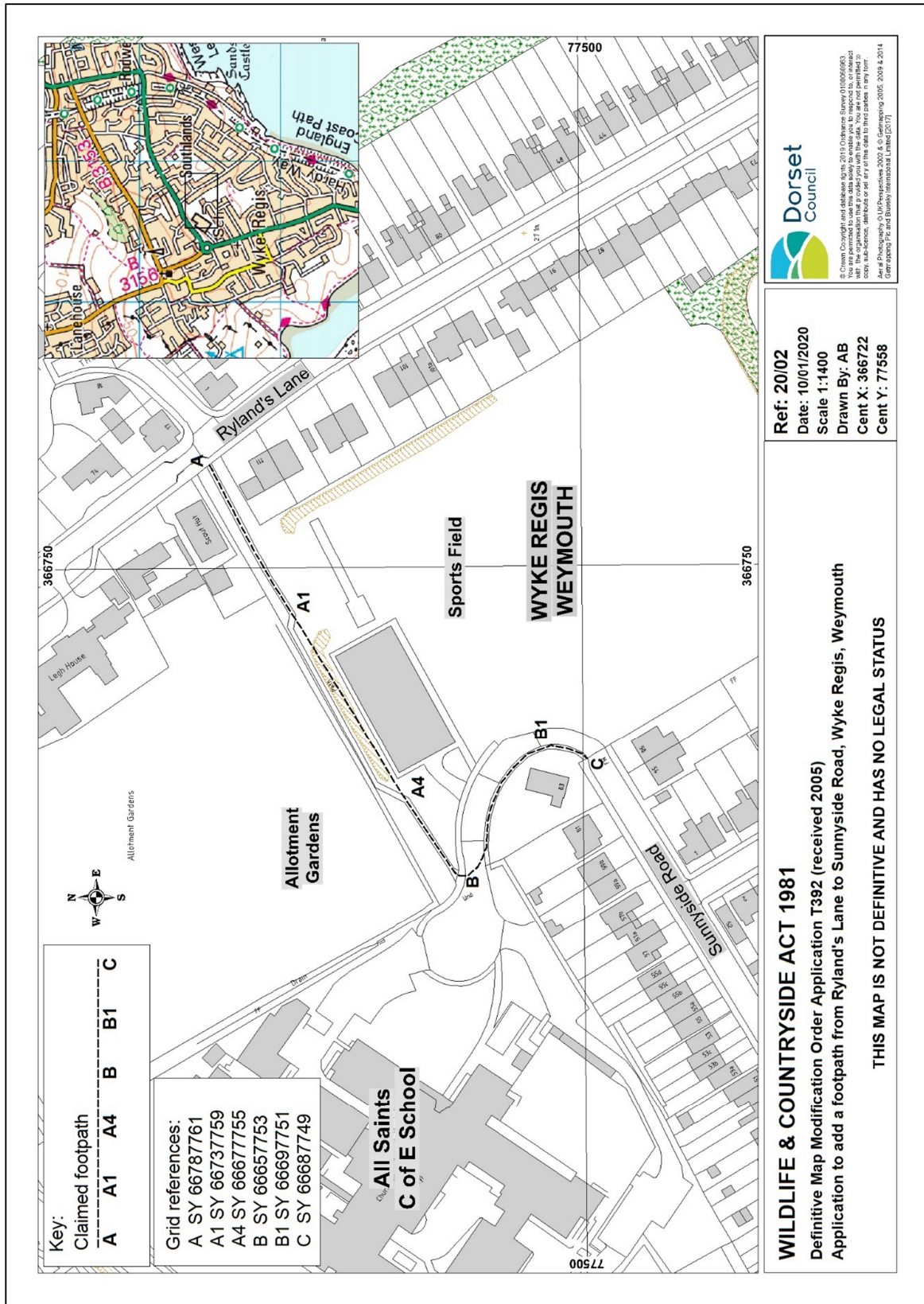


Ref: 19/21
Date: 10/01/2020
Scale 1:1400
Drawn By: AB
Cent X: 366719
Cent Y: 77546

WILDLIFE & COUNTRYSIDE ACT 1981
Definitive Map Modification Order Application T516
Application to add a footpath from Ryland's Lane to Sunnyside Road, Wyke Regis, Weymouth
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Drawing 20/02 (old application route, T392)

APPENDIX 1b



LAW**General**Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the 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 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 Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
 - (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.

