



**WILDLIFE AND COUNTRYSIDE ACT 1981**

**COUNTY OF DORSET**

**DEFINITIVE MAP AND STATEMENT**

**DORSET COUNTY COUNCIL  
(RESTRICTED BYWAYS AND FOOTPATHS  
FROM MILL LANE TO HIGH STREET AND  
CROWN MEAD, WIMBORNE MINSTER)  
DEFINITIVE MAP AND STATEMENT  
MODIFICATION ORDER 2016**

**STATEMENT OF CASE**

**DORSET COUNCIL**

## **1 INTRODUCTION**

1.1 Dorset Council (“the Council”) supports confirmation of the Dorset County Council (Restricted Byways and Footpaths from Mill Lane to High Street and Crown Mead, Wimborne Minster) Definitive Map and Statement Modification Order 2016 (“the Order”).

1.2 This Statement of Case;

1.2.1 describes the effect of the Order;

1.2.2 sets out the Council’s reasons for making the Order; and

1.2.3 sets out the law and evidence to be considered in determining whether to amend and/or confirm the Order.

1.3 A copy of the Order forms **Appendix 1**.

1.4 A copy of an extract from the definitive map and statement for the area forms **Appendix 2**.

## **2 CONFIRMATION OF THE ORDER**

2.1 The 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 (“the Order Routes”) ought to be shown on the definitive map and statement as footpaths and restricted byways.

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 Order Routes are shown by:

- 3.1.1 hatched between points A - A1 - B - B1 and B - E ('Route 1') - proposed restricted byway
- 3.1.2 a dashed black line between points B1 - B2 - B3 - C - D ('Route 2') - proposed footpath
- 3.1.3 a dashed black line between points E - F - G ('Route 3') - proposed footpath
- 3.1.4 cross-hatched between points A - X ('Route 4') - proposed restricted byway on an annotated version of plan number 14/07/4 ('the Plan') (**Appendix 1b**) and are particularly described in the Schedule to the Order.
- 3.2 Photos of the Order Routes can be found at **Appendix 4**. Please note that references to points on the photos are in relation to the Application Plan that can be found at Appendix 3 (see 4.4 above).
- 3.3 The land crossed by the Order Routes is owned by:
- 3.3.1 Route 1: Christopher John Slocock & Jeremy Francis Mills (Title No. DT94708) of Mills Keep, Dorset House, 5 Church Street, Wimborne BH21 1JH.
- 3.3.2 Route 2:
- (part of section between points D and C) – Dorset Council (Title No. DT365600) of South Walks House, South Walks Road, Dorchester DT1 1UZ.
  - (part of section between B3 and D) – Carey Pension Trustees UK Limited (Title No. DT81539) of Lakeside, Shirwell Crescent,

Furzton, Milton Keynes MK4 1GA as trustee of the Carey Pension Scheme - Lewis Syndicate 27(G0594) and Nova Crownmead 27 LLP (LLP Regn. No. OC369336) of 41 Commercial Road, Poole, Dorset BH14 0HU.

- (part of section between points B2 and C) – Co-Operative Foodstores Limited (Title No. DT119552) of 1 Angel Square, Manchester M60 0AG (Leasehold).
- Part of Route 3 is unregistered between points F and G. Secretary of State dispensation was received in December 2015 prior to the Order being made (**Appendix 5**). Remainder of Route 3 - Christopher John Slocock & Jeremy Francis Mills (Title No. DT151868) of Mills Keep, Dorset House, 5 Church Street, Wimborne BH21 1JH.
- Route 4 - Christopher John Slocock and Yuyu Rini Slocock (Title No. DT183572) of 5 Mill Lane, Wimborne, Dorset BH21 1JQ

3.4 The effect of the Order, if confirmed, would be to record the Order Routes as restricted byways and footpaths (as described in the Order) 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 **Appendix 2** is a copy of the County of Dorset Definitive Map and Statement.

- 4.3 An application to add several footpaths in Wimborne Minster town centre ('the Application') was made by Mr A Hewitt ('the Original Applicant') on 10<sup>th</sup> January 2006. It appears that the Original Applicant moved from the local area shortly after submitting the Application and left no forwarding contact details. In 2013 Mrs S L Hopkins agreed to support the Application and in the absence of the Original Applicant, assumed the role of Applicant ('the Applicant').
- 4.4 During the investigation into the Application further evidence was discovered relating to the public status of a further unrecorded route leading from Mill Lane to the River Allen (Route 4). A plan numbered 14/07/3 ('the Application Plan') showing the claimed footpaths and the addition of Route 4 makes up **Appendix 3**.
- 4.5 In accordance with paragraph 3(1)(b) of Schedule 14 WCA 1981 the Council consulted with East Dorset District Council regarding the Application. Other consultations were conducted.
- 4.6 A report was prepared setting out the evidence relevant to the Application and the Order Routes and subsequently published prior to the Council's Regulatory Committee ('the Committee') meeting on the 27<sup>th</sup> November 2014 ('The 2014 Report'). Immediately prior to this meeting a substantial amount of additional evidence was submitted on behalf of one of the landowners. The matter was deferred to enable the additional evidence to be considered.
- 4.7 The 2014 Report was finally considered by the Committee, alongside an additional report ('the 2015 Report'), at a meeting on the 12<sup>th</sup> March 2015.
- 4.8 The Committee resolved that an order be made and published to modify the County of Dorset Definitive Map and Statement of Rights of Way to add

footpaths along Route 2 and Route 3 and restricted byways along Route 1 and Route 4.

- 4.9 A copy of the 2015 Report (which includes the 2014 Report at appendix 1) and an extract from the minutes is included at **Appendix 6**.
- 4.10 Any historical public rights for mechanically propelled vehicles over Route 1 and Route 4 are affected by the Natural Environment and Rural Communities Act 2006 (“NERC”) (see paragraph 6.15) as they were not shown on the definitive map and statement prior to 2nd May 2006 (the commencement date) and do not fall into any of the exceptions set out in s67 NERC. Consequently, any public rights for mechanically propelled vehicles on these routes have been extinguished. The remaining rights for all other types of traffic over Route 1 and Route 4 should be recorded on the definitive map and statement as restricted byways.
- 4.11 The Order was made on 22 January 2016 and published on 4 March 2016.
- 4.12 Following the making of the Order 39 objections were received and 18 letters of support (**Document Ref 5**)

## **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.

- 5.2 In particular section 53(3)(c)(i) 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.
- 5.3 The Order was made on the basis that the documentary evidence and user evidence demonstrate that on balance: public footpath rights are reasonably alleged to subsist over Route 2 and Route 3; and restricted byway rights are reasonably alleged to subsist over Route 1 and Route 4. The evidence considered by the Committee is set out in the 2015 Report (**Appendix 6**)
- 5.4 Detailed consideration of the evidence relevant to the Order is set out in paragraphs 7-15

## **6 LAW**

- 6.1 The test to be considered when making an order pursuant to section 53(3)(c)(ii) WCA 1981 is considered above (paragraphs 5.1 and 5.2).
- 6.2 A public right of way is created when the owner dedicates a right to the public over a way and the right is accepted by the public. Acceptance by the public can be by agreement or by use of the dedicated way.
- 6.3 In the absence of an express dedication by an owner, a public right of way may be presumed to have been dedicated by use of a route as provided for by Section 31(1) of the Highways Act 1980 (see paragraphs 6.4 to 6.8). Alternatively, such use may support an inference of dedication at common law (see paragraphs 6.7 to 6.10). So, at common law the use by the public is evidence of the dedication as well as demonstration of acceptance of the way.

6.4 Section 31(1) of the Highways Act 1980 states:

“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.”

6.4.1 The meaning of “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” is not clear. Land owned by certain statutory or public bodies where legislation prevents acquisition of a right of way by long use may be intended, or the words may refer to physical characteristics of the way in question, for example, navigable waters. These issues are not relevant to the Order Route.

6.4.2 Whether a route has been “actually enjoyed by the public” is a matter of fact in each case but appears to mean that the general public, rather than a particular selection or class of people, has had the amenity or advantage of using the Order Route: **Merstham Manor v Coulsdon and Purley UDC [1936] 2 All ER 422 at 426.**

6.4.3 ‘As of right’ has been held to mean openly, not secretly, not by force and not by permission, which follows the requirement for use at common law to be nec clam, nec vi and nec precario: **Merstham Manor v Coulsdon and Purley UDC [1936] 2 All ER 422 at 427.**



6.4.4 “Without interruption” means that the use claimed must be without actual and physical stopping of the enjoyment of the public’s use of the way with intent to prevent public use of the way (rather than for some other purpose such as preventing cattle straying). The actual use need not be continuous as long as there is sufficient use to show actual enjoyment by the public: **Merstham Manor v Coulsdon and Purley UDC [1936] 2 All ER 422 at 427 to 429; Lewis v Thomas [1950] 1 All ER 116; Fernlee Estates Ltd v City and County of Swansea and the National Assembly for Wales [2001] EWHC Admin 360 paragraphs 13 to 17.**

6.4.5 It is clear from the case law that temporary obstructions such as broken-down vehicles and abandoned machinery are not interruptions that would defeat a claimed public right of way.

6.4.6 The meaning of “for a full period of 20 years” is reviewed at paragraph 6.5.

6.4.7 The sufficiency of “evidence that there was no intention during that period to dedicate it” is considered at paragraphs (6.6 and 6.7).

6.5 Section 31(2) Highways Act 1980 continues:

6.5.1 “The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.”

This means that the 20 year period is counted backwards from when the right of the public to use the way is brought into question.

6.5.2 In order for the right of the public to have been “brought into question... by notice .....or otherwise” there must be some act that raises the issue of the status of the way sufficient to bring it home to the public that their right to use the way is being challenged, so that they must be apprised of the challenge and have a reasonable opportunity of meeting it: **Fairey v Southampton County Council [1956] 2 All ER 843 at 846.**

6.5.3 If the landowner merely turned back one stranger on an isolated occasion that would not be sufficient to make it clear to “the public” that they had no right to use the way. He must make it clear to those members of the public who would be most concerned to assert the right, e.g. the local people: **Fairey v Southampton County Council [1956] 2 All ER 843 at 846 to 847.** It is clear from the Highways Act 1980 that a notice, inconsistent with the dedication of the way as a public footpath, erected so as to be visible to persons using the way is sufficient to bring into question the right of the public to use the way as a footpath (Section 31(3) referred to in Section 31(2) Highways Act 1980).

6.6 Section 31(3), (5) and (6) Highways Act 1980 identify specific means by which a landowner may indicate a lack of intention to dedicate:

6.6.1 By Section 31(3) a landowner may erect an appropriate notice on the way as evidence that there is no intention to dedicate.

6.6.2 By Section 31(5), if a notice erected by the landowner for the purposes of Section 31(3) is subsequently torn down or defaced, he may continue to assert his lack of intention by giving notice to the local authority that the way has not been dedicated.

- 6.6.3 Section 31(6) enables a landowner to submit to the local authority maps of his land showing the routes and the status of any ways he admits to having been dedicated. The landowner may then make subsequent declarations. In the absence of any evidence to the contrary (such as an express dedication) such maps and declarations sufficiently indicate a lack of intention to dedicate. Before the 1980 Act a similar facility was available under the Highways Act 1959 and the Rights of Way Act 1932, although the maximum time period for deposit of subsequent declarations (now 20 years) has changed.
- 6.7 Further, the nature of evidence sufficient to indicate that there is no intention to dedicate was considered by the **House of Lords in R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs and Cambridgeshire County Council [2007] UKHL 28**. Their Lordships held that the test to establish what is sufficient is an objective one. That is, “intention” means what the relevant audience, namely the users of the way, would reasonably have understood the landowner’s intention to be. This confirms the law as stated by Lord Denning in **Fairey v Southampton County Council [1956] 2 All ER 843 at 846 to 847**. There must be “evidence of some overt acts on the part of the landowner such as to show the public at large – the public who used the path ... - that he had no intention to dedicate”. It must be clear that the reasonable user would understand that the landowner was intending to deny that the land was a public highway of the particular status sought.
- 6.8 Accordingly, to establish a claim for a public right of way under and in accordance with Section 31(1) of the Highways Act 1980 it is necessary to establish:

- 6.8.1 That the way concerned is not 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;
- 6.8.2 The act, and the date of the act by which the right to use the way as a public right of way was brought into question;
- 6.8.3 Use of the route as of right and without interruption for 20 years before the date of bringing into question; and
- 6.8.4 That there is no sufficient evidence of a lack of intention to dedicate during that 20 year period.
- 6.9 Section 31(9) Highways Act 1980 specifically provides that Section 31 of the Highways Act 1980 does not operate “to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of [the Highways Act 1980]”. Accordingly, the common law is relevant as an alternative to the provisions of Section 31 of the Highways Act.
- 6.10 In **Mann v Brodie (1885) 10 App. Cas. 378**, Lord Blackburn summarised the requirements relevant to a claim for a public right at common law in England **(386)**: “Where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence but evidence on which those who have to find the fact may find that there was a dedication by the owner whoever he was”.

