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## SUBMISSION

**Re: Application to upgrade bridleways ( and other ways)  
to BOAT**

**BR17 & BR35, Beaminster and other paths**

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## INDEX

		<u>Page No.</u>
1.	Introduction	4
2.	The Application	4
3.	Standard of proof	5
4.	What the Applicant has to prove	7
5.	Ownership, occupation and private maintenance	7
5.1	Title to the Langdon Estate	7
5.2	Title to land at Beaminster Down	8
5.3	Tenancy of Mr G Streatfeild	9
5.4	The <i>Drain</i> case	9
6.	Status of the various elements of the Claimed Route	10
7.	UCR	11
8.	Handover map and County road records	12
9.	Topography of the Claimed Route	13
	SUMMARY OF PARAS 5-9	15
10.	Documentary evidence submitted by FoDROW	16
10.1	Introduction	16
10.2	Various old maps	18
10.3	The 1800 map of Beaminster roads	18
10.4	Beaminster Inclosure Award and map 1809	19
10.5	<i>Eyre –v- New Forest Highways Board 1892</i>	22
10.6	Beaminster Tithe Award 1843	23
10.7	The OS maps	24
11.	Documentary evidence not submitted by FoDROW	25
11.1	Finance Act 1910	25

11.2	Object Names Book	26
11.3	Parish claims and review of Definitive map	26
11.4	Spot heights and bench marks	30
	SUMMARY OF DOCUMENTARY EVIDENCE	31
12.	User evidence	32
12.1	User evidence submitted by FoDROW	32
12.2	User evidence submitted by the Objectors	33
12.3	Illegality and <i>Bakewell</i>	33
	SUMMARY OF USER EVIDENCE	34
13.	Conclusion	34
	List of Appendices	37

## **SUBMISSION**

**Re: Application to upgrade bridleways ( and other ways)  
to BOAT**

**BR17 & BR35, Beaminster and other paths**

1. This Submission has been prepared by Thring Townsend, solicitors, acting for
  - Langdon (Dorset) Farms (Mr C W W Dupont) of Langdon Manor, Beaminster, Dorset;
  - Mr J MacKenzie-Green of Higher Langdon Farm, Beaminster, Dorset; and
  - Mr G Streatfeild of Denhay Farms Limited, Broadoak, Bridport, Dorset (tenant of land at Beaminster Down)

("the Objectors"). Although it is believed that Dorset County Council ("DCC") have not yet carried out their own investigation of the Application, the Objectors have carried out a great deal of their own research into the background of the ways the subject of the Application. The purpose of this Submission is to summarise that research, and interpret it, and apply to it the relevant law.

### **2. The Application**

- 2.1 This was submitted to DCC on 21 December 2004 by Friends of Dorset Rights of Way ("FoDROW"). Its purpose is to upgrade to BOAT status a pair of bridleways at Beaminster (nos. 17 & 35) and a stretch of path between them and another stretch between the southern end of BR35 and the main road at Dirty Gate.
- 2.2 As a point of principle it has to be questioned whether it is technically possible for two parts of the Claimed Route to be modified to byway



status if it is the case that either or both of those is already a publicly maintained road.

- 2.3 This claim reveals a complicated and inconsistent state of affairs. It covers six stretches of path. We have applied lettering to each of these stretches as follows:

- A-B This starts at Dirty Gate in the south-east and runs a short distance north-westwards, and stops at the parish boundary. FoDROW describe it as a "county road". It is apparently tarmac-ed by DCC from time to time, but that is no necessary indication of its status.
- B-C This stretch runs from the dog-leg at B to the gate at the entrance to Higher Langdon Farm. FoDROW describe this stretch as a private road, which is what it is.
- C-D This runs from C to the gatepost at the southern end of Crabb's Barn Lane. This is a bridleway, no 35.
- D-E This is Crabb's Barn Lane and runs from the gateway at D up to White Sheet Hill. It was previously BR58, though FoDROW describe it as a UCR. This is not clear, but even if it is a UCR it by no means guarantees that it carries public vehicular rights.
- E-F This is a track running along the south-western edge of Beaminster Down. It is BR17, previously BR30.

- 2.4 In this Submission we describe the whole length from A-F as "the Claimed Route". A map is attached (**Appendix 1**) showing the Claimed Route and this lettering.

### 3. **Standard of proof**

- 3.1 This BOAT claim must be proved by the Applicant if it is to succeed. The standard of proof is on the balance of probabilities. It is not a question of whether or not public vehicular rights have been reasonably

alleged to subsist. The decision in *Todd and Bradley v DEFRA* [2004] EWHC 1450 (Admin), makes it plain that the proper standard of proof to be applied in a case such as this is **not** that byway status has been reasonably alleged to subsist, but rather the higher test: that the decision should be made on the balance of probabilities.

- 3.2 FoDROW take a different view on this. They say that, in the light of *Todd and Bradley*, “*this claim requires a different, that is lower, level of proof than the Meerhay Lane claim, at least on the section where no public rights are currently shown*”. This is interesting, and clearly needs to be resolved. FoDROW’s point is based on the difference between section 53(3)c(i) and (ii) in the Wildlife & Countryside Act 1981, the first of which relates to the situation where no Definitive status exists and the claim is to add a path, and the second of which is to vary an existing Definitive path. FoDROW seek also to draw a distinction between the Meerhay claim and this one, presumably because BR14 covers all of that claim whereas here not all of the Claimed Route has Definitive status. FoDROW say that *Todd and Bradley* entitles them to argue that the lower test (reasonable allegation) still applies where no Definitive status exists ((c)(i)), even if the higher test (balance of probabilities) applies where a variation is sought of an existing definitive path ((c)(ii)). It is true that the 1981 Act says that the lower test applies on the making of an order under (i), but the point of *Todd and Bradley* is that on confirmation of an order the higher test applies in all circumstances. Para 51(v) of the judgment in *Todd and Bradley* states:

***“It is anomalous if it is sufficient for the purposes of adding a way to the Definitive map under subsection (c)(i) that a test of reasonable allegation is sufficient when the civil burden of proof is required to obtain an order varying the permitted user of a way under (c)(ii) and in removing a way under (c)(iii).”***

The finding in *Todd and Bradley* is that the higher test (balance of probabilities) is the proper test to apply on confirmation of the order in all three sets of circumstances. That being so, it would be a nonsense for the lower test to be applied on the making of the order.

4. **What the Applicant has to prove**

The Applicant has to prove that the Claimed Route has acquired public vehicular status throughout its length. This either means demonstrating on the balance of probabilities that the documentary evidence shows that public vehicular rights have existed in the past and/or that, irrespective of documentary evidence, the public as a whole have used the Claimed Route with vehicles as of right for more than 20 years without interruption, force, secrecy or permission (and there has been no rebuttal of the presumption of dedication), or that a lesser period of similar public use can be proved under common law (in which case the onus of proving lack of dedication is on the Applicant). In either case, it must have been dedicated to the public use, and accepted and used by the public as of right with vehicles. The "public" means the public as a whole, and not just sections of it or those who were exercising private rights of access.

5. **Ownership, occupation and private maintenance**

5.1 **Title to the Langdon Estate:**

- The earliest document we have managed to trace is a copy plan from 1907. Although this deals principally with the reservoir, it confirms that the then northern boundary of the Langdon Estate ran across the Claimed Route at point D with an unbroken line. The plan is very large, but a copy extract from it is attached at **Appendix 2**. It is based on the 2<sup>nd</sup> Edition OS Map 1903 which we deal with below. Note the crucial change in the Claimed Route at point D: Crabb's Barn Lane is a wide double-fenced area which, at its end, gives off into the surrounding fields. The width of the track as it debouches into OS503 forms less than a quarter of the width of the gateway at the end of Crabb's Barn Lane. These two contrasting ways when viewed together in this way do not give the impression of the whole being a through route, certainly not at least for public vehicles.
- Attached (at **Appendix 3**) is a copy of the plan on the 1925 conveyance of the Langdon Estate. This shows a red line and pink margin at both ends of the farm. Succeeding conveyances show an exactly similar



position, including the 1939 conveyance into the Dupont family (**Appendix 4**).

- In 1980, Langdon was split from Higher Langdon, the ownership of the Claimed Route B-C-D remaining with Langdon Farm. Detailed repair provisions were inserted into that conveyance to allocate the cost of repair between the two farms on a proportionate basis. From B to the first gate it is on a 50-50 basis; between the first gate and point C it is 80% (Higher Langdon) and 20% (Langdon).
- The title to Higher Langdon also includes the express grant of private access rights on the Claimed Route.
- It is clear that the Langdon Estate has existed as a private estate for a very long time. The Inclosure Map (see para 10.4 below) shows that immediately beyond point D the Langdon Estate began, so evidence of the Estate and the Claimed Route being in private ownership exists as long ago as 1809.
- If the Claimed Route as a whole had historically been dedicated to the public use with vehicles, it is highly unlikely that the central section would have been within private ownership and occupation, and been the subject of detailed provisions as to private access and repair.

## **5.2 Title to land at Beaminster Down:**

5.2.1 The deeds show that the whole of Beaminster Down was held by Trustees on behalf of the Cox family going back to at least 1880, i.e. including the F-E stretch.

5.2.2 In 1938 the whole Down was conveyed by the Trustees to Beaminster Rural District Council. The plan on that conveyance shows that the F-E stretch was included within the conveyance, and the schedule shows likewise: OS907 (33.364 acres) was exactly the same number and acreage as on the 1903 OS map. The Down was purchased by the RDC for the purpose of safeguarding the Beaminster water supply.