- 1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.
- 1.9 Where an objection has been made to an order, the 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 Council can itself confirm the order, provided that the criterion for confirmation is met.
- 2 Highways Act 1980
- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought in to question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

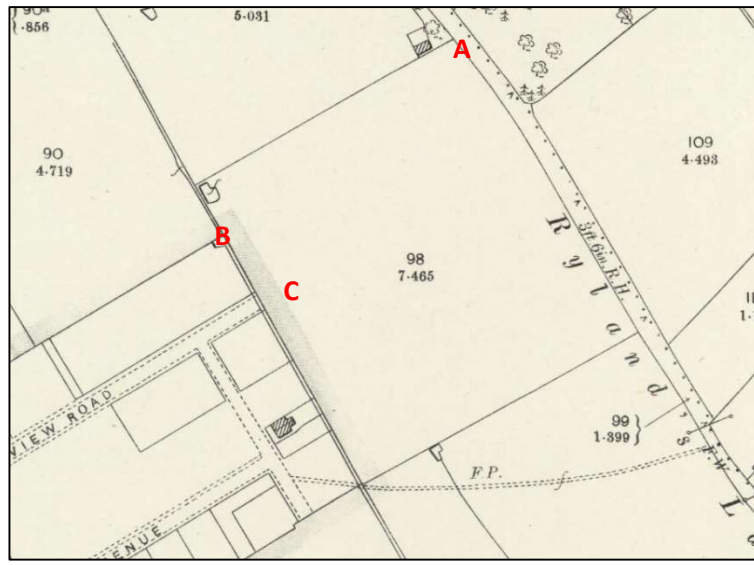
- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 2.5 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.
- 3 Human Rights Act 1998
- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

Case specific law

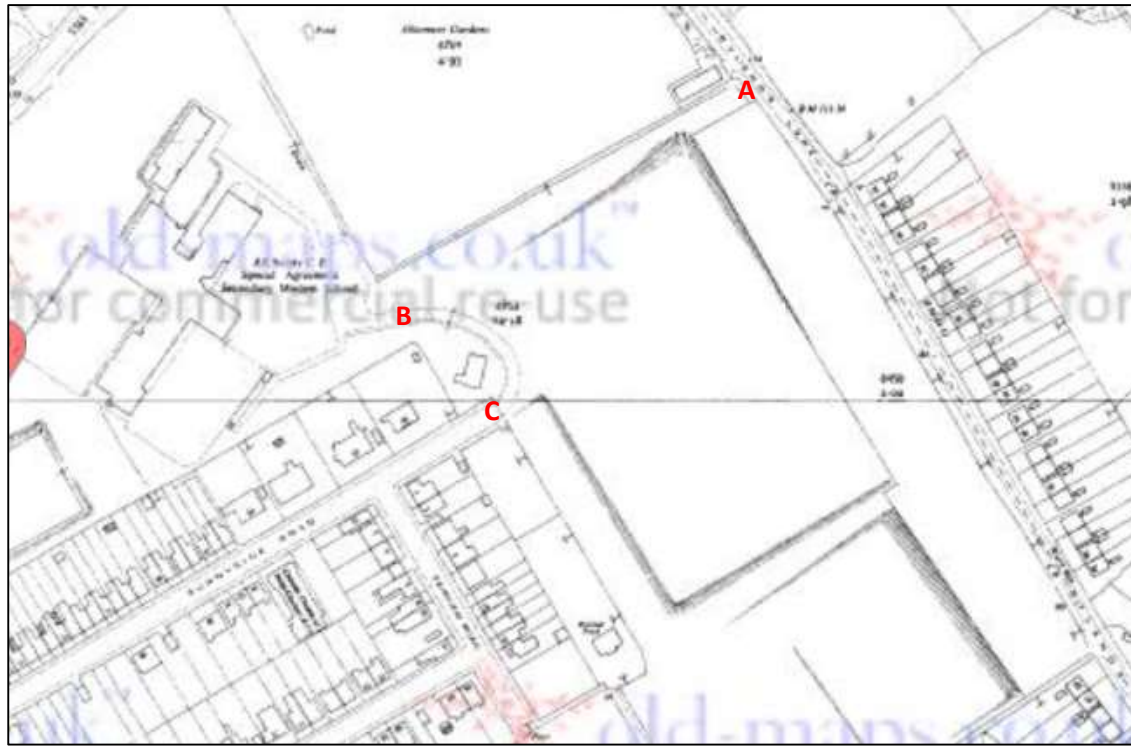
National Parks and Access to the Countryside Act 1949

- 3.3 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.

