

Document Reference 4

**WILDLIFE AND COUNTRYSIDE ACT 1981
COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNCIL
(BRIDLEWAY 8 (PART) CHESELBOURNE AND BRIDLEWAY 18
DEWLISH TO BE UPGRADED TO BYWAYS OPEN TO ALL TRAFFIC)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2020**

STATEMENT OF CASE

DORSET COUNCIL

1 INTRODUCTION

- 1.1 Dorset Council ('the Council') supports the confirmation of the Dorset Council (Bridleway 8 (Part) Cheselbourne And Bridleway 18 Dewlish To Be Upgraded To Byways Open To All Traffic) Definitive Map And Statement Modification Order 2020 ("the Order").

This Statement of Case;

describes the effect of the Order;

sets out the background to making the Order;

sets out the Council's reasons for making the Order; and

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

- 1.2 A copy of the Order is included with the Council's submission letter as **Document Reference 2**.

- 1.3 A copy of an extract from the definitive map and statement for the area is with the Council's submission letter as **Document Reference 3**.

2 CONFIRMATION OF THE ORDER

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

- 2.2 The Council, therefore, requests that the Inspector confirms the Order.

3 DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER

- 3.1 The proposed route is shown by a broken black line between points A – B - C – D – E on plan number 18/11/1 ("the Plan") included in the Order. The claimed Byway Open to All Traffic commences at the junction of Bridleway 8, Cheselbourne, and Bridleway 4, Piddlehinton, on the eastern side of Dole's Hill Plantation, shown at point A on Drawing 18/11, and runs in a generally easterly direction via point B to point C, its junction with Bridleway 23 Dewlish, at the parish boundary. From point C it continues in an easterly direction to point

D, its junction with Bridleway 8, Dewlish, and then continues easterly along the course of Bridleway 18, Dewlish, to the County Road at point E.

- 3.2 Photographs of the Order Route can be found at **Appendix 1**.
- 3.3 Land Registry documentation shows that part of the claimed byway runs over land in the ownership of Woodsford Farms. The remaining length of the claimed byway runs on land that is unregistered.
Document Reference 7 of the submission bundle contains the Secretary of State's dispensation letter of 17th January 2020.
Appendix 2 contains Land Registry information.
- 3.4 The effect of the Order, if confirmed, would be to record the Order Routes as byways open to all traffic on the definitive map and statement.

4 BACKGROUND

- 4.1 Section 53 of the Wildlife and Countryside Act 1981 ("WCA 1981") allows any person to apply to the County Council for an order to modify the definitive map and statement of rights of way to show a public right of way.
- 4.2 **Document Reference 3 contains** a copy of the Definitive Map and Statement. The Order Route is recorded on the Definitive Map as bridleway, and the corresponding entries in the Definitive Statement describe the two paths over which the Order route runs route as bridleways.
- 4.3 An application to upgrade part of Bridleway 8, Cheselbourne and Bridleway 18, Dewlish to a byway open to all traffic was made by the Friends of Dorset's Rights of Way (FoDRoW) on 25 September 2004. **(Appendix 3)**.
- 4.4 The application was accompanied by a map showing the length of path that is the subject of the application. This map is included at **Appendix 3**.
- 4.5 The following evidence was submitted with the application form in support of the application for the modification order:
 - 4.5.1 Extract of Cheselbourne Inclosure Award and Plan of 1844
 - 4.5.2 Extract of Dewlish Inclosure Award and Plan of 1819
 - 4.5.3 Extract of Piddlehinton Inclosure Award and Plan of 1835

- 4.5.4 Extract of Piddletrenthide Inclosure Award and Plan of 1835
- 4.6 A compact disc, containing electronic copies of the documents submitted in support of the claim was sent to the Council. A note from the applicants explains that this CD is entitled 'FoDRoW Evidence, 25 Sept. 2004'. A list of the items contained on this CD was provided by the applicants. The CD contains a number of Finance Act (1910) maps in addition to the inclosure awards and plans noted above. None of the Finance Act maps on the CD cover the area in which the claimed byway runs.
- 4.7 Eighteen completed Public Rights of Way Evidence Forms were later submitted in support of the application. These forms are all dated in 2010.
- 4.8 In investigating the application it is the Council's duty to assess the validity of this and other available evidence, and to determine whether or not it should make a modification order. On 7 October 2010 Dorset County Council rejected the application on the ground that the map that had accompanied the application had been by computer generated enlargements of Ordnance Survey (OS) maps drawn to a scale of 1:50,000 and not by maps drawn to a scale of not less than 1:25,000. The Trail Riders Fellowship (TRF) judicially reviewed this decision and ultimately the Supreme Court held, agreeing with the TRF, that the maps accompanying the application were in accordance with the legislation. The Supreme Court's order confirms that the applications complied with paragraph 1 of Schedule 14 to the WCA 1981.
- 4.9 A report setting out the evidence relevant to the Application and the Order Routes ("the Report") was presented to Dorset County Council's Regulatory Committee ("the Committee") on 21st March 2019. **(Appendix 4)**
- 4.10 The Committee resolved that:
- a That the application be accepted, and an Order made to modify the Definitive Map and Statement of Rights of Way to upgrade part of Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish from Doles Hill Plantation to Chebbard Gate as shown A – B – C – D – E on Drawing 18/11 as a Byway open to all traffic.
 - b That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council/Dorset Council without further reference to this Committee.