6.11 Accordingly, at common law a public right of way may be found to have been dedicated when the public has used the route as a byway in an open and notorious way such that the use gives rise to the presumption that the owner must have been aware of it and acquiesced in it.

6.12 Once again, the use must be 'as of right', that is, actual enjoyment that is open, not by force, not by secrecy and not by permission. Although, at common law there is no set time period for use to have continued.

6.13 Whether there has been sufficient use for a sufficient period for a dedication to be found is a question of fact to be determined on all the evidence. That evidence will include the extent, nature and notoriety of the use and the length of time for which it has continued, the nature of the way and whether it connects existing ways.

6.14 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.

6.15 Natural Environment and Rural Communities Act 2006 ('NERC')

6.15.1 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.

6.15.2 Section 67(2) NERC states that subsection (1) does not apply to an existing public right of way if an exception applies.

6.15.3 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.

6.16 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 [2004] EWHC 1450 at paragraphs 6 to 52**. In considering the evidence, matters such as desirability and suitability, safety and sensitivity should not be taken into account.

## **7 DOCUMENTARY EVIDENCE**

7.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 7. Extracts from the key documents are also included at Appendix 8.

## **8 USER EVIDENCE**

8.1 A table of user evidence from witness evidence forms and charts showing the periods and level of use of Route 1, Route 2 and Route 3 are summarised at Appendix 9. An analysis of the user evidence is contained at paragraph 9 of this report.

## **9 OBJECTIONS TO THE ORDER & ADDITIONAL EVIDENCE RECEIVED OPPOSING THE ORDER**

9.1 Following publication of the Order 44 objections were received by 34 individuals (**Document Ref 5**).

9.2 There were a total of 44 objections by 34 individuals made in respect of the Order (see Doc Reference 6). Some objectors objected more than once.

9.3 Several of the objectors are retaining the objections they made at the time the previous report was presented to the Committee. Some objectors are seeking to provide evidence relating to the Order Routes.

## **10 COMMENTS OF THE OBJECTIONS & ADDITIONAL EVIDENCE RECEIVED OPPOSING THE ORDER**

10.1 The Council's comments on the objections and additional evidence received can be found at **Document Reference 6** to the submission bundle.

## **11 ANALYSIS OF EVIDENCE DOCUMENTARY EVIDENCE**

### Finance Act 1910

11.1 Parts of the Order Routes are clearly visible on the Ordnance Survey maps, sheets 34.8 northeast and southeast at a scale of 50 inches to the mile (1:1250), used as the base map for the Finance Act plans. Route 1 and Route 4 are excluded from valuation, this being indicated by the colour-washed adjacent boundaries and there being no associated hereditament or parcel number.

11.2 Part of Route 2, B1 to a point between points C and D, is contained within Hereditament 317 and the remainder of the route of Route 2, terminating at point D is contained in Hereditament 335. Part of Route 3, E to F, is also contained within Hereditament 317 the remainder of Route 3, to point G is within Hereditament 309.

11.3 The accompanying Field Book identifies Hereditament 317 as Millbank House, describing it as a "Residence, Lawn and Garden" There were no deductions for

public rights of way. However, it was also the site of the Town Brewery (Ellis & Son) and the sketch plan of the site within the Field Book entry shows that the site consisted of a number of buildings in addition to the house, namely engine room, stables, malt and barley store, bottling store and wine cellar, all of which occupied the site of the present day Millbank House. In addition, the building that is presently used as a car body repair shop and tattoo parlour, which is located immediately south of Route 1, was identified as the motor house and store for the brewery.

- 11.4 The exclusion of Mill Lane, including Route 1 and Route 4, is strong evidence towards the conclusion that they were considered to be public highways, probably public carriageways. The fact that Route 1 was not included within Hereditament 317 and in the knowledge that the Town Brewery had both stables and a motor store, the vehicles from which would have had to have used Mill Lane (including Route 1), in order to gain access to the wider network of public highways, provides further support towards the conclusion that Route 1 was recognised as being a public carriageway.

#### Inclosure and Tithe Awards

- 11.5 The 1786 Wimborne Inclosure Award does not include the area of Mill Lane.
- 11.6 The 1846 Wimborne Tithe Apportionment Plan depicts Mill Lane including Route 1. This section is un-apportioned and was therefore not liable to taxation it is also coloured ochre, being depicted in exactly the same manner as the network of public carriageways to which it connects. Route 2, from point B1, passes through Apportionments 202, 208 and 210. At point C there appears to be a bridge depicted over the River Allen but no reference is made to any public rights of way within the descriptions. Part of Route 3, E to F, is also contained within Apportionment 202. There appears to be a bridge and perhaps a barrier,



hedge, fence or gate at point F, Route 3 then passes into Apportionment 517, an open field and is not depicted.

11.7 Whilst it was not the primary purpose of these documents to depict public highways, in many cases they do as they often form the boundaries of separate apportionments. In this instance it is considered that the lack of any apportionment number and the colouring of Route 1 suggest it was regarded as a public highway, possibly a carriageway and consequently provides additional support in respect of this part of the Order.

11.8 The Tithe plan shows that a through route along the route of Route 2 may have been possible it provides no compelling evidence in support of or against the claim.

11.9 With respect to Route 3, whilst it suggests that passage may have been possible, at least as far as point F (beyond this point it led into a field with no obvious means of passage beyond), it seems reasonable to conclude that at this time a through route to point G did not exist.

#### Highway Board Minutes

11.10 One volume of the Wimborne District Highway Board minutes covers the period from 1878 to 1892. There are several entries relating to Mill Lane but of particular interest is an entry from 25 June 1886 that refers to the “re-erection of the gates in the Mill Lane and the removal of rubbish deposited at the Public Drinking place”. It was resolved that the “rubbish at the Drinking Place be removed by the Surveyor or levelled ..... and the posts which are still in the ground be sawn level with the Road or taken up at his discretion. It was resolved that leave be obtained for the placing of a notice on the wall of the premises adjoining stating that no rubbish must in future be placed there”.

- 11.11 In a further entry dated 26 February 1892 the Surveyor reported “an encroachment by Mr Ellis at the mouth of the Drinking Place in Mill Lane by the erection of a manure pit and the planting of some shrubs and Messrs Habgood, Wilson and Bartlett were appointed a committee to see Mr Ellis upon the subject”.
- 11.12 On Friday 8 April 1892 the committee reported that the encroachment had taken place and the Clerk was instructed to write to Mr Ellis and inform him that if he agreed to pay one shilling a year and to remove the manure heap causing the obstruction whenever required to by the Board the manure heap could remain, subject to these conditions.
- 11.13 An entry dated 17 June 1892 records that the Clerk was directed to write to Mr Ellis requesting a reply to his letter of 19 April last regarding the encroachment made by him in Mill Lane.

Wimborne Urban District Council ('UDC')

- 11.14 The Wimborne UDC Minute Book from 1901 to 1916 makes several references to Mill Lane. At a meeting of the Roads, Buildings and Sanitary Committee on 14 September 1903 the Surveyor explained that due to the high level of the water the work on the Drain Outfall in Mill Lane was not possible without working in the water.
- 11.15 An entry dated 13 June 1916 relating to the “Public Drinking Place – Mill Lane” notes that the Medical Officer for Health and the Surveyor were instructed to “inspect Public Drinking Place & river course”.
- 11.16 Although these entries from the Highway Board Minutes and the UDC provide no direct evidence in determining the full extent of the public highway known as Mill Lane they do make reference to repairs to a drain outfall and to the

‘Public Drinking Place’, both of which were located in Mill Lane. It is considered, on balance, that the ‘Public Drinking Place’ referred to is located at the end of the Route 4 towards point X.

#### List of Streets

11.17 Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up-to-date a list of all streets (LOS) maintainable at public expense. The LOS does not list all public highways, only those which are maintainable at the public expense. Mill Lane is recorded on the current LOS and has been since local government re-organisation took place in 1974. Prior to this date Mill Lane would have been part of the highway network managed by Wimborne UDC.

11.18 The schedule of roads for April 1974 records Mill Lane as the D40841, describing it as a paved road of 0.41 miles (0.07km) in length. There appears to be an error in respect of the grid reference as only the commencement point is given, this being (SY) 010001. The current schedule provides exactly the same information. This suggests that the adopted public highway ends at approximately point A on Drawing 14/07/4

11.19 Council records do not record a date of adoption although this road would have been handed over by the Wimborne UDC. Unfortunately, the surviving records of Wimborne UDC are yet to be catalogued and no records relating to this have been discovered.

11.20 There is a discrepancy between what is recorded as the adopted network and the ‘inspected network’ of public highways. Whereas the adopted network ends at point A, the inspected network of public highways continues to the entrance to Millbank House, point B. Whilst there is no explanation for this discrepancy

the extent of the highway as recorded on the inspected network is supported by the evidence from the Finance Act 1910, The Tithe Apportionment Plan and several other maps and plans examined.

#### Estate Maps and Town Plans

11.21 The 1613-14 Plan of Wimborne Minster by Richard Harding, although of a rather crude construction nevertheless depicts a route that would generally correspond to that of Mill Lane, including Route1. The former Mill is also shown, being labelled as “The Towne Myll”. The area around the site of the mill shows little in the way of development and there is no detail of any other part of the claimed route. The lane itself is coloured and depicted in the same or a very similar manner to other public roads in the area.

11.22 The Hanham Estate Plan is undated but possibly dates from the 16th or 17th Century. The plan clearly depicts the Town Mill, which is numbered ‘8’ in the accompanying key, it being located at the end of a narrow thoroughfare that would correspond to what is now known as Mill Lane and includes Route 1. This lane does not appear to be gated but is an open route as far as the Mill. The Mill is depicted as being constructed over the river but there is no obvious depiction of a bridge, though one may have existed. There appears to be a route north corresponding to part of Route 3, specifically E to F, where there appears to be a structure, perhaps a sluice, dam or bridge across the river. Beyond the river the area is depicted as open marshland.

11.22.1 Route 2 is not shown but the area is depicted as open meadow or parkland with the two channels of the River Allen bounding the western and eastern sides, and an avenue of trees along the western side. Whether these trees existed or were due to artistic licence is unclear. At point C there is a bridge shown and the

route from here to point D is clearly defined by two parallel lines.

There are no barriers depicted along any part of Route 2.

11.22.2 The main roads of the town are numbered and named on the plan as are the main buildings including the Town Mill. Mill Lane is not numbered or named, which may indicate that it was either not of sufficient significance or not regarded as a public route at this time. However, it does appear to have been the only means of accessing the mill with vehicles (carts) and it appears reasonable to assume that it was used by the public for that purpose; use which, if not at that time, may have later led to its present status as a public carriageway.

11.23 The 1775 Survey and Map of Wimborne Minster by John Woodward identifies the freehold, copyhold and leasehold properties in the town. Mill Lane is clearly shown although it is not labelled as such. It extends as far as the mill, which is identified as 'Talbotts Mill' and appears to be on land in the ownership of Mr Cray. The lane is shown to be free of any gates or barriers and extends over the River Allen and includes Route 1. The Town Brewery, now Millbank House, does not appear to have been constructed at this time and is not shown on the plan.