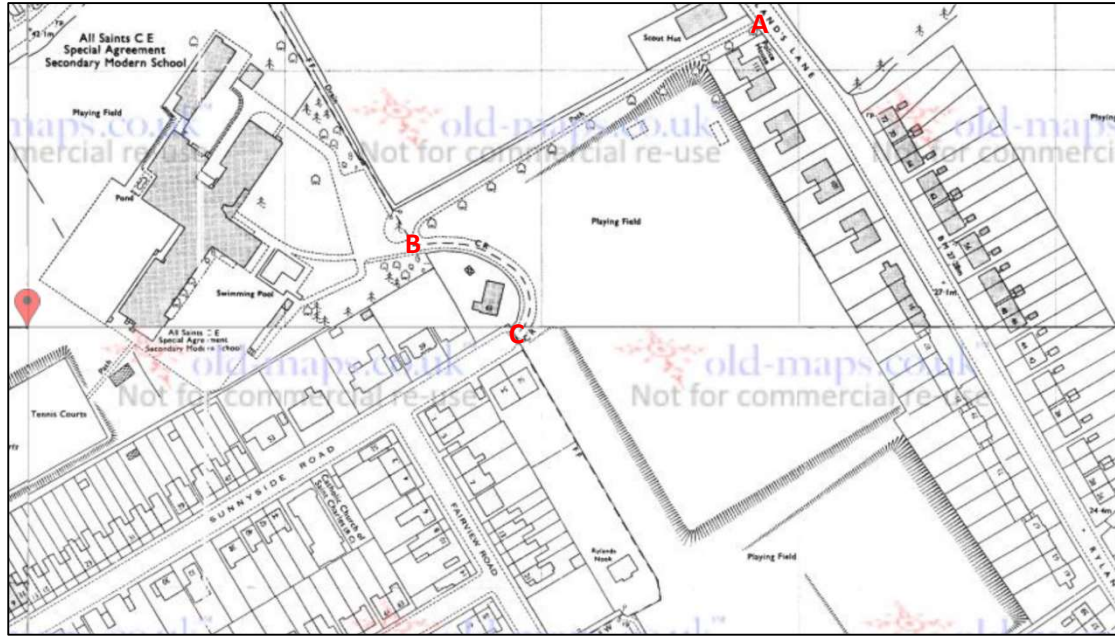
Ordnance Survey Map (1901) at a scale of 1:2500



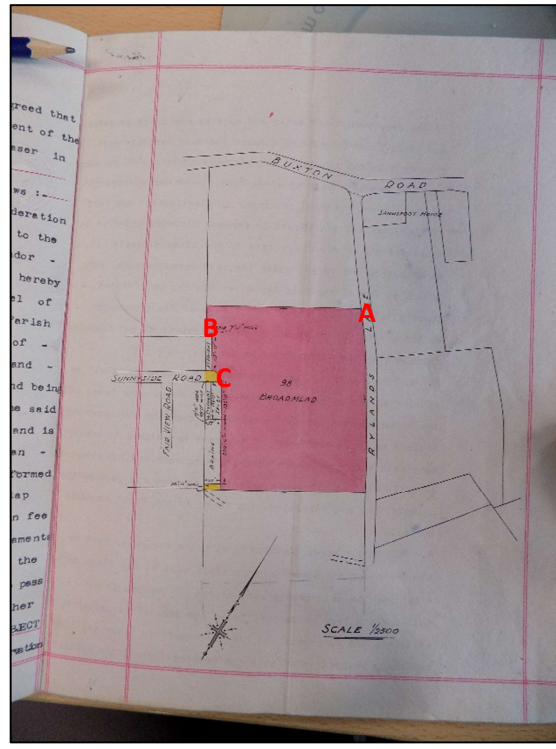
Ordnance Survey Map (1959) at a scale 1:2500



Ordnance Survey Map (1965 – 1973) at a scale of 1:1250



Conveyance document plan (1936)