- 4.11 The Application was received before 20 January 2005 and therefore following the Supreme Court's decision public rights for mechanically propelled vehicles over the Application Route, if they exist, are unaffected by the Natural Environment and Rural Communities Act 2006 ("NERC").
- 4.12 The Modification Order was made on 6 March 2020 and advertised on 6th August 2020.
- 4.13 Following the making of the Order two objections were duly made. These are contained in **Document Reference 5** of the submission bundle.

5 REASONS FOR MAKING THE ORDER

- 5.1 The Order was made under section 53(2)(b) WCA 1981 by virtue of which the County Council (as surveying authority for the purposes of WCA 1981) is required to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3) of the WCA 1981 by order make modifications to the map and statement as appear requisite in consequence of the occurrence of that event. Section 53(3)(c)(ii) provides for the making of a modification order on the grounds that 'a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.'
- 5.2 The making of the Order was substantially based upon documentary evidence which demonstrated on balance that byway rights subsisted or could be reasonably alleged to subsist over the Order Route.

6 LAW

- 6.1 The test to be considered when making an order pursuant to section 53(3)(c)(ii) WCA is considered above (paragraph 5.1).
- 6.2 Section 31 of the HA 1980 provides that: "*Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*"

- 6.3 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.
- 6.4 Natural Environment and Rural Communities Act 2006 ('NERC')
- 6.5 Section 67(1) NERC states that an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
- (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.
- Section 67(2) NERC states that subsection (1) does not apply to an existing public right of way if an exception applies. Subsection 1 does not apply where, in accordance with section 67(3)(a), before the relevant date an application was made under section 53 (5) WCA for an order making modifications to the definitive map so as to show the way as a byway open to all traffic.
- 6.6 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.
- 6.7 Where a public vehicular right exists and is exempt from the extinguishment provisions of NERC it may be recorded on the definitive map and statement as a BOAT. Section 66(1) WCA 1981 defines a BOAT as 'a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpath and bridleways are so used'. The meaning of the statutory definition was challenged in the case of *Masters v Secretary of State for the Environment and Somerset CC* (DC)(1999)¹, Hooper J held that '...the purpose of giving a definition to a byway was to distinguish byways from ordinary roads'. The definition refers 'to a type of highway and [is] not seeking to limit byways to those which are currently and actually "used by the

¹ [2000] 2 All ER 788 (see **Case Appendix 2**)

public mainly for the purpose for which footpaths and bridleways are so used”’. In the Court of Appeal Roch LJ approved the reasoning of the Judge at first instance and dismissed the appeal: *Masters v Secretary of State for the Environment and Somerset CC* [2000]²

7 EVIDENCE

7.1 Documentary evidence

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

7.3 User Evidence

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

8 ANALYSIS OF EVIDENCE

8.1 Documentary evidence

8.2 The documentary evidence which was submitted with the application is considered in paragraphs 8.3 to 8.12 below.

Inclosure Awards and Plans

8.3 Dewlish Inclosure Act 1815

8.4 The lands enclosed under the Dewlish Inclosure Act of 1815 were subject to the provisions of the Inclosure Consolidation Act of 1801, unless it was expressly stated that they did not apply. Reference to the Act indicates that, with respect to highways, the Commissioners did not have recourse to any additional powers.

General Inclosure Act 1836

8.5 The Cheselbourne Inclosure was undertaken under the provisions of the General Inclosure Act 1836. The 1836 Act authorised enclosure on standard terms without the need for an Act of Parliament, provided that two thirds of the affected landowners agreed.