11.23.1 Part of Route 2, B to C, is not defined but the area appears to represent open fields, the first part belonging to Mr Cray and the second to Mrs King. At point C there is no bridge to cross the river however, the remainder of Route 2, C to D, is clearly and separately defined from adjacent property by means of two parallel lines and is not gated at any point, being open at point D, where it joins what is now known as the High Street.

- 11.23.2          Route 3 also passes through an open field belonging to Mr Cray. There is a sluice, dam or bridge at point F leading into the next field, which is also owned by Mr Cray, the path from point F to G is not defined.

11.24    The 1832 Bankes Estate Map of the Town of Wimborne Minster depicts Mill Lane throughout its length and includes Route 1. It also shows it continuing along part of Route 2, B1 to B2, where there may have been a gate, fence, hedge or wall. Although not defined Route 2 would have passed through what appears to be an open field to point C. At point C a bridge is depicted across the River Allen and Route 2 is then clearly defined by two parallel solid lines to point D, passing along the way through what may have been a gap, gate, fence, hedge or wall.

- 11.24.1          Route 3 is also clearly defined, initially by two parallel solid lines before crossing a bridge or other structure at point F into an open field, the route from F to G being undefined.

- 11.24.2          Route 4 is also clearly defined with no evidence of any gates or barriers. It is partially coloured blue, which may suggest that it was subject to encroachment by water, depending on the level of the river.

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

- 11.25.1          The smaller scale plan clearly shows Mill Lane although it is not labelled as such.

- 11.25.1.1          The lane is shown to cross the river and then turn southerly for a short distance, being defined by

two parallel solid lines and including Route 1. On crossing the river it is shown to enter a parcel of land assigned to Mr C Ellis (Ellis & Son Brewery) although neither the mill nor the brewery is depicted.

11.25.1.2 From B2 the area is a parcel of land coloured green and numbered 268. There is no key with the plan to identify the numbered parcels although it appears to represent an open field and Route 2 is not defined separately within it. At point C there appears to be a bridge over the River Allen and Route 2 between points C and D is contained within a clearly defined parcel, which appears to be an extension of the parcel numbered 268.

11.25.1.3 Route 3 is not defined although there is a bridge or crossing point shown at point F, where it enters land assigned to the Rev W H Castleman.

11.25.2 The larger scale plan is the same as the smaller one but contains more detail.

11.25.2.1 Mill Lane is not labelled but is shown clearly, including Route 1. The Mill and the Town Brewery (Millbank House) are outlined.

11.25.2.2 The plan shows Part of Route 2, from B2 to a point approximately midway between points C

and D, in the same manner as on the smaller scale plan but continuing towards point D, Route 2 passes through parcel numbered 279 and a further unnumbered parcel.

11.25.2.3 Route 3 is shown in the same manner as on the smaller scale plan being undefined, a barrier, fence or gate may be depicted at point F.

11.26 The 1929 Dean's Court Estate Plan uses a 50 inch to the mile (1:1250) Ordnance Survey base Map of 1928. Mill Lane is clearly labelled as such and is coloured brown, Route 1. The colouring corresponds with the manner in which other public roads within the town are depicted.

11.26.1 Route 4 and Route 2 are also shown. Route 2, from B1 to a point approximately midway between points C and D, is also clearly defined by means of a broken line drawn a little distance from the eastern bank of the River Allen to a bridge at point C. From point C westward it is defined by two parallel solid lines. There is a solid line through the route, at a point approximately midway between points C and D, possibly defining the location of a gate, fence or hedge. The remainder of Route 2 to point D is also clearly defined, with another solid line across the route at point D.

11.26.2 Route 3 is also clearly defined by two solid parallel lines. Passing under a covered passageway at point E it then continues to a crossing point or bridge at point F. From point F it enters into a field, parcel number 75, it is undefined from this point.



11.27 The 1964 Wimborne Minster Town Improvement Plan, produced by the Wimborne Minster UDC, includes a number of plans and a discussion in respect of proposed improvements to the town centre. One plan, based on the Ordnance Survey, shows Mill Lane, which is labelled as such, the labelling extending to include Route 1. Route 4 is also depicted.

11.27.1 Route 2 south of point B2 is clearly defined extending to the entrance to what is labelled as a car park (Crowther's Car Park), which occupied the site of what is now the supermarket. At point C the annotation 'F.B.' indicates the location of a footbridge over the River Allen and the route from here to point D is also clearly defined for the majority of its length by two parallel solid lines. Throughout its length there does not appear to be any gates, fences or hedges located across the route.

11.27.2 Route 3 is also clearly defined as far as point F, the river crossing, from which point the remainder to point G is not shown.

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

11.28.1 The plans for 1971 and 1973 show a short stretch of Mill Lane, which is clearly labelled, but does not extend as far as Route 1. The footbridge at point C is shown, as is the remainder of Route 2, west to point D.

11.28.2 The plan dated August 1975 is very similar to the earlier plans but is annotated with details of the proposed development of the

central site “TO BE SMKT & SHOPS”. The plan of August 1977 is also similar to the earlier plans with additional information “TO BE SAFEWAY SMKT\_& SHOPS”.

11.28.3 The plans from 2007, 2010 and 2012 depict the whole of Mill Lane, along with its associated retail and domestic buildings and also Route 1. Millbank House is shown along with the Somerfield Supermarket (now the Co-Operative), Route 2 is also clearly shown as is Route 3 with what may be a gate at point F.

11.29 The 1986 pamphlet entitled The Historic Town of Wimborne Minster, B Willis, includes a ‘sketch’ plan of the town centre. Mill Lane is shown on the plan and a route defined by a single broken line that corresponds with Route 1 and Route 2. Although there is no key by reference to other ways shown on the plan the single broken line appears to represent pedestrian routes within the town.

11.30 Copies of the Wimborne Minster Town Guide produced by the Chamber of Commerce for the years 1996 to 2004 include within them a map of the town centre. These plans all depict Mill Lane, which is clearly labelled as such, including Route 1. Route 2 and Route 3 are also shown on the plans, reference to the accompanying keys indicate that these routes were all regarded as pedestrian routes although there is no indication as to whether their status was that of public or private paths.

11.31 The Estate Maps and Town Plans encompass a period of approximately 400 years, 1613 to 2012. They demonstrate that Mill Lane, including Route 1, has existed throughout that period. The majority of the plans also show that Route 2 existed, and it appears that it was free of obstructions or impediments to passage. With respect to Route 3, most of these plans show it extending as far

as point F, from which point it would have entered into what was once an open field with no obvious exit. The later Goad plans from 2007 do show the development of the present car park and consequently the continuation of Route 3 from point F to G is also shown.

11.32 Whilst these documents by themselves do not provide any compelling evidence as to the status of the Order Routes, the manner in which Mill Lane, including Route 1, is defined on many of them suggests that the entire length of Mill Lane was considered to be a public highway, probably a public carriageway. They also provide support to the claim in respect of the remainder of the Order Routes.

11.33 The East Dorset District Council Policy Planning Division Supplementary Planning Guidance No 15, published in April 2006 was intended to provide guidance as to the elements and characteristics of the Wimborne Conservation Area to be taken into consideration when considering planning applications. Pages 49 to 51 of the document discuss the area of Mill Lane, describing it as forming an important link in the town centre footpath network, connecting the Square with the main car parks and Crown Mead shopping area.

11.33.1 Paragraph 5, page 50, describes Route 4 as having been used for the watering of horses and for tipping and disposing of ice and snow into the river. In the conclusions on page 51 it describes the area as having vitality “despite the poor ground finishes, cheap signs and utilitarian detailing. Less acceptable are the ugly galvanized barriers recently erected by the landowner to control pedestrian use of the ways”.

11.33.2 This document, which is based on a document originally published in 1994, describes the Order Routes as an important

link in the town's footpath network. Although this does not prove that the Order Routes are public highways it nevertheless portrays a route that has been extensively used by the public for a considerable period of time. However, one important detail noted is the reference to the recently installed 'barriers' at point B1, a reference that does help to define the point in time when they had been erected and which would concur with some of the user witness statements, who stated they had been prevented from using the through route between Route 1 and Route 2 by their erection in 2005 – 2006.

#### Ordnance Survey Maps

11.34 The Ordnance Survey drawings, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Wimborne Minster was completed in 1807/8 and clearly depicts Mill Lane, including Route 1, which is shown to lead to both the Mill and the Town Brewery (Millbank House), both of which are also depicted. The map is not of insufficient scale to depict Route 2, Route 3 or Route 4.

11.35 The 1811 First Edition Ordnance Survey map at a scale of 1 inch:1 mile also clearly depicts Mill Lane including Route 1. The road is shown to be free of any obstructions such as gates or fences, but the scale of the map prevents any meaningful interpretation of Route 2, Route 3 or Route 4.

11.36 The later revised 1 inch Ordnance Survey maps from 1895, 1904, 1947 and 1960 provide similar information and all depict Mill Lane, including Route 1 in

the same manner, namely as a minor road. Due to the restriction in scale they do not provide any meaningful information as to Route 2, Route 3 or Route 4.

11.37 The 1887 First Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) shows Route 1 in exactly the same manner as the remainder of Mill Lane, which is currently recorded as a public carriageway. It also shows Route 4 in the same way. At point B there appears to be an extension of the main part of what is now known as Millbank House westwards across Route 1 and connecting to what is now the car body repair shop. There is no indication on this map as to whether this was a 'solid' building or a covered walkway similar to that located over Route 3 at point E.

11.37.1 Route 2, between point B and C, is not defined although the area appears to comprise 'open' land, perhaps a garden or field. There is a line across the route a little south of point B, possibly representing a wall, hedge, fence, or gate that also appears to define the extent of the Town Brewery (Millbank House) site. At point C the map is annotated 'F.B.', indicating the presence of a footbridge. Route 2, between point C and D is clearly defined by two parallel lines. There is a line across the route, midway between points C and D, that may represent a barrier, fence, hedge or gate across the route. There is also a line across the route at point D which may represent a gate, fence or hedge or may merely define the extent of the adjoining carriageway.

11.37.2 Route 3 is also shown. There appears to be a bridge over the river at point F that leads into what was then an open field. There is no indication of any barrier, fence, hedge or gate on this section. The route beyond F lies in an open field and is not

defined. No part of Route 3 is annotated 'F.P.' or 'B.R.' that may suggest it was recognised as a footpath or bridleway and no disclaimer is present on this map (see note in Table of Evidence, Appendix 7).

11.38 The 1902 Second Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) shows the Order Routes in a very similar manner to the First Edition, including Route 4. The significant differences relate to the addition of a barrier, hedge, fence, or gate on Route 3 at point F, the removal of the structure connecting the Town Brewery (Millbank House) to what is now used as the car body repair shop at point B1, leaving this as an 'open' route and the footbridge at point C being no longer annotated as such.

11.39 The 1929 Revised Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) is similar to that of 1902 although the barriers at C and D may no longer be in place. The barrier, hedge, fence or gate located to the south of point B is still shown but from here to point C Route 2 appears well defined by two parallel lines. The bridge at C is in place as is the line through the Route 2 at a point approximately midway between points C and D that may indicate a gate, fence or hedge.

11.40 The 1949 Revised Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) depicts the Order Routes in the same manner as the 1929 edition. The gate, fence or hedge at point F is no longer shown and additional unidentified features are shown in the field beyond point F.

11.41 The 1889 First Edition Ordnance Survey Map at a scale of 1:2500 (25 inches: 1 mile) shows Route 1 in a similar manner to the earlier six inch map. It is depicted in the same manner as other public roads in the area and is labelled as 'Mill Lane'. It also shows Route 4 in exactly the same way. At point B1 the

extension of the main part of the brewery, now Millbank House, westwards across or over Route 2 connecting to what is now a car body repair shop is depicted. The crossed diagonal lines through this feature indicates that it was an archway or covered walkway, the same as the feature located over Route 3 at point E.

