



**WILDLIFE AND COUNTRYSIDE ACT 1981**

**COUNTY OF DORSET**

**DEFINITIVE MAP AND STATEMENT**

**DORSET COUNTY COUNCIL  
(UPGRADING OF BRIDLEWAY 9, WINFRITH  
NEWBURGH AND PART OF BRIDLEWAY 5  
COOMBE KEYNES (CLAYPITS LANE)  
DEFINITIVE MAP AND STATEMENT  
MODIFICATION ORDER 2011**

**STATEMENT OF CASE**

**DORSET COUNCIL**

1. **INTRODUCTION**

1.1 Dorset Council (“the Council”) supports confirmation of the Dorset County Council (Upgrading of Bridleway 9, Winfrith Newburgh and Part of Bridleway 5, Coombe Keynes (Claypits Lane)) Definitive Map and Statement Modification Order 2011 (“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 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. **DESCRIPTION OF THE SITE AND THE EFFECT OF THE ORDER**

2.1 The claimed route is shown by broken black line with arrowheads between points A – F (‘the Order Route’) on plan number 10/04/2 (“the Plan”) included in the Order (**Appendix 1**).

2.2 The Order Route runs from its junction with the unclassified road east of the village of Winfrith Newburgh at Claypits Farm, east to the parish boundary with Coombe Keynes and continues east to the western edge of Coombe Wood.

2.3 Photos of the Order Route can be found at **Appendix 4**.

2.4 The land crossed by the Order Route is owned by the Weld Estate.

2.5 The effect of the Order, if confirmed, would be to record the Order Route as a restricted byway on the definitive map and statement.

3. **CONFIRMATION OF THE ORDER**

3.1 The Council asserts that the documentary evidence submitted in support of the Order is sufficient to establish, on the balance, that the Order Route ought to be shown on the definitive map and statement as a restricted byway.

3.2 The Council, therefore, requests that the Inspector confirms the Order.

4. **BACKGROUND**

4.1 Section 53 of the Wildlife and Countryside Act 1981 ("WCA 1981") allows any person to apply to the 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 Definitive Map and Statement for Dorset.

4.3 An application to upgrade Bridleway 9, Winfrith Newburgh and Bridleway 5 Coombe Keynes, from Claypits Farm east through Coombe Wood to Bridleway 5's junction with the B3071, to a byway open to all traffic ("BOAT") ("the Application") was made by Mr Diamond on behalf of the Trail Riders Fellowship ("the Applicant") on 1 June 2005. A plan ("the Application Plan") showing the route of the claimed byway ("the Application Route") forms part of **Appendix 3**.

4.4 In accordance with paragraph 3(1)(b) of Schedule 14 WCA 1981 the Council consulted with Purbeck District Council regarding the Application. Other consultations were conducted.

4.5 A report setting out the evidence relevant to the Application and the Order Route ("the Report") was presented to the Roads and Rights of Way Committee ("the Committee") on 11 March 2011.

- 4.6 The Committee resolved that:
- 4.6.1 the Application be refused.
- 4.6.2 an order be published to modify the Dorset definitive map and statement of rights of way to add a restricted byway along the Order Route.
- 4.7 A copy of the Report and an extract from the minutes is included at **Appendix 5**.
- 4.8 The Application was received after 20 January 2005 and therefore any public rights for mechanically propelled vehicles over the Application Route, and in turn the Order Route, are affected by the Natural Environment and Rural Communities Act 2006 ("NERC") (see paragraph 6.15) and have consequently been extinguished.
- 4.9 The Order was made on 3 June 2011 and advertised on 16 June 2011.
- 4.10 Following the making of the Order one objection was received (see **Document Reference 6**).

5. **REASONS FOR MAKING THE ORDER**

- 5.1 The Order was made under section 53(2)(b) WCA 1981 by virtue of which the 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)(ii) WCA 1981 refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

5.3 The Order was made on the basis that the documentary evidence demonstrated that Bridleway 9, Winfrith Newburgh and part of Bridleway 5 Coombe Keynes, ought to be recorded as restricted byways. The evidence considered by the Committee is set out in the Report (**Appendix 5**).

5.4 Detailed consideration of the evidence relevant to the Order is set out in paragraphs 7 and 8 below.

## 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 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 6.9 to 6.13). 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:

6.4.1 “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.”

6.4.1.1 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.