² [2000] EWCA CIV 249 (see **Case Appendix 3**)

Inclosure Awards

- 8.6 The Dewlish Inclosure Award and plan of 1819 shows that the area of land through which the claimed route passes was not subject to enclosure.
- 8.7 A route that corresponds with that part of the claimed byway between points D to E is shown on the Dewlish Inclosure Plan and is depicted by two parallel broken lines. It is annotated at the position that corresponds with point D with the words “from Piddlehinton”, and continues in an easterly direction to its junction at Chebbard Gate, at the Cheselbourne Road, which corresponds with point E on drawing 18/11. The Cheselbourne Road has the awarded road number 1.
- 8.8 The annotation “from Piddlehinton” and the description of that part of the claimed route in the Award as a public carriageway and entering the parish of Dewlish at Higher Chebbard Gate (point D) may suggest that, at that time, the part of the claimed route between points D to E was regarded as a public carriageway. The Dewlish Inclosure Award of 1819 indicates that the land through which the part of the claimed route between points D and E passes was not the subject of this enclosure. This part of the claimed route is clearly defined from point D, from where it is annotated with the words “from Piddlehinton”, through to its junction with the awarded public carriageway number 1 at Chebbard Gate, point E.
- 8.9 The Cheselbourne Inclosure Award and plan of 1844 shows two awarded public carriageways, numbered 6 and 7. Public carriageway number 7 commenced at the south west corner of West Down, point A, and extended easterly to enter public carriageway number 6 at point B. Public Carriageway number 6 commenced at Doles Ash gate, shown at point X, and extended south easterly to point B, ‘Cheppard Peak Gate’, and then easterly to point D, ‘Cheppard Gate’, from where it is described as entering the Parish of Dewlish.
- 8.10 Both carriageways were awarded widths of 30 feet, the minimum required under the Inclosure Act of 1836. Although no Justices’ Certificates have been discovered, there is no evidence to suggest that either of these ways was not set out as required by the legislation, nor to indicate that they have been the subject of any lawful diversion or stopping up since the time of the enclosure. It is difficult to draw assumptions with regard to the setting-out of the Awarded ways from what exists on the ground today. A short length of the claimed route to the west of point D on Plan 18/11 is now less than 30 feet between the hedges, and it is not possible to determine

whether the hedges have been planted since the Inclosure Award. Much of the length of the claimed byway to the west of point D does not have hedges on its northern side. Caution is also exercised in drawing conclusions from Ordnance Survey and other maps. On balance, there is no evidence to suggest that the Awarded routes were not correctly laid out, and that the presumption of regularity therefore applies. The Cheselbourne Inclosure Award is thus considered to provide evidence of the existence of a way carrying public vehicular rights..

- 8.11 The Piddlehinton Inclosure Award and plan of 1835 reveals that a public carriage road and highway named the Milborne and Blandford Road had been awarded. The award makes reference to “Chesilborne Gate”, which is the present location of the junction of Bridleway 4, Piddlehinton and Bridleway 8, Cheselbourne at point A. This may suggest that the Milborne and Blandford Road continued along the awarded Cheselbourne public carriageways numbered 6 and 7, as shown between points A to D. It may be that the road continued beyond point D, following that part of the claimed route as shown between points D and E, but this is not proved one way or the other by the evidence of the Piddlehinton Inclosure Award.
- 8.12 The Piddletrenthide Inclosure Award of 1835 does not provide any evidence that indicates the existence or status of the claimed byway.

Parish Survey and Definitive Map and Statement

- 8.13 The National Parks and Access to the Countryside Act 1949 charged the County Council, in its capacity of “Surveying Authority”, with a duty to compile a record of the public rights of way network. As part of this process District and Parish Council carried out surveys and provided the County Council with information for the purposes of recording the existence of public rights of way.
- 8.14 The Cheselbourne Parish Survey map, at a scale of 1:10560, and the accompanying schedule, was submitted to the County Council in April 1951. The schedule and map record that the Parish Council made a claim for a ‘carriageway’ between points A and D, (drawing 18/11), which was given the number 12 as a means of identification. The path is described as commencing at Doles Wood and terminating at Chebbard. The map shows that Cheselbourne Parish Council had also claimed that part of the route shown between points D and E, lying on the northern side of the parish boundary, within Dewlish parish. A possible explanation for this is that the parish council was indicating the continuation of the route within Dewlish.

- 8.15 The Cheselbourne Parish survey undertaken under the National Parks and Access to the Countryside Act 1949 thus indicates that the Parish Council believed that the part of the claimed route shown between points A to D was a public carriageway.
- 8.16 The Dewlish Parish Survey map, at a scale of 1:10560, is accompanied by a schedule dated 20 May 1951. The schedule and map record that Dewlish Parish Council made a claim for a bridleway between points D and E, (drawing 18/11), which was given the number 36 as a means of identification. The path is described as commencing from the “road at Chebbard” and terminating at “junction with lane leading into Cheselbourne”.
- 8.17 The Dewlish Parish survey undertaken under the National Parks and Access to the Countryside Act 1949 thus indicates that Dewlish Parish Council believed that the part of the claimed route shown between points D to E was a public bridleway. On the form, the letters CRB (Carriage Road Bridleway’) and the number 8 have been added, presumably at a later date.
- 8.18 There were various maps produced by the County Council leading up to the current definitive map, which was sealed in 1989. These were the draft map of 1959, provisional map of 1964, first definitive map of 1967 and the revised draft map of 1974.
- 8.19 Draft Map 1959: The claimed route is shown on the draft map as Carriage Road Bridleway (CRB)¹² between points A and D in Cheselbourne, and as CRB 8 between points D and E in Dewlish.
- 8.20 Provisional Map 1964: The claimed route is shown on the provisional map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.21 First Definitive Map 1967: The claimed route is shown on the first definitive map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.22 Revised Draft Map 1974: The claimed route is shown on the Revised Draft Map as Bridleway 8 between points A and D in Cheselbourne, and as Bridleway 18 between points D and E in Dewlish.
- 8.23 Special Review 1977/1973: There are several items which make reference to the status of the route subject to the application during the Special Review process.