11.42 From point B1 south Route 2 is not physically depicted although it does not appear to be obstructed save for a line across the route that may depict the location of a gap, gate, fence or hedge at B3. A footbridge is shown at point C with what may be a gate on the western side of the bridge. From C westwards Route 2 is defined by two parallel lines and appears to be open and unobstructed to its junction with the High Street at point D where there is a line across the route, which may represent a gate, fence or hedge or may merely define the extent of the adjoining carriageway.

11.43 The 1902 Second Edition Ordnance Survey Map at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts Route 1 in much the same manner as on the First Edition 25 inch map. However, the archway shown at point B1 on the First Edition has now been removed and at this point the through route is open and unobstructed. Route 2 from B1 is not physically depicted but the line across the route at point B3, possibly depicting the location of a gate, fence or hedge, remains. The footbridge shown at point C on the First Edition map is not shown. The remainder of Route 2 westwards to point D is clearly depicted defined by two parallel lines although there are additional lines across the route at a point approximately midway between points C and D and again at point D that may define the presence of a gate, fence or hedge.

11.44 Route 3 clearly defined between the building on the eastern side and the river on the western side. A sluice is depicted at point F and a line through the route here suggests the presence of a gate, fence or hedge. From here the route to G passes through an open field and is undefined.

11.45 The series of extracts from the Ordnance Survey 1:2500, 1:10000 and 1:10 560 scale maps published between 1963 and 1984 demonstrate that in 1963 part of Route 3, between points F and G, did not physically exist and the public roads known as Crown Mead and Hanham Road had not yet been constructed.

11.45.1 By 1968 the eastern end of Hanham Road had been or was under construction but there is still no evidence of Route 3 between points F and G. By 1972 Hanham Road had been constructed (confirmed by the aerial photograph of the same year (see paragraph 11.54) and a car park had also been constructed where the Hanham Road car park is today, although the entrance is in a different place. Crown Mead is not shown but there does appear to be a route available that generally corresponds to that shown between points F and G.

11.46 Although the Ordnance Survey maps provide evidence in support of the Order Routes they do not, on their own, provide any compelling evidence as to their status. They do, however, show the physical characteristics on the ground at the date of the map. They alone demonstrate that Mill Lane, including Route 1, has physically existed since at least 1807, being consistently defined in the same manner as other public roads in the area at that time.

11.46.1 Whilst the smaller scale maps provide little information on the remainder of the Order Routes the larger scale maps generally demonstrate that Route 2 either physically existed or, where the



route is not physically defined, there appears to be no obvious or persistent obstructions to its use.

11.46.2 Route 3 and Route 4 do not appear on the smaller scale maps but Route 4 is consistently portrayed on the larger scale maps having the appearance of being an extension of the road from which it branches, Mill Lane.

11.46.3 The first part of Route 3, E to F, is also consistently depicted on both the early and later larger scale maps as is the structure crossing the river at point F. However, the earlier maps pre-date the recent development of this area of Wimborne and on these maps the route from F to G is undefined.

11.46.4 The later maps show the gradual development of the area and suggest that part of Route 3, F to G, or at least one that generally corresponds with it, would have been available for use around the time of the construction of Hanham Road in approximately 1972 and after the construction of the supermarket, Crown Mead and the re-development of the Hanham Road Car Park from approximately 1979-80.

#### Commercial maps

11.47 None of the Bartholomew's maps or the small-scale commercial maps of Dorset examined, are of sufficient detail to show the area of the Order Routes.

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

11.48 The Wimborne UDC Survey of rights of way was completed by March 1951 but the Order Routes were not claimed.

11.49 The Order Routes were not included on the 1959 draft, 1964 provisional or 1966 first definitive maps and there is no evidence to suggest that they have ever been the subject of any previous claim or application.

Site and Aerial Photographs

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

11.50.1 The right of way referred to corresponds to Route 4, point X being depicted in the picture. This is also believed to be the feature referred to as being a public drinking place in the Wimborne District Highway Board and UDC minutes, see paragraphs 11.10 and 11.17 above.

11.51 There are several photographs depicting the construction of the new supermarket during 1979-80. Although difficult to determine there do not appear to be any obvious signs other than that shown on the gate leading onto the site.

11.51.1 These photographs appear to show that part of Route 2, B1 to C, would not have been passable during the construction of the supermarket

11.52 Two photographs from 1987-88 were taken in Mill Lane during the re--development of Jessop House. The first is taken looking west down Mill Lane towards the square and the second looking east towards Millbank House.

11.52.1 The photograph taken looking towards the square is taken from a position just to the east of point A. It can be observed that a vehicle is parked at the beginning of Route 4 and shown as A. It can also be observed that at this time there were no signs either affixed to the walls of the building or on the road itself suggesting that in 1987-88 there were no signs in the vicinity of point A to suggest that Route 4 was considered private and not a public right of way.

#### Aerial Photographs

11.53 Aerial photographs covering the period 1947 to 2005 have been examined. The 1947 photograph is not of sufficient quality to discern features such as gates but nevertheless appears to show Route 1 and Route 2. The 1972 photograph also appears to depict Route 1 and also the development of a car park north of point F, although the termination point at G appears to be located in scrub/woodland as the road that presently exists was not constructed at this time. It should also be noted that Hanham Road was constructed by this time, although Crown Mead, point G, was not.

11.54 The aerial photographs from 1979/80 depicting the construction of the supermarket suggest that use of Route 2 from B1 towards C was, in all probability, not possible due to the obstruction of the route by scaffolding, building supplies and a fence and gate at point B1.

11.55 The 1997 photograph shows that by this time the termination point of Route 3, at G, is now adjacent the present road constructed at the same time as the supermarket, shopping complex and the Hanham Road Car Park, which are also shown.

11.56 The 2005 photograph is of better quality than the earlier photographs and there do not appear to be any gates or barriers located along the Order Routes, although some parts are partly obscured by trees.

## **12 USER EVIDENCE**

12.1 A total of 60 Forms of Evidence were submitted in response to the consultation from users of Route 1, Route 2 and Route 3, three of which have been discounted as they lack details of the period of use or the route(s) that were used and the individuals could not be contacted to clarify their statements. Several witnesses were contacted by telephone in early October 2014 in order to clarify their statements.

12.2 The vast majority of the witnesses state on the form or indicate on the accompanying plan that they used all sections of Route 1, Route 2 and Route 3, as shown on Drawing 14/07/3 ('The Application Plan') (Appendix 3). 51 of the witnesses indicate that they used the route A – B – E – F – G. 47 of the witnesses indicated that they had used Route 1 and Route 2, two having used only that part from A to B2.

12.3 All of the witnesses state that their use was either as an individual or with other users, mainly for pleasure but also to get to work. The majority of use was on foot although 21 witnesses state their use was on foot and with a car or other vehicle whilst seven witnesses state that their use was on foot and also with a bicycle.

- 12.4 Although there appears to be evidence of public vehicular use, closer analysis suggests that this use was in connection with the car parks located at Hanham Road and the supermarket or with the business use (vehicle repairs) of premises located along the Order Routes and would therefore be considered as use by invitation. The associated bicycle use is considered as being insufficient to have established public vehicular rights.
- 12.5 The earliest date of use, on foot and with vehicles is from 1953 and the latest date of use is 2014, encompassing a period of some 61 years. The number of users per year varies from two in the 1950s to around fifty from 2000 to 2004. Frequency of use varies from once or twice a day to once a month; the majority of witnesses used some of the Order Routes on a daily or weekly basis.
- 12.6 In respect of Route 1 and Route 3, 51 of the witnesses indicate that they used this through route on foot. Seven of these witnesses also used it with a bicycle and 18 (used it in part) with a car or other vehicle (MPV). The earliest date of use was 1953 on foot and with a car and the latest date of use was 2014.
- 12.7 In respect of Route 1 and Route 2, 47 of the witnesses indicate that they used this through route on foot. Seven of these witnesses also used it with a bicycle and 19 (used it in part) with a car or other vehicle (MPV). The earliest date of use was 1953 on foot and with a car and the latest date of use was 2014.
- 12.8 The majority of witnesses state they were never challenged and were not aware of any gates or other obstructions, which would have prevented their use of the Order Routes, nor to the existence of any notices, the effect of which would have been to make them aware the Order Routes were not a public highway. However, several witnesses do recall gates and/or fences being recently erected, some noting that they were locked on occasions and others that they were never locked.

- 12.9 Several witnesses were aware of the presence of signs stating 'private road' in approximately 2006 and one witness thinks there may have been a sign on a gate stating 'no right of way' just prior to the construction of the supermarket and shops in 1979-80.
- 12.10 Four witnesses state they enjoy a private right of access over all or some of the Order Routes and eight witnesses state that they were prevented from some of the Order Routes, the earliest being November 2005 and the latest in March 2006.
- 12.11 One witness states that they were aware that the gate at point F was closed at Christmas or Easter for a day.
- 12.12 One witness, Mr T Jessop, provides photographic and documentary evidence in respect of the refurbishment of premises in Mill Lane, now Jessop House, which demonstrates that the signs attached to what is now used as a Tattoo Parlour (point A) were not in place in May 1988.

**13 ANALYSIS OF EVIDENCE OPPOSING THE APPLICATION (PRIOR TO ORDER BEING MADE)**

- 13.1 Mr D Hoyle responded twice to the consultation by e-mail. On 10 April 2014 Mr Hoyle, who has lived in the area for some 40 years, stated that he believes that access over Route 1 was allowed by the owner of the freehold in respect of the residents of Millbank House and their visitors, traders and their customers. He states that there were no footbridges over the River Allen and Route 3 was not viable. Mr Hoyle continues, stating that in 1976 he was aware that Route 1 was private freehold property. At the time that the supermarket was built the owner took action with fencing and gates but allowed public

access to the supermarket and to the car park at Hanham Lane. He concludes that he believes no right of way exists nor has one ever existed.

13.1.1 In addition to any public rights that may exist, the residents of Millbank House enjoy private rights over the whole of Mill Lane. The vast majority of public highways are contained within private land holdings and the fact that land is private does not preclude the possibility that a public highway may exist over it.

13.1.2 Mr Hoyle has provided no evidence in support of his statement that a right of way has never existed over the Order Routes. Should it be demonstrated that a public right of way existed over a sufficient period of time prior to the erection of any signs, fences or gates then this action by the landowner would have taken place after the public right to the use the Order Routes had become established.

13.2 Mr J Batchelor wrote on 8 April 2014 stating that he has lived in Wimborne for some 55 years and is familiar with the land in question. He states that part of Mill Lane is a public highway, but Route 1 is privately owned and has always been clearly identified as such. Mr Batchelor notes that Mr Crowther owned the land now occupied by the supermarket and controlled the former car park, on occasions closing the land off at the point now occupied by the gate and bollards (B1). At point F there was a field gate, now replaced with metal gates, which are also regularly closed. Mr Batchelor is of the opinion that the landowner has done all that is required to identify the land as being private whilst allowing access to facilities.

13.2.1 Mr Batchelor is correct in that the landowner has taken steps to prevent the accrual of public rights over some of the Order

Routes. However, there is a conflict of evidence as to when this challenge was first initiated, the user witnesses being of the opinion that this has happened relatively recently. Furthermore, should the historical evidence show, on balance, that the Order Routes, or parts of it, were already a public highway prior to the landowner's action then his challenge to use of the ways would be unsuccessful.

13.3 Mr & Mrs Blackmore wrote on 8 April 2014 stating that they had lived in Mill Lane since 2002 and from that time had been aware of the signs and gates and the private nature of the 'precinct'. They are also aware that the landowner closes the gates annually, usually at Christmas and occasionally at Easter and bank holidays. In their view there has never been a public right of way over the Order Routes.

13.4 Mr D Hart wrote on 10 April 2014 stating that he was born in Wimborne and worked there in the 1960s. To the best of his knowledge there is no right of way beyond the Asiana restaurant (point A). At the end of Mill Lane there was a car park to one side controlled by the owner of the land and to the other side a field, both of which had gates closing them off. In the 1980s both these areas were developed and opened up. He was aware of signs stating that the land in Mill Lane was private, not a public right of way, before that time and since and the gates have been regularly closed.