- 5.2.3 With the deeds is a plan dated June 1951 prepared for Beaminster RDC by H A Jarvis, Engineer & Surveyor. A copy of this plan is attached at **Appendix 5**. It shows adopted roads in brown and bridleways in green. F-E is green and so is E-D.
- 5.2.4 With the deeds is also a statutory declaration of H L Kitson dated 15<sup>th</sup> January 1952 which inter alia makes reference to the Inclosure Award of 1809, which provided that *"the Open and Common Down or Field of Pasture called Beaminster Down should remain open and unenclosed and should be fed and depastured by sheep as theretofore it had been used and accustomed"*. No reference here to the setting out of any rights of way of any kind on Beaminster Down.
- 5.2.5 In 1957, Beaminster Down was conveyed by the RDC to Langdon (Dorset) Farms. Both the plan and schedule on that conveyance show that the F-E stretch was included, and that the OS no. (907) was exactly the same number and acreage (33.364) as before.
- 5.2.6 The 1957 search plan shows the F-E stretch as a bridleway.
- 5.2.7 In 1986 the whole of the Down, including F-E, was conveyed to the present owners (the Hood trustees).
- 5.3 **Tenancy of Mr G Streatfeild:** Mr Streatfield (Denhay Farms Ltd) has been tenant of the land at Beaminster Down since 1986. His tenancy includes the F-E stretch ie it is within his exclusive occupation.
- 5.4 **The Drain case:** The main point of that case, for present purposes, is that a provision in a written tenancy agreement by which the landlord obliges the tenant to prevent trespass and the acquisition of public rights of way is good evidence of his lack of intention to dedicate. The full case reference is *Godmanchester Town Council and Drain v DEFRA [2004] EWHC 1217Admin*.

6. **Status of the various elements of the Claimed Route**

- 6.1 As mentioned at para 2.2 above this claim throws up a complicated state of affairs, with five different stretches of way, of differing types and natures.
- 6.2 FoDROW's argument is that "***it is fairly ridiculous to have so many different classifications on one route, which range from no public right of way to a public right for vehicles***" and that "***it is in everyone's interest to resolve this anomaly***". They therefore argue that "***the correct classification for the whole route is byway***".
- 6.3 This is an interesting argument, and merits careful and detailed analysis. First, we would argue that there is nothing ridiculous about it; it merely reflects the evolution of differing types of use, both public (though not by any means necessarily vehicular) and private, over hundreds of years. Secondly, we would argue that this is not an anomaly which needs resolving. It is no doubt in the interests of FoDROW and their members to have the Claimed Route opened up for use by the public with vehicles, but it is not in anyone else's interest to do so. To everyone else it is a satisfactory state of affairs which needs no alteration. The public are entitled to walk and ride horses on parts of it, but the Claimed Route is not open to public vehicles, and there is no reason why it should be.
- 6.4 In order to succeed in this claim, FoDROW will, as mentioned in para 4 above, have to prove that the Claimed Route as a whole has been dedicated to public use with vehicles. They cannot properly argue that because some of it may have been (which is itself far from certain), all of it now should become a byway. They will plead the *Eyre* case (see below) but we differ from them on the true construction of that decision.
- 6.5 It is the Objectors' case that the variety and inconsistency of types of way tends to militate **against** a public vehicular through route, rather than in favour of it. It is admittedly a complex and inconsistent picture, but that is not a reason for jumping to conclusions. The variety of types of route is more likely, we argue, to prove the **absence** of public



vehicular rights throughout than the presence of such rights. Again, we must say that it is not a question of what FoDROW would like the route to be (understandable though that may be for them and their members) but of what as a matter of law the proper status of the Claimed Route actually is.

- 6.6 Of these five stretches, then, at least two are bridleway and one is free of any sort of public right, being a private and privately-maintainable road. The A-B stretch is said by FoDROW to be a county road, which means the DCC are presumably in the habit of tarmac-ing this short stretch. That is all it means. It does **not** of itself mean that the public have the right to drive vehicles on it (though of course it enjoys private vehicular access rights). The D-E stretch (Crabb's Barn Lane) is a stone track with patches of grass; it is a one-off and self-contained way. It is said by FoDROW to be a UCR.

## 7. UCR

- 7.1 It is necessary to be clear about what a UCR actually means. The most important point to make at the start is that historically UCRs have been used to record questions of maintenance rather than necessarily questions of user and public rights. The fact that a UCR has been metalled and/or maintained by the highway authority does not of itself necessitate the way having been open to public vehicular use. It is well-known that many UCRs are in fact cul-de-sacs leading to the entrance of a farm or other property, which the tarmac-ing gang employed by the highway authority would metal by convention to assist the farmer or property owner with his own private access. Often such stretches of UCR would coincide with footpath or bridleway status, the metalled stretch providing private vehicular access to the property, combined with public footpath or bridleway rights which would then continue on beyond the end of the metalled UCR.

- 7.2 It is not the case, by any means, that any vehicular rights continued beyond the end of the metalled stretch, though it is often mistakenly believed that, because a stretch of UCR is followed by a footpath or a bridleway, there must be some historical public vehicular status in the

continuing footpath or bridleway; and, as mentioned, there is no certainty that there is any public vehicular status in the UCR stretch itself. In the present case, immediately at the northern end of the A-B stretch the way does not even continue as a footpath or bridleway. It is a private way.

7.3 If you then refer back to our comments at 5.1 above and look again at the conveyance plans at **Appendix 3 & 4** you will see how there is a self-contained ring-fenced farm in the middle, consisting of over 400 acres, with a pair of stretches of way at either end which may be publicly-maintained. It is very important to bear in mind that, just because (if that is indeed the case) there is a public way approaching one side of a farm and another approaching from the other side, it does not mean that you can conclude that the public way (if any) continued across the middle of the farm.

7.4 This situation occurs in **many** farms in our experience, and it would be quite wrong to conclude that the ways at either end should be, as it were, deemed to link together to form a through route when the intervening farm is, as in this case, privately owned and occupied.

7.5 FoDROW argue that a UCR automatically enjoys "proven and admitted public vehicular rights". We argue against that.

7.6 **The inclusion (if any) of a way in the county road records and on the handover map is an indication of its maintenance status rather than its user status.**

But was either of those two stretches (A-B and D-E) ever shown on that map or on those records?

## 8. **Handover map and county road records**

8.1 It has been confirmed to us in writing by DCC that the handover maps for West Dorset were destroyed inadvertently several years ago while being stored in a depot at Bridport. They are therefore obviously not available for inspection. These maps would have shown us what the rural district council at the time believed they were responsible for by

way of road maintenance. The only source of information on this is the County Rural Road Estimates 1931-1932, copies of which we have been sent by DCC. These records themselves are difficult to construe without any accompanying map, because the descriptions of each road are somewhat imprecise.

- 8.2 The point of great interest as far as this Submission is concerned is that there does not appear to be any reference in these Estimates to the Claimed Route or any part of it. There is no reference, for example, to Dirty Gate or to Crabb's Barn Lane, or any way connecting the B3163 with White Sheet Hill, let alone across the Down on the E-F stretch.
- 8.3 The question also needs to be asked as to why, if two stretches of the Claimed Route really do already carry public vehicular rights, FoDROW should want to reclassify them as BOAT.

## **9. Topography of the Claimed Route**

- 9.1 At the southern end the A-B stretch is metalled by (it is believed) the County Council. Point B at the dog-leg appears to coincide with the parish boundary turning off to the north-east. The B-C stretch is also metalled, but maintenance is done privately.
- 9.2 About half-way along the B-C stretch there is a gate, still in existence, and shown on the 1903 OS map. The map shows a brace mark at that gate indicating that the B-C stretch forms part of the same OS no (OS511) as the C-D stretch which itself forms part of OS511 (17.874 acres) through which it runs.
- 9.3 Point C is at the gated entrance to Higher Langdon and from there the C-D stretch runs through open fields, through another gateway, and up to the third gate at the southern end of Crabb's Barn Lane.
- 9.4 Thus, part of B-C and the whole of C-D is grassed and not metalled and runs across fields. The key points are that there is no made way from the first gate to the third gate and that there are as many as three gates on a short stretch of way (no more than ½ mile long), making it most



unlikely that any public vehicular rights could have existed on that stretch. C-D is a bridleway (BR35).

- 9.5 You then enter Crabb's Barn Lane at point D, at the third gate. Crabb's Barn Lane bears a distinctly different impression from the open stretches to the south of it. It is fenced on both sides, so that the gate at its southern end forms it into an enclosed rectangle, open only to the main road at its northern end (point E).
- 9.6 Near the southern end of Crabb's Barn Lane lies the site of the Barn itself, and the lane gives the impression of being a way leading to and serving that Barn, from which the lane derived its name. The Finance Act 1910 Map (which see below) carried a solid red line at point D, where the way opens out into the fields, showing that whatever vehicular access was enjoyed on Crabb's Barn Lane did not continue across the fields to the south.
- 9.7 The Object Names Book (which see below) is precise in describing the length of Crabb's Barn Lane as 32 chains, and that the lane terminates at the end of that length. 32 chains equals 704 yards which equals exactly 0.4 miles. It stops at a gate. Since such precise measurements were used by the OS, and since the lane was enclosed and stopped at a gate, it is the case that, whatever public rights it might have carried, Crabb's Barn Lane was a cul-de-sac.
- 9.8 In the parish claim under the 1949 Act (which see below) the lane formed part of BR58.
- 9.9 The F-E stretch is pasture land on the south-western edge of Beaminster Down. Soon after their purchase of the Down, Langdon (Dorset) Farms gated F-E at both ends. It still is gated at both ends.

#### SUMMARY OF PARAS 5-9

- The Langdon Estate was in private ownership before 1809 and has remained so since
- The land at Beaminster Down has been in private ownership since at least 1880, and tenanted since 1986
- Thus the F-E stretch and the D-C-B stretch have been within private ownership and occupation during that time, and subject to private access, repair and maintenance
- The existence of differing types of public status (and none) militates **against** a public through-route
- The *Eyre* case does not prove what FoDROW suggest
- The existence of UCR status on E-D and B-A (if that is the case) does **not** by any means guarantee the existence of public vehicular rights, only public maintenance
- The existence of many gates on a short stretch tends to indicate absence of a public through-route

## DOCUMENTARY EVIDENCE

### 10. Documentary evidence submitted by FoDROW:

- 10.1 In cases such as this where there is no evidence of public vehicular use, the Applicant's case stands or falls entirely on the documentary evidence; this, on its own, has therefore to be sufficient to show that public vehicular rights really have come into existence. This is why a careful study is required of each piece of evidence, not only to see whether the Claimed Route is shown but also that the showing of it can properly be taken to mean that at that time public vehicular rights existed on the Route as a whole.

