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BS1 6PN



16 April 2019

Dear Sir,

## **WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE 14**

**Appeal to the Secretary of State Secretary of State for Environment, Food and Rural Affairs  
under paragraph 4 (1)**

I attach an appeal on behalf of the Directors of the Trail Riders Fellowship Ltd in respect of:

**Application for a definitive map and statement modification order to upgrade Bridleway 17,  
Beaminster, to a Byway Open to All Traffic.**

Surveying authority: Dorset County Council.

Title of definitive map: Definitive map and statement for Dorset.

Description of the way: Currently recorded as Bridleway 17, Beaminster,

Date and reference of the application: 21 December 2004, registered by DCC as 'T354'.

Date of service of notice of decision: 26 March 2019.

Grounds of appeal: please see attached paper with, as attachments:

- The application,
- The notices associated with the application,
- A map showing the alleged right of way,
- The authority's decision letter,
- Other relevant supporting documentation.

Two full sets are enclosed, split into two envelopes.

I understand that a copy of this appeal and supporting papers may be made available for public inspection. n n

Signed ..... Date 16 April 2019

**Certification**

I served notice of this appeal on the surveying authority on: [date]

Signed ..... Date 16 April 2019

Yours faithfully,

Alan Kir

**Application for a definitive map and statement modification order to upgrade  
Bridleway 17, Beaminster, to a byway open to all traffic**

**Appeal to the Secretary of State under Paragraph 4(1) of Schedule 14 of the  
Wildlife and Countryside Act 1981, against Dorset County Council's  
determination not to make the order**

**Grounds of Appeal**

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**1. Background**

- 1.1. This appeal is made by the Trail Riders Fellowship (TRF) acting as appointed agent (Attachment A) of Jonathan Stuart, who made the application on behalf of the Friends of Dorset Rights of Way on 21 December 2004. Mr Stuart by letter of 4 October 2010 appointed the TRF to be his agent in all matters regarding this application, and that letter of agency was accepted by the Supreme Court. (Attachment B)
- 1.2. This application was given the Dorset County Council (DCC) reference RW/T354, and it was under reference T354 that the application became subject to a challenge to its validity, culminating in an Order of the Supreme Court dated 13 April 2015, declaring that application T354 was made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981. (Attachment B)
- 1.3. In a report to the Regulatory Committee (meeting on 21 March 2019) dated 6 March 2019, Matthew Piles, Service Director, Environment, Infrastructure and Economy, advised the Committee that it was *"recommended that an order be made to record the route between Point A and Point I on the plan 18/13 as a byway open to all traffic"* (Plan 18/13 is Attachment C)

- 1.4. At its meeting on 21 March 2019, the Regulatory Committee went against officers' advice and resolved not to make an order in respect of the length shown on plan 18/13 as A-B-C.
- 1.5. In a letter dated 26 March 2019, Vanessa Penny, Definitive Map Team Manager, Planning and Regulation Team, advised the TRF that "*Application T354 should be accepted in part and an order made to record the route as shown between points C and I on drawing 18/13 as a byway open to all traffic*" (Attachment D)
- 1.6. The TRF is therefore exercising its right of appeal to the Secretary of State against Dorset County Council's determination not to make the order sought.

## **2. Validity of this appeal**

- 2.1. The application 'Form A' was actually four applications on one form. Nothing in Schedule 14 states that this cannot be done, and the layout of Dorset County Council's template Form A invites a 'set' of applications to be made together.
- 2.2. The application for the route described by Dorset County Council as A-B-C is to 'upgrade' (i.e. modify) the status of Bridleway 17 Beaminster to byway open to all traffic. This is clear from the entry against (c) "from: I - ST 49105 03415 to: I - ST 49555 03010".
- 2.3. That is a single 'application entity', separate in fact and law from the other three 'application entities' on the same Form A. The reason for setting it out in this way is the commonality of evidence.
- 2.4. PINS' "Schedule 14 Appeal Guidance" states, "*The right of appeal does not exist if the authority issues a refusal notice to make an order for the status applied for but resolves to make an order for a different status or where the authority makes an order which differs from the application in some other way. The right of appeal against the authority's determination is only valid if that determination is not to make an order at all.*"
- 2.5. Firstly, we say again that the application for what is now termed A-B-C is a stand-alone application in its own right, was rejected by DCC, and is therefore amenable in its own right to an appeal under Schedule 14.
- 2.6. Secondly, we respectfully say that this guidance is wrong, or at least misleading. In the matter of *Dorset County Council (Bridleway 3 (part) and Bridleway 4, Piddlehinton) Definitive Map and Statement Modification Order 2010*. PINS Ref'n FPS/C1245/7/36, two separate applications were made to Dorset County Council to upgrade various bridleways (in a 'connected cluster') to BOAT status. DCC officers quite reasonably treated these two applications as one for the purpose of handling the evidence, but the decision-making committee rejected officers' advice and declined to make the order.

- 2.7. On appeal under Schedule 14 the Inspector appointed directed DCC to make orders, embracing all of the two applications, except for the northern end of one leg, that on the basis of 'insufficient evidence.' DCC chose to make one composite order. Objections were lodged to this order; and the TRF presented a case largely in two heads:
- Evidence and submission to show that all of A-E and C-E-B-D are historical public carriage roads, and,
  - The order should be modified to include leg B-D, which was refused in the Schedule 14 appeal decision.
- 2.8. In her interim decision letter of 2 December 2014 (FPS/C1245/7/36) Inspector Mrs Slade notes:
- 2.9. [16] "I was also requested to include in the modification the length of the route to the north of the Order route to Drakes Lane, which had formed part of one of the original applications. This part of the route lies outside the scope of the Order plan. It was Mr Kind's view that failure to include the onward section would prevent any future modification of the DMS which to accurately reflect what the TRF believes to be the correct status of that part of the original application route.
- 2.10. [17] "I agreed to hear the evidence at the inquiry in relation to the whole of the application route on the basis that I would then be able to consider whether or not it was appropriate to make such a modification; bearing in mind that such modifications would require advertising, thus allowing a further statutory notice period for objections. I also made it clear to the other participants at the inquiry that they were at liberty to argue against such modifications.
- 2.11. [19] "To include the onward route as originally claimed by FoDRoW would require the addition to the Order of a map and a revised schedule, a draft of which was supplied by Mr Oickle at the inquiry. I have considered the situation carefully, and taken account of the arguments for and against such a modification. Whilst I understand the implications as expressed by Mr Kind, I consider that to make such a fundamental alteration to the Order would be an abuse of the process. It may be acceptable to add a map to an Order for clarification purposes (for example to clarify the location or some other aspect of a route) but to add a map for an additional length route which would extend significantly beyond the scope of the map attached to the Order as made would be a very substantial alteration.
- 2.12. [20] "My powers of modification are quite wide, but I must exercise those powers fairly and with discretion. In this case I have concluded that to modify the Order in the way requested would be too significant a change, and make the Order substantially different from the one I am considering. I have therefore declined to make any modification in respect of the additional claimed section of the route."



- 2.13. Mrs Slade maintained her view in her final decision letter. The TRF made an application to the Administrative Court, primarily on a ground concerning 'Winchester compliance', and adding a second ground that the Inspector was wrong to have held that the modification to the order sought was outwith her powers of modification, because in so doing the order applicants lost (because of s.67 of NERCA) all possibility of having this leg properly recorded as a BOAT.
- 2.14. The Judge held that this second limb was correctly a matter of the Inspector's exercise of discretion and rejected that ground of claim. [2016] EWHC 2083 (Admin).
- 2.15. In this current case, if the Secretary of State holds that there is no right of Schedule 14 appeal as regards A-B-C, then the applicant can do nothing more than object to the order for D-I when that is made by DCC, on the ground that it should include A-B-C as well. But it is then entirely within the discretion of the Inspector as to whether he or she will even entertain so-modifying the order, and hearing evidence accordingly.
- 2.16. For the Secretary of State to bar a Schedule 14 appeal now as regards the application in respect of A-B-C wrongly (in our view) deprives the applicant of the right of appeal, and leaves only a lottery as to whether a later Inspector will modify the order as made.
- 2.17. That cannot be right. This would be an unfair and biased approach as between applicants, where some have a statutory right to have their evidence heard, and some rely on the exercise of an Inspector's absolute discretion. There should be equal treatment at each stage of the appeal and determinative process.

### **3. Structure of these grounds of appeal**

- 3.1. The basis of this appeal is that Dorset County Council officers have properly set out in the report to committee (at least some of) the various pieces of historical documentary evidence supplied by Mr Stuart, both in matters of fact (interpretation) and law, and have given proper weight to those pieces of evidence, and to the evidence as a whole. The minutes of the Regulatory Committee give no clear reason as to the grounds on which members went against officers' advice. When all the evidence is properly considered and weighed, then on the balance of probabilities a public vehicular right of way subsists along the application route.
- 3.2. These grounds accept the Report to the Regulatory Committee on 21 March 2019, and add below some additional evidence and legal submissions.

### **4. The evidence reconsidered**

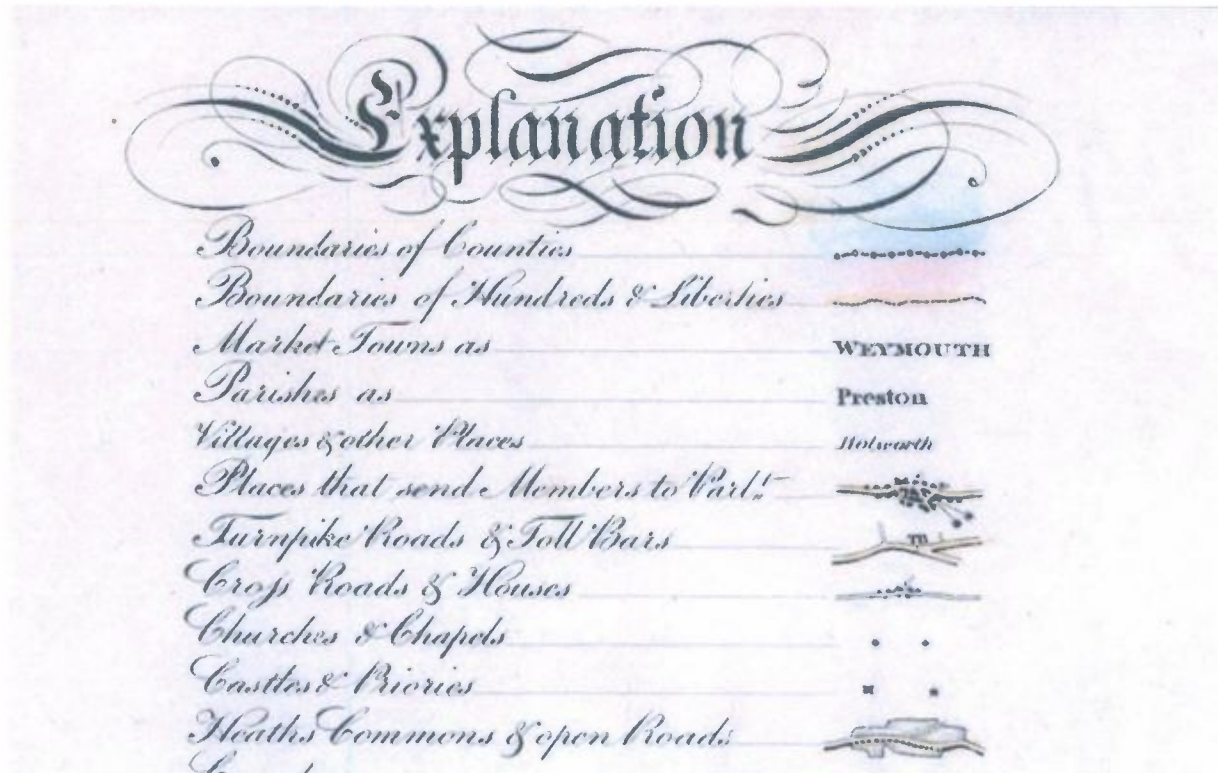
- 4.1. **Greenwood's map of 1826.** As DCC says, Greenwood shows the application route as a 'cross road'. The most-recent judicial consideration of the meaning of 'cross road' in old

maps is in Fortune v. Wiltshire Council [2012] EWCA Civ 334, Lewison LJ at [54] (our emphasis).

