

**DOCUMENT REFERENCE 4**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**Dorset Council**

**County of Dorset Definitive Map and Statement of Rights of Way**

**Dorset Council (A Byway Open to All Traffic, Beaminster at Crabb's  
Barn Lane) Definitive Map and Statement Modification Order 2020**

**STATEMENT OF CASE**

**DORSET COUNCIL**

## **1      INTRODUCTION**

- 1.1      Dorset Council ('the Council') supports the confirmation of the  
Dorset Council (A Byway Open to All Traffic, Beaminster at Crabb's  
Barn Lane) Definitive Map and Statement Modification Order 2020  
("the Order"). **Document Reference 1.**

This Statement of Case;

- 1.1.1    describes the effect of the Order;
- 1.1.2    sets out the background to making the Order;
- 1.1.3    sets out the Council's reasons for making the Order; and
- 1.1.4    sets out the law and evidence to be considered in determining whether  
to amend and/or confirm the Order.
- 1.2      A copy of the Order is included with the Council's submission letter as  
**Document Reference 2.**
- 1.3      A copy of an extract from the definitive map and statement for the area  
is with the Council's submission letter as **Document Reference 3.**

## **2      CONFIRMATION OF THE ORDER**

- 2.1      Dorset Council asserts that the documentary and user evidence  
submitted in support of the Order is sufficient to establish, on the  
balance of probabilities, that the Order Routes as described in the  
Order are byways open to all traffic.
- 2.2      The Council, therefore, requests that the Inspector confirms the Order.

## **3      DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER**

- 3.1      The proposed route is shown by a broken black line between points C  
– D – E – F – G -H -I- H- I on plan number 18/13/1 ("the Plan") included  
in the Order.

3.2 The claimed byway is described in the Order as follows:

- (i) from its junction with the C67 Road at Whitesheet Hill, opposite Bridleways 10 and 17 at ST 49560299, east south east along a stone/earth surfaced track (known as Crabb's Barn Lane) hedged on both sides, to its junction with Footpath 28 at ST 50060270 and continuing east south east along the track to its junction with Bridleway 84 and the current Bridleway 35 at ST 50150264. Width: 9.14 metres (30 feet) (as indicated in the Beaminster Inclosure Award 1809).
- (ii) From its junction with Bridleway 84 at ST 50150264, south east along an earth surfaced track, hedged on the eastern side and fenced on the western side, to its junction with Bridleway 33 and the access road to Higher Langdon Farm at ST 50480216. Width: 5 metres.
- (iii) From its junction with the current route of Bridleway 35 (to be upgraded) and Bridleway 33 at ST 50480216, south east along a tarmac surfaced road, hedged on the eastern side and fenced on the western side, to its junction with Bridleway 34 at ST 50520206 and continuing south south east (via ST 50560196), hedged on both sides to its junction with the D11205 Road at the Corscombe parish boundary at ST 50680165. Width: 5 metres, except for 8 metres at ST 50560196.

3.3 Photographs of the Order Route can be found at **Appendix 1**.

3.4 The length of the proposed byway open to all Traffic runs on land that is unregistered. **Document Reference 7** of the submission bundle contains the Secretary of State's dispensation letter of 11<sup>th</sup> December 2019.

3.5 The effect of the Order, if confirmed, would be to record the Order Routes as byways open to all traffic on the definitive map and statement.

## **4 BACKGROUND**

4.1 Section 53 of the Wildlife and Countryside Act 1981 ("WCA 1981") allows any person to apply to the County Council for an order to modify the definitive map and statement of rights of way to show a public right of way.

4.2 **Document Reference 3** contains a copy of the Definitive Map and Statement. Between points E and F on the Order Plan The Order Route is recorded on the Definitive Map as bridleway 35, Beaminster,, The corresponding entry in the Definitive Statement describes the route between E and F as a bridleway.

4.3 On 21 December 2004 Mr J Stuart on behalf of Friends of Dorset Rights of Way (FoDRoW) made an application to upgrade Bridleway 17, Beaminster, to a byway open to all traffic, from its junction with the C102 highway at Beaminster Down, running south eastwards to the C67 highway, Whitesheet Hill; to add a byway open to all traffic from the C67 highway at Whitesheet Hill running south-eastwards to its junction with Bridleway 35, (Crabb's Barn Lane, currently recorded as a publicly maintainable unclassified road); to upgrade Bridleway 35 to a byway open to all traffic from its junction with the unclassified road running south-eastwards to its junction with Bridleway 33; and to add a byway open to all traffic from its junction with Bridleway 33 running south-eastwards to its junction with the road at the Corscombe parish boundary leading to Dirty Gate. The application was accompanied by a map showing the length of path that is the subject of the application. **Appendix 2** contains the application for the modification order.