- 8.24 In a letter to the Secretary of State for the Environment, bearing a date stamp of 1975 by Dorset County Council, Mrs R. V. Edwards objected to the status of bridleway 8, Cheselbourne, on the grounds that it should be recorded as a byway open to all traffic.
- 8.25 A note dated 24th October 1971 from a J. Tucker describes 'A road used by the general public, carts, cars etc.'
- 8.26 A memorandum addressed to the County Surveyor of Dorset County Council, from the Divisional Surveyor, dated 24th January 1977, states 'That BR18 should be recorded as a Byway Open to all Traffic'.
- 8.27 A form dated 30 July 1973, relating to the Special Review, for the route within Dewlish parish, records that the Special Review Committee's decision was to retain the path on the revised draft map as a bridleway. The note on the card refers to the 'Original parish survey and draft map show as a carriage road/bridleway. Is shown on the Award Map of 1819 but is not awarded. It is a hard farm road and has been entered on the OS map as a suggested byway as it forms part of a cross country route. 'The Special Review Committee determined that, as there was no evidence of public use, it should be recorded on the revised draft map (1974) as a bridleway.

Highways Records

- 8.28 No part of the claimed bridleway is shown in Dorset County Council current records as a highway maintainable at public expense. The records of preceding highway authorities are not available, and may have been destroyed.

8.29 Tithe Maps & Apportionment

- 8.30 The Dewlish Tithe Map and Apportionment of 1845 shows a route that corresponds with that of the claimed byway between points D to E. It is coloured sienna and shown in the same manner as other routes on the map, some of which are known today to be public vehicular highways. At point D the route is annotated with the words "from Piddlehinton", and it runs in an easterly direction to its junction with the Cheselbourne Road, at point E. The Dewlish Tithe Map and Apportionment of 1845 post-dates the Dewlish Inclosure Award by some 26 years.
- 8.31 Roads are often shown on tithe maps, particularly where they form the boundaries to individual tithe areas. However, the recording of public highways was not part of the purpose of tithe maps, which were drawn up for the allocation of tithe payments. It is only

occasionally that the status of a way can be clearly identified with any certainty from the evidence of tithe maps, although, as in this instance, the colouring of public roads in sienna, and their annotation as being from or leading to a particular place, can be taken as an indication that the route shown was considered to be a public highway.

- 8.32 The Cheselbourne Tithe Map and Apportionment of 1844 predates the Cheselbourne enclosure by 4 years. Any public rights of way shown upon it may have been subject to changes brought about by the process of enclosure.
- 8.33 A number of routes are shown on the Cheselbourne Tithe Map, one of which commences at point D and continues in a westerly direction more or less parallel to the parish boundary. This route, whilst following the general direction of the claimed route, is located somewhat further to the north. At point A the map is annotated with the words “from Piddlehinton” and at point D it is annotated with the words “to Bere”. One of the other routes follows a north westerly direction from point D towards the Parish Boundary, at which point it is annotated with the words “from Cerne”.
- 8.34 The claimed route between points A to D is not shown upon the tithe map, but the route lying to the north of it is noted. Point D is shown, and so is the point where a number of routes converge. The plan is annotated “from Dorchester” at this point.
- 8.35 The Cheselbourne Tithe map provides no compelling evidence for or against the existence of the claimed route between points A to D. The depiction and annotation of the ways may suggest that they were through routes, although it is not possible to define their status from this. What does appear to be certain is that they were the subject of changes following the enclosure that took place some 4 years later, which may be taken to support the conclusion that the terms of the Inclosure Award had been followed.
- 8.36 The Piddlehinton Tithe Map and Apportionment of 1840 makes no reference to the claimed route.

Ordnance Survey Maps

- 8.37 The First Edition Ordnance Survey map 1811, at a scale of 1 inch to the mile, shows a route running east to west direction across West Down. Between points A and D the route is located to the north of the claimed byway.