- 4.2. “The judge moved on to consider Greenwood’s map of Wiltshire, produced in 1829. Greenwood was a well-known commercial map-maker who produced maps of many English counties. The judge considered that this map also showed a thoroughfare which included Rowden Lane. Prof Williamson agreed. It was not coloured in the same way as the Bath road; but nor were a multitude of other roads linking disparate settlements. The legend of the map showed that the colouring of the Bath Road meant that it was a turnpike or toll road, whereas that of Rowden Lane meant that it was a “cross road”. As the judge pointed out, in 1829 the expression “cross road” did not have its modern meaning of a point at which two roads cross. Rather in “old maps and documents, a “cross road” included a highway running between, and joining other, regional centres”. Indeed that is the first meaning given to the expression in the Oxford English Dictionary (“A road crossing another, or running across between two main roads; a by-road”). Prof Williamson agreed in cross-examination that a “cross road” was a reference to a road forming part of a thoroughfare. The judge gave a further explanation of the significance of the expression later in his judgment (§ 733) by reference to guidance given to the Planning Inspectorate:
- 4.3. “In modern usage, the term “cross road” and “crossroads” are generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term “cross road”. These include a highway running between, and joining, other regional centres. Inspectors will, therefore, need to take account that the meaning of the term may vary depending on a road pattern/markings in each map.”
- 4.4. “The guidance went on to urge caution as the judge recognised:
- 4.5. “In considering evidence it should be borne in mind that the recording of a way as a cross road on a map or other document may not be proof that the way was a public highway, or enjoyed a particular status at the time. It may only be an indication of what the author believed (or, where the contents had been copied from elsewhere – as sometimes happened – that he accepted what the previous author believed). In considering such a document due regard will not only need to be given to what is recorded, but also the reliability of the document, taking full account of the totality of the evidence in reaching a decision.”
- 4.6. “[56] The judge concluded that Greenwood’s map supported “the emerging picture” of an established thoroughfare. In our judgment the label “cross road”

added further support. This map also shows the angle between Rowden Lane and Gipsy Lane as a less acute angle than the "V" shape that Prof Williamson spoke to."

- 4.7. This below is the 'Explanation' on Greenwood's map.



- 4.8. In **Consistency Guidelines, May 2015, Section 12 Maps (Commercial, Ordnance Survey, Estate Etc) And Aerial Photographs.**
- 4.9. "Hollins v Oldham 1995 C94/0206, unreported. Judicial view on cross roads: 'Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads ... This latter category, it seems to me, must mean a public road in respect of which no toll was payable'."
- 4.10. **Taylor's maps of 1765 and 1796.** DCC says that the road shown by Taylor in 1796 "appears to show the claimed byway" and in 1765, "also shows the route." On closer examination the probability of correspondence is higher than 'appears'. Consider Taylor's map of 1796. Taylor has a 'triangle' of roads, just south of Beaminster Down, and that matches a similar pattern on the modern Ordnance Map, where two sides of the triangle are sealed motor roads, and one side is a public bridleway.
- 4.11. **The Beaminster Inclosure Award of 1809.** DCC is correct in describing the awarded road, but it is worth noting also how the award plan treats the road junction at point C of A-B-C. The border of the plan is broken to show the road junction, and to indicate



Thomas Hine and  
 John Banger & Russell Partners  
 16 3/4 A.

William Conway  
 1 - 12

John Pearson  
 3 1/2

Elizabeth Evans  
 2 1/2

John Pearson  
 1 1/2

John Randall  
 1 1/2

- 
- Thomas Hine and  
 John Banger & Russell Partners  
 16 3/4 A.
- William Conway  
 1 - 12
- John Pearson  
 3 1/2
- Elizabeth Evans  
 2 1/2
- John Pearson  
 1 1/2
- John Randall  
 1 1/2





- 4.13. Maps of this scale, in 1787, are inevitably schematic to some degree, and the evolution of the roads in the 230 years since can make the maps seem incorrect at first glance. Cary shows the road from Beaminster mostly northwards via Mosterton (do not confuse with Misterton, just to the north) as a turnpike, and he has a 'Y' junction of turnpikes (A356, A3066), just beyond the county boundary. This can be matched against the modern OS map, which is not schematic.
- 4.14. On Cary, follow the road running due east out of Beaminster. That is a schematic rendering of the B3163. Follow on the OS to just east of OS spot height 181 and then fork right on the 'yellow' road. Shortly an unclassified road (shown with red ORPA dots) turn left (north) and this is Cary's branch cross road, running towards the northwest.
- 4.15. There is immediately a road on Cary off to the right (east) near Dirty Gate, towards '16', and this corresponds to once more to the B3163.
- 4.16. Follow Cary's road northwestwards on the modern OS, and after the access to Higher Langdon this becomes the southern end of the whole of the applied-for route.
- 4.17. At the junction with the 'yellow' road near Hillbrow Farm, that yellow road going towards the northeast is clearly Cary's branch road towards Corscombe, passing through the 'e' of 'W. Chelborough'.
- 4.18. Cary's continuing line is then the subject of this appeal (currently Bridleway 17) turning westwards (schematically again) to make a junction with Cary's turnpike to Mosterton, now the junction on the A3066 at Horn Hill.
- 4.19. This reconciliation of the Cary map against modern OS also sits very well with the 1800 'Plan of roads in the neighbourhood of Beaminster', as put in with the application. That plan shows 'Dirty Gate', and the pattern of roads east from Beaminster, then cutting back towards the northwest, the application route, and beyond towards Bristol.
- 4.20. Cary's map shows little other than roads and settlements. If it was not intended for travellers, then for whom would it hold interest sufficient to buy?
- 4.21. A road that, in the 'middle of nowhere' and for just a short distance, changes status from a general-purpose road to only a bridle road, would be curious advice and reassurance to sell to travellers.

## **5. Conclusions from the evidence**

- 5.1. Taking all of this evidence together, it is sufficiently clear that the application route was historically part of a much longer thoroughfare. Look at the whole plate of Cary's 1787 map and it is immediately visible that the cross road encompassing the order route continued southeastwards as a linear entity at least as far as Upway. That is about 18 miles, and although Cary's representation is schematic comparison with the modern OS suggests that this route was (near Upway) along one of the 'Dorset Ridgeways', and, further towards Beaminster, coincided with part of a Roman road. Overall, this has the character of a very ancient, long through route, of which the application route was one very short part. This longer route submission is contextual, and the more-local evidence goes to show the status of the application route.

## **6. The 'through route presumption'**

[This is not argued to be a legal presumption; it is more one of common sense and experience.]

- 6.1. Part 2 of PINS's Consistency Guidelines states:

"Rural Culs-de-Sac

"2.48, The courts have long recognised that, in certain circumstances, culs-de-sac in rural areas can be highways. (e.g. *Eyre v. New Forest Highways Board* 1892, *Moser v. Ambleside* 1925, *A-G and Newton Abbott v. Dyer* 1947 and *Roberts v. Webster* 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.

"2.49, In *Eyre v New Forest Highway Board* 1892 Wills J also covers the situation in which two apparent culs-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it."

- 6.2. Expanding this guidance a little further is of assistance:

- 6.3. In *Eyre v. New Forest Highway Board* (1892) JP 517, the Court of Appeal under Lord Esher, MR, considered an appeal against a decision of Wills J, who had rejected an application by Mr Eyre that Tinker's Lane in the New Forest was not a publicly repairable highway and should not be made up by the Board. Lord Esher commended



Wills J's summing-up as "... *copious and clear and a complete exposition of the law on the subject; it was a clear and correct direction to the jury on all the points raised.*"

- 6.4. Wills J: "It seems that there is a turnpike road, or a high road, on one side of Cadnam Common; on the other side, there is that road that leads to the disputed portion, and beyond that if you pass over that disputed portion, you come to Tinker's Lane which leads apparently to a number of places. It seems to connect itself with the high road to Salisbury, and with other more important centres, and I should gather from what I have heard that there are more important centres of population in the opposite direction. You have heard what Mr Bucknill says about there being that better and shorter road by which to go. All that appears to me on the evidence is that, for some reason or other, whether it was that they liked the picturesque (which is not very likely), or whether it is that it is really shorter; there were a certain portion of the people from first to last who wished to go that way. It is by the continual passage of people who wish to go along a particular spot that evidence of there being a high road is created; and taking the high roads in the country, a great deal more than half of them have no better origin and rest upon no more definite foundation than that. It is perfectly true that it is a necessary element in the legal definition of a highway that it must lead from one definite place to some other definite place, and that you cannot have a public right to indefinitely stray over a common for instance... There is no such right as that known to the law. Therefore, there must be a definite terminus, and a more or less definite direction...
- 6.5. "But supposing you think Tinker's Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a cul-de-sac, and ends at a gate onto a common? Such things exist in large towns... but who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again? ... It is a just observation that if you think Tinkers Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore it seems to me, after all said and done, that the evidence with regard to this little piece across the green cannot be severed from the other... it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green... I am not laying this down as law; but I cannot understand how there could be a public way up to the gate – practically, I mean; I do not mean theoretically, - but how in a locality like this there

could be a public highway up to the gate without there being a highway beyond it. If there were a public highway up Tinker's Lane before 1835, it does not seem to me at all a wrong step to take, or an unreasonable step to take, to say there must have been one across that green."

- 6.6. There are three often-cited cases on culs-de-sac and whether such can be (public) highways: Roberts v. Webster (1967) 66 LGR 298; A.G. v. Antrobus [1905] 2Ch 188; Bourke v. Davis, [1890] 44 ChD 110. In each of these the way in dispute was (apparently) a genuine dead-end with no 'lost' continuation. Fundamental argument in each was whether or not a cul-de-sac (especially in the countryside) could be a (public) highway. In each case the court took the point that the law presumes a highway is a through-route unless there are exceptional local circumstances: e.g. a place of public resort, or that the way was expressly laid out under the authority of statute, such as an inclosure award. In A.G. (At Relation of A H Hastie) v. Godstone RDC (1912) JP 188, Parker J was called upon to give a declaration that a cluster of minor roads were public and publicly repairable highways.
- 6.7. "The roads in question certainly existed far back into the eighteenth century. They are shown in many old maps. They have for the most part well-defined hedges and ditches on either side, the width between the ditches, as is often the case with old country roads, varying considerably. There is nothing to distinguish any part of these roads respectively from any other part except the state of repair. They are continuous roads throughout and furnish convenient short cuts between main roads to the north and south respectively [note the similarity of logic here with Wills J in Eyre]. It is possible, of course, that a public way may end in a cul-de-sac, but it appears rather improbable that part of a continuous thoroughfare should be a public highway and part not. It was suggested that there might be a public carriageway ending in a public footpath and that Cottage Lane and St Pier's Lane are public carriageways to the points to which they are admittedly highways, and public footpaths for the rest of their length. I cannot find any evidence which points to this solution of the difficulty, and so far, at any rate as evidence of the user of the road is concerned, there is no difference qua the nature of that user between those parts of the roads which are admittedly highways and those parts as to which the public right is in issue."
- 6.8. The matter was also touched upon in Brand & Another v. Philip Lund (Consultants) Ltd (1989) Unreported. Ch 1985 B. No. 532 (this is the case reference given in the 'Blue Book': there may be a typographical mistake here, as the hearing was on 18 July 1989?) Judge Paul Baker QC (sitting as a Judge of the High Court).