13.5 Mr J Wells wrote on 28 April 2014 stating that he was born in Wimborne and lives and works there. He acknowledges that part of Mill Lane is a public highway up to the Old Church House but beyond there it is private land and has been signposted as private land and not a public right of way for many years and the gates have been closed regularly. He recalls from the 1960s and



1970s that once past the Mill at the end of the lane there was nowhere to go to except fields and in his view there has never been a public right of way over the land.

13.6 In respect of the statements made by Mr & Mrs Blackmore, Mr Hart and Mr Wells and in common with Mr Batchelor's statement there is a conflict of evidence. The questions to determine are:

13.6.1 When did the first challenge to the public use of the route take place?

13.6.2 Was the route in fact already an established public highway prior to any such challenge?

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

13.7.1 It should be noted that the printing business with which Mr Wheelton served his apprenticeship is owned by the current landowner, Mr Slocock.

13.7.2 Mr Wheelton notes that gates were present and occasionally closed. However, it is not stated whether these gates were ever locked.

13.7.3 Mr Wheelton notes that Mr Crowther closed off the area of the car park sometimes for periods exceeding 24 hours. Whether this course of action was taken by Mr Crowther is disputed by the user witnesses and, if it was, Mr Wheelton does not clarify as to whether it was intended to prevent vehicular access, pedestrian access or both, nor does it seem likely that Mr Wheelton would have observed the area constantly, in excess of 24 hours, to be able to confirm what he believes may have taken place.

13.7.4 Mr Wheelton states that on return visits to Wimborne he was aware of signs and gates. However, he provides no dates nor does he confirm whether the gates were closed and locked.

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

13.8.1 The route is not a public right of way; the settler and his predecessors allowed the public to pass and repass to access their facilities and other premises. Action was taken annually to deny access and signs were erected to make users aware that it was private land and access to adjoining land was obstructed by gates and third party owners.

13.8.1.1 It appears there is a conflict of evidence as to when the landowners' actions were first initiated.

13.8.2 It is not possible for Mrs Hopkins and other tenants or owners of Millbank House, that have a private right of way, to attempt to

make it a public right of way and their submissions should be excluded as evidence.

13.8.2.1 Whilst the use of Order Routes, or parts thereof, by persons with private rights over them cannot be taken into consideration as evidence of public use (unless such use exceeds their private rights), their knowledge of the general public's use of the way or to the erection of signs, gates and of any challenges to the public use of the way are admissible and can be taken into consideration in determining the application.

13.8.3 They raise concerns over a number of statements made by Mrs Hopkins, which they consider inaccurate and misleading.

13.8.3.1 It was not stated which of Mrs Hopkins statements were considered inaccurate or misleading.

13.8.4 After viewing the case file they note that a letter of 2009 from Dorset County Council stated that the Order Routes were not a public right of way.

13.8.4.1 It is suggested that the letter to which they referred may be one of 5 August 2009 from East Dorset District Council to Mrs Hopkins in which the Planning Officer advised Mrs Hopkins that the Council's informal view was that it was not a right of way. It is also noted that the Planning

Officer, Mr Gausden, stated quite clearly within the letter that “the role of the East Dorset District Council as the Local Planning Authority does not extend to judgements in respect of ‘rights of way’”.

13.8.5 They query the legitimacy of Mrs Hopkins’ involvement with the claim following the inability to contact the original applicant Mr Hewitt. They also raise concerns over what they regard as procedural errors in that a number of affected landowners had not been identified by the applicant.

13.8.5.1 Since making the application Mr Hewitt has left the area and it has not been possible to contact him. Whilst it is the responsibility of the applicant to make all efforts to contact affected parties it became apparent that a number of them had not been identified. However, during the course of the investigation it is believed that all those affected have now been contacted and it is considered that no party has been prejudiced by the initial oversight on behalf of the applicant.

13.8.6 They state that they have found no record of any public right of way ever having been in existence over their land. However, they note that there are records concerning private rights of way being granted quite recently, which they consider reinforces their position that no public right of way exists.

13.8.6.1 Copies of the Finance Act 1910 were provided to the landowners that demonstrate that at that time part of the Order Routes had been excluded from valuation. It was explained that, whilst on its own this was indicative of the existence of a public highway part of the Order Routes, it would have to be considered alongside any other relevant evidence that came to light.

13.8.7 Mr M Shutler provided 8 signed statements in support of Mr Slocock. Six of these witnesses have signed what appear to be prepared statements that generally refer to the same information, namely that the witness was aware that the land was private, that signs denoting this and that there was not a public right of way over the property had been on site for as long as they had lived or worked there and that gates were in place and were closed annually, normally at Christmas and public holidays. They were all of the opinion that the Order Routes are not a public right of way.

13.8.7.1 Seven of these witnesses, K Short, A Trim, E Dunningham, S Tucker, D Munford and J & L Henton are or were employees or tenants of Mr Slocock. The earliest date for which they can provide information is 1979. Several of the witness statements include a photograph of one of the signs located under the archway at point E. None of the witnesses are specific as to the exact

locations of the signs or the gates to which they refer.

13.8.7.2 In a telephone conversation with Mr Short on 11 August 2014 he clarified that he did manufacture the signs for Mr C Slocock's father but that was not responsible for their erection. Furthermore, although he was aware of the signs around the estate he could not confirm that all the signs and more specifically those present on the wall of the Tattoo Parlour (point A) and present today were in place in 1979.

13.8.7.3 In a further statement of 18 September 2014 Mr Short confirmed that he did manufacture the signs and that they had been "fixed on site by Mr H L Slocock and currently Mr C J Slocock". Mr Short also stated that he was aware that since 1979 the signs had been placed on the buildings, posts and gates in the locations identified on the accompanying plan and shown in the accompanying photographs.

13.8.7.4 Another witness, Mr Monds, a former Solicitor and Partner at Turners, believed that these signs had been in place for 25 years or more and consequently the public must have been aware that the land was private and their use was by implied consent. Mr Slocock's statement

reiterates points such as his belief that the signs had been in place for 35 years, the gates had been closed at least annually and that the former owner of the car park had, on occasions, prevented public use of the way. He believes that the Order Routes are not public rights of way and the public are using Order Routes and not reading or seeing the signs and not seeing or realising that the gates are shut annually.

13.8.7.5 Mr Monds believes the signs have been in place for at least 25 years (1989). However, he has not provided information as to their specific location or to the gates to which he also refers.

13.8.7.6 In his statement Mr Slocock states that he believes that the signs and gates have been in place for at least 35 years (1979) but he also suggests that it may be the case that the public do not see or read the signs or see or realise when the gates are shut.

13.8.8 They state that they have found no evidence of unobstructed user activity of sufficient frequency to establish public rights and question the validity of the user evidence.

13.8.8.1 There is evidence of public use dating from the 1950s, the numbers and frequency of which could be considered sufficient, without any

evidence to the contrary, to raise a presumption of dedication.

13.8.9 They reiterate their concerns as to the validity of the Application and Mrs Hopkins' involvement with it.

13.8.9.1 Mr Slocock was informed that the investigation was being conducted on the basis of the evidence that had been discovered. Due to the unavailability of the Original Applicant there was no applicant, nor was one required. Mrs Hopkins' involvement was as an interested party and a local point of contact.

13.8.10 They question the interpretation of the evidence provided by the Finance Act 1910.

13.8.10.1 Although the interpretation of this evidence is questioned no alternative interpretation has been provided to comment on.

13.8.11 Mr Slocock and Mr Shutler enquire as to whether the investigation would be undertaken with complete impartiality. They also reiterate their concern as to the motives of Mrs Hopkins and the other owners of Millbank House, suggesting a conflict of interest and that any evidence provided by them should not be taken into consideration. They reiterate that access to private land outside of Mill Lane was restricted, controlled and physically obstructed by gates. Access across the (Crowther) car park was also controlled (point B1 south) and



consequently there does not appear to have been the continuous route as suggested. With respect to the Finance Act 1910 they have seen no evidence that the plan produced was a result of the survey and no evidence that the owner claimed an exemption from tax.

13.8.11.1 The Slocock Trust was advised that every investigation is carried out impartially, that any evidence discovered and/or submitted during the course of the investigation would be taken into consideration and where applicable would be attributed the appropriate weight that it merited.

13.8.11.2 There is a conflict of evidence as to when the actions of the landowner(s) to prevent the accrual of public rights over the Order Routes were first initiated.

13.8.11.3 The extract from the Finance Act plan was acquired during a routine visit to the National Archives in London. Should it prove necessary a certified copy of the document can be acquired.

13.8.11.4 There is no, nor will there be any evidence within the Finance Act documentation that a landowner had claimed an exemption as Route 1 and Route 4 were excluded from valuation. Had there been an owner who could demonstrate that they had control of the land, then in all likelihood an entry would have been made within the

accompanying Field Book. In all probability the 'owner' or 'owners' of the land are the adjacent property owners who own all of the land to the centre of the highway except for the surface, which was and remains vested with the Highway Authority and therefore out of the control of the landowner(s). Consequently, as highways were not subject to valuation or tax, Route 1 and Route 4 were excluded on the plan from which a strong indication that these routes were considered to be a public highway, probably a public carriageway, can be inferred.

13.8.12 Mr C Slocock responded on 11 August 2014 to an additional consultation on Route 4. Mr Slocock states that his family has owned the land for over 67 years and over this time nobody exercising any rights has been observed using it. They have used the land in a variety of ways such as parking and it had been identified, closed and used as private property over that time. The deeds have identified no public rights and past use appears to have been related to private activities involving horses, drinking and limited access connected with the Brewery, not a public brewery. He concludes, stating that he sees little point in something that goes nowhere, the use of which has ceased a long time ago.

13.8.12.1 The documentary evidence shows Route 4 excluded from the provisions of the Finance Act 1910, suggesting that it was regarded as a public

highway, probably a public carriageway. Extracts from the Highway Board records suggest that it was the public drinking place.

13.8.13 Mr C Speirs, Chartered Surveyor, submitted a report on behalf of the Slocock Trust in April 2014 and made several other submissions, the last being made on 19 September 2014. A summary of the report follows:

13.8.13.1 Mr Speirs commences with a brief history of the site and a summary of the Application noting that not all of the landowners, including Mr Slocock had been identified by the Original Application. He also notes that the case was not pursued by the County Council immediately, the matter being raised again by Mrs Hopkins.

13.8.13.2 Mrs Hopkins is the owner of a flat in Millbank House through which she enjoyed a private right of access and therefore has no personal reason to seek a right of way from which she already benefits.

13.8.13.2.1 The Application was not pursued immediately due to the fact that at that time there was a 7 year 'backlog' of applications. Except in extenuating circumstances all applications are dealt with in chronological order.

13.8.13.2.2 Mr Slocock is identified on the Application form as being the landowner, whom the original applicant, Mr Hewitt, acknowledges was notified.

13.8.13.2.3 During the course of the investigation it is believed that all of the interested parties had been identified and had all had the opportunity to comment on the Application. There is no evidence to suggest that any of the interested parties have been prejudiced.

13.8.13.2.4 Mrs Hopkins did not seek to pursue the Application. It was by chance that she contacted the Council and, in the conversation that followed, during which it was explained that without an applicant the investigation of the Application would most likely be delayed, Mrs Hopkins took it upon herself to attempt to trace Mr Hewitt. Having been unsuccessful in locating the Original Applicant Mrs Hopkins offered to act as a local contact in

order that the investigation was not delayed any further.

13.8.13.3 Mr Speirs discusses the Finance Act documents and appears to suggest that they provide no evidence as to the status of the way, stating that the only evidence is that of a red line “which is purported to indicate this”. He continues, stating that no evidence in writing has been provided to support this and no evidence to suggest that tax was avoided has been produced.

13.8.13.3.1 Mr Speirs’ interpretation of the Finance Act documents is incorrect. The exclusion of Route 1 and Route 2 is considered as being strong evidence to the effect that the excluded section was regarded as a public highway, probably a public carriageway.