- 8.38 The First Edition Ordnance Survey map of 1887, at a scale of 6 inches to the mile, shows a route corresponding to that which is being claimed throughout its length, from point A to point E. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.
- 8.39 The Second Edition Ordnance Survey map of 1902, at a scale of 25 inches to the mile, shows a route corresponding to that being claimed throughout its length from point A to point E. Between point E to a point at the boundary immediately to the east of point C, the way is shown as a double line, in the form of a walled or fenced lane. To the west of this point the route is shown as a double-dashed line, in the form of a track.
- 8.40 The Second Edition Ordnance Survey map of 1903, at a scale of 6 inches to the mile, shows a route corresponding to that which is being claimed throughout its length, from point A to point E, in a similar way to that shown on the 1887 6 inch map.
- 8.41 The Ordnance Survey Second Edition one inch map of approximately 1906, shows the claimed route. Most of the way is shown as a double line, in the form of a walled or fenced lane, and the western end is shown as a double-dashed line, in the form of a track.
- 8.42 The Second Edition Ordnance Survey half inch map of 1913 shows the claimed route in the form of a lane, up to a point to the west of point D. To the west of this point the route is shown as a double-dashed line, in the form of a track.
- 8.43 The Ordnance Survey one inch map of 1919 shows the path in the same way as the 1913 half-inch map.
- 8.44 The Ordnance Survey one inch map of 1960 shows the whole length of the path in the form of a walled or fenced lane or road.
- 8.45 The Ordnance Survey contoured road map of Yeovil and Blandford, of 1919, at a scale of 1 inch to 1 mile shows the claimed route between points A to approximately C by two parallel broken lines, and from point C to point E by two unbroken lines. The key describes A to C as a "minor road - unfenced" and C to D as a "minor road - fenced".
- 8.46 The Ministry of Transport Road Map of Weymouth, Yeovil and Taunton published in 1923, is based on the Ordnance Survey 1 inch to 1 mile map of 1903-08 (reduced to a scale of $\frac{1}{2}$ " inch to one mile). It shows the claimed route throughout its length from point A to point

E. The route is depicted between point A to a point just to the west of point C by two parallel broken lines and from this point to point E by two unbroken lines. The key describes the first part as an “other road – unfenced” and the latter part as an “other road – fenced”.

- 8.47 The Ordnance Survey one inch map of 1945 shows the path in the same way as the 1913 half-inch and 1919 one inch maps.
- 8.48 The 1958 two and a half inch OS map shows the route in the form of a lane.
- 8.49 It is important to note that Ordnance Survey maps do not provide any conclusive evidence of the status of a route, but they are of use in that they confirm the physical existence of what was on the ground at the time of the survey.

Other Commercial Mapping

- 8.50 The claimed route is shown, partly or in its entirety, on a number of commercial maps published between the late 1800’s and middle years of the twentieth century. The route is sometimes shown as a track, and often in the form of a lane or road.
- 8.51 As with Ordnance Survey maps, these published maps do not provide any conclusive evidence of the status of a route. Nonetheless, they are useful in that they confirm the existence of the route subject to the application for the modification order. Bartholomew’s maps were published principally for cyclists and give a certain amount of information on the ease or otherwise by which the routes shown in them might be used by those on bicycles. Many of the other maps were for reference by motorists, but caution must be exercised in drawing any conclusions as to the negotiability of the routes shown by motor vehicles.
- 8.52 An inspection of the route today shows that it has changed very little since the publication of the Ordnance Survey map in 1903. Although these maps do not provide any evidence as to the status of the route, they nevertheless indicate that the route of the claimed byway has been in existence at least since that time.

Early published maps

- 8.53 Taylor’s map of Dorsetshire 1765 shows a route commencing at point E and heading in a westerly direction. It would appear to straddle or be located just to the north of the parish boundary. The map does not appear to show the route extending beyond a point that lies

approximately midway between points D to E. Taylor's map depicts a route which may represent part of the eastern end of the claimed route. This is of limited assistance in determining the status of the route presently under consideration.

- 8.54 Greenwoods' Map of Dorset 1826 at a scale of approximately 1 inch to 1 mile, shows the route as two broken parallel lines. Greenwoods' map shows a route similar to the 1811 Ordnance Survey map. The route depicted does not correspond exactly with that of the claimed byway. This map was published some 20 years prior to enclosure taking place in Cheselbourne, and those routes depicted on it may be represent a reasonably accurate picture of the network of roads, both public and private, that were in existence prior to enclosure taking place.
- 8.55 A number of other early published maps have been examined, including Saxtons map of 1575, Kip's map of 1607, Bill's map of 1626, Blaeu's map of 1645 and Seale's map of 1732. None of these shows the claimed byway, but they are of a small scale and in most case only show settlements and significant topographical features.

Dorchester Highways Board minutes. June 1880.

- 8.56 These minutes, supplied by the applicant, refer to public highways in the Dorchester area. In the note for the parish of Dewlish there is mention of a road known as 'Chebbard Drove', which may refer to the claimed byway, although this cannot be assumed with certainty.