- 6.9. "Before I come to the evidence I should deal with certain submissions of law supported by a number of authorities which have been placed before me by Mr Marten for Mr and Mrs Brand. The first one is that a public vehicular highway is and normally must be used to go from one public highway to another. In support of that, there was cited the well-known case of Attorney General v. Antrobus [1905] 2 Ch 188. That case concerned a path or track leading to Stonehenge. It was held to be not a public highway. I cannot accept the proposition precisely as stated. The position as I see it is this, that generally a public right of way is a right of passing from one public place or highway to another. Here the claimed right is from one highway (at Bellingdon) to another (at Chesham Vale). Hence I do not have to consider the position as to cul-de-sacs and tracks, as in the Antrobus case. The part of the formulation that I do not accept is the wording that it normally must be used to go from one public highway to another. In my judgment, it does not have to be shown that it is normally used to go from one end to the other. It may normally be used by people going from either end to and from premises fronting on to it and less frequently used by persons traversing its whole length. The user necessary to establish a right of way is to be considered separately from the way itself."
- 6.10. Although it is not in any way a 'precedent', it is useful to note the view of Inspector Dr T O Pritchard, when tasked to consider the true status of a through-route that currently 'changes status' part-way. He said it is "... *Improbable for part of a continuous route to be part footpath and part carriageway*", expressly taking the Godstone case as authority. [FPS/A4710/7/22 723, of 31 March 1999].

## **7. Summary**

- 7.1. If it is accepted that the application route was part of a thoroughfare, and thus a 'cross road' (as it is described on Greenwood's map), then it was historically either a public bridleway or a public general-purpose road. Its modern-era recording as a public bridleway on the definitive map and statement may have been on an historical basis, or, more probably, on the basis of user recent to the date of survey.
- 7.2. If it is accepted that the application route was part of such a thoroughfare, and thus a 'cross road', then it is improbable that the highway status changed part-way along, if one end was historically a public general purpose road (i.e. in this circumstance a cart road) then it is more probable that the whole thoroughfare was a highway of the same traffic status.
- 7.3. There is no evidence or comment in the pre-determination consultation responses that is incompatible with the application route being a 'lost way' as regards its historical traffic status. Weighing together the historical evidence, the opinion of experts, and how the

courts view 'cross roads', 'thoroughfares', and a presumption of continuing through-route traffic status, this application should lead to the making of the order sought.

**Ends.**

#### **Attachments**

- A. Letter of 4 October 2010 from Jonathan Stuart, who made the application on behalf of the Friends of Dorset Rights of Way on 21 December 2004, appointing the TRF to be his agent in this case.
- B. Order of the Supreme Court dated 13 April 2015.
- C. DCC report plan 18/13.
- D. Notice of refusal of application, letter dated 26 March 2019.
- E. John Cary's Map of Dorsetshire 1787 (dated by others in the same series).
- F. The application made to the surveying authority. This application lists the evidence submitted with the application, and this is appended here (indexed) using item references, a.a., b.b., et seq to and including o.o. The application includes the notices associated with the application.
- G. A map showing the alleged right(s) of way.
- H. Paper, "*Byway Claim for Bridleways 17 & 35 Beaminster*" as submitted with the application.
- I. Report to the Regulatory Committee, 21 March 2019. Officers' analysis of documentary evidence.
- J. Regulatory Committee minutes of 21 March 2019. Reasons for refusal of application.



FoDRoW,  
Dairy Barn,  
Coombe Keynes,  
Wareham,  
Dorset,  
BH20 5PS.

Chief Executive,  
Dorset County Council,  
County Hall,  
Colliton Park,  
Dorchester,  
Dorset,  
DT1 1XJ.

4<sup>th</sup> October 2010

**Re: Rights of Way Definitive Map Modification Orders**

Dear Sir,

Friends of Dorset's Rights of Way (FoDRoW) currently has a number of applications for Definitive Map Modifications (DMMOs) lodged with Dorset County Council. With immediate effect the Trail Riders' Fellowship (TRF) is managing and prosecuting these applications on behalf of FoDRoW. All correspondence regarding these applications should now be directed to the TRF instead of FoDRoW. Please also take this letter as our authority for Dorset County Council to accept and act on correspondence and instructions from the TRF relating to these applications.

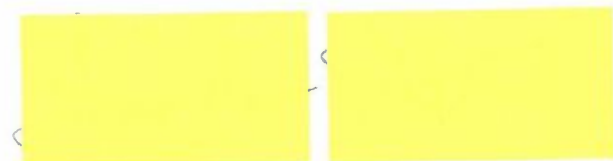
The contact details for the Trail Rider's Fellowship are included below. Please send all correspondence electronically by email where possible.

Dave Tilbury (TRF),  
C/o Oakbank Cottage,  
1 Oakbank Road,  
Eastleigh,  
SO50 6PA.

Tel: 0560 279 5905  
Email: [southandsouthwest@trf.org.uk](mailto:southandsouthwest@trf.org.uk)

Please let me know if you need anything further from FoDRoW or if any further details or clarification is required.

Yours faithfully,



Jonathan Stuart,  
FoDRoW Chairman



IN THE SUPREME COURT OF THE UNITED KINGDOM

13 April 2015

*Before:*

Lord Neuberger  
Lord Clarke  
Lord Sumption  
Lord Carnwath  
Lord Toulson

**R (on the application of Trail Riders Fellowship and another)  
(Respondents) v Dorset County Council (Appellant)**

AFTER HEARING Counsel for the Appellant, Counsel for the First Respondent and the Intervener on 15 January 2015 and

THE COURT ORDERED THAT

- 1) The appeal be dismissed
- 2) The claim for judicial review of the Appellant's decision of 2 November 2010 succeeds
- 3) By 4.00pm on 15 April 2015 the Appellant will pay the First Respondent's costs of the appeal in the agreed sum of £10,000 (inclusive of VAT) and

IT IS DECLARED that

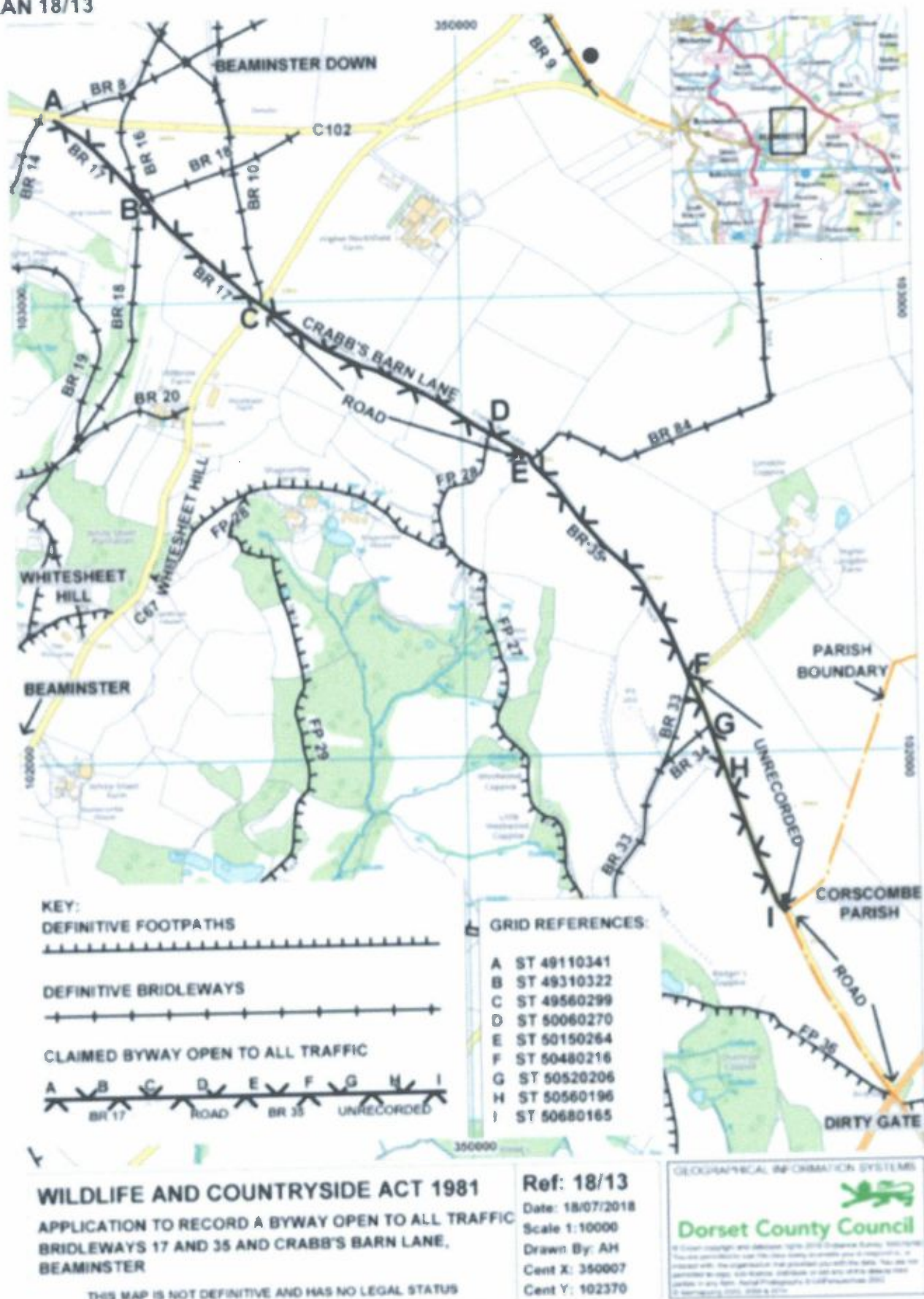
- 4) The five applications dated 14 July 2004 (ref. T338), 25 September 2004 (ref. T339), 21 December 2004 (ref. 350), 21 December 2004 (ref. 353) and 21 December 2004 (ref. T 354) made to the Appellant under section 53(5) of the Wildlife and Countryside Act 1981 were made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

Louise de Maubou.

Registrar  
13 April 2015



**PLAN 18/13**







County Hall  
Colliton Park  
Dorchester  
DT1 1XJ

**Official**

Telephone: 01305 224719  
Minicom: 01305 267933

**We welcome calls via text Relay**

Mr D Oickle, Mr C Wiles, Mr J Vannuffel  
Trail Riders Fellowship

Email: v.penny@dorsetcc.gov.uk  
Website: www.dorsetforyou.com

**By email**

Date: 26 March 2019  
Ask for: Vanessa Penny  
My ref: VP RW/T339/T353/T354  
Your ref:

**Planning and Regulation**

Dear Sirs

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**T339 - Application for a definitive map and statement modification order to upgrade Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish to Byway Open to all Traffic.**

**T353 - Application for a definitive map and statement modification order to upgrade Bridleway 14, Beaminster, to a Byway open to all Traffic.**

**T354 - Application for a definitive map and statement modification order to upgrade Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster, to a Byway Open to all Traffic.**

Your applications to modify the definitive map and statement have now been considered by the Regulatory Committee.