13.8.13.3.2 The red line to which he refers is used in conjunction with green lines to denote the boundaries of the separate hereditaments or parcels, which are individually numbered and assessed for the purpose of valuation and taxation.

13.8.13.3.3 The majority, if not all, of public land and specifically public highways were not subject to valuation and taxation and consequently were excluded from the process, being given no hereditament or parcel numbers (footpaths and bridleways were generally included within the hereditaments and deductions allowed in respect of them).

13.8.13.3.4 Conversely, private roads were subject to valuation and even if they were not subject to taxation, due perhaps to other easements over them, would nevertheless have been included in or given a separate hereditament or parcel number. The fact that the land is excluded is evidence to the fact that it was not valued and that no tax was paid on it.

13.8.13.4 Mr Speirs then discusses Route 1, noting that this land is subject to private rights granted to the owners of Millbank House. Mr Speirs acknowledges that from 1979 to date access was available along Route 1 to members of the

general public but that it was signed, indicating that it was private and not a public right of way. Prior to 1979 no access was available from point B towards point C without the payment of a car parking charge. Millbank House was the former Town Brewery, which was linked to the Mill building and joined to the current car body workshop by a passageway, there being no access to the southeast at this point.

13.8.13.4.1 It is not disputed that there are signs indicating that Route 1 is not a public right of way. However, it is disputed as to when these signs were first erected.

13.8.13.4.2 It is acknowledged that the present supermarket was formerly a car park although many witnesses dispute that the owner was as vigilant as has been suggested. There is no evidence to suggest that pedestrian users of Route 2 were permitted, challenged or charged for passage by the owner of the car park.

13.8.13.4.3 The evidence provided by the Ordnance Survey indicates that the 'passageway' between points B and B1 to which Mr Speirs refers was in fact an archway, the same as that which is presently located opposite at point E. This would suggest that there was in fact access southeast from point B towards point C.

13.8.13.5 Mr Speirs then discusses part of Route 1 and Route 2, B to C. Mr Speirs states that the B to B1, is owned by the Slocock Trust and B1 to B2 was transferred to the Slocock Trust in 2005. B2 to C is owned by the Co-operative Society, being previously owned by Mr Oaks and prior to 1985 by Mr Crowther, when it was used as a car park and who generally barred access, charging a fee for entry.

13.8.13.5.1 Whilst Mr Speirs has identified the ownership of the land in respect of B to B2 (Slocock Trust) he does not appear to have suggested any action that may have been taken by the landowner to prevent the accrual of public rights.



13.8.13.5.2 With respect to B2 to C Mr Speirs suggests that the owner of the car park, Mr Crowther, generally barred access, charging an entry fee to park a vehicle in the car park. Whilst this suggests that passage beyond B2 in a vehicle was not as of right but by the payment of a charge, there is no evidence to suggest that Mr Crowther permitted, challenged or charged others to the use of the way.

13.8.13.6 With respect to parts of Route 1 and Route 2, namely, B - E - F, Mr Speirs states that the whole of this section is in the ownership of the Slocock Trust with B to E subject to private rights granted to the owners and occupiers of Millbank House. He acknowledges that B to E is open at all times but that access width is restricted and barred from time to time. In respect of that part from E to F he states that the land beyond point F was originally a field with a five bar gate prior to its present use as a car park and is now gated at both ends.

13.8.13.6.1 Mr Speirs states that public access through parts of Route 1

and Route 3 were allowed but on occasions 'barred', presumably by the closing of the gates. However, no dates have been provided as to when this action may have been taken and the majority of user witnesses state that during their main period of use the gates were not locked, the locking of gates having only occurred relatively recently (prior to the application).

13.8.13.7 Mr Speirs suggests that the Town, District and County Councils have had ample opportunity to suggest that Route 1 and Route 3 are public rights of way and correspondence regarding this subject, in which each has stated that the routes are not public rights of way, is a matter of public record.

13.8.13.7.1 As noted at paragraph 13.8.4 above Mr Speirs has probably confused the response from the District Council in 2009 as being from the County Council, in which the District Council clearly state that the "the role of the East Dorset District Council as the

Local Planning Authority does not extend to judgements in respect of ‘rights of way’”.

13.8.13.7.2 Whilst the Town Council may have commented on the status of the Order Routes no evidence to that effect has been discovered or submitted for consideration.

13.8.13.7.3 With respect to the Council’s position on the status of the Order Routes, if the question were asked prior to the Application then the answer would have been that the Order Routes were not recorded as public rights of way on the definitive map and statement. However, the definitive map is only conclusive as to those ways shown upon it and is not prejudicial to the existence of any higher or unrecorded public rights that may also exist. If the question arose after the Application then the answer would have been that they were not recorded public rights of way but were subject to

an application that was awaiting determination.

13.8.13.8 Mr Speirs concludes by stating that it is clear that relevant signage has been in place to indicate that the land is private and that Route 1 and Route 3 have been closed at sufficient periods to indicate that rights of way have not been established at least since 1979. Prior to this date he suggests that part of Route 2, B to C was policed by the owner, Mr Crowther, who charged for the use of the car park. He notes this land was private, enclosed and access led nowhere beyond the car park. He believes that the only evidence that can be relied upon is that of the Finance Act but this has yet to be proved and also that no tax was paid. He also states that a public right of way should provide a link between two points of interest and it is clear that these routes are not capable of providing a continuous route over the period of time required to establish a right of way.

13.8.13.8.1 It is acknowledged that the landowner in respect of those parts of Route 1, Route 2 and Route 3 has taken steps to prevent use by the public and in doing so has challenged public

use of the way. However, what has not been established is when this action or challenge first occurred. If, as Mr Speirs suggests, it can be established that this first took place in 1979 then consideration must be given to whether public use of those ways for the preceding 20 years would give rise to a presumption that a dedication had taken place. Consideration must also be given to whether the documentary evidence considered demonstrates that, on balance, the Order Routes were already established public highways.

13.8.13.8.2 It is reasonable to conclude that, as Route 1 and Route 4 were excluded from valuation in the Finance Act documents, no tax was due or paid on the land involved. The exclusion of these routes is indicative that they were regarded as public highway, probably public carriageways.

13.8.13.8.3 As case law has established it is not a pre-requisite that a public right of way must lead to a point of interest. Generally speaking a public right of way would lead to another highway or a point of interest, for example a mill, river or open space. However, the user evidence in this case and the majority of the documentary evidence examined suggests that Route 1 and Route 2 have been available over a considerable period of time. With respect to Route 3 the documentary evidence suggests that this has been available as a through route over a considerably shorter period of time, probably from around the time of the construction of the car park.

13.8.13.9 On 6 June 2014 Mr Speirs submitted an addendum to his report of April 2014 including extracts from several of the documents to which he refers. With respect to a reproduction Ordnance Survey map of Wimborne Minster 1900, Mr Speirs believes this demonstrates that

Mill Lane was in fact a cul-de-sac serving only the Brewery and the Mill. This he notes would concur with the situation as depicted on the Finance Act plan. This document also included a letter from Mr D Wheelton of Tasmania, Australia a former resident of Wimborne, which is summarised at paragraph 13.7 above.

13.8.13.9.1     Ordnance Survey maps are dealt with in some detail from paragraph 11.35 above. In conjunction with the other maps and plans examined they demonstrate that Mill Lane, including Route 1, has existed since at least 1613.

13.8.13.10     Mr Speirs included a reference to the former Town Brewery (Millbank House) that notes that it was acquired by Hall & Woodhouse in 1937, concluding that it probably operated as a brewery into the war years.

13.8.13.10.1     Probably of more significance is the fact that it was a brewery at the time of the Finance Act and that the Brewery made no claim over Route 1.

13.8.13.11 Mr Speirs then refers to an Aerial Photograph of Wimborne, which although undated, he suggests is probably from the 1950s. Mr Speirs notes that the photograph shows that the original open access of the brewery yard has now been enclosed by a brick wall. He further notes that access to Mill Lane remains restricted and the completely enclosed garden area at the rear of the former brewery is now the supermarket and its car park.

13.8.13.11.1 Reference to the six inch Ordnance Survey maps dated 1887, 1902 and 1930 suggest that the brewery yard has always been enclosed by a fence, wall or hedge, earlier maps, for example, the Deans Court Estate Map 1873, would concur with this conclusion.

13.8.13.11.2 From the photograph supplied it is not possible to determine whether there are any restrictions on Mill Lane as the road is obscured by the buildings adjacent its southern boundary.



13.8.13.11.3 Mr Speirs' observations in respect of the supermarket and car park appear correct but it should be noted that the extension of Mill Lane into the car park is also depicted in the picture.

13.8.13.12 Mr Speirs refers to a note made by Mr G Watson, the co-founder of the Priest's House Museum, Wimborne Minster, in which he describes how the brewery drays 'had' to be driven along the bed of the river from Mill Lane towards Eastbrook, indicating that there was no other route from Mill Lane to this side of Wimborne.

13.8.13.12.1 The note is undated and does not indicate from where the information was obtained.

13.8.13.12.2 Mr Watson refers to carts that had unloaded their grain and were empty, not specifically brewery drays, and that it was 'tradition' that after unloading they would use the river bed rather than return through the town. However, there is no other evidence to suggest that this was common practice nor is there anything to

suggest that it was compulsory. It seems reasonable to assume that the normal practice was for loaded drays and carts to have used Mill Lane when leaving or entering the brewery.

13.8.13.12.3 Although, after all of the available evidence has been considered, it may be determined that vehicles did not or could not proceed any further than what was the old car park, there is nothing within Mr Watson's statement to suggest that passage on foot or indeed with a vehicle beyond this point was not possible at that time.

13.8.13.13 Mr Speirs also provides a photograph, of poor quality, showing a vehicle parked at point F. The vehicle's registration suffix is 'L', suggesting that it was first registered in 1972. The photograph shows that the gate at F is open and the gate post to the eastern side has a notice affixed to it. The notice is illegible, but Mr Speirs has provided the wording it contained, namely "WIMBORNE INDUSTRIAL ESTATE PRIVATE PROPERTY NO PUBLIC RIGHT OF WAY". Mr Speirs appears to suggest that this may indicate that in

1972 the land was clearly identified as being private with no public right of way.

13.8.13.13.1 Mr Speirs could be correct, although he qualifies his statement by noting that the photograph is undated and that January 1972 would have been the earliest date the car was registered. Consequently, as the photograph is undated and the age of the car at the time the picture was taken is unknown it has little value in determining exactly how long the notice may have been in place.

13.8.13.14 Mr Speirs states that since the beginning of the 20th Century Mill Lane has been a cul-de-sac and none of the evidence provided, including that of the Finance Act 1910, suggests that this has not remained the case. Mr Watson's note, he suggests, shows that the only access to the lower part of the Town, without the use of the main road, was by the river bed, which in turn he suggests shows that there was no other road or footpath available. The later plans and photographs he concludes show that there was no public access either to the south over the land

now occupied by the supermarket and previously used as a car park, or to the north, which was properly fenced and gated well into the 1970s.

13.8.13.14.1 The majority of the documents examined do not provide any compelling evidence to the conclusion that the route' comprising of Route 1 and Route 2' was a cul-de-sac. For example, the 1910 Finance Act plan clearly shows a through route from point A to D that may or may not have been gated at point C2. The majority of other 'early' plans examined generally support this conclusion.

13.8.13.14.2 The later plans would also support the conclusion that a through route (A to D) was available. In addition, they also show that Route 3, prior to and following the time the supermarket was built, was also available. For example, the Town Plan of 1964 shows Route 2 in its entirety. The later Town Guides and Plans 1986 – 2004 all show

Route 2 was available for public use.

13.8.13.14.3 With respect Route 3, although the photograph provided may show the presence of a notice there is nothing to determine when the picture was taken i.e. the date from which the use Route 3 by the public was challenged. Furthermore, it will be noted that the gate is open and the picture itself provides no evidence to the effect that it was ever closed or locked.