4.4 The following evidence was submitted to support the application:

Isaac Taylor Map 1796

Plan of roads in neighbourhood of Beaminster c.1800.

Greenwood 1826

Beaminster Tithe Map

Beaminster Inclosure Map and Award

OS Old Series 1"

Isaac Taylor Map, 1765

4.5 Accompanying the application is a note from FoDRoW giving an analysis of the documentary evidence they have submitted in support of the application. This evidence is considered in section 8 below.

4.6 On 31 December 2004 Mr Stuart wrote to clarify that the intention of FoDRoW was 'to claim a byway from ST 49105 03415 south-east to the point where the claimed route becomes a county road'. Mr Stuart adds that is 'it is fairly ridiculous to have so many different classifications on one route, which range from no public right of way

to a public right for vehicles’.

- 4.7 Twenty two completed Public Rights of Way Evidence Forms were later submitted in support of the application. These forms are dated in 2008, 2009 and 2010. The user evidence forms are included in the submission bundle as **Document Reference 16**.
- 4.8 In investigating this application it is the Council’s duty to assess the validity of this and other available evidence, and to determine whether or not it should make a modification order.
- 4.9 On 7 October 2010 Dorset County Council rejected this application on the ground that the map that had accompanied the application had been by computer generated enlargements of Ordnance Survey (OS) maps drawn to a scale of 1:50,000 and not by maps drawn to a scale of not less than 1:25,000. The Trail Riders Fellowship (TRF) judicially reviewed this decision and ultimately the Supreme Court held, agreeing with the TRF, that the maps accompanying the application were in accordance with the legislation.
- 4.10 A report setting out the evidence relevant to the application and the Order Routes (“the Report”) was presented to Dorset County Council’s Regulatory Committee (“the Committee”) on 21<sup>st</sup> March 2019. (**Appendix 3**)
- 4.11 The Committee resolved that:  
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  
  
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
- 4.12 On 16<sup>th</sup> April 2019 the Trail Riders Fellowship appealed against the decision of the Committee to exclude the section of claimed route between A-B-C from a modification order. The Planning Inspectorate was unable to accept the appeal because the right of appeal does not exist if the authority issues a notice to make an order which differs from the application in some way. The TRF’s appeal and response of the Planning Inspectorate of 28<sup>th</sup> May 2019 are at **Appendix 4**.

- 4.13 The Application was received before 20 January 2005 and therefore public rights for mechanically propelled vehicles over the Application Routes were unaffected by the Natural Environment and Rural Communities Act 2006 (“NERC”) Any public rights for mechanically propelled vehicles on the route are thus preserved.
- 4.14 The Modification Order was made on 24<sup>th</sup> January 2020 and advertised on 6<sup>th</sup> February 2020.
- 4.15 Following the making of the Order three objections were duly made. These are contained in **Document Reference 5** of the submission bundle.

## **5. REASONS FOR MAKING THE ORDER**

- 5.1 The Order was made under section 53(2)(b) WCA 1981 by virtue of which the County Council (as surveying authority for the purposes of WCA 1981) is required to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3) of the WCA 1981 by order make modifications to the map and statement as appear requisite in consequence of the occurrence of that event. In particular section 53(3)(c)(i) WCA 1981 refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- 5.2 The making of the Order was substantially based upon documentary evidence which demonstrated on balance that byway rights subsisted or could be reasonably alleged to subsist over the Order Route.

### **LAW**

- 6.1 The test to be considered when making an order pursuant to section 53(3)(c)(i) WCA is considered above (paragraph 5.1).
- 6.2 A modification Order should be confirmed if, on the balance of probabilities, the evidence shows that a right of way subsists: *Todd v Secretary of State for the Environment, Food and Rural Affairs*<sup>1</sup>.

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<sup>1</sup> [2004] EWHC 1450 at paragraphs 6 to 52 (see **Case Appendix 1**)

- 6.3 In considering the evidence, matters such as desirability and suitability, safety and sensitivity should not be taken into account.
- 6.4 Section 31 of the HA 1980 provides that: *“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually 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.”*

Section 32 of the HA 1980 states that a tribunal (which includes a public inquiry) must take into consideration any map, plan or history of the locality. It should give such weight as considered justified by the circumstances, including the antiquity of the document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Natural Environment and Rural Communities Act 2006 (‘NERC’) Section 67(1) NERC states that an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—

- (a) was not shown in a definitive map and statement, or
- (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

Section 67(2) NERC states that subsection (1) does not apply to an existing public right of way if an exception applies. In particular, by Section 67(2)(b) if immediately before commencement a route was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (list of highways maintainable at public expense), any public vehicular rights are not extinguished.