Many ways were shown on old maps which were not necessarily public vehicular ways or even public ways at all. A private farm or estate road shown on, say, ten old maps still remained only a private farm or estate road. The showing of it on a large number of maps does not necessarily invest it with any public rights.

Hilberry J discussed the general value of maps in evidence in the case of *Merstham Manor Limited -v- Coulsdon and Purley Urban District Council* [1937] 2 KB 77:

*"It is not necessary, I think, to discuss the ancient maps, the ordnance maps, the tithe maps and the estate maps, save to say this. The road is shown as a road on the earliest maps put in evidence before me. Rocque's map of 1762, produced from the custody of the British museum .... was the earliest in date. It showed the road in question and the shaw alongside which it runs. The road is again shown [in maps of] 1802, 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the topographer-author was intending to represent the roads on his map as public highways. All the ordnance survey maps show the road; but it was admitted by a witness from the Ordnance Survey Department that they show*



***any road which is there on the surface whether it is a public highway or not. The tithe maps make no distinction between public and private roads; their object is to show what is titheable, and the roadways are marked upon them as untitheable parts of land whether they are public or private”.***

The decision in *Robinson Webster (Holdings) Limited –v- Agombar* [2001] HC000095 is also helpful on this general point, because it deals with old maps and tithe maps as well as the Finance Act 1910 map. At para 43 of the judgment in *Agombar*, where various old maps were being discussed and in respect of which it was argued that the route was shown thereon in the same colour as other principal roads in the area, it was submitted that the proper inference to be drawn from the colouring on those plans was that the route was then a highway, but the Judge said: ***“In my judgment, it is unsafe to draw any such inference from those plans. I agree with the submission of Mr Hodge QC that there is no reason to suppose that the cartographers were concerned to distinguish public from private roads on those plans.”*** At para 45, the Judge dealt with Tithe maps and said: ***“Roads generally, whether public or private, were not titheable and so the tithe maps are generally relevant only to proving the existence of a road at a particular time rather than its status.”***

The case of *Maltbridge Island Management Company –v- Secretary of State for Environment & Hertfordshire County Council* (1998) EGCS 134 is helpful on both Tithe map and Finance Act 1910 evidence. On the Tithe map, Sullivan J found that, because both public and private roads were not titheable, the fact of a road being shown on a tithe map is no indication whether it is public or private. On the Finance Act 1910 evidence, he found that the fact of a way being uncoloured on the map is only of corroborative evidential value and not in any way conclusive: there may well be other alternative interpretations of the evidence.

Bearing these points in mind, let us look at the documentary evidence submitted by FoDROW. This can be categorised as follows:

- Various old maps

- The 1800 Beaminster road map
- The Beaminster Inclosure Award and Map 1809
- *Eyre –v- New Forest Highway Board 1892*
- Beaminster Tithe Map 1843
- OS Maps

## 10.2 Various old maps:

- The *Taylor* maps of 1765 and 1796 do appear to show the Claimed Route as existing, but they are imprecise and cannot, for reasons already given, be relied upon for any indication of status.
- The *Greenwood* map shows the Claimed Route uncoloured. The only guide to status in the legend is that uncoloured ways are “Cross Roads”. This term has no clear definition. Some would argue that it is the next category down from turnpike roads; others that it is an imprecise term to catch all lesser ways, both public and private. Not every way shown on *Greenwood* is public, thus suggesting the latter interpretation as more likely. Many private and accommodation ways and farm entrances are shown on *Greenwood*. For example, the private ways at Axnoller Farm and at Parnham and other private estates, and the entrances to Chapel Marsh and Put Hill, are all shown in the same way. So, again, this map is not determinative of status, merely existence.

10.3 **The 1800 map of Beaminster roads:** This map does show what appears to be the Claimed Route as an indistinct double-pecked road. That a road of sorts existed along the Claimed Route in 1800 is very probable, because many other maps also show it, but that does not mean that it was public vehicular. The word “road” encompasses many types of way, both public and private. The 1800 map, although simply drawn and obviously not to scale, shows other roads which are obviously not public vehicular. It is worth looking at this in detail. For example, north of the Beaminster Down road there are as many as five roads shown on this 1800 map running in a north-south direction. The most westerly of these five appears to be what is now the A3066 Misterton-Whetley Cross road (though today it does not exist south of Whetley Cross). The other four roads do not exist or are private farm tracks or bridleways or footpaths. So this 1800 map, while helpful in its omissions, is not a basis for showing that public



vehicular rights necessarily existed on the roads which were shown on that map.

#### 10.4 **Beaminster Inclosure Award and Map 1809:**

10.4.1 There is only one map attached to the Award. A copy is attached at **Appendix 6**. This shows Crabb's Barn Lane (the E-D stretch), but nothing of F-E or D-A. At point D, the map shows Crabb's Barn Lane as terminating and, as it is now, opening out into the fields. The whole of these fields south of point D is marked "Langdon" and appears to be unenclosed or unallotted land. This is because it was then and still is today a private estate.

10.4.2 The map has the words "To Hook Village" pointing south-east. What does this mean? We suggest that it means no more than that it was physically possible to go towards Hooke in that direction. This is not doubted, for it is clear that the Claimed Route did exist as a way of sorts in those days. This Inclosure Map does not of itself mean that public vehicular routes existed on that way.

10.4.3 It is necessary, of course, also to look at the Award. This says that Crabb's Barn Lane was "**one other public carriage road and highway 30' wide leading from the north-east end of White Sheet Lane [i.e. from point E] to its usual entrance on Langdon Farm in the Parish of Beaminster and adjoining to the south side of the said open and common arable fields called The South Fields the same being part of the public highway towards the village of Hook .....**" This means that Crabb's Barn Lane only existed along the route shown on the Inclosure Map and that it stopped where it stops today, at point D, at the entrance to Langdon Farm, i.e. at the point where the boundary of Langdon Farm began then and still begins now. It was thus then a cul-de-sac as it remains to this day. The words "public carriage road" therefore have to be interpreted in that context. It cannot have been a through route for the public in carriages. It would not otherwise have been shown so clearly on both the Map and Award as stopping at point D. Was "public carriage road" then really intended to mean a carriage road for the public at

large, or could it have meant a wheeled way for local people needing to get to Crabb's Barn and the fields leading off Crabb's Barn Lane? We suggest the latter. It is true that the Award said that "**the same**" [i.e. Crabb's Barn Lane] formed "**part of the public highway towards the village of Hook**", but note that the word highway was used, signifying presumably that the way from D to A enjoyed public status on foot or horse or by packhorse but not necessarily with wheeled vehicles. It is important to note the contrast between the two lots of wording: the Award states that Crabb's Barn Lane was a public carriage road and highway, but from point D onwards it was only a highway.

- 10.4.5 The cumulative effect of the depiction on the Inclosure Map and the wording of the Inclosure Award, when considered together, is thus that the public or sections of the public could take their vehicles between E and D but no further, and that beyond point D the way continued across the open field towards Hooke but not for public vehicles.
- 10.4.6 Remember that this claim is for public vehicular status on the whole of the Claimed Route. FoDROW are relying strongly on the Inclosure Award and Map for proving this argument, but it is our case that the Award and Map do not supply that proof, especially when taken in conjunction with the other points of documentary evidence referred to in this Submission which show to the contrary effect.
- 10.4.7 The Inclosure Award and Map provide no evidence at all for the F-E stretch.
- 10.4.8 As for the rest of the Claimed Route, what emerges clearly is the difference between the way Crabb's Barn Lane was shown and described, on the one hand, and, on the other, the rest of the Claimed Route: they were obviously not thought to be same type of way or status.
- 10.4.9 This does not help FoDROW in showing that this was one public vehicular through route. If Crabb's Barn Lane was a public carriage

road, it must have been a cul-de-sac, because it did not continue beyond point D, which in turn suggests that it was not intended by the Award to be a public vehicular through route.

10.4.10 It is important to consider the **purpose** of the Inclosure Award (as it is when looking at all old documentary evidence): it was to enclose and allot the parcels of land. This it did where it could, but the Langdon Estate was an integral private estate and remained unallotted. The purpose of the Award, then, was principally to deal with the allotment of land parcels. The setting out of roads was a secondary purpose, ancillary to the principal purpose. The Award did not aim to pronounce upon the status of roads and ways independently of that allotment process, but rather as part of it. Hence, we find a group of fields to the north of Crabb's Barn Lane set out and allocated and a 30' carriage road set out to be appurtenant to those land holdings. The Award was specific, that Crabb's Barn Lane was only of a limited length. It did not continue into the Langdon lands, though a way did continue in the direction of ("towards") Hooke. There is no reason to believe that the cartographer concerned himself with what happened beyond point D. He would have had no reason to do so, since the Langdon lands did not form part of the inclosure process. Thus, the sign indicating that you could go towards Hooke should not be taken as determinative, but more by way of conjecture or assumption. And anyway why pick out the village of Hooke which, although is generally in a south-easterly direction, is by no means close at hand or to be found at the end of a straight road.

10.4.11 It is in this context that the expression "public carriage road" should be viewed, the result being to show that Crabb's Barn Lane was only intended for use by a certain section of the public.

10.4.12 This Award forms a, or even the, central part of FoDROW's argument in favour of public vehicular rights on the whole of the Claimed Route, but when you consider it in its true perspective you see that it does not achieve that aim. Arguably, this Award and map together constitute evidence more against than for a public vehicular through route on the Claimed Route.