- 6.4.1.2 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 advance of using the Order Route: **Merstham Manor v Coulsdon and Purley UDC [1936] 2 All ER 422 at 426.**
- 6.4.1.3 ‘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.**
- 6.4.1.4 “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.**
- 6.4.1.5 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.
- 6.4.1.6 The meaning of “for a full period of 20 years” is reviewed at paragraph 6.5.
- 6.4.1.7 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”.
- 6.5.1.1 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.
- 6.5.1.2 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 Council [1956] 2 All ER 843 at 846**.
- 6.5.1.3 If the landowner merely turned back on 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 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 having been dedicated, followed by a statutory declaration. 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 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 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 way 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 a route 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 (copies included as part of Appendix 5)**
- 7.1 The earliest historical record that shows the Order Route is the **1768 Thomas Sparrow Estate Plan** shows parcels of land held by the Weld Family before the later Inclosure award. The explanation or key to the plans includes “Roads Retained” which are shown by parallel pecked lines, “Roads Rejected” indicated by a heavier single pecked line and “Foot paths”. **(Appendix 5 @ appendix 4 – p42)**
- 7.2 The Winfrith sheet shows part of the Order Route clearly as a ‘retained road’, starting at Winfrith and continuing past a clay pit (just east of point A on the Plan) and continuing east through Knighton Field and alongside the northern hedge line of the next three fields, through gaps in the field boundaries, These hedges and gaps are still on the ground.
- 7.3 The **Winfrith Newburgh Inclosure Award 1771** under the heading “Publick Roads” states “The road leading from the Parish to Coombe Wood from the Crown Inn thro’ Clay Street”. The Crown Inn was located in School Lane, Winfrith in the 1841 census and Clay Street may have been ‘Clay Pit Lane’, mentioned in the 1861 census as having only one property registered along its length. **(Appendix 5 @ appendix 5 p45 (a clearer copy can be found at Appendix B to Document Reference 7).**
- 7.4 The **1771 John Sparrow Lulworth Castle Estate Map** is recognised as the enclosure map for Winfrith by Kain, Chapman and Oliver in “The Enclosure maps of England and Wales 1595 – 1918” (Cambridge University Press, 2004) and so for the purpose of this report it will be recognised as such.
- 7.5 On the Winfrith plan the Order Route is shown clearly as an east to west route between hedge boundaries or with single dotted lines inside a hedge or with double dotted lines, however the Coombe Wood plan shows no visible route along the line of the Order Route.
- 7.6 **Carey’s Map 1787** (small scale) shows a route from Winfrith to Coombe Keynes, however, the route shown is a straighter route than the Order Route. **(Appendix 5 @ appendix 8 p54)**

- 7.7 The **First Edition Ordnance Survey Map 1811** at a scale of 1" to mile shows a route between Winfrith and Coombe Wood along the line of the Order Route. **(Appendix 5 @ appendix 7 p50)**
- 7.8 **C & J Greenwood Map of Dorset 1826** shows a track with double pecked lines on a similar line to the Order Route. Please note: Where the path enters "Comb Wood" there is a join in the map sheets, resulting in the image being slightly offset. **(Appendix 5 @ appendix 8 p57)**
- 7.9 The **1839 Winfrith Newburgh and West Lulworth Tithe Map** shows the western part of the Order Route, past point B (on the Plan), just into Coombe Keynes parish, coloured the same as other routes on the map. It is shown between boundaries or with double pecked lines or bounded by a field boundary and a pecked line on one side. The pecked line indicates an unfenced route. **(Appendix 5 @ appendix 6 p48)**
- 7.10 The **1840 Coombe Keynes Tithe Map** overlaps with the route shown on the Winfrith Tithe Map – annotated "From Winfrith Newburgh" – and shows the Order Route extending east and south east coloured the same as other routes on the map. It is marked with the number 32 in several places along its length. The apportionment describes this route as "The Drove", its state of cultivation as "Rough Pasture" and that it measured 4 acres and 15 perches. **(Appendix 5 @ appendix 6 p49)**
- 7.11 The **Plan of Newburgh Farm 1876** shows only part of the Order Route. It has writing at either end of the coloured route. The west end states, "from Winfrith" and the left end states "to Coombe Keynes". **(Appendix 5 @ appendix 5 p58)**
- 7.12 The **Ordnance Survey Boundary Sketch Map** for the parishes of Coombe Keynes, East Lulworth and West Lulworth 1886 at a scale of 12 chains to 1 inch shows the Order Route as parallel solid lines crossing the parish boundary. **(Appendix 5 @ appendix 10 p76)**
- 7.13 **The First Edition (no contours) Ordnance Survey Map 1888 at a scale of 6": 1 mile (1:10560)**, sheet XLVIII SE (48 SE) shows the western part of the Order Route from Winfrith along Claypits Lane in to open fields. There are 2

possible gates or banks along the Order Route, each indicated by a line across the route. **(Appendix 5 @ appendix 7 p50)**