Where it is found that a route was historically a public vehicular route and the rights for mechanically propelled vehicles have been extinguished, the remaining rights for all other types of traffic should be recorded on the definitive map and statement as a restricted byway.

Where a public vehicular right exists and is exempt from the extinguishment provisions of NERC it may be recorded on the

definitive map and statement as a BOAT. Section 66(1) WCA 1981 defines a BOAT as ‘a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpath and bridleways are so used’. The meaning of the statutory definition was challenged in the case of *Masters v Secretary of State for the Environment and Somerset CC (DC)*(1999)<sup>2</sup>, Hooper J held that ‘...the purpose of giving a definition to a byway was to distinguish byways from ordinary roads’. The definition refers ‘to a type of highway and [is] not seeking to limit byways to those which are currently and actually “used by the public mainly for the purpose for which footpaths and bridleways are so used”’. In the Court of Appeal Roch LJ approved the reasoning of the Judge at first instance and dismissed the appeal: *Masters v Secretary of State for the Environment and Somerset CC* [2000]<sup>3</sup>

## **7. EVIDENCE**

### **7.1 Documentary Evidence**

7.2 A table of all the documentary evidence considered during the investigation into the Application, together with extracts from the key documents, is contained within Appendix 5.

### **7.3 User Evidence**

7.4 A table of user evidence summarised from witness evidence forms and a chart showing their periods of use are contained within **Appendix 6.**

## **8. ANALYSIS OF EVIDENCE**

### **8.1 Analysis of Documentary Evidence**

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

### **8.2 Ordnance Survey Map of 1811**

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<sup>2</sup> [2000] 2 All ER 788 (see **Case Appendix 2**)

<sup>3</sup> [2000] EWCA CIV 249 (see **Case Appendix 3**)



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

### 8.3 **Greenwood's Map of 1826**

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.

### 8.4 **Taylor's Maps of 1765 and 1796**

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 map.

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

8.8 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 it is not known whether this sketch map was a record of routes carrying vehicular rights.

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

The tithe map of 1843 shows those parts of the claimed byway 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 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 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. 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.**

- 8.10 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 length of the claimed byway, between points E, F, G, H and I, is not included in the Award.
- 8.11 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. 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.

- 8.12 The Council considers 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**

#### **8.13 Parish Surveys**

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.

- 8.14 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.
- 8.15 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.
- 8.16 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.'

8.17 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.'

8.18 **Draft Map 1953.**

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.

8.19 **Provisional Map 1964**

The provisional map of 1964 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.

8.20 **First Definitive Map 1966**

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

8.21 **Revised Draft Map 1974**

On the revised draft map of 1974, Bridleway 35 is not shown. The revised draft map does show any public rights of way over the route between point 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. If it was not deemed appropriate to record these rights on the revised draft map, it seems likely that it was considered they were vehicular rights that did not require recording on the definitive map.

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

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.

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

On the sealed definitive map of 1989, between points E and F, the path is shown as a bridleway, numbered 35. The remaining length of the claimed byway are not shown.

#### **8.24 Highways Records**

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 the Order Plan 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.

#### **8.25 Finance Act 1910 Records**

## **Valuation Map and Field Book**

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.

### **8.26 Ordnance Survey Maps**

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.

- 8.27 The 1888 6inch Ordnance Survey map shows that part of the Order Route between C and E 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.
- 8.28 The 25 inch Ordnance Survey map of 1903 shows the route between C and E 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.
- 8.29 The 1904 6 inch Ordnance Survey map shows similar detail to the 1888 map.
- 8.30 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.
- 8.31 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.'

8.32 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.

8.33 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.

8.34 The limitations of Ordnance Survey maps in providing evidence of the status of a way is thus noted.

8.35 **Early Published Maps**

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, Blaeu'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.

8.36 **Commercial Maps**

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.

8.37 **Land Registry**

Land Registry documentation does not assist in determining the status of the claimed byway. The land occupied by the 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.

8.38 **Analysis of User Evidence Supporting the Application**

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. A summary of the forms of evidence is set out

below. The table at **appendix 6** summaries the key information contained in these forms.

- 8.39 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".
- 8.40 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.
- 8.41 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.
- 8.42 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.
- 8.43 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.
- 8.44 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.