10.4.13 As mentioned at 5.2 above, the Award is helpful in showing not only that no public right of way was set out on Beaminster Down but, conversely, that the whole Down, including F-E, was to remain open and unenclosed.

10.5 ***Eyre –v- New Forest Highway Board 1892:***

10.5.1 FoDROW are attaching great importance to this case. They say that it is a “key precedent”. It is important to look at the case carefully in order to see what it actually decided. It was a case about the right of the highway board to metal a way across a common. There seems to have been no doubt, in that case, that the way was being used by the public, but it wasn’t metalled and got muddy, and the point arose as to whether the board were entitled to repair it. The court at first instance held that they were.

10.5.2 On appeal to the Court of Appeal, the issue was whether there should be a re-trial of the original case. The reasoning for that application appears to be that a point had arisen, **after the close of the first hearing**, as to whether the dedication to the public had been a limited dedication. The Court of Appeal found that the summing-up by the original Judge had been fair and copious and there was no reason to order a re-trial. The limited dedication point was not raised at the first trial (but after it) and thus no reason to question the original decision.

10.5.3 FoDROW, in their comments on this case, have said:

- that the *Eyre* case is a key precedent;
- that in that case a highway entered a common and emerged the other side but that there was no record of a highway across the common; and
- that the court found that a highway across the common could be presumed to exist.



10.5.4 With respect, that is not what happened in *Eyre*. It is misleading to say that there was no record of a highway across the common. Public use appears to have been in no doubt, but there was no metalled surface. That is why the court found in favour of the highway board's entitlement to repair by metalling.

10.5.5 It would not be a true interpretation of *Eyre* to say (as FoDROW appear to be saying) that whenever you have two stretches of public carriageway with a gap in between you can safely presume that a public carriageway must exist in the gap; nor would it be accurate to call this case a key precedent.

10.5.6 We repeat a point of central significance to this case: that where you have a private, enclosed and ring-fenced estate or farm, with a way approaching it from one side which may carry public vehicular rights, and a way approaching from the other side which may also carry public vehicular rights (a situation which is encountered in many, many farms), it does not mean that whatever public vehicular rights which may exist at either end must continue through the middle of the estate or farm. The more likely interpretation, on the contrary, is that the ways that were thought to be public vehicular, approaching the farm from either side, are not in fact public vehicular. Without clear evidence that public vehicular rights do continue across the middle, the most that can be said for the ways at either end is that they are cul-de-sacs. The *Eyre* case does not provide a precedent that in such a case the way through the middle of the estate or farm must also carry public rights. *Eyre* was a case resting on its own facts and cannot be used to show that the D-B stretch of the Claimed Route carries public vehicular rights, even if the E-D stretch and the B-A stretch do (though we argue that it is more likely that they don't).

10.6 **Beaminster Tithe map 1843:** As mentioned in para 10.1 above, tithe maps were not aimed at defining the status of ways, but rather to show what was titheable and croppable. All ways that existed as ways tended to be shown, coloured sienna. The Beaminster Tithe map shows F-E across the Down and E-D (Crabb's Barn Lane) as existing ways, and also B-A; **but the middle section D-C-B is not shown coloured. It is not shown at all.** This is

consistent with the title plans, the Inclosure Award and the Finance Act 1910 map (see below).

#### 10.7 OS maps:

- Let it again be stated that OS maps were not intended to be determinative of status, but only of existence. The legend on OS maps has always stated that the representation of a road, track or path is **no evidence** of the way existence of a right of way.
- The early OS maps show the Claimed Route as existing, but no more than that.
- The 2<sup>nd</sup> Edition OS map (1903) (surveyed 1886) needs to be studied closely because of its scale (1:2500) and detail. Copy extracts are attached at **Appendix 7 and 8**. These are the Finance Act 1910 maps, but the same base map was used.
- The F-E stretch across Beaminster Down is shown as a double-pecked (i.e. unfenced) way along the south-western edge of the Down, braced into OS907. It is not marked as BR (unlike some of the other paths on the Down). The E-D stretch (Crabb's Barn Lane) is shown quite differently – as a wide and fenced way, in the manner of an accommodation way serving the fields surrounding it. The upper portion of Crabb's Barn Lane appears to have been metalled, or surfaced in some way, judging by the thickened line. It is gated at D (i.e. at the southern end of Crabb's Barn Lane), from which point it opens out into the fields. The contrast between this E-D stretch on the one hand with, on the other, the F-E stretch on the Down and the D-C stretch to the south is notable. South of the gate at D the path is open and unfenced passing over fields. There are **two more** gates before the B-A stretch is reached, which is another double-fenced path running down to Dirty Gate. There appears to be no metalling apart from the short portion of Crabb's Barn Lane.
- There are benchmarks and spot heights along this whole stretch, which will, no doubt, be alleged to indicate public status, **but that would be a false conclusion**. These measures are purely intended for the recording of height of land (there are no contours on the OS maps). The OS policy was to place



benchmarks and to show spot heights anywhere where access could be had reasonably easily by the surveyors. The OS have confirmed that benchmarks and spot heights could just as easily be shown on private ways as public. See para 11.4 below and **Appendix 10**.

- Before leaving the OS map, it is important to re-emphasise the difference between the way in which Crabb's Barn Lane is portrayed on the one hand and the way in which the way from D to C is portrayed on the other, the latter being a substantially lesser width than the former and, as it were, squeezed into a corner of it when it debouches at point D.

11. **Documentary evidence not submitted by FoDROW:**

As well as the points made above, the following documentary evidence which was not put in by FoDROW must also be noted carefully.

- 11.1 **Finance Act 1910:** Those claiming public rights of way tend to attach great weight to the evidence provided by the Finance Act 1910 records, what a thorough exercise it was that was carried out pursuant to that Act and that great reliance should be placed upon its findings. However, it must always be borne in mind that this category of evidence should be taken as being corroborative only (for judicial authority on this point, see the *Maltbridge Island* case at para 10.1 above). What the Finance Act 1910 evidence shows in the present case is indeed corroborative of the points we have made elsewhere in this Submission against public vehicular status on the Claimed Route.

- **The Valuation Book:** This suggests that Langdon was at that stage 512 acres, the whole being occupied by a tenant. There was a claimed deduction of £100 for rights of way, but as always the identity of the ways in question is not revealed. Arguably, a claim of only £100 over 512 acres is on the low side. Various footpaths traverse the Farm.
- **The Field Book:** Beaminster Down is described as "land situate each side of main road to Maiden Newton". No other road or way is mentioned, which would hardly have been likely had the F-E stretch been regarded as public vehicular.

- **The Finance Act 1910 map for Beaminster Down and Langdon:** This is a highly important piece of evidence. The F-E stretch across Beaminster Down is shown enclosed within hereditament no. 495, and blocked with solid red colouring at both ends. This is consistent with the Field Book, that it was obviously not regarded as public vehicular. The Crabb's Barn Lane stretch is open **but at point D there is a solid red line across the Route.** This is exactly consistent with the 1907 plan and the conveyance plans (see **Appendix 2, 3 and 4**). The southern boundary of Langdon Farm at point B is marked with a double mere mark where the parish boundary veers off to the north-east. Copy extracts from the Finance Act 1910 map are attached at **Appendix 7 and 8.** **We repeat that this map is highly indicative of the lack of public vehicular status on F-E and beyond point D.**

11.2 **Object Names Book:** As mentioned at para 9.7 above, this shows that Crabb's Barn Lane was a public road but only of 32 chains in length (0.4 miles) stopping at a gate. This exactly coincides with the Inclosure Award evidence of Crabb's Barn Lane having public vehicular rights but only for a limited distance, after which it enters the private lands of Langdon.

11.3 **Parish claims and review of Definitive map:**

11.3.1 Much attention has been paid to the status of the ways around Beaminster since the 1949 Act came in, various bridleway numbers have been allocated and then altered, various vehicular claims have been made the bulk of which appear to have been either withdrawn or rejected, and a Special Review was carried out in 1973. Despite all that detailed consideration of each path since 1950, and despite there having been ample opportunities for anyone to submit a byway claim in that time (indeed, the BMF did put in a large number of claims in 1975), the Definitive Map contains no byway status on any part of the Claimed Route, and bridleway status on only two stretches of it.

11.3.2 The F-E stretch was originally BR30 but is now BR17. In the original Statement it was described thus: "**BR30 on Beaminster Down. This BR starts at the southern corner of Beaminster Down (junction of Crabb's Barn Lane with White Sheet Hill**



*Road) and runs in a n.w. direction with hedge on left to the westerly corner of Down. A well-defined grass track".*

11.3.3 The E-D-C stretch. This was originally BR58. This is an important point: both parish and county in the 1950s thought that Crabb's Barn Lane was a bridleway. The original Statement provided as follows: "**BR58 Beaminster Down towards Hooke. A continuation of BR30 from the southern corner of Beaminster Down. For the first half-mile this BR is known as Crabb's Barn Lane. It runs between hedges (part-metalled) in a s.e. direction to a field gate and then continues as a field track with hedge on left through two field gates (passing turning on left to Upper Langdon and turning on right to Langdon) the second field gate being at the commencement of a lane (12' metalled) which continues to Dirty Gate (top of Hackthorn Hill on Beaminster-Dorchester road). A well-defined and frequently used BR with gates etc. in good condition).**"

11.3.4 Note that the title of that entry said "Beaminster Down towards Hooke". This wording mirrors exactly the wording of the Inclosure Award, and yet Crabb's Barn Lane was still thought to be no more than a bridleway. Why would the words "towards Hooke" have been used if they were not just mirroring the words of the Inclosure Award? There is no reason why the way should be thought to be going towards Hooke any more than towards any other village in that general south-east direction, so it does appear that they were aware of the Inclosure Award and yet still determined this to be a bridleway.