13.8.13.15 On 19 September 2014 Mr Speirs provided a plan, photographs and a further written statement from Mr Short in respect of the placing of signs along Route 1. Mr Short confirms that these signs have been in place at the locations shown on the plan since 1979.

13.8.13.15.1 Mr Short's latest statement contradicts his recollection of events as established during a telephone conversation that took place on 11 August 2014, see paragraph 13.8.7.2 above.

13.8.13.16 In November 2015, immediately prior to the planned Council committee meeting which was due to determine the Application, Additional Evidence was received from Mr Cosgrove on behalf of Mr C Slocock (Appendix 10). In his covering letter Mr Cosgrove states that he is a Chartered Surveyor and has lived in Wimborne since 1955. Mr Cosgrove enjoyed a brief period of employment with Dorset County Council in the Valuation and Estates Department before starting his own company in 1989. Whilst employed by the County Council he was involved in the purchase of land for highway improvements, the experience from which he states developed his understanding of public highway rights.

13.8.13.17 In representing the Slocock family Mr Cosgrove objects to Route 1, part of Route 2 (B1 - B2) and part of Route 3 (B – E – F) whilst acknowledging that Route 4 appears valid although he believes that the width may be overstated.

Summary and Analysis of Mr Cosgrove's Additional Evidence.

Abstract of Title & Conveyance

13.8.13.18 The first pieces of additional evidence submitted are those relating to an Abstract of Title of 1949 in respect of the property known as Millbank

House (see Order Plan), formerly the Town Brewery, and a conveyance of the same year in respect of a freehold store and garage premises to the south side of Mill Lane. Mr Cosgrove notes that the title document commences with reference to a conveyance dated 12 March 1914, within Schedule 1 of which the land is described and reference made to a plan dated 15 March 1875.

13.8.13.19 Mr Cosgrove further notes that private rights of way have continued to be granted to Millbank House and other buildings and makes reference to the accompanying conveyance document of 1949, which includes a plan showing that the Old Malthouse (now the car body shop and tattoo parlour) was granted a private right over both the brown and yellow coloured land. This land includes Route 1.

13.8.13.20 Mr Cosgrove's argument is that this particular document demonstrates that a private right also existed over the land crossed by Route 1 and Part of Route 3 (E-F). Consequently, he is of the opinion that this suggests that there was no existing public right of way, as if one had existed there would have been no requirement for any private rights over the land.

13.8.13.20.1 Mr Cosgrove is correct in as much as the private rights which he describes were granted to the purchaser of the properties concerned. However, he is incorrect to reach the conclusion that this provides positive evidence that Route 1 and part of Route 3 (E-F) could not, therefore, be public highways.

13.8.13.20.2 It is common knowledge that public and private rights can happily co-exist and there are many examples of such instances. There are various reasons to explain such occurrences, for example, the private rights may be higher than the public rights, e.g. providing private vehicular rights over a public footpath or bridleway.

13.8.13.20.3 In this particular instance the private rights are vehicular over Route 1 and part of Route 3 (E-F). The evidence previously examined, on balance, indicates that public vehicular rights exist



over these routes. Whilst this may seem superfluous, the importance of the private rights in this example is that they would not be affected should any existing public vehicular rights be formally extinguished. In establishing that private rights exist, a competent solicitor would ensure that such rights were retained on any subsequent conveyance in case the public rights were extinguished.

Correspondence from the County Surveyor & Highways Information Unit

13.8.13.21 Mr Cosgrove also submitted as evidence in support of his conclusions a letter received from the County Surveyor dated 16 June 1987 and another from the Dorset County Council Highways Information Unit dated 1 October 2014. The County Surveyor confirmed that the definitive map had been inspected and there were no public rights of way within the area of Mill Lane. The response from the Highways Information Unit was in respect of a question as to the extent of the publicly maintained highway, Mill Lane. The response included a plan

indicating that the publicly maintained highway did not extend any further east than point A.

13.8.13.21.1 Neither of these documents provide any evidence in support of Mr Cosgrove's conclusions. The response of 1987 merely confirms that at that time there were no 'recorded' public rights of way in the vicinity. However, this does not necessarily mean that public rights did not exist over Route 1, Route 2 or Route 3 as another reasonable explanation is that, if they did, they simply had not yet been recorded.

13.8.13.21.2 The letter from the Highways Information Unit confirms that according to their records the publicly maintained highway did not extend eastwards beyond point A. However, this response on its own does not provide confirmation that public rights did not exist beyond point A. As detailed in paragraphs 8.18 to 8.21 of the 2014 Report (part of **Appendix 6**), the List of Streets

and any accompanying documents, from which this information was provided, relate only to those highways that are publicly maintained. Public highways that are not publicly maintainable, or those which for one reason or another have yet to be recorded, are not and should not be recorded upon it.

Preparation of the first definitive map

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

13.8.13.22.1 Whilst it is a fact that the route was not recorded during this process, as members will be aware, one of the functions of the Regulatory Committee is to consider applications to record not only those routes that have come into existence since the publication of the definitive map

but also those that may have been overlooked or omitted at that time.

13.8.13.22.2 It should also be noted that the primary object of the original survey was the recording of public rights of way on foot or horseback, with provision for the recording of public vehicular routes, used mainly by the public on foot or horseback and known at the time as 'CRFs' and 'CRBs', later 'RUPPs' and eventually 'BOATs'. However, it was not the purpose of the survey to record public carriageways and as, on balance, the available evidence suggests Route 1 and Route 4 are public carriageways it may have been the case that these routes were not included within the survey as it was thought they were in fact public roads.

#### Finance Act 1910

13.8.13.23 Mr Cosgrove refers to the records of the Finance Act 1910 and the "assumption" made within the 2014 Report that this is indicative of a public

highway. Mr Cosgrove notes however, that the accompanying Field Book records that the land was not affected by any easements and that all tax had been paid.

13.8.13.23.1 The records from the Finance Act 1910 are discussed in paragraphs 8.1 to 8.4 in the 2014 Report.

13.8.13.23.2 To clarify the findings from the Finance Act records, as stated in paragraph 8.1 of the 2014 Report, Mill Lane, including Route 1 and Route 4, were excluded from valuation and these 'parcels' of land therefore have no hereditament numbers. As a consequence, there are no corresponding entries within the Field Book relating to these parcels as, being public highways, they were not liable to valuation or taxation.

13.8.13.23.3 The field book entries to which Mr Cosgrove refers relate to the adjoining properties abutting or containing the remainder of the Order Routes, namely Route 2

and Route 3. Although these records indicate that the owners of these parcels did not acknowledge the existence of any public right of way over them, this does not necessarily indicate that no public rights existed within them. Whilst it was a criminal offence with severe penalties to falsely claim tax deduction in lieu of the existence of a public highway there were no penalties for not acknowledging the existence of a public highway over the land.

Mr H L Slocock Statutory Declaration

13.8.13.24 Mr Cosgrove submitted a copy of a statutory declaration, with an accompanying plan and several attachments, made by Mr H L Slocock in 1987. However, Mr Cosgrove makes no comments about it other than it relates to “land where there was a right to water”. Although Mr Cosgrove makes no further comments in respect of this document it does provide some useful information in respect of the Order Routes.

13.8.13.25 At paragraph 4 Mr H L Slocock confirms that he purchased the Old Brewery, now the car body repair shop and tattoo parlour located to the south of Route 1, in November 1949. By reference to an accompanying plan dated July 1987 he acknowledges that this conveyance did not include the land affected by Route 4.

13.8.13.25.1 This confirms that Mr Slocock did not own the land affected by Route 4 at the time he purchased the Old Malthouse.

13.8.13.26 He further stated that since he had acquired the land he had enjoyed sole use of the adjoining land (Route 4) initially for the parking of cars and that in 1966 he placed a builder's skip on the land for both his and his tenants use. Mr Slocock also provides the width of Route 4, which by reference to the accompanying plan is shown to be approximately 3.6 metres (11' 10") at its narrowest point, identified as being between the points A and B shown on his accompanying plan.

13.8.13.26.1 Whilst Mr C Slocock has now acknowledged that Route 4 is a public highway he still disputes the width of it. Mr H L Slocock's statement and plan clearly

identifies the whole of this piece of land, it being defined by the boundaries formed by the Old Malthouse on the eastern side and the retaining wall located to the west. He acknowledges that the width of this route was 3.6 metres at its narrowest point.

13.8.13.27 Furthermore, in respect of this land, Mr H L Slocock states that to his own personal knowledge Route 4 was used by the brewery to water the dray horses, which use he believed was ancillary to the malt house and brewery and was in use up to 1936, both these properties now being owned by him. To the best of his knowledge no person or body had ever objected to the placing of the skip.

13.8.13.27.1 The use of Route 4 for the watering of horses by the brewery would be in accordance with it being identified as a public watering place. Had this land been owned by the brewery, serving purely the requirement of the brewery for the watering of their horses, it would be expected that it would not have been



excluded from valuation during the survey in respect of the Finance Act 1910 but instead would have been attributed to them.

13.8.13.28 At paragraph 5, Mr H L Slocock acknowledges that in 1986 he erected posts on either side of the entrance to Route 4 with a chain and padlock to prevent access when the estate was closed. No objections to his enclosure of the land had been received.

13.8.13.28.1 It should be noted that a public highway cannot be adversely possessed. Consequently, although Mr H L Slocock enclosed the land in an attempt to register and acquire it, as the available evidence demonstrates, Route 4 was a public highway prior to his actions and still remains a public highway. Any attempt to acquire the land through occupation was destined to be unsuccessful.

13.8.13.29 At paragraph 8 Mr H L Slocock reveals that in August 1987 he instructed his Solicitors to investigate with the previous Local Authority and

Council whether they had any knowledge as to title to or rights over the pink land (Route 4). Copies of these letters are attached to the declaration. Of particular interest is that, within these letters, Mr Slocock recalls that at one time, many years ago, a notice had been fixed to the wall of the Old Malthouse, perhaps by the old Urban District Council or Town Council he questions whether either authority may have had a proprietary interest in this land.

13.8.13.29.1 On balance, the available evidence indicates that Route 4 is a public highway, something the owner of the adjoining property, Mr C Slocock, now acknowledges. However, as further support to this conclusion, consideration ought to be given to the reference by Mr H L Slocock (contained in the letters attached to his Statutory Declaration) to a notice he believed to have been erected "many years ago", possibly by the former Town or Urban District Council. This notice may well have been the same or a replacement of the notice that

the Wimborne District Highway Board had ordered the Surveyor to erect in 1886 as detailed in paragraph 8.11 of the 2014 report.

13.8.13.30 At paragraph 9 Mr H L Slocock refers to his purchase of the Old Brewery in July 1946 and the adjacent parcels of land coloured green and yellow. The yellow land is part of Route 3, namely E-F. Mr Slocock acknowledges that he allowed access over this land on foot but that he maintained a gate at a point marked X on the plan (point F on the Plan), that until recently he “shut” once a year. He further states that on a post at X there is a plaque indicating no public right of way.

13.8.13.30.1 The gate located at point F has been discussed within the 2014 report, for example at paragraph 10.9(d). Mr Speirs, on behalf of the present owners, suggested that use of the Route 3 had been prevented by the occasional closing of a gate at this point. It has also been suggested that this gate may have been locked but any evidence to support that

conclusion is only applicable to recent times.

13.8.13.30.2 Mr H L Slocock's statement provides additional support to the conclusion that the gate at F was, until recent times, not locked. He describes how his practice was to 'shut' the gate at least once a year; there is no suggestion that this gate was ever locked. Consequently, users of Route 3 would have been able to open and close the gate: the action of shutting the gate would not have prevented their use of this route.

Land Charges Search 1992

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

13.8.13.31.1 The search included what was then an optional enquiry

numbered 18. Enquiry 18 related to whether any public right of way that abutted or crossed the property had been shown in a definitive map or revised definitive map.

13.8.13.31.2 With respect to Route 1 and Route 4, as neither of these routes had been recorded on the definitive map or any other register of public rights of way then the “NO” response given was correct.