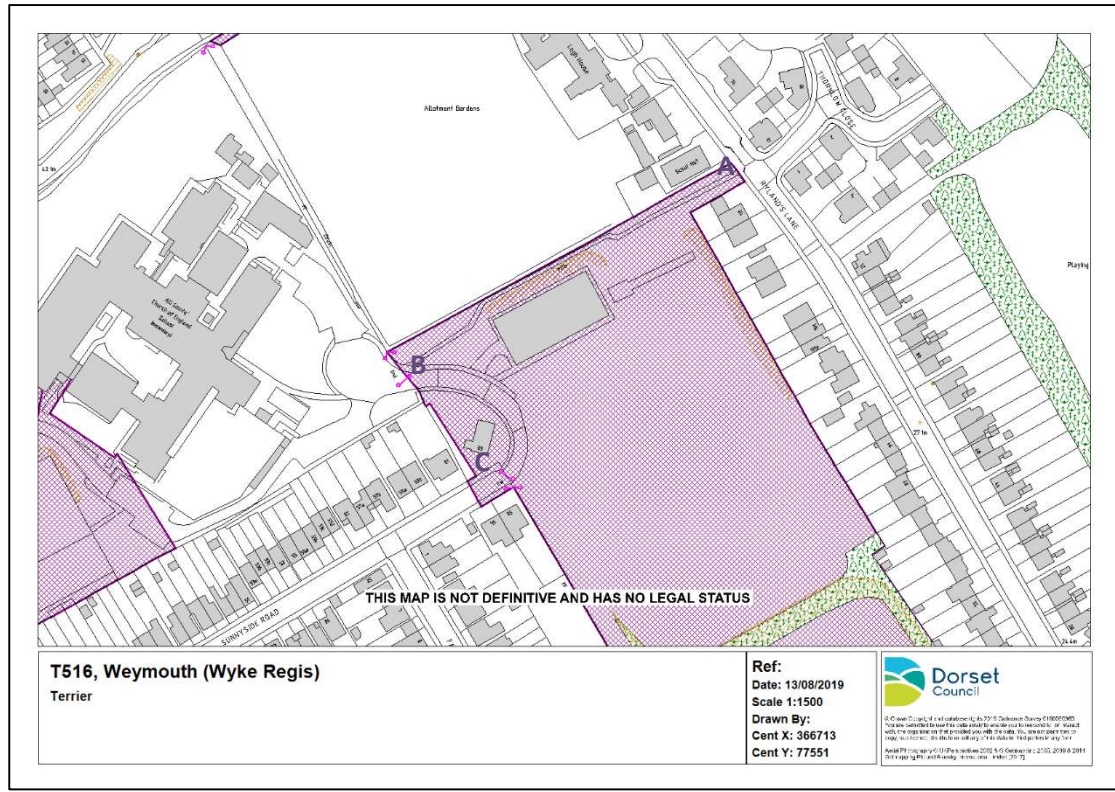


Conveyance Document plan (1949)



Dorset Council Property Services Plan

All Saints' School Playing Field (2019)



Sign at Point B1 photographed in 2005



Aerial Photo (1947)



Aerial photo (1972)



Aerial Photo (2005)

T516, Weymouth
VAP 2005

Ref:
Date: 13/08/2019
Scale 1:1500
Drawn By:
Cent X: 366744
Cent Y: 77544

Dorset Council

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Aerial photo (2017)