11.3.5 It also confirms that Crabb's Barn Lane lasted for about half a mile between hedges, ending up at a gate, and that it was only part-metalled (the northern section of it appears to have a thickened line on the 1903 OS map, indicative of metalling). Note that originally BR58 was thought to continue to the gate between points C and B. That was what the Statement described as the second field gate, being at the start of the

metalled lane (which is of course a privately owned and maintained metalled lane). Note also that it was frequently used as a bridleway (no suggestion of any public vehicular use) and that the gates were in good condition).

11.3.6 The current number of the D-C stretch is BR35.

11.3.7 An interesting document is contained within the parish claim correspondence, which is attached at **Appendix 9**. This dates back to 1973. It is an unsigned and anonymous BOAT claim, and the map references on it show that it covers the D-C-B stretch. The claim was based solely on the 1809 Inclosure Award; no other reason or justification for the claim was given. It is worth looking at this carefully, because it shows how easily misunderstandings can arise. This 1973 claim summarised the Inclosure Award by saying that it ***“awarded as a public carriage road 30’ wide a highway from north end of Shoot Lane to Langdon Farm being part of the public highway leading to the village of Hooke”***. In fact, the Award said that Crabb’s Barn Lane was a public carriage road **and** highway from White Sheet Lane to its (i.e. Crabb’s Barn Lane’s) **usual entrance on Langdon Farm**. The clear meaning of the Inclosure Award on this point is that Crabb’s Barn Lane stopped at point D where the Langdon Estate began. It is interesting that someone (presumably a member of DCC’s staff, because of the endorsement of the committee decision on the reverse side of the claim form being in the same handwriting) inserted into the claim the words “the access road to”, so that the claim read: “..... a highway leading from the north end of Shoot Lane to **the access road to** Langdon Farm”. The Inclosure Award wording clearly meant that the ending of Crabb’s Barn Lane came at point D where it debouches onto Langdon lands, whereas this 1973 byway claim, as amended, would take you from D to C, which is the point where there is an access way leading to both Langdon Farm and Higher Langdon Farm. In fact, the map references on the claim form take it further still, down to point B. The claimant thought it was really a RUPP, though still



numbered BR35, and claimed that it should be a BOAT. The committee's decision, endorsed on the reverse side in the same hand as had mistakenly added to the claim, was neither to uphold nor overrule the claim, but rather that "this should be shown as a county road because of its origin in the Inclosure Award", but that would have been to misunderstand the true meaning of the wording of the Award. Nevertheless, it didn't become anything, and the status quo remained.

11.3.8

There was also correspondence in 1971 between the County Surveyor and the District Surveyor. On 12<sup>th</sup> March, the County Surveyor asked the District Surveyor for his views on the middle section of the Claimed Route, D-C-B. He said that DCC maintained the A-B stretch and asked the District Surveyor:

***"Have you any knowledge that we have ever maintained the remainder of this road as a through road and is there any evidence that it is used by the public as a through road? Do any obstructions exist on it? At present no public status exists but it is necessary that some public status is given to it at the Review to link up bridle roads".***

The reply from the District Surveyor dated 23<sup>rd</sup> May 1971 was as follows:

***"The bridleway part is hard bottom but grassed except in the vehicle tracks and from here southwards to the county section it is fair gravelled road giving access to Higher Langdon. Had I known the conditions I could have driven my car through and this qualifies as a Byeroad open to all traffic. On BR35 there are two satisfactory gates. At the southern end where the farm road joins the county road there is a sign saying that beyond that point the only right of way is as a bridleway or footway".***

Note the degree of uncertainty over status, and the disingenuous suggestion that, if you are physically able to drive through, the

way automatically qualifies as a BOAT. Note also that the District Surveyor had been asked if any evidence existed of public vehicular use on that stretch, but did not provide any. The only reason he thought the way might have byway status was that the conditions enabled him to drive through. This type of confusion and misunderstanding, even at that senior level, needs to be borne in mind when these highly important claims are to be dealt with.

11.3.9 Again, it has to be said that, despite all this debate, enquiry, research and claim, the status quo remains. **Byway claims have been tried before but have failed. There is no new reason why this present claim should succeed.**

11.4 **Spot heights and bench marks:** As mentioned at para 10.7 above, neither bench marks nor spot heights bear any relation to the status of any way. Attached (please see **Appendix 10**) is a copy letter from the OS confirming this point, and it will be noted that the OS only put bench marks and showed spot heights wherever their surveyors were able to gain access. Unlike BR14 at Meerhay, the OS surveyors were physically able to get along the Claimed Route at Langdon to measure the height of the ground. That is all that these marks mean.

## SUMMARY OF DOCUMENTARY EVIDENCE

- There is no evidence to suggest that the whole of the Claimed Route, that is to say from point F to point A as a whole, is subject to public vehicular rights.
- The old maps are not determinative of status; they show many other ways which are not public
- The Tithe map is not determinative of status; it doesn't even show the middle section at all
- The OS maps are not determinative of status (and contain a specific disclaimer) but they do show a number of gates, and that there is a significant difference between Crabb's Barn Lane on the one hand and the D-B stretch on the other; benchmarks and spot heights are not indicative of public status
- The Finance Act 1910 evidence shows strongly that F-E and D-C-B were not public vehicular
- The Object Names Book expressly limits Crabb's Barn Lane to its present length (0.4 miles)
- The Definitive Map has never shown any higher status than bridleway on any of the Claimed Route, even on Crabb's Barn Lane; claims to higher status have been made and investigated, but rejected; the correspondence in the 1970s throws up no evidence of public vehicular use or of a through-route
- There is no evidence whatever of public vehicular rights on F-E
- The Inclosure Award of 1809 described Crabb's Barn Lane as a public carriage road but expressly confined that status to the length of Crabb's Barn Lane
- There is only one piece of evidence which may suggest that the whole of E-A was a public highway, and that is the wording in the Inclosure Award that



Crabb's Barn Lane formed part of the public highway towards the village of Hooke. That wording is not specific as to what route that public highway was alleged to have taken (the Inclosure map does not show that route at all), but the Award might have been intended to mean that it was D-C-B-A that was a public highway going on from there towards Hooke. But even if it was, the use of the words public highway for that stretch, being in direct contrast with the way in which Crabb's Barn Lane itself was described (public carriage road **and** public highway) coupled with the obvious difference between the showing on the map of Crabb's Barn Lane and the way beyond it, suggests that the type of public status on D-A was thought to be different from that on Crabb's Barn Lane, so that if Crabb's Barn Lane was public vehicular, the rest of the Claimed Route beyond that point was not, but rather only open to the public by non-vehicular means. As against that one piece of evidence there is much evidence to suggest that at least D-B was not public vehicular (as well as F-E).

- The "highway towards Hooke" was not formed or set out by the Inclosure Award: it must have existed already in order for it to have been referred to in the Award. But what status was it? If it had been a public carriage road, why did the Award set out a specific public carriage road on, and limited to, the 0.4 miles of Crabb's Barn Lane? There would not have been any need for this if a public carriage road had already existed on that route. That is why it is more likely that the "highway towards Hooke" continuing south-east from point D was not a public carriage road.
- Since this claim must be decided on the balance of probabilities, it must surely be the case that on balance it is more likely that the Claimed Route as a whole has never been public vehicular than that it has, and thus that this claim must fail.

## 12. USER EVIDENCE

- 12.1 **User evidence submitted by the Applicant:** There is none. FoDROW appear to be relying entirely on documentary evidence. The 1971 request by the County Surveyor for evidence of public vehicular user did not reveal any.

12.2 **User evidence submitted by the Objectors:** The E-A stretch is subjected to public vehicular use very infrequently, probably no more than once or twice a year at most. Whenever the Objectors see anyone attempting to use it, they invariably challenge them and point that it is not a through-route for vehicles, and the visitor then leaves. About 15 years ago a motor cycle club did ask for permission to use the Route as part of a rally; permission was granted. This has only happened once. In relation to the F-E stretch there is no evidence of public vehicular user at all. Both the Tenant and his farm manager confirm that this is so, and that had there been any attempt to use F-E with vehicles it would be immediately challenged. When Langdon (Dorset) Farms owned the Down they had an exactly similar policy. This evidence of challenges is good evidence of the lack of intention to dedicate.

12.3 **Illegality and *Bakewell*** : In any case, vehicular use without lawful authority has for some years been a criminal offence, and until the *Bakewell* decision in 2004 any such use could not be counted towards the period of claim. The *Bakewell* decision appears at first sight to have removed that element of criminality, but actually that removal was subject to two very important conditions, both of which must be kept closely in mind.

- The first condition relates to capacity to dedicate and the second to public nuisance. As to capacity to dedicate, the House of Lords suggested that, if it would have been possible for the freeholder to dedicate the way to public vehicular use, then such a dedication would have constituted lawful authority. However, it is clear that capacity to dedicate rests in the hands of the freeholder who also occupies the land crossed by the way in question, so that in the present case all the time the Farm was the subject of a tenancy, no dedication could have taken place. The F-E stretch is within Mr Streatfield's tenancy. The D-B stretch was also subject to a tenancy (see para 11.1 above). As well as the existence of tenancies, the challenges to public user constitute express evidence of lack of intention to dedicate.
- The second condition in *Bakewell* relates to public nuisance and it is clear from the judgment of Scott L J that it would not have been open to the landowner to have dedicated the way as a public vehicular highway if use by vehicles would have constituted a public nuisance to lawful users of the way. In the present case that would mean equestrian users of BR17 and BR35 and it will arguably be a public



nuisance if public vehicular use were to take place on this bridleway. The authors of the Blue Book state that use of mechanically propelled vehicles on a bridleway may constitute the common law criminal offence of public nuisance if the use prevents the convenient use of the way by lawful users.

Thus, the decision in *Bakewell* is not as clear cut as it may first appear and, even if there is any evidence of public vehicular use as of right in the present case (which there certainly does not appear to be), the *Bakewell* decision will only remove the criminality element if those two conditions do not apply.