Their decisions were that:

1. Application T339 should be accepted and an order made.
2. Application T353 should be refused and no order made.
3. Application T354 should be accepted in part and an order made to record the route as shown between points C and I on drawing 18/13 as a byway open to all traffic.

The minutes will be available for viewing soon (approximately two weeks following the Committee) on the County Council's website: <http://www.dorsetforyou.com/countycommittees> Click the link for the Regulatory Committee from the list and then click on the "Browse meetings agendas for this Committee" link.

The County Council will publish Orders reflecting these decisions in due course and you will be sent copies. Notices will also be erected on site and appear in the press. If there are no objections the Orders can be confirmed and the paths recorded on the definitive map and statement of rights of way. However, if there are objections the matters will be referred to the Secretary of State for determination, either by written representations, public hearing or public inquiry.

If you wish to appeal against the decision on application T353, you must notify the Planning Inspectorate of your intention to do so within 28 days of receiving this letter. The address is:

Rights of Way Team  
The Planning Inspectorate

Room 3G Hawk  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Email: [rightsofway2@pins.gsi.gov.uk](mailto:rightsofway2@pins.gsi.gov.uk)

A copy of your notice of appeal must also be served on the County Council at the same time.

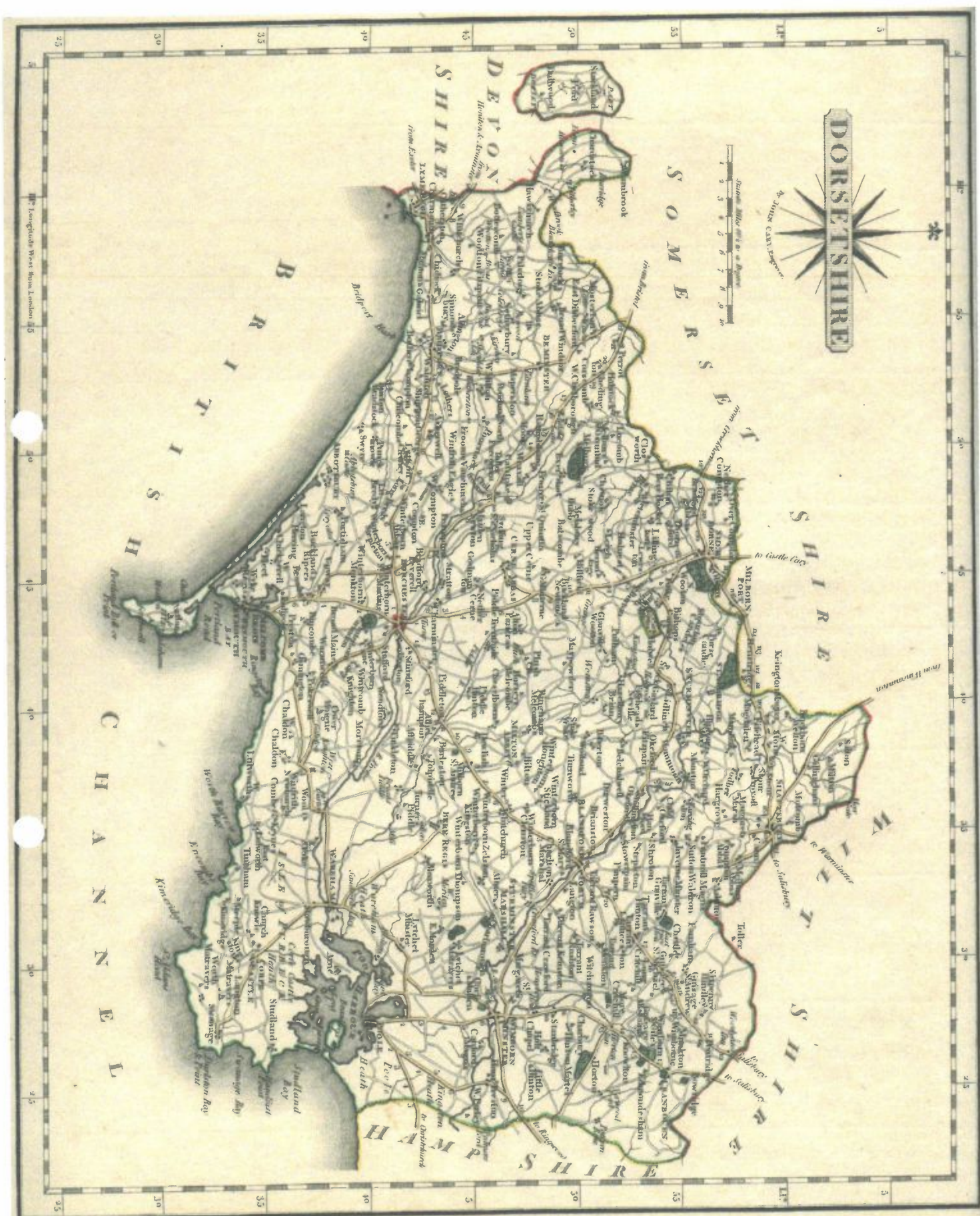
Yours faithfully

V Penny

**Vanessa Penny**  
Definitive Map Team Manager  
Planning and Regulation Team

Dorset County Council is a Data Controller for the purposes of the General Data Protection Regulation 2016 and the Data Protection Act 2018. This Act regulates how we obtain, use and retain personal information. The information you supply will be used for the purpose of fulfilling our functions and duties, including those under the Highways Act 1980, Town and Country Planning Act 1990 and the Wildlife and Countryside Act 1981. Any information provided, including personal details will be available for public inspection, disclosed to interested third parties and may be used during public inquiries and other proceedings. The information will be kept indefinitely. By replying to this correspondence you are consenting to your personal information being retained and used for these purposes. Further information about the use of personal information and data protection is available on our web-site at [www.dorsetforyou.com](http://www.dorsetforyou.com) or by contacting the Council's Data Protection Officer.







F



FORM A

DORSET COUNTY COUNCIL

APPLICATION FORM FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY  
Wildlife and Countryside Act 1981

To: Chief Executive  
Dorset County Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

I/We (i)

Friends of Dorset's Rights of Way (FoDRoW)

of (ii) PO Box 5365, Dorchester, Dorset, DT2 8WH.

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by \*:-

- (a) ~~Deleting the footpath / bridleway / byway open to all traffic \*~~ which runs

from:

to:

- (b) ~~Adding the footpath / bridleway / byway open to all traffic \*~~ which runs

from: 1 – ST 49555 03010 2 – ST 50485 02165

to: 1 – ST 50150 02640 2 – ST 50700 01660

- (c) ~~Upgrading/downgrading~~ to a ~~footpath / bridleway / byway open to all traffic \*~~ the ~~footpath/bridleway/byway open to all traffic~~ which runs

from: 1 – ST 49105 03415 2 – ST 50150 02640

to: 1 – ST 49555 03010 2 – ST 50485 02165

- (d) ~~Varying/adding to the particulars relating to the footpath / bridleway / byway open to all traffic \*~~

from:

to:

by providing that

and shown on the map annexed hereto (see overleaf).

I/We attach copies of the following documentary evidence [including statements of witnesses] in support of this application:-

- (iii) Please see attached report for details of evidence submitted in support of this claim.

Copies of documentary evidence has been supplied on CD, viewable on any Windows PC.

Signed: \_\_\_\_\_

Date: 21st December 2004





FORM B

DORSET COUNTY COUNCIL

NOTICE OF APPLICATION FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

Section 53(5) & Schedule 14 to the Wildlife and Countryside Act 1981

NOTES FOR GUIDANCE OVERLEAF - PLEASE READ CAREFULLY

**Section A** To (i): Mrs GA Langton, Higher Meerhay Farm

Of (ii): Beaminster, Dorset, DT8 3FB.

**Section B** Notice is hereby given that on the 21<sup>st</sup> December 2004

I/We (iii): Friends of Dorset's Rights of Way (FoDRoW)

Of (iv): PO Box 5365, Dorchester, Dorset, DT2 8WH.

have made an application to the Dorset County Council that the Definitive Map and Statement for the area be modified by \*:

**Section C**

(a) ~~Deleting the footpath / bridleway / byway open to all traffic\*~~ which runs  
from:

to:

(b) ~~Adding the footpath / bridleway / byway open to all traffic \*~~ which runs

from: ST 49555 03010

to: ST 50150 02640

(c) ~~Upgrading/downgrading to a footpath / bridleway / byway open to all traffic\*~~ the  
~~footpath / bridleway / byway open to all traffic\*~~ which runs

from: 1 – ST 49105 03415 2 – ST 50150 02640

to: 1 – ST 49555 03010 2 – ST 50485 02165

(d) ~~Varying/adding to the particulars relating to the footpath / bridleway / byway open to  
all traffic\*~~ which runs

from:

to:

by providing that:

**Signed:**

**Dated:** 21<sup>st</sup> December 2004

(i) Insert name of landowner(s)  
(ii) Insert address of landowner(s)

(iii) Insert your name(s)  
(iv) Insert your address

\* Delete as appropriate



FORM B

DORSET COUNTY COUNCIL

NOTICE OF APPLICATION FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

Section 53(5) & Schedule 14 to the Wildlife and Countryside Act 1981

NOTES FOR GUIDANCE OVERLEAF - PLEASE READ CAREFULLY

**Section A** To (i): CWW Dupont, Langdon (Dorset) Farms,

Of (ii): Langdon Manor, Beaminster, Dorset, DT8 3NN.

**Section B** Notice is hereby given that on the 21<sup>st</sup> December 2004

I/We (iii): Friends of Dorset's Rights of Way (FoDRoW)

Of (iv): PO Box 5365, Dorchester, Dorset, DT2 8WH.

have made an application to the Dorset County Council that the Definitive Map and Statement for the area be modified by \*:

**Section C**

(a) ~~Deleting the footpath / bridleway / byway open to all traffic\* which runs~~

from:

to:

(b) ~~Adding the footpath / bridleway / byway open to all traffic \*~~ which runs

from: 1 – ST 49555 03010 2 – ST 50485 02165

to: 1 – ST 50150 02640 2 – ST 50650 01700

(c) ~~Upgrading/downgrading to a footpath / bridleway / byway open to all traffic\* the~~  
~~footpath / bridleway / byway open to all traffic\*~~ which runs

from: 1 – ST 49105 03415 2 – ST 50150 02640

to: 1 – ST 49555 03010 2 – ST 50485 02165

(d) ~~Varying/adding to the particulars relating to the footpath / bridleway / byway open to~~  
~~all traffic\* which runs~~

from:

to:

by providing that:

**Signed:**

**Dated:** 31<sup>st</sup> December 2004

(i) Insert name of landowner(s)  
(ii) Insert address of landowner(s)

(iii) Insert your name(s)  
(iv) Insert your address

\* Delete as appropriate



FORM B

DORSET COUNTY COUNCIL

NOTICE OF APPLICATION FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

Section 53(5) & Schedule 14 to the Wildlife and Countryside Act 1981

NOTES FOR GUIDANCE OVERLEAF - PLEASE READ CAREFULLY

**Section A** To (i): Mr G Neal, Westleaze Farm,

Of (ii): Whitesheet Hill, Beaminster, Dorset.