Ilchester Estate Records

- 8.57 A map dated 1847, showing land owned by the Earl of Ilchester's Estate, shows a route broadly corresponding with that part of the claimed route between points D to E. At point D the map shows the route crossing the parish boundary into Cheselbourne. At this point it also shows three other routes; one heading south and annotated "From Waterson", and two other routes. One of these ways corresponds with what is presently recorded as Bridleway 8, Cheselbourne and is annotated to "Chislebourne".
- 8.58 The Earl of Ilchester's archive also includes a sketch of the land comprising Chebbard Farm. This is undated, but the annotation upon it refers to part of the land as being lately enclosed. The enclosure referred to would appear to be in Puddletown, for which no records have been discovered. The sketch shows that part of the claimed route between points D to E to be annotated with the words "Road on

to Dewlish". The road to Waterson is also shown, as is the present line of Bridleway 8, Cheselbourne, which is annotated with the words "Road on to Cheselbourne".

- 8.59 An undated map from the Earl's of Ilchester's archive, entitled 'Manor of Dewlish – Dorset', shows the ownership of the various landholdings in the vicinity. It also shows that part of the claimed route between points D and E, which is annotated with the words 'To Piddlehinton' at point D.
- 8.60 Although this information indicates that a route existed on part of the line of the claimed byway, it does not provide any conclusive evidence as to its status.
- 8.61 A Parish Map of Cheselbourne by A H Green, dated 1884, is accompanied by a book of reference for the Cheselbourne Manor rental. The map indicates the location of the various gates mentioned in both the Dewlish and Cheselbourne Inclosure Awards, namely Cheppards Peak Gate, Higher Cheppard Gate and Cheppard Gate.
- 8.62 The map also depicts the route of the awarded road number 6 in Cheselbourne, which corresponds with that part of the claimed route between points B and C and also shows a route that corresponds with that part of the claim within Dewlish, shown between points D and E.
- 8.63 The Parish Map of Cheselbourne provides evidence supporting the existence of a route, which is shown between points D and E in Dewlish and from a point just to the west of point C to point D in Cheselbourne. However, the plan used for this may well be from an earlier survey as, although it postdates the Cheselbourne enclosure by some 40 years, it appears to show the layout of roads prior to enclosure.
- 8.64 **The Bladen Estate Map of 1928** depicts various farms and landholdings held by the estate at that time. Some of these were within the parish of Dewlish and the Estate plan includes the greater part of the claimed route within Dewlish. The plan has a key which identifies various types of land and which also identifies first and second class roads and cattle tracks. That part of the claimed route between point E and approximately point D is shown on the plan. The key describes the route as a second class road.
- 8.65 **The Ordnance Survey Boundary Sketch Map**, bearing a date of 1885, shows the claimed route, in the form of a lane, running along

the boundary between Dewlish and Cheselbourne. The boundary between Piddlehinton and Piddletrenthide is shown in the same way. The letters 'RH' refer to the root of the hedge bordering the lane, but we cannot determine the status of the way shown from this record.

- 8.66 **The Ordnance Survey Boundary Remark Books, dated 1885**, show the boundaries between the parishes of Dewlish and Cheselbourne, and between Piddlehinton and Piddletrenthide. The books record the boundaries as being 3 feet or 4 feet from the root of the hedge. This is of no assistance in determining the status of the claimed path.

Finance Act (1910) Records

- 8.67 The claimed route is shown on the Ordnance Survey 1902 base map, at a scale of 25 inches to the mile (1:2500), which was used for the survey. The survey was carried out for the purposes of valuing the land for taxation purposes. The route was not excluded from the land for valuation purposes, and in the accompanying valuation books there are no deductions for the existence of any rights of way. This may suggest that there were no public rights over the route A to E. Equally, it should be noted that, whilst deductions in tax could be granted due to the existence of public rights of way, there were no penalties for not disclosing where public rights of way existed. It is possible that the landowner(s) considered it more preferable to pay additional tax rather than to acknowledge the existence of a public right of way. We do not know that this was the case, and this record is of no assistance in determining the status of the claimed byway.

Aerial Photographs

- 8.68 Aerial photographs are available for the years 1947, 1972, 1997, 2002 and 2005.
- 8.69 The 1947 photographs show the route throughout its length between points A and E. The route appears to be well defined and has no hedge or fence on its northern boundary between points A and C. Between points C and E the route is bordered on both northern and southern sides by hedges and trees.
- 8.70 The 1972 photographs also show the entire route, between points A to E with adjacent boundaries as shown in the 1947 photographs.
- 8.71 The 1997, 2002 and 2005 photographs also show the entire route between points A and E.

- 8.72 In summary these aerial photographs taken between 1947 through to 2005 provide evidence of the existence of a well-defined route that was well established in 1947. The photographs do not tell us who used the route, but they support Ordnance Survey and other maps in showing the existence of a way that may have been used by vehicles.