#### **SUMMARY OF USER EVIDENCE**

- There is no evidence of public vehicular use as of right of the Claimed Route
- There is some evidence of permission having been sought and granted in respect of some of it
- The *Bakewell* decision, when viewed as a whole shows that, because of the crucial points about dedication and public nuisance, the illegality issue has not ceased to apply and that it will still act to prevent public vehicular use since 1930 (whatever such use there may have been) being counted towards this BOAT claim

### **13. CONCLUSION**

13.1 FoDROW has to show, on the balance of probabilities, that public vehicular rights have come into existence on the whole of the Claimed Route. It has to be shown that at some stage - either in the past, evinced by documentary evidence, or in present times by sufficient public vehicular use - the Claimed Route (all of it) had become dedicated to the public use, and accepted and used by the public with vehicles as of right for long enough and in enough numbers to count.

13.2 They cannot just point to the possibility of part or parts of it having been regarded either as public vehicular or as publicly-maintained, and then suggest that the intervening parts of it must therefore be public vehicular.



- 13.3 The *Eyre* case is not a precedent for that proposition.
- 13.4 On the balance of probabilities there is not sufficient documentary evidence in favour of public vehicular status on the Claimed Route as a whole to prove this claim. There may be some evidence in favour of some parts of the claim but also a lot of evidence to suggest that the rest of the Claimed Route is not and never was public vehicular.
- 13.5 Although we have said elsewhere in this Submission that this claim reveals an inconsistent state of affairs, in fact there is a great deal of consistency in that inconsistency, by which we mean that there is a large body of evidence, referred to in this Submission, which demonstrates a consistency, in that the middle section (i.e. D-C-B) has for a very long time been within private ownership and occupation. The same goes for the F-E stretch.
- 13.6 There is no evidence of public vehicular use as of right of the Claimed Route, but there is evidence of permission having been sought and granted in respect of some of it.
- 13.7 The *Bakewell* case: in the circumstances of the present case, it is submitted that *Bakewell* does not operate: because of doubt about capacity and/or intention to dedicate and the likelihood of public nuisance we are in effect back where we were before *Bakewell*, with the result that no post-1930 public vehicular user (without lawful authority) can count towards this claim, even if such use had taken place.
- 13.8 The other points of title and topography made (paras 5-9) also suggest strongly that it is most unlikely that the Claimed Route as a whole was ever dedicated to public use with vehicles.
- 13.9 It is submitted on behalf of the Objectors that, on the balance of probabilities, insufficient evidence exists and that, for each and all of these reasons, this claim must fail.

13.10 Even if DCC were to take the view that, despite *Todd and Bradley*, it would be proper to make an Order based only on the lower test (reasonable allegation), we would argue that, for the reasons given in this Submission, it would not be reasonable to allege that public vehicular rights subsist on the Claimed Route as a whole.

13.11 DCC are now invited to dismiss the claim and make no Order.

Dated this 21st day of July 2005

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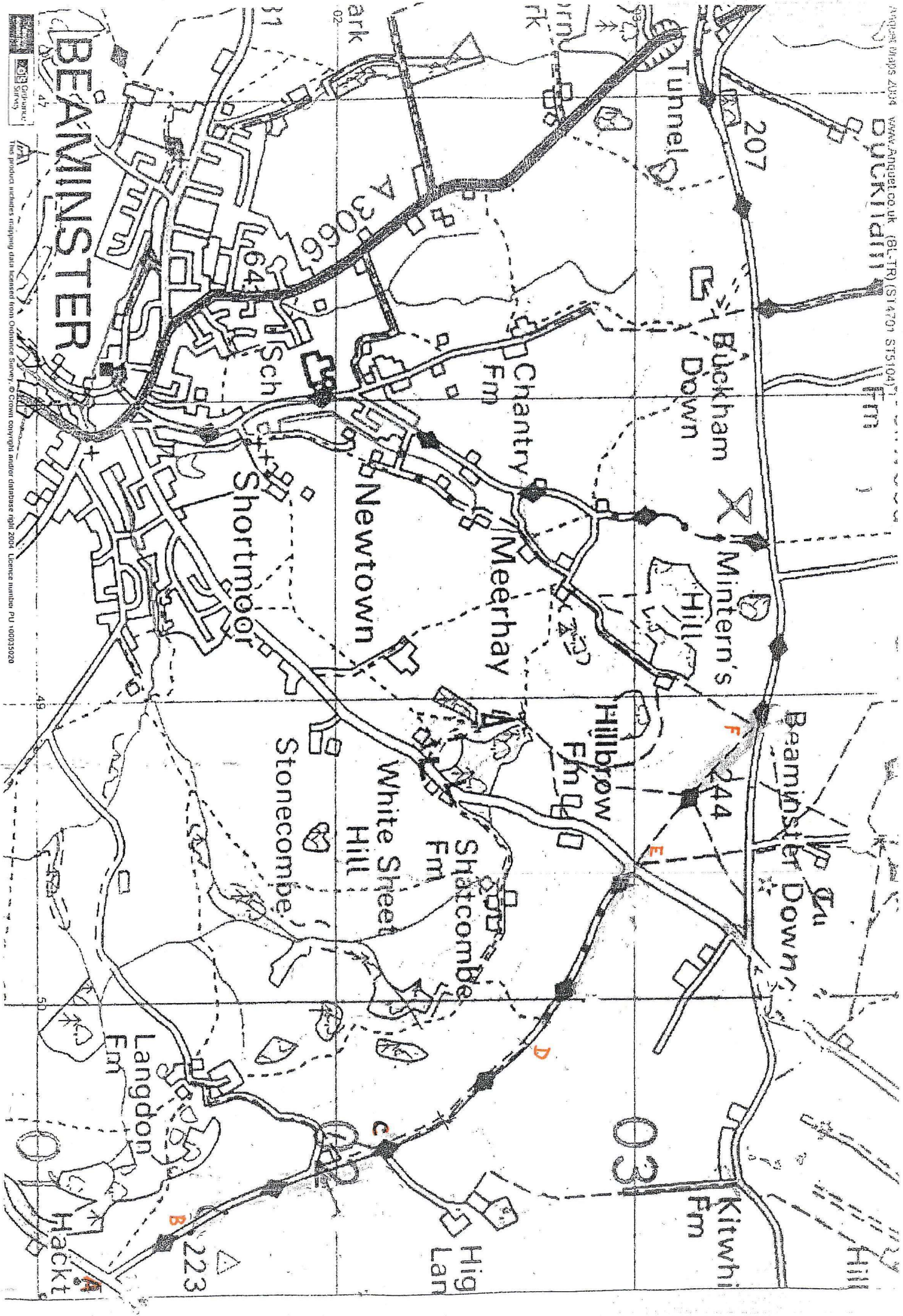
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## LIST OF APPENDICES

1. The Claimed Route and lettering
2. Extract from 1907 Plan
3. 1925 Conveyance Plan
4. 1939 Conveyance Plan
5. 1951 Beaminster RDC Plan
6. Extract from Inclosure Award Map
7. Extract from Finance Act 1910 Map Beaminster Down
8. Extract from Finance Act 1910 Map Crabb's Barn Lane
9. 1973 BOAT claim (unsuccessful)
10. OS letter re spot heights and benchmarks