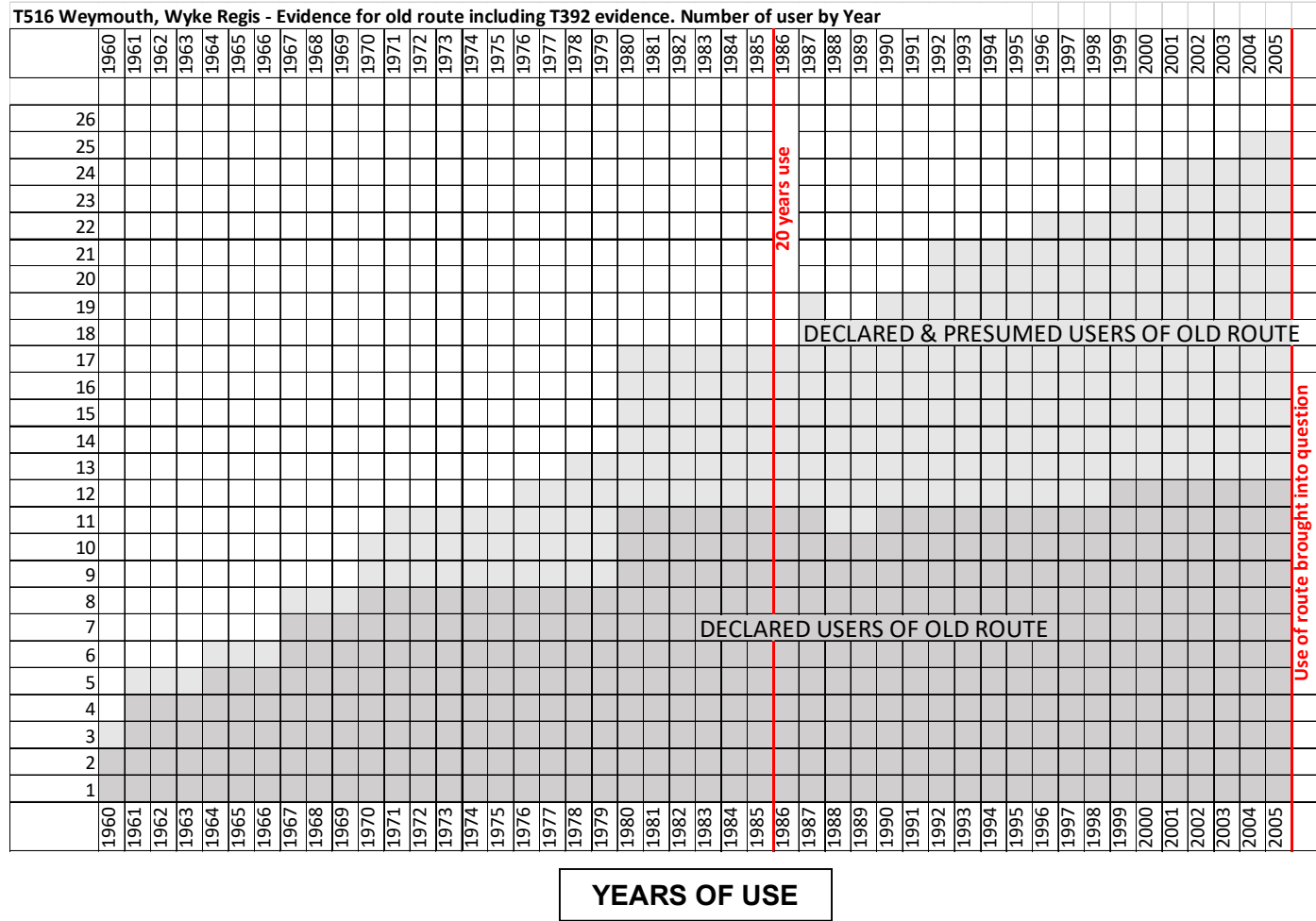
T516, Weymouth
VAP 2017

Ref:
Date: 13/08/2019
Scale 1:1500
Drawn By:
Cent X: 366744
Cent Y: 77544

Dorset Council

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Chart to show level of use of old route



NUMBERS

YEARS OF USE

Duration of Use, New Route

T516 Weymouth, Wyke Regis - Evidence for new route. Durati															
User no	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
	Declared use of new route, around sports hall														
1															
2															
3															
4															
5															
6															
7															
8															
10															
11															
12															
16															
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20															
21															
23															
24															
25															
26															
27															
35															
36															
37															
Total users	22	22	23	23	23	23	23	13	13	13	14	14	14	14	6

Number of Users, New Route

T516 Weymouth, Wyke Regis - Evidence for new route including. Number of user by Year														
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
23														
22														
21														
20														
19														
18														
17														
16														
15														
14														
13														
12														
11														
10														
9														
8														
7														
6														
5														
4														
3														
2														
1														
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019

Frequency of Use, New Route

T516 Weymouth, Wyke Regis - Evidence for new route. Frequency of use by User																
User no	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019		
1	200	200	200	200	200	200										
2	200	200	200	200	200	200	200	200	200	200	200	200	200	200		
3	150	150	150	150	150	150										
4	50	50	50	50	50	50	50	50	50	50	50	50	50			
5	40	40	40	40	40	40										
6	40	40	40	40	40	40										
7	800	800	800	800	800	800										
8	12	12	12	12	12	12										
10	50	50	50	50	50	50										
11	360	360	360	360	360	360										
12	50	50	50	50	50	50										
16	6	6	6	6	6	6										
17	50	50	50	50	50	50										
18		12	12	12	12	12	12	12	12	12	12	12	12	12		
19												360	360	360		
20	150	150	150	150	150	150	150	150	150	150	150	150	150	150		
21	100	100	100	100	100	100	100	100	100	100	100	100	100	100		
23	150	150	150	150	150	150	150	150	150	150	150	150				
24	12	12	12	12	12	12	12	12	12	12	12	12	12	12		
25	50	50	50	50	50	50	50	50	50	50	50	50	50			
26	50	50	50	50	50	50	50	50	50	50	50	50	50			
27	3	3	3	3	3	3	3	3	3	3	3	3	3	3		
35										100	100	100	100	100		
36	2	2	2	2	2	2	2	2	2	2	2	2	2	2		
37	360	360	360	360	360	360	360	360	360	360	360	360	360	360		
Total / year	2885	2897	2897	2897	2897	2897	1139	1139	1139	1239	1239	1599	1449	1144		
Mean / day	7.9	7.9	7.9	7.9	7.9	7.9	3.1	3.1	3.1	3.4	3.4	4.4	4	3.1		

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