Other Documentary Evidence

- 8.73 Conveyances have been provided by the owners of Chebbard Farm. A conveyance of 1927 related to the sale of the land comprising of Chebbard Farm and consists of two schedules with an accompanying plan. The conveyance includes land, located at the northern boundary of the property and described as a 'roadway' being coloured brown on the accompanying plan, subject to the rights of any adjoining landowners.
- 8.74 The conveyance clearly describes the existence of a roadway suitable for the passage of vehicles including motorised vehicles. The existence of private rights does not preclude the existence of public rights as is demonstrated by the route currently being recorded as a bridleway upon the definitive map.
- 8.75 A second conveyance of 1978 makes it clear that the land which was the subject of the conveyance was being managed in a partnership arrangement which included other parcels of land in addition to that land comprising of Chebbard Farm. Reference to the claimed route is contained within the conveyance, it being described as a roadway.
- 8.76 As with the first conveyance of 1927, the existence of private rights does not preclude the existence of public rights.
- 8.77 Consideration should also be given to the fact that conveyances are, by their nature, private affairs between vendor and purchaser. They may set out the status that the owner believes a route has but they cannot extinguish public rights which have already been established.

User evidence (Appendix 4)

- 8.78 A total of 18 completed user evidence forms were submitted in support of the application. These were received by the Council in February and April 2010. The user evidence forms are at **Document Reference 16** of the submission bundle.
- 8.79 A summary of the information contained in these forms is set out below. **Appendix 6** contains a table and graphs showing the user evidence that is discussed.

- 8.80 Not all witnesses have been personally interviewed. The information has been taken from the forms of evidence which have been signed by each witness stating: "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true".
- 8.81 All of the witnesses state that they have used the route, shown between points A to E on Drawing 18/11/1, either individually or with other users. These statements indicate that this use was by vehicles, mostly on motorcycles. The period of use was between 1973 and 2010, a period of 37 years. Individual use of the route varied between once or twice a year up to twenty to twenty-five times a year.
- 8.82 Of the 18 witnesses who have used the route, seven have used it for a period of 20 or more years, three of whom have used it for periods of between 30 and 32 years between 1973 and 2006, and five for periods of between 20 and 23 years between 1978 and 2010.
- 8.83 Of the remaining witnesses, eight have used the route for periods between 10 and 19 years. One witness has used it for a period of seven years and the remaining witness has used it over a period of one year.
- 8.84 The frequency of use varied from once or twice a year to a maximum of 20 to 25 times a year.
- 8.85 None of the witnesses had asked for permission to use the path. None make a statement to the effect that they were granted permission to use the claimed footpath.
- 8.86 No witness refers to any signs or notices on the claimed path that were intended to discourage their use of it in motor vehicles.
- 8.87 None of the witnesses mention their use of the path being in the exercise of a private right of access.
- 8.88 No one was a tenant or employee of the owner of the land.
- 8.89 None of the witnesses recall there being any gates along the route or any other obstructions that would have prevented their use of the way. However, one witness, whilst indicating that there were no gates, nevertheless has stated that 'it' was unlocked.
- 8.90 All of the witnesses mention meeting or seeing other users of the way. Several are of the opinion that the landowner(s) must have been aware of the way being used by motorcycles.

- 8.91 The majority of the witnesses state that they saw or met other users in vehicles, predominantly motorcycles, but there are also references to the public using the path on bicycles, horses or on foot.
- 8.92 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 from the date the right to use the route was brought into question. Dedication of a way may also be inferred at common law where it can be demonstrated that at some time in the past the landowner dedicated the way to the public, either expressly, the evidence of the dedication having been lost, or impliedly, by making no objection to the use of the way by the public.
- 8.93 There is no clear evidence of a challenge to the public use of the way with vehicles prior to the application being made, and the date of challenge is taken to be the date of the application, which is 25 September 2004. Use of the way up to this date may be considered in order to meet the requirements of section 31 of the Highways Act 1980. Some of the representations in response to consultations on the application, including those from landowners and the parish councils, stated that they were not aware of any use by motor vehicles. Further they say that others would have or were told to challenge any public use they knew about. These statements absent any direct evidence about challenging users and are not considered sufficient to outweigh the evidence from the users.
- 8.94 A byway open to all traffic is a right of way for vehicles. The definition of a BOAT is that of a right of way for vehicular traffic but which is used mainly for the purposes for which footpaths and bridleways are used, that is to say by walkers and horse riders. Under Section 31 of the Highways Act 1980 and under common law the public right of way must be shown to follow a defined track and not be an area over which the public have wandered at large.
- 8.95 It is considered that public rights were brought into question by the application to modify the definitive map and statement, which was made in September 2004.
- 8.96 Thus, the relevant period of use of the way by members of the public, as of right and without interruption, in order to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years, or more, prior to 2004.