Ducklington

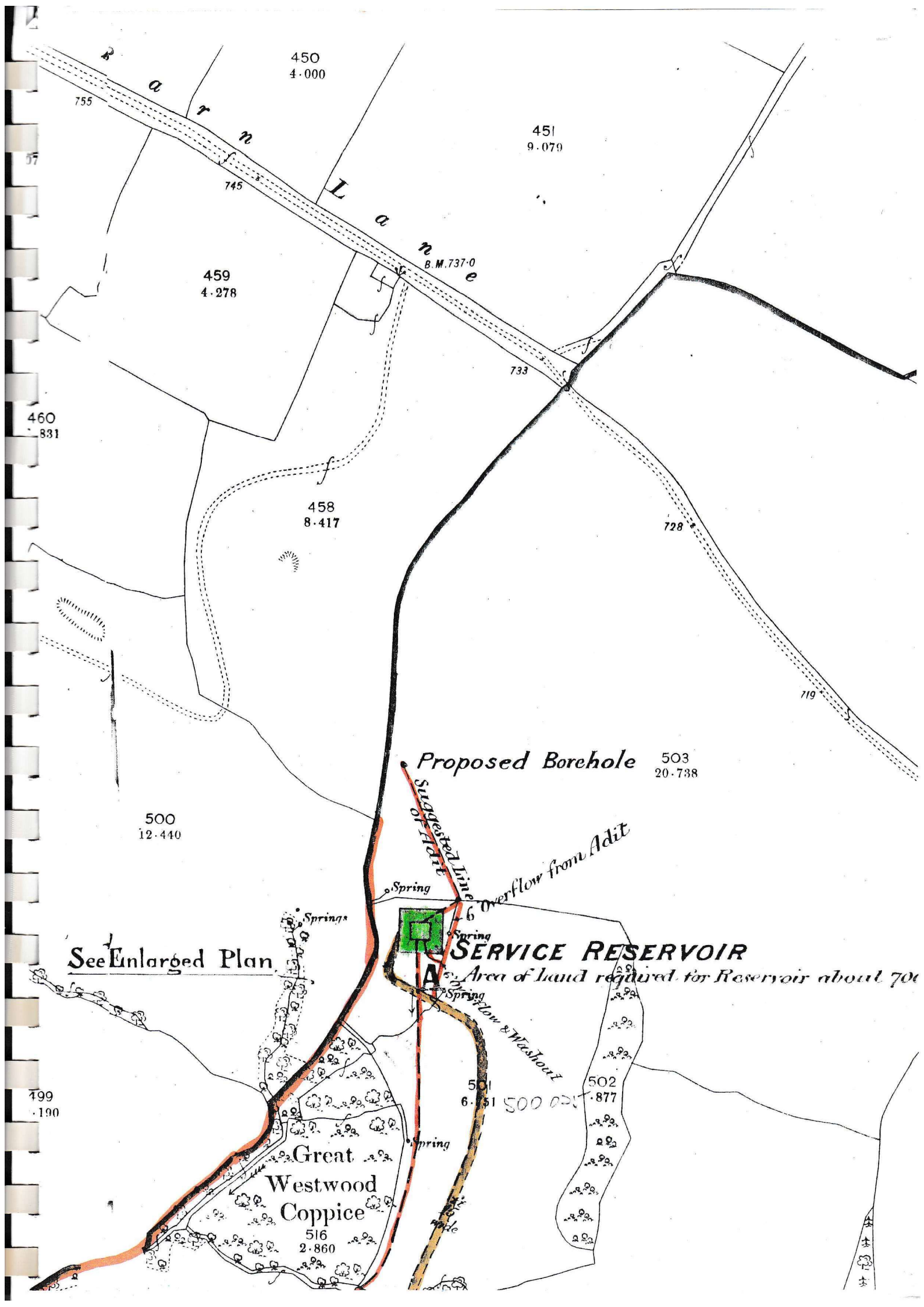


BEAMINSTERTOWN

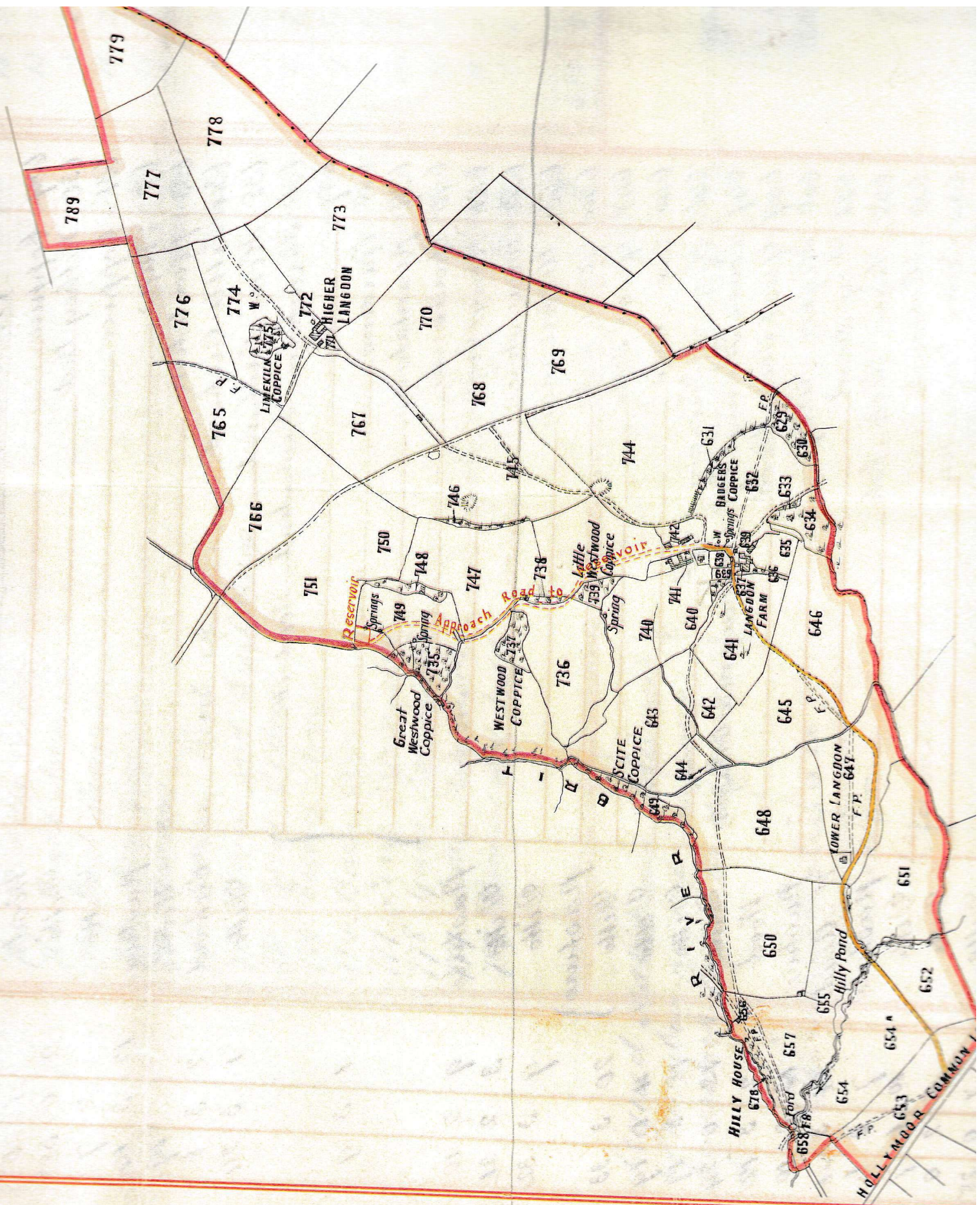


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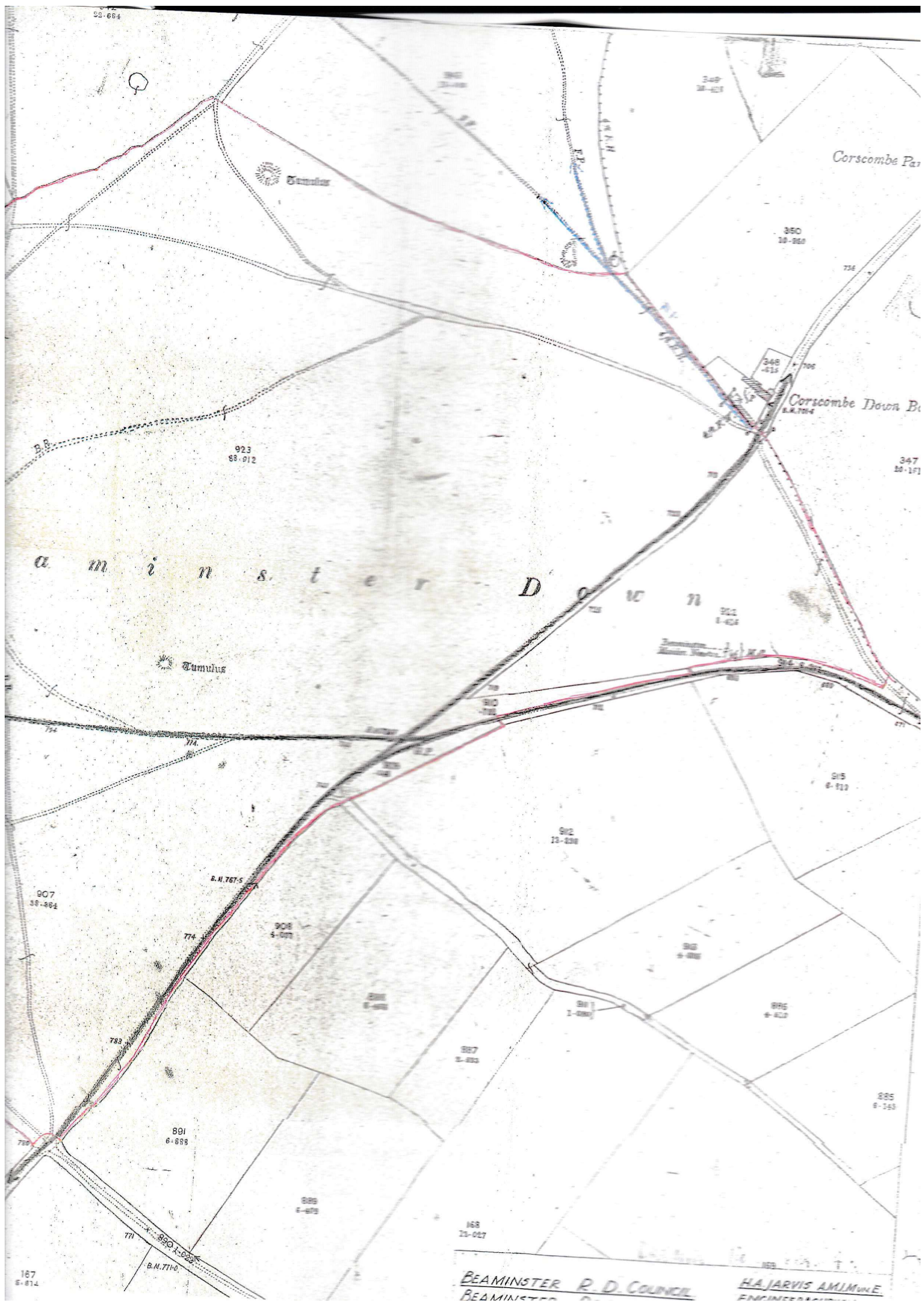