**Section B** Notice is hereby given that on the 21<sup>st</sup> December 2004

I/We (iii): Friends of Dorset's Rights of Way (FoDRoW)

Of (iv): PO Box 5365, Dorchester, Dorset, DT2 8WH.

have made an application to the Dorset County Council that the Definitive Map and Statement for the area be modified by \*:

**Section C**

(a) ~~Deleting the footpath / bridleway / byway open to all traffic\* which runs~~

from:

to:

(b) ~~Adding the footpath / bridleway / byway open to all traffic \*~~ which runs

from: ST 49555 03010

to: ST 50150 02640

(c) ~~Upgrading/downgrading to a footpath / bridleway / byway open to all traffic\* the~~  
~~footpath / bridleway / byway open to all traffic\*~~ which runs

from: 1 – ST 49105 03415 2 – ST 50150 02640

to: 1 – ST 49555 03010 2 – ST 50485 02165

(d) ~~Varying/adding to the particulars relating to the footpath / bridleway / byway open to~~  
~~all traffic\* which runs~~

from:

to:

by providing that:

**Signed:**

**Dated:** 21<sup>st</sup> December 2004

(i) Insert name of landowner(s)  
(ii) Insert address of landowner(s)

(iii) Insert your name(s)  
(iv) Insert your address

\* Delete as appropriate



FORM C

DORSET COUNTY COUNCIL

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

Wildlife and Countryside Act 1981

To: Chief Executive  
Dorset County Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

I/We(i) Friends of Dorset's Rights of Way (FoDRoW)

of (ii) PO Box 5365, Dorchester, Dorset, DT2 8WH.

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed: \_\_\_\_\_ Date: 31<sup>st</sup> December 2004

NOTES FOR GUIDANCE

This certificate should only be completed when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be provided below. Please indicate if you have been unable to identify all owners and occupiers of any land to which the application relates.

We have been unable to identify all landowners; the landowners identified are listed below and an application to post a Site Notice is enclosed.

Notice of Application Sent To:

	Name	Address
1.	Mr G Neal	Westleaze Farm, Whitesheet Hill, Beaminster, Dorset.
2.	Mrs GA Langton	Higher Meerhay Fm, Beaminster, Dorset, DT8 3FB.
3.	CWW Dupont	Langdon Manor, Beaminster, Dorset, DT8 3NN.
4.		
5.		

(i) Insert name of applicant(s)

(ii) Insert address of applicant(s) 21 September 2004





FORM C

DORSET COUNTY COUNCIL

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY

Wildlife and Countryside Act 1981

To: Chief Executive  
Dorset County Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

I/We(i) Friends of Dorset's Rights of Way (FoDRoW)

of (ii) PO Box 5365, Dorchester, Dorset, DT2 8WH.

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed: \_\_\_\_\_ Date: 6<sup>th</sup> February 2005

NOTES FOR GUIDANCE

This certificate should only be completed when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be provided below. Please indicate if you have been unable to identify all owners and occupiers of any land to which the application relates.

Re: Beaminster BR17, BR35, "Crabb's Barn Lane. Unable to identify all landowners; site notices posted at ST 491 034 & ST 507 016 on 6<sup>th</sup> February 2005.

Notice of Application Sent To:

	Name	Address
1.	Mr G Neal	Westleaze Farm, Whitesheet Hill, Beaminster, Dorset.
2.	Mrs GA Langton	Higher Meerhay Fm, Beaminster, Dorset, DT8 3FB.
3.	CWW Dupont	Langdon Manor, Beaminster, Dorset, DT8 3NN.
4.		
5.		

(i) Insert name of applicant(s)

(ii) Insert address of applicant(s) 21 September 2004



DORSET COUNTY COUNCIL

FORM D

APPLICATION FOR PERMISSION TO NOTIFY LANDOWNERS  
BY SITE NOTICE

Wildlife and Countryside Act 1981

To: Chief Executive  
Dorset County Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

**PATH LOCATION DETAILS:**

PARISH: Beaminster DISTRICT: West Dorset

CLAIMED STATUS OF WAY: ~~Footpath/Bridleway~~ Byway Open to All Traffic *[delete as appropriate]*.

DESCRIPTION OF PATH *[include a map]:*

FROM: ST 49105 03415

TO: ST 50700 01660

I/WE (i) Friends of Dorset's Rights of Way (FoDRoW)

of (ii) PO Box 5365, Dorchester, Dorset, DT2 8WH.

have carried out an investigation in an attempt to discover the owners and occupiers of the land affected by the application. I have made enquiries of: *[delete those that are not applicable]*.

- \* Adjoining landowners
- \* Local inhabitants
- \* ~~Post Office~~
- \* ~~Parish Council~~
- \* ~~Register of Electors~~
- \* Land Registry
- \* Other appropriate sources *[please state]* – **Please see enclosed explanation.**

I have been unable to discover ownership of the land, and I request the Council to direct that Notice may be served by posting said Notices at either end of the way claimed.

Signed: \_\_\_\_\_ Date: 21<sup>st</sup> December 2004



DORSET COUNTY COUNCIL

FORM G

**PUBLIC RIGHTS OF WAY DOCUMENTARY EVIDENCE CHECKLIST**

**Wildlife and Countryside Act 1981**

To: Chief Executive  
Dorset County Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

**PATH DETAILS:-**

**PARISH:** Beaminster

**DISTRICT:** West Dorset

**BELIEVED STATUS OF PATH:** ~~footpath~~ / ~~bridleway~~ / byway open to all traffic *[delete as appropriate]*

**DESCRIPTION OF PATH** *[please indicate route on a map - 1:2500 scale if possible]*

**FROM:** ST 49105 03415

**TO:** ST 50700 01660

**I/We** (i) Friends of Dorset's Rights of Way (FoDRoW)

of (ii) PO Box 5365, Dorchester, Dorset, DT2 8WH.

have carried out research at the County Records Office and/or Public Records Office and wish the following documents to be considered in support of my application [see notes on reverse of **FORM A**]:

**Document**

**DRO/PRO Reference**

**Please see enclosed report for full list of evidence submitted to support this claim**

Inclosure Award and Map\*

Tithe Apportionment and Map\*

Finance Act 1910 Maps\*

Ordnance Survey Maps\*

Railway/Canal Survey Maps and Schedules\*

Estate Maps and Records\*

Quarter Session Rolls\*

Sale Catalogues\*

Highway Board Minute Books\*

Others *[please state]*.

**Signed:** \_\_\_\_\_

**Date:** 21<sup>st</sup> December 2004

(i) Insert name of applicant(s)

(ii) Insert address of applicant(s)

\* Delete as appropriate

# Index to plans put in with application.

## Byway Claim for Bridleways 17 & 35 Beaminster

### Introduction

This document supports FoDRoW's DMMO claim for byway status on a route in the parish of Beaminster. The claimed route runs over what is currently two bridleways, an unpaved unclassified county road (UCR) and a section with no recorded public rights of way. The route extends from ST 49105 03415 to ST 50700 01660. The entire route is highlighted on the enclosed map, which is an enlarged OS 1:50000 map printed at 1:20000 scale. This route is currently partly recorded as two bridleways, namely:

Beaminster BR17, ST 49105 03415 to ST 49555 03010.  
Beaminster BR35, ST 50150 02640 to ST 50485 02165.

No evidence has been found to indicate this road has ever been stopped up. Thus on the basis of the evidence presented below FoDRoW believes the route should today be a byway.

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

### Documentary Evidence

The following evidence is being submitted to support our DMMO application:

- Isaac Taylor Map 1796, DRO reference M14.
- Plan of roads in neighbourhood of Beaminster c.1800, DRO reference D/RGB:LL.
- Greenwood's map 1826, DRO reference M116.
- Beaminster Tithe map 1843, DRO reference T/BE.
- Beaminster Inclosure Map & award, DRO reference Inclosure 65.
- Ordnance Survey Old Series 1" map, DRO reference D626/25.
- Isaac Taylor's map 1765, DRO reference D626/25.

### Analysis of Documentary Evidence

The evidence submitted indicates the claimed route is part of a longer route that historically had public vehicular rights. The original route started at ST 49105 03415, proceeded over BR17, then along the UCR, over BR35, over a section with no recorded public rights and along what is now a minor county road to Dirty Gate at its junction with the B3163, and over what is today an unpaved UCR on Hackthorn Hill. This claim covers the NE section of the original road, upto the point which is today a minor county road.

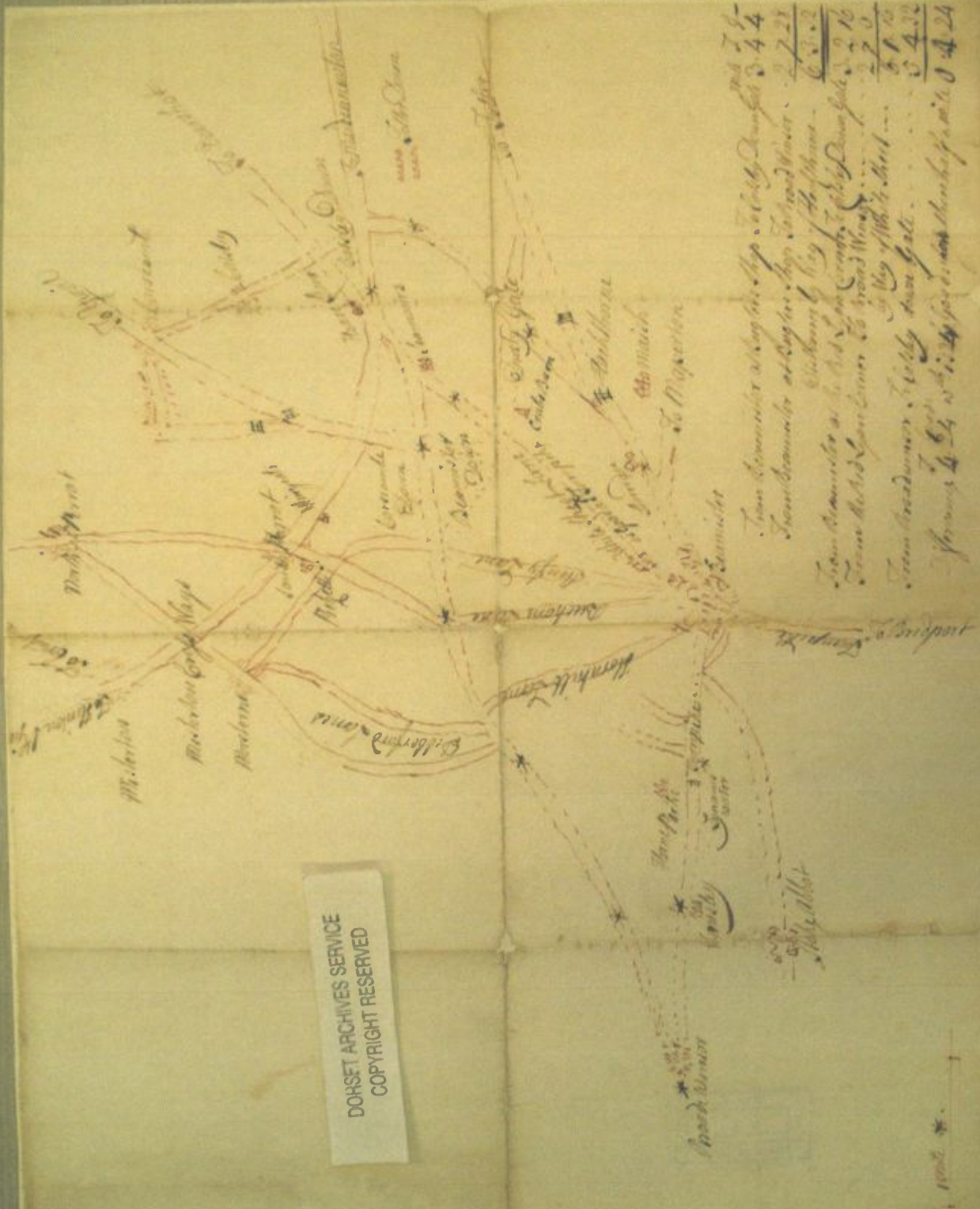
The Beaminster inclosure map and award identifies the central part of the claimed route as a public carriage road (PCR 'B'), thus this certainly had public vehicular rights. Furthermore, a map annotation at the south east end of the road describes the road as continuing "To Hook Village". This is confirmed by the description in the award which also states the road continues to Hook and it is sensible to assume the status of the road remained the same. The north east end of the road on