- 8.97 The minimum period of use for the purposes of dedication under Section 31 of the Highways Act 1980 is therefore taken to be from 1984 to 2004.
- 8.98 In order to be satisfied on the question of 20 or more years use of the way by the public, it is necessary to consider not only the number of users but also the overall frequency of use
- 8.99 There is evidence of use by the public with vehicles, predominantly motorcycles, contained in the user evidence forms that were submitted in support of the application for the modification order. Taken together these fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date that public rights were brought into question.
- 8.100 The number of users, their frequency of use of the way, and the level of that use is sufficient for the purposes of section 31 of the Highways Act 1980.
- 8.101 It is therefore concluded that there has been a presumed dedication of a byway open to all traffic under section 31 of the Highways Act 1980
- 8.102 In considering the common law test, it is necessary to consider whether the owner of the land had capacity to dedicate the path as a way for motor vehicles and whether the evidence of use of the way is of sufficient quantity and quality to give rise to a presumed dedication.
- 8.103 There is no evidence that the owner of the land did not have the capacity to dedicate the way as a vehicular highway over the length of path for which user evidence has been submitted.
- 8.104 It is considered that the number of users, the period of time in which they have used the way, and their frequency of use of the route is sufficient for implied dedication of public vehicular rights under common law.
- 8.105 It is concluded that there has also been a presumed dedication at common law.

9 OBJECTIONS TO THE ORDER

- 9.1 There were 2 objections to the Order. Details of the objections and the Council's comments on the objections can be found at Document Reference 6.

10 SUMMARY OF POINTS FOR CONSIDERATION

- 10.1 The documentary evidence summarised in this report demonstrates that that part of the claimed route shown between points A and D was awarded as a public carriageway in the Cheselbourne Inclosure Award.
- 10.2 There is no Inclosure Award for the remaining part of the claimed route between points D to E in Dewlish. However, the evidence that has been submitted and discovered suggests that this part of the route was a pre-existing public carriageway unaffected by the enclosure process. As there is no record of any lawful diversion or extinguishment of this way, the evidence supports the conclusion that this part of the claimed route is also a public carriageway.
- 10.3 Some of the other documentary evidence that has been considered in this report may support the existence of a highway that was used by vehicles. The showing of the way on early maps suggests that the claimed line of byway open to all traffic may once have been of equal status to other routes which are part of today's established highways network. Ordnance Survey maps published between 1811 and 1958 show the path, either wholly or partly, in the form of a lane or road, and the path is shown as a lane or road on other published maps, although it is emphasized here that the depiction of the way on such maps does not prove it was used by vehicles. Aerial photographs taken between the late 1940's and 2001 back up Ordnance Survey and other maps in showing a road or lane on at least parts of the way. The evidence of the tithe map is of some assistance in supporting the existence of a highway.

- 10.4 The Parish Survey and Draft Definitive Maps indicate that the way in question was considered to be a 'Carriage Road Bridleway', and the status of the way as a bridleway was questioned at the Special Review stage, with claims that it carried higher rights. The Finance Act 1910 information does not refer to a highway, or public way of any kind.
- 10.5 It is concluded that there is sufficient documentary evidence to show that the way in question carries public vehicular rights.
- 10.6 In addition to the documentary evidence, it is considered that the user evidence is sufficient to satisfy the requirements of Section 31 of the Highways Act 1980 and to show a presumption of dedication at common law, and, consequently, a public right of way for mechanically propelled vehicles has been dedicated. There is nothing to show that the owner of the land did not have the capacity to dedicate the way as a vehicular highway.
- 10.7 The application for the Modification Order was made prior to 20 January 2005 and is considered to comply with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981; the supplied evidence raising a prima facie case that the route was a vehicular highway. Therefore, the rights of mechanically propelled vehicles have not been extinguished by the Natural Environment and Rural Communities Act 2006.
- 10.8 Having considered and weighed up the available evidence and having taken into consideration the objections to the modification order, it is concluded that, on balance, a highway shown on the definitive map and statement ought to be shown as a highway of a different description.
- 10.9 Therefore, with respect to the route A – B – C – D – E as shown on Drawing 18/1/11 contained in the Modification Order, a public right to use a mechanically propelled vehicle has been shown to exist and a definitive map modification order should be made to upgrade the route from bridleway to byway open to all traffic.

11 CONCLUSION

- 11.1 The Council asserts that the documentary and user evidence support the existence of public byway open to all traffic rights along the Order Route.
- 11.2 The Council requests that the Inspector confirm the Order as made.

Appendix

1. Photographs of the route subject to the Modification Order.
2. Land Registry Information
3. Application for the Modification Order
4. Report to Regulatory Committee, 19 March 2019.
5. Documentary Evidence Table
6. User Evidence Table and Chart.