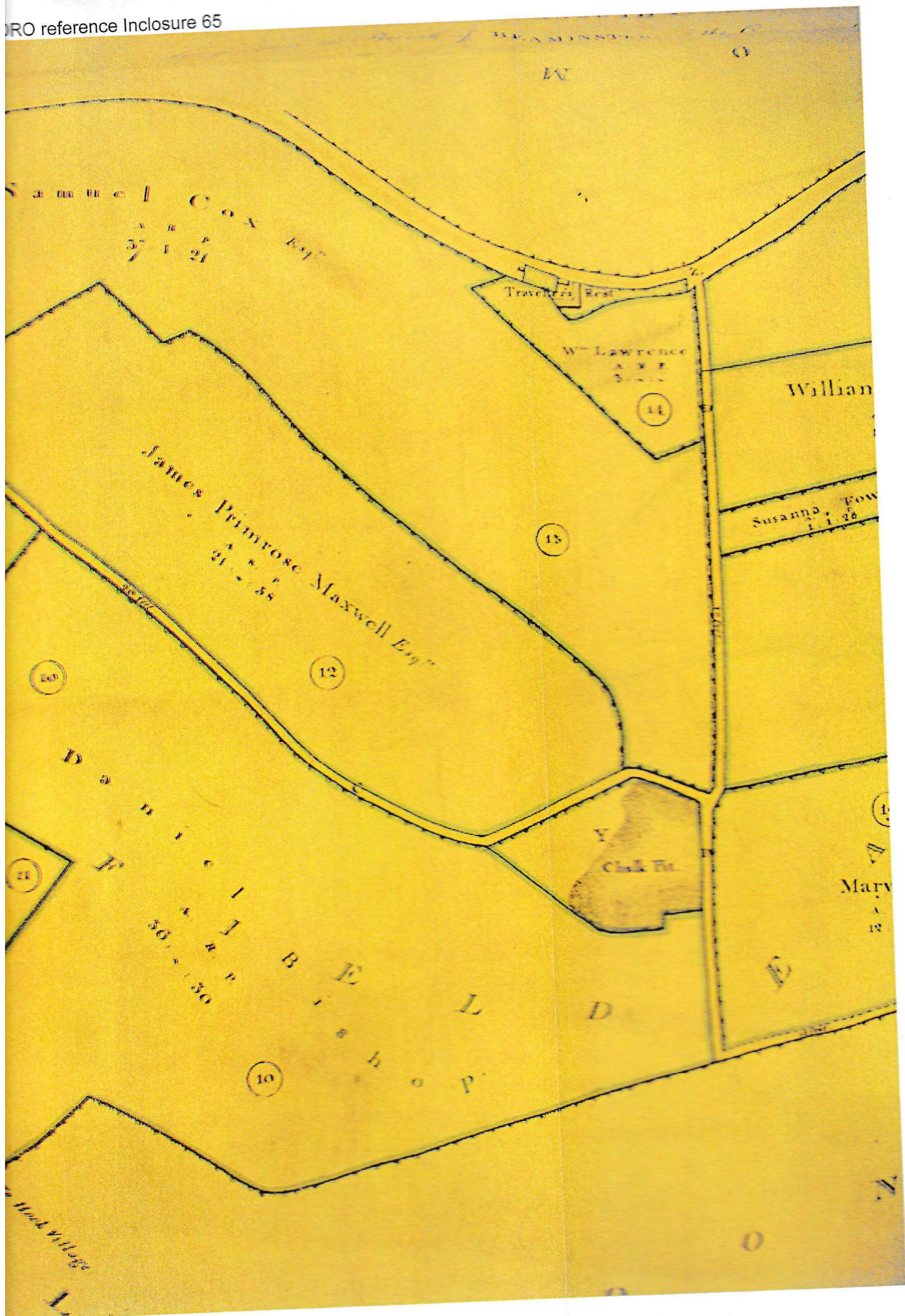


Beaminstor Down















Change of Boundary: indicating the point at which the character of a boundary changes

Antiquities (Site of)

Trigonometrical Station

Boor Law Enthus

Sett

Every parcel is numbered thus

Its area is given underneath in acres, thus

4-370

21

Boundaries indicating that the squares so connected are included in the same reference number and area

For other information see Characteristic Sheet

SYMBOLS FOR BOUNDARIES, &c.

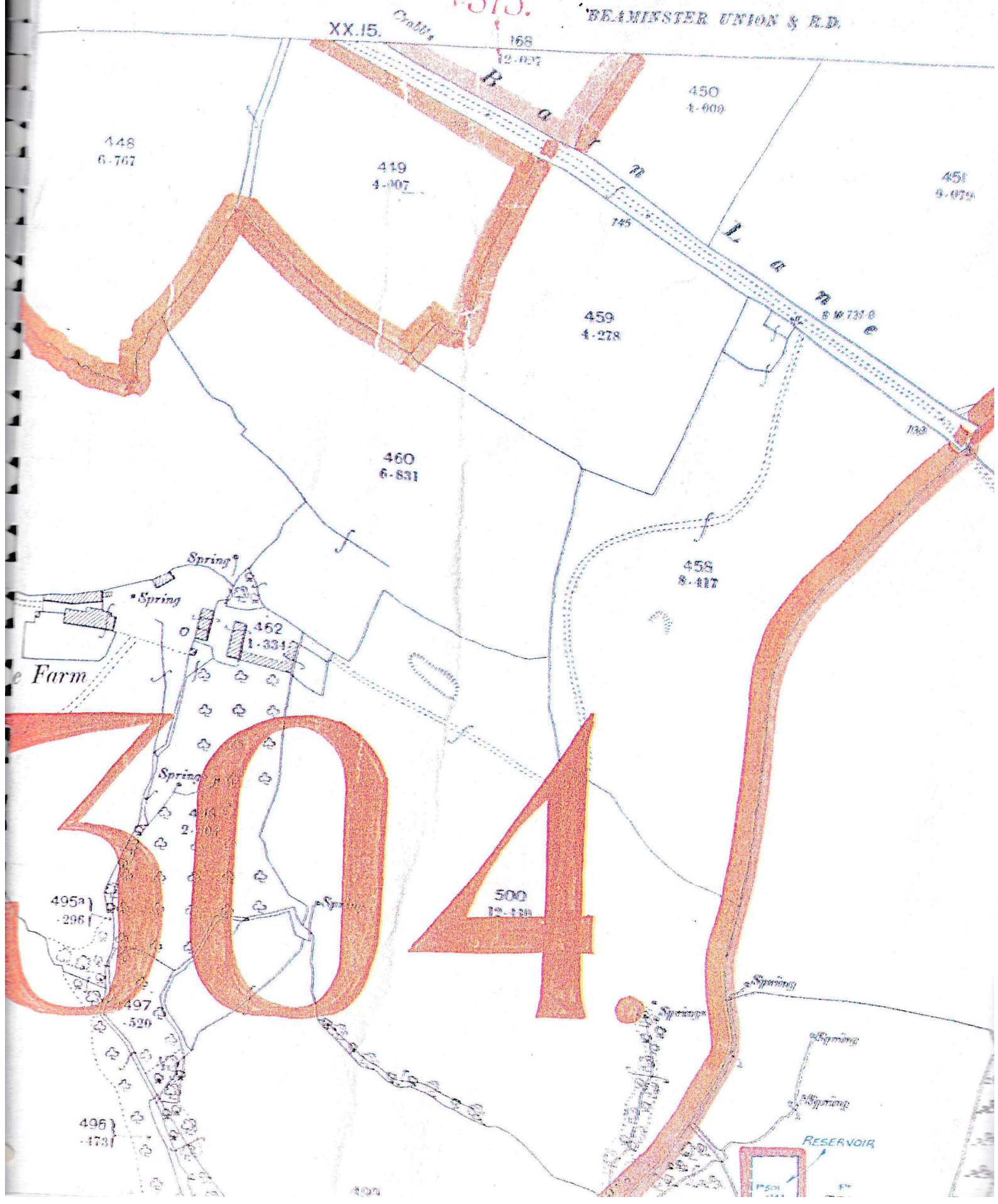




ERN DIVISION

BEAMFESTER UNION & E.D.

Pr 375.



169  
12-716

452  
22-573

456  
9-971

457  
15-479

504  
2-261

505

505  
13-470

506 1-000

FP



## SPECIAL REVIEW OF DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY

1. Municipal Borough/Urban District/Parish of

*BRAMINSTON*

2. Claim for inclusion on the Revised Draft Map of Rights of Way of -

- (a) a new Footpath  
 (b) a new Bridleway  
 (c) a Byway Open to all Traffic  
 (d) that a path shown on the present Definitive Map should be upgraded to a higher status  
 (e) any other relevant claim, eg new evidence concerning an existing path or way (please specify below)

✓

- (a)  
 (b)  
 (c)  
 (d)  
 (e)

*R.U.P.P.*

3. Claim originated by (MB/UD/Parish Council/Meeting/User Organisation/Private Person, etc (please state))

*See 6 below*

4. Official number of path or way if already shown on Definitive Map

5. From

Map Ref. *502027*

To

Map Ref. *506017*

6. Precis of Claim

*The East Fields & South Fields Inclosure award of 1809 awarded as a Public Carriage Rd. 30' wide a highway from North End of Shoot Lane to the access road to Langdon Farm, being part of the Public Highway leading to the village of Hook. This is now partly County Rd. The remaining section may constitute a R.U.P.P. (at present shown as B.L. 35).*

7. COMMITTEE'S DECISION - ~~CLAIM UPHOLD/OVERRULED~~ for the following reasons:-

This should be shown as a County Road, because of its origin in the Enclosure Award.

Date 20TH JUNE 1973.

signature redacted

Signed

Chairman of the Special Review  
Committee

6<sup>th</sup> April 2005-04-06

Please find an explanation of the Ordnance Surveys Policy on Levelling.

Ordnance Survey stated levelling the Country in 1840. This continued through to the mid 1990s when GPS provided a easier and cheap alternative.

In 1840 the levels refer to Liverpool and went to give height to the County Series mapping. In 1921 the Ordnance Datum was changed to Newlyn. This continues to present day.

The levelling that the Ordnance Survey undertook was "Block Levelling". This meant that the levelling lines took any passable routes which did not rely on public rights of way. The routes can be seen in the Ordnance Survey Data as the Bench Mark symbols and the Spot Height crosses are shown.

The Bench Mark is a known height point that is visible on the ground. The spot height is a guide height that is shown in the data. There is no evidence on the ground and are only accurate to 0.3 metre. The point indicate where the levelling staff was placed on the ground ie. The length of the observing leg. Not all these points were collected. They were shown at changes in height and shown to give the user an insight into the ground character.

Most of the levelling was done along road and tracks (public and private) as this was the easiest route to traverse (A loop from a known mark to another known mark). In the early Liverpool days these lines traversed moorland as well as roads and tracks. They did not rely on just public rights of way. These routes can be found shown on County Series mapping.

I hope this give you an idea of the policy that the Ordnance Survey used when they undertook the levelling of Great Britain.

Yours Truly  
**signature redacted**

Richard Short  
Chief Surveyor Geodetic Surveys  
Ordnance Survey – Southampton