DORSET ARCHIVES SERVICE  
COPYRIGHT RESERVED













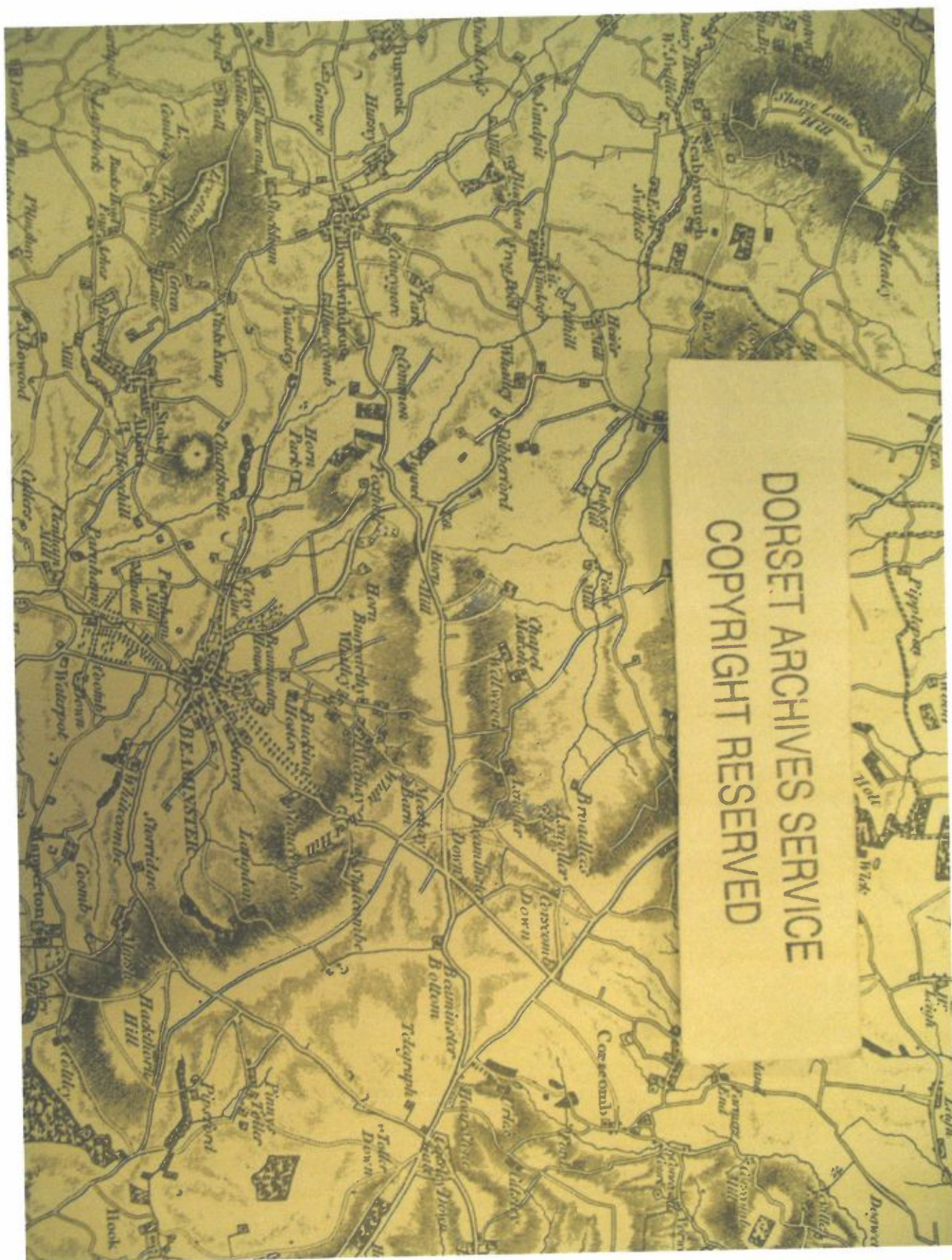




三

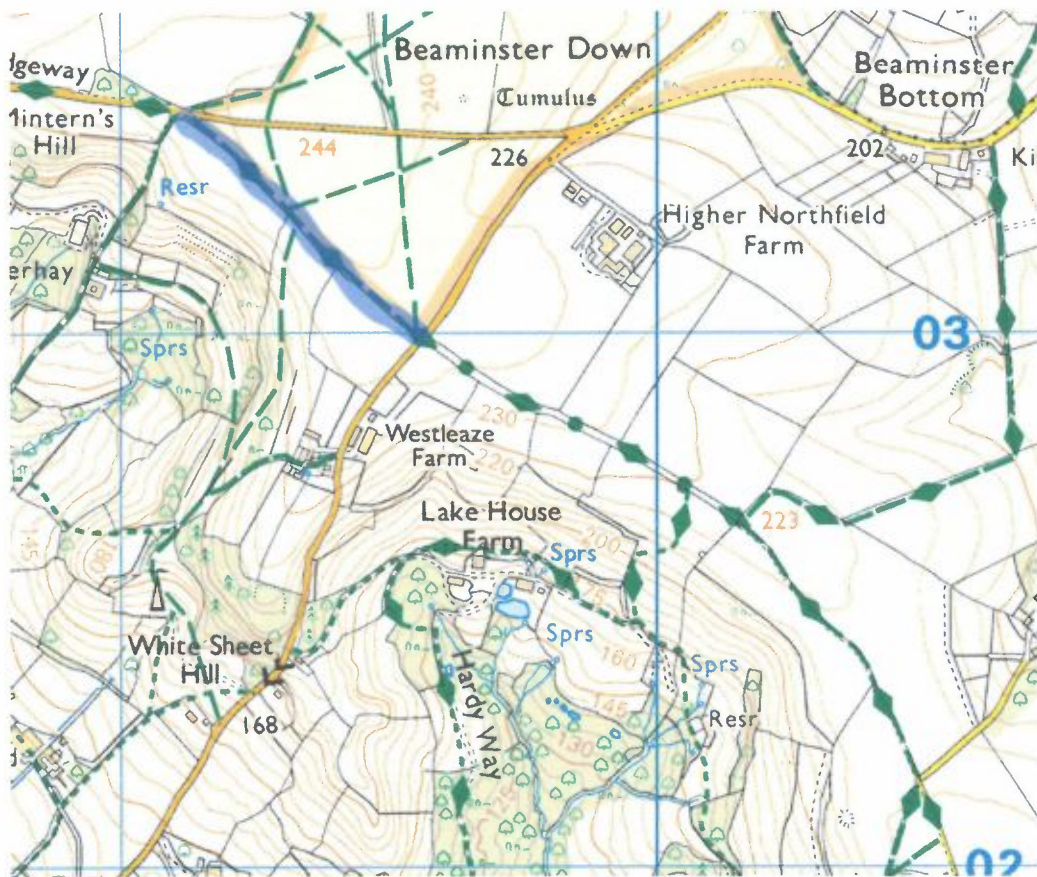
**Save**













## Byway Claim for Bridleways 17 & 35 Beaminster

### Introduction

This document supports FoDRoW's DMMO claim for byway status on a route in the parish of Beaminster. The claimed route runs over what is currently two bridleways, an unpaved unclassified county road (UCR) and a section with no recorded public rights of way. The route extends from ST 49105 03415 to ST 50700 01660. The entire route is highlighted on the enclosed map, which is an enlarged OS 1:50000 map printed at 1:20000 scale. This route is currently partly recorded as two bridleways, namely:

Beaminster BR17, ST 49105 03415 to ST 49555 03010.

Beaminster BR35, ST 50150 02640 to ST 50485 02165.

No evidence has been found to indicate this road has ever been stopped up. Thus on the basis of the evidence presented below FoDRoW believes the route should today be a byway.

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

### Documentary Evidence

The following evidence is being submitted to support our DMMO application:

- Isaac Taylor Map 1796, DRO reference M14.
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- Greenwood's map 1826, DRO reference M116.
- Beaminster Tithe map 1843, DRO reference T/BE.
- Beaminster Inclosure Map & award, DRO reference Inclosure 65.
- Ordnance Survey Old Series 1" map, DRO reference D626/25.
- Isaac Taylor's map 1765, DRO reference D626/25.

### Analysis of Documentary Evidence

The evidence submitted indicates the claimed route is part of a longer route that historically had public vehicular rights. The original route started at ST 49105 03415, proceeded over BR17, then along the UCR, over BR35, over a section with no recorded public rights and along what is now a minor county road to Dirty Gate at its junction with the B3163, and over what is today an unpaved UCR on Hackthorn Hill. This claim covers the NE section of the original road, upto the point which is today a minor county road.

The Beaminster inclosure map and award identifies the central part of the claimed route as a public carriage road (PCR 'B'), thus this certainly had public vehicular rights. Furthermore, a map annotation at the south east end of the road describes the road as continuing "To Hook Village". This is confirmed by the description in the award which also states the road continues to Hook and it is sensible to assume the status of the road remained the same. The north east end of the road on

the inclosure map shows a crossroads. This indicates the road continued NW beyond what is shown on the inclosure map.

The Beaminster tithe map shows the NE half of the claimed route as an unapportioned shaded road, indicating this was a public road. It includes much of the road shown on the inclosure map and all of the claimed route to the NE of the inclosure map's carriage road. Both parts of the road are shown in the same way and as continuous, thus supporting the argument that the route was continuous and the same rights, ie those documented in the inclosure award, would apply to the entire route.

Dorset Records Office document D/RGB:LL is a "Plan of roads in neighbourhood of Beaminster c. 1800". This clearly shows the claimed route as a continuous road. Although the map is a rough sketch the roads clearly correspond to modern roads. Furthermore the objective of the map's creator appears to be to show public roads with no lesser routes shown and the length of commonly travelled routes marked.

Isaac Taylor's map of 1796 clearly shows the entire route as a continuous road. There is no distinction between what is now the sections of BR, UCR and county road, indicating the route has a single status. This map also appears to only show public roads. Relatively few roads are shown, those included correspond well to modern public roads, and there appears to be no intention to show bridleways or footpaths.

Greenwood's map of 1826 also shows the entire claimed route as a continuous road with no indication the status changes at any point. The route's depiction is consistent with other minor public roads in the area. Similarly, The 1<sup>st</sup> Edition "Old Series" OS map and Isaac Taylor's map from 1765 both show the claimed route as a continuous road and in the same way as other public roads in the area. Isaac Taylor's map shows very few roads and it appears only the more significant public roads are shown.