13.8.13.31.3 Route 2 and Route 3 did not cross or abut the property identified in the request so even if they had been recorded upon the definitive map the answer to enquiry 18 would still have been “NO”.

#### Transfer of Part 1997

13.8.13.32 Mr Cosgrove included a copy of a document dated 14 June 1993, which appears to be in respect of the transfer of property from one party (Messrs C C Wilson, G B Slocock and C J Slocock) to another (Mr & Mrs C J Slocock). In his list of submission documents Mr Cosgrove

refers to it as “Transfer of Part 1997” but this does not appear to correspond with the date on the document.

13.8.13.33 The reference number DT207640 suggests that it is a Title number and emanates from the Land Registry and the accompanying plan bears a Land Registry stamp. There are no further details provided although Mr Cosgrove refers to a “recent grant of Private rights of way”.

13.8.13.33.1 There is insufficient information provided to comment meaningfully on this document. However, it may have been introduced in support of the suggestion that the existence of private rights provides evidence against the existence of any public rights over the Order Routes. Should this be the case then the response to the evidence from the Abstract of Title at paragraphs applies.

13.8.13.34 Mr Cosgrove also makes reference to a Highway Search dated 1 October 2014, which he describes as defining the highway. Mr Cosgrove provides no further detail as to what he

concludes from the response given by the Highways Information Unit. The response, which includes a plan, clearly defines the extent of the maintainable highway, which terminates at approximately point A (on the Plan).

13.8.13.34.1 The letter from the Highways Information Unit confirms that according to their records the publicly maintained highway did not extend eastwards beyond point A. However, this response on its own does not provide confirmation that public rights did not exist beyond point A. As detailed in paragraphs 11.18 to 11.21 above, the List of Streets and any accompanying documents, from which this information was provided, relate only to those highways that are publicly maintained. Public highways that are not publicly maintainable, or those which for one reason or another have yet to be recorded, are not and should not be recorded upon it.

Letter and Map from Mr D Wheelton JP

13.8.13.35 The last piece of evidence offered comprises a letter and map from Mr D Wheelton, Devonport, Tasmania, Australia dated 25 November 2014, in which he makes comments and observations on the 2014 report.

13.8.13.36 Mr Wheelton refers to paragraph 1.2 of the 2014 Report and questions the validity of the Application as the Original Applicant could not be traced. He also notes that there appears to be no evidence of the original written application within the report.

13.8.13.36.1 It should be noted that Mr Wheelton had already made a submission dated 6 May 2014, which is summarised and analysed from paragraph 13.7 above.

13.8.13.36.2 The question as to the validity of the Application, in the absence of the Original Applicant, has been raised on a number of occasions during the investigation. The issue is dealt with at paragraph 13.8.9 above.



13.8.13.36.3 With respect to the 'original written application' it is stated at paragraph 5.3 of the 2014 report that the Application was received on 10 January 2006. The Application itself is contained within the case file, RW/T418 and has been available for public inspection, at County Hall, since receipt.

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

13.8.13.37.1 Mr Wheelton is correct in as much as the records indicate that the adopted, publicly maintainable highway ends at point A. However, this does not in itself determine that Route 1 was not a public highway as, in this case, it may be unrecorded or, even if it were recorded, depending on the circumstances surrounding its dedication, it may not be maintainable at the public expense.

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

13.8.13.38.1 It should be noted that Mr Wheelton's recollection of the gates being closed and locked to pedestrians and vehicles comes after having the opportunity to consider the published 2014 Report.

13.8.13.38.2 In his earlier statement Mr Wheelton recalled that the gates to the car park were occasionally closed but had no recollection of them ever being locked or, when closed, whether this was to prevent vehicular access, pedestrian access or both.

13.8.13.38.3 Mr Wheelton's original response is summarised and analysed at paragraph 13.7 above.

13.8.13.38.4 As detailed within the report, Mr Wheelton's recollection of events is disputed by the user witnesses.

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

13.8.13.39.1 The fact that there is and may have been a gate at point F is not disputed. However, a gate in itself does not necessarily prevent the public from using a route unless it can be demonstrated on balance that it was locked. There is little evidence to suggest that this was the case at least prior to 1979, when it is considered that the public's use of Route 3 was brought into question.

13.8.13.40 Mr Wheelton quotes the first sentence of paragraph 11.47, this being the summary of the evidence that was provided by the Ordnance Survey maps (see paragraph 11.47 above). He states that there are references throughout the 2014 Report with respect to there being no

evidence that Route 3 was ever a public highway.

However, he does not quote or reference them nor does he make any further comments.

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

13.8.13.41 Mr Wheelton makes the following comments on the summary of his initial submission contained at paragraph 13.7 above:

13.8.13.41.1 He confirms that he was employed by Mr H L Slocock.

13.8.13.41.2 He is now of the opinion that the gate at point F was not just closed but was locked with a padlock and chain.

13.8.13.41.3 He remains of the opinion that gates to Mr Crowther's car park were closed to prevent both pedestrian and vehicle access. He does not state that they were locked and whether, in fact, Mr Crowther ever closed any gates is disputed by the user witnesses.

13.8.13.42 Mr Wheelton refers to the rather poor-quality photograph which is discussed above at paragraph 13.8.13.13. He confirms what was written on the sign attached to the gatepost and notes that the gate at point F, which is shown in the picture, is open and not locked. This he believes is because it was not a weekend or public holiday but a normal workday evidenced by the cars that would have belonged to people working in the units.

13.8.13.42.1 All of the points Mr Wheelton refers to are considered at paragraph 11.51. As stated as the photograph is undated and the age of the car at the time the picture was taken unknown it is of little value in determining when the notice was initially erected.

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

13.8.13.43.1 On balance, the evidence suggests otherwise.

Conclusions on Mr Cosgrove's Additional Evidence

13.8.13.44 The majority of the evidence submitted as 'additional' evidence by Mr Cosgrove adds little, if anything, to his conclusion that, save for Route 4, the Order Routes cannot be considered as public highways. His conclusions in respect of the land searches, title deeds, correspondence with the County Surveyor and the Highways Information Unit and also the records derived from the Finance Act 1910, are incorrect.

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

13.8.13.46 Mr Wheelton has expressed his opinion as to what he believes took place but this is uncorroborated, lacking detail and provides no times or dates and is disputed by the majority of the user witnesses.

**14 ANALYSIS OF OTHER SUBMISSIONS (PRIOR TO ORDER BEING MADE)**

14.1 The other letters contain no relevant evidence for consideration.

**15     DATE PUBLIC USE WAS BROUGHT INTO QUESTION**

- 15.1     Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- 15.2     There is a suggestion that users of the Order Routes, other than those parking their vehicles and passing through the former car park were challenged by the owner at the time, Mr Crowther. However, there is insufficient evidence to corroborate this and the majority, if not all of the witnesses, do not recall being challenged.
- 15.3     The landowner claims to have erected signs stating, 'no public right of way' and provides a witness statement from the person who states that he manufactured and erected them in 1979 and has maintained them since. During a telephone conversation the manufacturer of these signs, Mr Short, confirmed that although he manufactured the signs he could not state whether they were actually displayed in 1979. However, Mr Short has since provided a further written statement with an accompanying plan contradicting his previous position and confirming that the signs have been erected at the locations shown on the plan since 1979.
- 15.4     The majority of user witnesses do not recall any signs or notices, in particular signs stating that there was no public right of way. Several state that they were aware of the 'private road' and 'private property' signs.
- 15.5     The aerial photographs taken during the construction of the new supermarket in 1979-80 shows the provision of a fence and gate at point B1 in addition to the obstruction of Route 2 at several points beyond B1 towards C through the

construction works. It appears reasonable to suggest that this work would have prevented use of Route 3 during the construction phase but may be regarded as a temporary obstruction rather than a direct challenge to users of the way.

15.6 Photographic evidence indicates that there were no signs either along Route 1, or in the vicinity of point A, in May 1988 to suggest that Route 1 was considered private and not a public right of way.

15.7 There is evidence of bringing the use of Route 1, with vehicles, into question through the erection of bollards and barriers in 2005/06.

15.8 There is also evidence of a challenge to users of the through route, of Route 1 and Route 2, by the locking of a gate at point B1 in November 2005 and March 2006.

15.9 Witnesses opposing the Order have provided statements that they were aware of signs and gates that were at times closed and/or locked. However, the majority of these witnesses' evidence does not extend further back in time than 1979 and that which does cannot be corroborated.

15.10 The Application was made on 10 January 2006 and is a further date of bringing the use of the route into question.

15.11 It is considered that the earliest evidence of a date of a challenge to public use of Route 1, part of Route 3 (E to F) and Route 4 is as a result of the erection of notices at various points, namely A, B1, E and F which appear to have been in place since 1979. There is no or insufficient evidence of a challenge to the use of Route 2 or part of Route 3 (F to G) prior to the Application in 2006.



**16     SUMMARY OF POINTS FOR CONSIDERATION**

- 16.1     With respect to Route 1, the most important piece of documentary evidence is that of the Finance Act 1910, which demonstrates that Route 1 was excluded from valuation suggesting it was considered to be a public highway, part of the existing highway called Mill Lane, a public carriageway. This conclusion is supported by the evidence from the Wimborne Tithe Apportionment 1846, Ordnance Survey Maps and several Estate and Town Plans and, to a certain extent, the existence of Route 1 on the 'inspected layer' of the List of Streets as far as point B (para 11.21 above).
- 16.2     Similarly, with respect to Route 4, this is also shown as being excluded from valuation on the Finance Act 1910 plan, indicative of it being regarded as a public highway, most likely a public carriageway. This conclusion is supported by the evidence derived from both the Wimborne Highway Board Minutes and the Wimborne UDC Minutes, in addition to supporting evidence provided by Ordnance Survey Maps and several of the Estate and Town Plans.
- 16.3     With respect to Route 3, the majority of the historical documents examined, and the later Ordnance Survey Maps suggest that E to F has existed for a considerable period of time, probably since the early 17th Century. F to G has been undefined, existing as an open field until comparatively recent times. There is no compelling evidence to suggest that the Route 3 was not available to the public throughout this period.
- 16.4     With respect to Route 2, the documentary evidence, including that provided by the Ordnance Survey Maps and Aerial Photographs, also indicate that this has existed wholly or partially from the early 17th Century. With the exception of the period during the construction of the supermarket 1979-80, there is little evidence to suggest that it was not available for public use.

- 16.5 In respect of Route 1, Route 2, part of Route 3 (E to F) and Route 4 the relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980 is taken to be 20 years or more prior to 1979 and, with respect to the remaining part of Route 3 (F to G), from the date of the Application in 2006.
- 16.6 With the exception of Route 4, there is evidence of public use of the Order Routes that is considered, on balance, as being sufficient to demonstrate that public rights on foot exist along Route 1, Route 2 and Route 3 which fulfils the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question in 1979.
- 16.7 If the Inspector is not satisfied that the user evidence alone is sufficient to satisfy the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, then consideration ought to be given to the evidence of use in conjunction with the documentary evidence, which is also considered, on balance, sufficient to raise an inference of dedication under the common law.
- 16.8 The Council submits that a presumed dedication under Section 31 of the Highways Act 1980 is satisfied. With the exception of Route 4, there is sufficient evidence, on balance, to demonstrate that public rights on foot exist along the Order Routes.
- 16.9 In addition, the documentary evidence demonstrates that, on balance, public vehicular rights exist along Route 1 and Route 4 to the extent shown hatched (Route 1) and crosshatched (Route 4) on the Order Plan. However, as neither route meets an exception to the provisions contained in Section 67 NERC, public mechanically propelled vehicular rights have been extinguished.

**17     CONCLUSION**

17.1    The Council asserts that the evidence supports the existence of public vehicular rights along Route 1 and Route 4. With the application of NERC the Council submits that the Route 1 and Route 4 should be recorded as a restricted byways to the extent shown hatched and crosshatched respectively on the Order Plan. The Council asserts that the evidence supports the existence of public footpath rights along Route 2 and Route 3. The County requests that the Inspector confirm the Order as made.