- 8.45 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.
- 8.46 The frequency of use varied from once or twice a year to a maximum of 20 to 25 times a year.
- 8.47 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.
- 8.48 No witness refers to any signs or notices on the claimed path that were intended to discourage their use of it in motor vehicles.
- 8.49 None of the witnesses mention their use of the path being in the exercise of a private right of access.
- 8.50 No one was a tenant or employee of the owner of the land.
- 8.51 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.
- 8.52 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.
- 8.53 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.
- 8.54 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.
- 8.55 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.

- 8.56 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. Due to the physical characteristics of the route, the Council does not consider 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.
- 8.57 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.
- 8.58 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.

## **9 OBJECTIONS TO THE ORDER**

- 9.1 There were three objections to the Order. Details of the objections and the Council's comments on the objections can be found at **Document reference 6**.

## **10 SUMMARY OF POINTS FOR CONSIDERATION**

- 10.1 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 the way, but are of some assistance in placing a route in the context of the wider highways network.
- 10.2 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.

- 10.3 The tithe map of 1843 shows those parts of the claimed byway 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.
- 10.4 On the Finance Act (1910) Act maps 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.
- 10.5 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.
- 10.6 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.

- 10.7 It is concluded that the documentary evidence as a whole is sufficient to demonstrate, on balance, that the claimed public rights subsist.
- 10.8 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.
- 10.9 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.
- 10.10 Thus, the relevant period of use of the way by members of the public, as of right and without interruption, in order to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years, or more, prior to 2004.
- 10.11 There is evidence of use by the public with vehicles, predominantly motorcycles, contained in the user evidence forms that were submitted in support of the application. Taken together these would seem to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date that public rights were brought into question.
- 10.12 In order to be satisfied on the question of 20 or more years use of the way by the public, it is necessary to consider not only the number of users but also the overall frequency of use. The evidence suggests that the number of users and the frequency of that use would satisfy these requirements.
- 10.13 The evidence submitted and discovered suggests that the landowners took no effective steps to prevent the public from using the way with mechanically propelled vehicles. Alongside the statements of those who have used the path in motor vehicles must be considered the statements of those who have taken steps to prevent use of the way by the public with motor vehicles. These actions may be evidence of a lack of intention to dedicate the path as a vehicular highway. However, neither the applicant nor any of the witnesses refer to having been challenged or obtaining permission to use the way and neither the landowners nor objectors

have provided direct evidence of attempts to prevent such use which overcomes the user witness evidence. It is therefore concluded that there has been a presumed dedication of the route under section 31.

- 10.14 In considering the common law test, it is necessary to consider whether the owner of the land had capacity to dedicate the path as a way for motor vehicles. Any periods of capacity, however short, may be sufficient for dedication to be implied. It is considered that the use of the route is sufficient for implied dedication of public vehicular rights under common law.
- 10.15 There is no evidence that the owner of the land did not have the capacity to dedicate the way as a vehicular highway over the length of path for which user evidence has been submitted; that is, between points C, D, E, F, G, H and I on the Order Plan.
- 10.16 It is concluded accordingly that there has also been a presumed dedication at common law.
- 10.17 The Natural Environment and Rural Communities Act 2006 (“NERC”) extinguished any public motor vehicular rights created before 1 May 2006 (by use or otherwise) but not recorded on the Definitive Map and Statement, subject to certain exceptions (see Law, Appendix 2). The application for the modification order was submitted prior to the NERC Act taking effect and does not apply.
- 10.18 The application is considered to comply with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981; the supplied evidence raising a prima facie case that the route was a vehicular highway. Therefore, the rights of mechanically propelled vehicles have not been extinguished.
- 10.19 Having considered and weighed up the available evidence and having taken into consideration the objections to the modification order, it is concluded that, on balance, a highway shown on the definitive map and statement ought to be shown as a highway of a different description.
- 10.20 Therefore, with respect to the route C – D – E- F- G -H- I as shown on Drawing 18/13/1 contained in the Modification Order, a public right to use a mechanically propelled vehicle has been shown to exist.

## **11        CONCLUSION**

11.1        The Council asserts that the documentary and user evidence support the existence of public byway open to all traffic rights along the Order Route.

11.2 The Council requests that the Inspector confirm the Order as made.

### **Appendix**

1. Photographs of Order Route
2. Application for the Modification Order
3. Regulatory Committee Report and Minutes, 21/3/2019
4. TRF Appeal against Refusal to make a Modification Order
5. Documentary Evidence Table
6. User Evidence Chart and Table.