Finally, one must question why there be a public road to Higher Langdon, the modern county road from the B3163, when this is a private farm? It is more sensible to believe the road continued over what is today BR35 to join the unpaved UCR. In Dorset UCRs have the reputation of being public roads. This is confirmed by Dorset County Council letters and minutes from the 1950s and 1960s. Those document DCC's decision to not create RUPPs but instead classify unpaved roads with public vehicular rights as UCRs. The UCR in the claimed route goes nowhere and it is most likely the dead end UCR and county road were connected by a road over what is now BR35.

The inclosure map and award provides conclusive evidence of public vehicular rights over much of the claimed route. The tithe map and other small scale maps indicate the claimed route was a public road and also show it as a continuous route with the same status as the section shown on the inclosure map. The Eyre vs New Forest Highways Board case directs us that the whole route would have the same rights, ie those of a public carriage road, and there is no contrary evidence to assume the current BR-UCR-BR classification is correct.



# Regulatory Committee

**Dorset County Council**



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

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

## 8 Analysis of Documentary Evidence

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

### Ordnance Survey Map of 1811

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

### Greenwood's Map of 1826

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

### Taylor's Maps of 1765 and 1796

- 8.4 Taylor's map of 1796 appears to show the claimed byway. The map shows a lane or road running south-eastwards from Beaminster Down, and this route passes Crabbs Barn, which is noted on the map.
- 8.5 Taylor's map of 1765 also shows the route, as a double-pecked line, part of which is in the form of a lane.

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

#### **Plan of Roads in the Neighbourhood of Beaminster, Circa 1800**

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

#### **Tithe Map of 1843**

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

### **Beaminster Inclosure Award of 1809.**

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



## **The Definitive Map**

### **Parish Surveys**

- 8.12 The National Parks and Access to the Countryside Act 1949 charged the County Council, in its capacity of "Surveying Authority", with a duty to compile a record of the public rights of way network. As part of this process District and Parish Council carried out surveys and provided the County Council with information for the purposes of recording the existence of public rights of way.
- 8.13 There were various maps produced by the County Council leading up to the current definitive map, which was sealed in 1989. These were the draft map of 1953, provisional map of 1964, first definitive map of 1966 and the revised draft map of 1974.
- 8.14 The parish survey map, of 1951 shows the whole length of the claimed byway as a solid green line denoting a bridleway. On the parish map the path has the number 30 where it corresponds to what is now Bridleway 17, and the whole length of the route between the north-western end of Crabbs Barn Lane has the number 58.
- 8.15 The parish survey describes path 30 thus:  
  
'BR 30 On Beaminster Down. This BR starts at the southern corner of Beaminster down (Jn of Crabbs Barn Lane and White Sheet Hill Road) and runs in an NW direction with hedge on left to the westerly corner of down. A well defined track.'
- 8.16 The parish survey describes path 58 thus:  
  
'BR58 Beaminster down towards Hooke. A continuation of BR30 from the southern corner of Beaminster Down. For the first half mile this BR is known as Crabbs Barn Lane. It runs between hedges (part metalled) in a SE direction to a FG and then continues as a field track with hedges on left using two FG's (passing turning on left to Upper Langdon (see BR59) and turnings on right to Longdon (see BR22, 57 and 56), then second FG being at the commencement of a lane (12 foot, metalled) which continues to Dirty Gate (Top of Hackthorn Hill on Beaminster-Dorchester Road). A well defined and frequently used BR with gates in good condition.'

### **Draft Map 1953.**

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

### **Provisional Map 1964**

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

#### **First Definitive Map 1966**

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

#### **Revised Draft Map 1974**

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

#### **Special Review. 1977/1973**

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

#### **Sealed definitive map. 1989**

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

## **Highways Records**

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

## **Finance Act 1910 Records Valuation Map and Field Book**

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

## **Ordnance Survey Maps**

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



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

#### **Early Published Maps**

- 8.34 A number of early published maps have been examined, in addition to those submitted by the applicant, including Saxton's map of 1575, Kip's map of 1607, Bill's map of 1626, Blaue's map of 1645 and Seale's map of 1732. None of these shows the claimed byway, but the maps are of a small scale and only show settlements and significant topographical features.

#### **Commercial Maps**

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

#### **Land Registry**

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

## **9 Analysis of User Evidence Supporting the Application**

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

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



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

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

9.24 A byway open to all traffic is a right of way for vehicles. The definition of a BOAT is that of a right of way for vehicular traffic, but which is used mainly for the purposes for which footpaths and bridleways are used; that is to say by walkers and horse riders.

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

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

10.1 On 15 September 2006 Mr D. Oickle submitted the documentary evidence listed in the table in 5.1 above.

10.2 Mr Oickle concludes by stating that, 'In summary, there is a weight of evidence to indicate that it is more likely this route carries public carriageway rights than any lesser rights.' 'I believe there is sufficient evidence, together with the evidence put forward by FoDRoW, to support the claim that this road carries vehicular rights and should therefore be correctly classified as a byway open to all traffic.'

10.3 The applicant's comments on the evidence he submitted have been taken into account in section 8 of this report in considering documentary evidence which relates to the status of the claimed byway.

10.4 Mr Legg of the Open Spaces Society has written in a note dated 1 February 2010 making a number of observations on the background and historical purposes of the claimed route. Mr Legg says that 'in 1950 local people assumed it was already...an unclassified road', which Mr Legg believes is the reason for the unrecorded status of parts of the claimed byway. Mr Legg refers to the showing of the way on a road map from the 1970's and explains that the route was a 'direct link in the ridgeway system.' Mr Legg refers to 'A History of Beaminster', published in 1984 by Marie G de Eadle, who writes that 'authority was given for the building of a turnpike house near Dirty Gate in order to block use of Crabbs Barn Lane in order to avoid tolls, but adds that it was never built. In other references, Mrs De Eadle refers to the way as a droveway.'

10.5 These points must be considered together with documentary evidence relating to the use of and status of the way.

## **11 Analysis of evidence opposing the application**

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

11.2 In order for unrecorded rights for mechanically propelled to be preserved, an application complying with the requirements of the Wildlife and Countryside Act 1981 had to be made before 20 January 2005.

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

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

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

- 11.4 The County Council has considered these points raised by Mr Plumbe. The application was received by the County Council on 25<sup>th</sup> September 2004, and so before 20 January 2005. All of the evidence listed on the form was supplied by the applicant prior to the application. The applicant used the same wording for each of its applications submitted around this time because it was known that there was likely to be a 'cut off' date but not when it would be. Officers do not consider that the applicant deliberately held back evidence or submitted applications before they had been researched. Officers are therefore satisfied that the application has been submitted in accordance with the requirements of the Wildlife and Countryside Act 1981 so that the exceptions in the Natural Environment and Rural Communities Act are capable of applying.
- 11.5 On 21 July 2005 Mr J Cheal of Thring Townsend, Solicitors, sent to the Council a detailed submission inviting the Council to 'dismiss the claim and make no order'. This submission contains documentary evidence and other information regarding the status and use of the path in question, and an analysis of the evidence that has been submitted in support of the application. Mr Cheal is acting for the following:
- Langdon (Dorset) Farms (Mr C W Dupont)
  - Mrs T Mackenzie Green
  - Mr G Streatfield of Denhay Farms Ltd.

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

- 11.6 Mr Cheal questions whether it is technically possible for 'two parts of the claimed route to be modified to byway status if it is the case that either or both of these is already a publicly maintainable road'.
- 11.7 The effect of a modification order would be to record the route in question as a byway open to all traffic on the definitive map. There is no reason why the way should not appear in the Council's records as both a publicly maintainable highway and a byway open to all traffic.
- 11.8 Mr Cheal notes that, if the application for the recording of a byway open to all traffic is to succeed, 'the standard of proof is on the balance of probabilities. It is not a question of whether or not public vehicular rights have been reasonably alleged to subsist.'



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

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

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



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

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

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



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

## **12 Analysis of other submissions**

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

## **13 Conclusion**

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

- 13.5 The Finance Act 1910 map shows the length of claimed byway between A, B and C, over Bridleway 17, to run within hereditament 495. The Field Book for this hereditament does not record any deduction for 'Public Right of Way or User'. The length of claimed byway over the part of Crabbs Barn Lane between C and D is shown as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of highway status. The south-eastern end of Crabb's Barn Lane, between D and E, is not shown to be excluded in this way, and lies within hereditament 342. The length of claimed byway between E, F, G, H and I also lies within hereditament 342, and is not shown to be excluded as a separate area of land. The Field Book records a deduction of £100 for 'Public Right of Way or User'. It is possible that this deduction was granted because of the existence of a public highway through the land subject to the survey. This is of some assistance in indicating the existence of a highway, but its limitations must be noted.
- 13.6 The process of the drawing-up of the definitive map gives no information to indicate that any error was made in the recording of Bridleways 35 and 17. It is possible that the provisional map of 1964 did not include those sections of the route that were shown in the parish and draft map because these were considered to be vehicular highways, and that their showing on the definitive map was therefore unnecessary. Caution needs to be exercised in drawing any conclusions from such an assumption, and it is important to note that the listing of a way in the Council's records as a highway maintainable at public expense does not confirm the extent of public rights over it.
- 13.7 The Beaminster Inclosure Award of 1809 describes a route which corresponds to Crabb's Barn Lane, between C and E on plan 18/13. The Award describes this way as one other 'public carriage road and highway 30 feet wide and..... being part of the public highway towards the village of Hook...' The Inclosure map is annotated with the words 'To Hook Village' at the south-eastern end of this awarded carriage road. This gives weight to the assumption that the awarded carriageway was part of a route which continued, south-eastwards, in the direction of Hook.
- 13.8 It is concluded that the documentary evidence as a whole is sufficient to demonstrate, on balance, that the claimed public rights subsist.
- 13.9 If members are not satisfied on the basis of the documentary evidence that public vehicular rights have been shown to exist, then they should consider whether those rights have been dedicated either: -
- (a) Under Section 31 of the Highways Act 1980 by having been used by the public as of right and without interruption for a period of 20 or more years, ending with the date on which the public right to use the way was brought into question; or
  - (b) At Common law where it can be shown that the landowner at some time in the past dedicated the way to the public either expressly, the evidence of the dedication being lost, or by implication in making no objection to the use by the public of the way.
- 13.10 Under Section 31 of the Highways Act 1980 and under common law the public right of way must be shown to follow a defined track and not be an area over which the public have wandered at large.
- 13.11 It is considered that public rights were brought into question by the application to modify the definitive map and statement, which was made in December 2004.





## Regulatory Committee

Minutes of the meeting held at County Hall, Colliton Park,  
Dorchester, DT1 1XJ on Thursday, 21 March 2019

**Present:**

Councillor Ray Bryan (Chairman – for the meeting)  
Councillor Mary Penfold (Vice – Chairman for the meeting)  
Jon Andrews, Shane Bartlett, Kevin Brookes, Ray Bryan, Jean Dunseith, Katharine Garcia,  
Jon Orrell, Mary Penfold and David Shortell.

**Members attending**

Councillor Jill Haynes – Deputy Leader; Portfolio Holder for Health and Care and County  
Councillor for Three Valleys – minutes 18 and 23.  
Councillor Andrew Parry – Portfolio Holder for Economy, Education, Learning and Skills and  
County Councillor for Ferndown – minute 20.  
Councillor Rebecca Knox – Leader and County Councillor for Beaminster – minutes 24 and 25.

**Officers Attending:** Mike Garrity (County Planning, Minerals and Waste Team Leader), Vanessa  
Penny (Regulation Team Leader), David Northover (Senior Democratic Services Officer) and Phil  
Crowther (Senior Solicitor), Carol McKay (Definitive Map Technical Officer), Rob Jefferies  
(Principal Planning Officer), Charlotte Rushmere (Principal Planning Officer) and Paul Hopkins  
(Countryside Access Management Ltd).

**Public Speakers:-**

Debbie Thorpe, Trustee Bournemouth Guide Camp Association – minute 20  
Lin Growcott, Girlguiding Unit Leader – minute 20.  
Racheal Tattum, County Commissioner, Girlguiding Dorset – minute 20.  
Nick Davies, local resident/landowner – minute 20.  
Phillipa Clunes, local resident – minute 24.  
Jonathan Cheal, Solicitor – minute 25  
Philip Golding, Beaminster Society – minute 25.  
George Streatfield, representing Denhay Farms Ltd – minute 25.  
Bill Dupont, landowner coordinator – minute 25.  
Chris Wiles, Trail Riders Federation and applicant – minutes 23, 24 and 25.

(Note: These minutes have been prepared by officers as a record of the meeting and of any  
decisions reached. **They are to be considered and confirmed by the Chairman of the  
meeting, Councillor Ray Bryan.**

**Election of Chairman**

13

**Resolved**

That Councillor Ray Bryan be elected Chairman for the meeting.

The opportunity was also taken to appoint a Vice-Chairman for the meeting.

**Resolved**

That Councillor Mary Penfold be appointed Vice-Chairman for the meeting.

The Chairman took the opportunity to express his sincere gratitude – in his own right  
and on behalf of the Committee – to the former Chairman, Councillor David Jones and  
Vice-Chairman, Councillor Margaret Phipps, of the Committee for their commitment  
and contribution over the years to the work of the Committee which was much valued  
and appreciated – in ensuring that the Committee always acted with probity and

**T354, - Application for a definitive map and statement modification order to upgrade Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster, to a Byway Open to all Traffic.**

25 The Committee considered a report by the Service Director Environment, Infrastructure and Economy on the determination of an application to modify the Definitive Map and Statement of Rights of Way to upgrade Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster to record them as Byways Open to All Traffic (BOAT), following a recent Supreme Court ruling. It was confirmed that the Committee was being asked to revisit a decision to refuse five applications for BOATs taken on 7 October 2010, following a Judicial Review and subsequent Supreme Court ruling.

Officers confirmed that in response to an application by the Friends of Dorset Rights of Way – subsequently adopted by the Trail Riders Fellowship - an investigation was carried out to upgrade to a byway open to all traffic Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster. The Committee were now being asked to consider the evidence relating to the status of the claimed route. The Committee also needed to determine whether the applications had been made in accordance with the statutory requirements in order to determine whether rights for mechanically propelled vehicles had been extinguished.

With the aid of a visual presentation, and in taking into account the provisions of the Update Sheet made available to members prior to the meeting and appended to these minutes, the basis for the application was explained and what it entailed. Photographs and plans were shown to the Committee by way of illustration. This showed the claimed route and the points between which it ran in its current condition, as a grassy field-edge path between points A-C, a stone track between points C-F, and then a tarmac route from points F-I.

The documentary and user evidence contained in the report was referred to in detail and how this was applied in the officer's reasoning for coming to the recommendation they had. The weight to be given to the user and documentary evidence was explained. The Committee's attention was drawn to what they were being asked to take into consideration in coming to their decision.

Officers confirmed that the most substantial of the documentary evidence was the Beaminster Inclosure Award of 1809, which contained a plan showing a route which corresponded to Crabb's Barn Lane, between points C and E on plan 18/13. The Award described this way as 'one other public carriage road and highway 30 feet wide'. This was considered to be evidence of a way carrying public vehicular rights over this length of the claimed byway. However, the value of the Inclosure Award in providing evidence of public status was confined to that length of the claimed route that was awarded by it, with there being no other plan contained in the Inclosure Award. That said, the remaining lengths of the claimed byway, between points A, B and C, and between E, F, G, H and I, were marked on the Award Map as 'public highway to Hooke' which is evidence that that part of the route was already considered to be public highway at the time of the Inclosure Award.

Part of the claimed route was shown on the Tithe Map as excluded from paying a tithe which is indicative of public highway status; highways often being excluded from tithes. However, the route between E and I was not excluded from tithe. The Tithe Map evidence is less strong than the Inclosure Award but supports the existence of vehicular rights.

In addition to the documentary evidence, the report contains an analysis of the user evidence that had been submitted in support of the application for the modification order. There was evidence of use by the public with vehicles, predominantly

motorcycles, contained in the user evidence forms that were submitted following the submission of the application. Taken together, these forms were considered to fulfil the requirement of 20 or more years use by the public before the application, as of right and without interruption or secrecy, prior to the date that public rights were first brought into question. The objectors stated that they had taken steps to stop use, but none of the user evidence confirmed that.

Officers therefore concluded that there had been a presumed dedication of the route under section 31 of the Highways Act 1980 and officers also concluded that the use of the route was sufficient for an implied dedication of public vehicular rights under Common Law.

Officers reported that the available evidence showed that, on balance, a BOAT subsisted or was reasonably alleged to subsist. Consequently, they were satisfied that the claimed route including of Bridleways 17 (Part), 35 and Crabb's Barn Lane, Beaminster, as shown in the report, should be recorded as a BOAT.

As to the consultation on the application, an objection had been received from the Green Lanes Protection Group, and from the landowner's solicitor, who were of the view that the application was not made in accordance with the necessary provisions of the Wildlife and Countryside Act 1981. If this was so, public vehicular rights would have been extinguished by the effect of the Natural Environment and Rural Communities Act 2006 (NERC 2006). Questions had been raised about whether the evidence submitted with the application was sufficient, particularly when in the form of extracts of documents. Officers' view was that the application had been made in accordance with the necessary requirements.

Other objections referred to actions taken to prevent or discourage use of the way by the public with motor vehicles, but there was no evidence to show from the user evidence forms that they had experienced any acts that would give the impression that they should not be using the route. Questions had also been raised with regard to the landowner's intention and capacity to dedicate the way as a vehicular highway.

In particular, officers confirmed that the documentary evidence was considered to be strong and was supported by the user evidence, which was considered to be sufficient to fulfil the requirement of 20 or more years use by the public to demonstrate a deemed dedication under Section 31 of the Highways Act 1980. On that basis, officers had come to their recommendation that the route between Point A and Point I on Drawing 18/13, should be recorded as a byway open to all traffic.

The Committee heard from those wishing to address the Committee. Bill Dupont considered that there was no right for use of the route by motorcyclists, with the route being signed "to Langdon" as a no through route. He said whenever a motorcyclist had been seen, they were turned away and he had two witness's statements that challenges had been made to those using the route and that, on that basis, the application should be refused. He also would have appreciated notification of when officers made their site visit to the area to have had the opportunity to have met with them.

Jonathan Cheal made a statement on behalf of George Streatfield, one of the trustees who owned the land crossed by A-C. He did not know of any public vehicular use. He had seen footprint and hoof prints on the claimed route but never any vehicle tracks. The Estate had a policy to challenge unauthorised use and farm managers were instructed to do so.

Jonathan Cheal considered that there was no compelling evidence to give the impression that the route was BOAT and, on that basis, there was good reason that the application should be refused. He asserted that the UCR status did not



necessarily indicate public rights and that the mixture of recorded statuses (bridleway and UCR) was more likely to indicate the route was not a public carriageway. Moreover, the provisions of the NERC Act 2006 would have extinguished any previous rights for the route to be used by mechanically propelled vehicles because the user evidence forms were submitted after the required date of the Act. He was of the view that consideration of the application should be deferred pending an application to the Supreme Court to clarify its Order in relation to the application.

Philip Golding objected to the application considering it to not be valid and that given that there were multiple classifications throughout the route, which would imply that those section were in different ownerships, this would indicate that it was highly improbable that a BOAT could exist along the whole length. He also argued that using the route for that purpose would be of little benefit as acceptable alternative routes existed which could be used.

Chris Wiles (TRF) strongly advocated the upgrade of the route to a BOAT given the compelling documentary and user evidence available and which officers had thoroughly analysed in coming to their recommendation. For clarification, he said that the Trail Riders Fellowship had used the route between 1973 and 2006 and ceased only when the NERC Act came into force pending determination of the route's status. He confirmed that in his experience use of the route had never been challenged. He was confident that the evidence showed that the route should be recorded as a BOAT given the activities which had taken place and particularly from the historic documentary evidence which had identified such use and that the application satisfied the provisions of the NERC Act 2006.

The Committee were then provided with the opportunity to ask questions of the officer's presentation and officer's provided clarification in respect of the points raised including about use as of right, the mix of recorded statuses, the frequency of use, the effect of locked gates and the wording of signs.

Officers also confirmed that both documentary evidence and user evidence – either on an individual basis or in combination - should be taken into consideration in coming to their decision and that if either one or the other, or indeed both, provided compelling evidence in the minds of members, then this should be used as the basis for their decision.

The Committee assessed the evidence presented by officers. They considered that the documentary evidence showed that a BOAT should be recorded between C and I. However, they did not consider the documentary evidence showed the existence of vehicular rights between A-C. They did not consider that the user evidence was sufficient to demonstrate that vehicular rights had been dedicated. On being put to the vote the Committee agreed that an order should be made on that basis.

### **Resolved**

- 1) That an Order be made to modify the definitive map and statement of rights of way to record the route shown C-D-E-F-G-H-I on Drawing 18/13 as a byway open to all traffic; and that the route A-B-C remain classified as a bridleway; and
- 2) That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee

### **Reason for Decisions**

- 1) The available evidence submitted and/or discovered demonstrated that, on balance, a highway shown on the definitive map and statement - between points C-D-E-F ought to be shown as a highway of a different status; and between points F-G-H-I ought to be recorded as highway.

- (b) Lack of objection to an order may be taken as acceptance that the byway open to

all traffic does in fact subsist as described and if so the order should be confirmed.

Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-19 Outcomes Framework:

People in Dorset are Healthy:

- To help and encourage people to adopt healthy lifestyles and lead active lives
- We will work hard to ensure our natural assets are well managed, accessible and promoted.

Dorset's economy is Prosperous:

- To support productivity we want to plan communities well, reducing the need to travel while 'keeping Dorset moving', enabling people and goods to move around the county safely and efficiently.

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### Consideration of Urgent Item

#### **Planning Application 6/2019/0168 - Demolition Of Bovington Middle School, Cologne Road, Bovington - Matter of Urgency**

26 The Committee was asked to consider a report by the Service Director Environment, Infrastructure and Economy in determining an application as a matter of urgency – under the provisions of the Constitution - which sought agreement to delegate the determination of planning application 6/2019/0168 for the demolition of Bovington Middle School, Cologne Road, Bovington to the Planning and Regulation Manager or its equivalent role in Dorset Council.

Officers confirmed that due to the urgent nature of this proposal - in order that a development to accommodate SEND pupils could be constructed as soon as practicable to meet those needs - it was necessary to consider a suitable decision-making process to ensure it could be delivered in a timely manner.

Given the need as described, the Committee agreed that the planning application should be approved as a matter of urgency on the basis of the provisions of the Service Director's report.

#### **Resolved**

That under the appropriate provisions of the County Council's Constitution, delegated authority be granted to the Planning and Regulation Manager - or its equivalent designation in the structure of Dorset Council - for the determination of planning application 6/20/0168, for the demolition of former Bovington Middle School and associated works.

#### **Reason for decision**

In order to progress matters expeditiously and expediently given the need to provided for the practicalities of the application and that the upcoming Committee cycle would not enable this matter to be resolved as necessary