- 7.14 The **Wareham Highway Board minutes dated 30 April 1986**, report that “The Clerk read a letter from the Winfrith Parish Council respecting Coombe Wood Road. The Surveyor was instructed to inspect this road and report at the next meeting”. **(Appendix 5 @ appendix 11 p77)**
- 7.15 The **Wareham Highway Board minutes dated 11 June 1896**, say that “The Surveyor reported back he had inspected the road complained of by the Parish Council in company with Mr Hooper & recommended that a drain should be re-laid & the side ditches taken out. This was ordered to be done”. **(Appendix 5 @ appendix 11 p77)**
- 7.16 The **First Edition Ordnance Survey 1898 at a scale of 1”: 1 mile** shows the whole of the Order Route as a ‘Minor Road’. **(Appendix 5 @ appendix 7 p51)**
- 7.17 The map used to show the proposed railway route for the **Osmington to Lulworth Light Railway feasibility survey** was the 1898 Ordnance Survey 1”: 1 mile first edition (sheet 328) and it shows the whole of the Order Route as on the 1898 map mentioned in 7.16 above but the key refers to it as an ‘unmetalled road’. **(Appendix 5 @ appendix 8 p59)**
- 7.18 **George Richmond’s map (Reduced Ordnance Survey around Wimborne) (small scale)** published in the late 1800s, shows the Order Route towards Coombe Keynes but turning south towards “Newton” at its eastern end. **(Appendix 5 @ appendix 8 p60)**
- 7.19 The **Second Edition Ordnance Survey Map 1902 at a scale of 25”:1 mile (1:2500)** shows the whole of the Order Route on sheets 48.16 and 49.13 as on the smaller scale 6” maps. There are a possible 5 points where gates or banks are shown. **(Appendix 5 @ appendix 7 p52)**
- 7.20 The **Ordnance Survey Map 1906 at a scale of 1”:1 mile** shows the Order Route as a fenced and unfenced unmetalled road. **(Appendix 5 @ appendix 7 p53)**

- 7.21            The **1910 Finance Map** The Order Route is clearly shown on the Ordnance Survey 1902 base map, sheets 48.16 and 49.13 at a scale of 1:2500, which was used for valuation purposes. The Order Route is not excluded for valuation purposes, except for a short section in Hereditament 212 between Point A at Claypits Farm eastwards to a point near the pond (just west of Point B on the Plan). It then passes through Hereditaments 93 and 199. In the accompanying valuation book:
- 7.21.1        For **Hereditament 93**, Winfrith (split into four parcels) there is a deduction for the landowner of £100 for public rights of way.
- 7.21.2        For **Hereditament 199**, Winfrith (split into 5 parcels) there is a deduction for the landowner of £50 for public rights of way. **(Appendix 5 @ appendix 9 p68)**
- 7.22            **Bartholomew's Touring & Cycling Maps 1911 and 1920** show the Order Route as an uncoloured road and the key says that "uncoloured roads are inferior and not to be recommended". **(Appendix 5 @ appendix 8 p61)**
- 7.23            **Bacons Map of Dorsetshire 1920** shows a route, similar to the Order Route as an 'other road'. **(Appendix 5 @ appendix 8 p63)**
- 7.24            The **Ministry of Transport road map of Weymouth, Yeovil and Taunton 1923, scale ½":1 mile** shows the Order Route as an 'other road'. **(Appendix 5 @ appendix 8 p64)**
- 7.25            The **Geographia map of Dorsetshire 1920s** shows most of the Order Route, with the words "Coombe Wood" obscuring the eastern end of Order Route. The plan shows the Order Route noted as an "Order Road". **(Appendix 5 @ appendix 8 p65)**
- 7.26            The **Ordnance Survey Map Edition of 1928 at a scale of 25":1 mile (1:2500)** shows the eastern part of the Order Route on sheet 49.13. There are 5 possible gates or banks shown along the Order Route. **(Appendix 5 @ appendix 7 p53)**
- 7.27            The **Winfrith Newburgh Parish Survey map at a scale of 1:10560** and accompanying schedules were submitted to the Council in June 1951.

- 7.28 The map shows the routes surveyed as public rights of way coloured red and annotated alongside, also in red. However, the Order Route, Claypits Lane, is indicated by green colouring and numbered 13.
- 7.29 The schedule for No. 13, however, is dated 1 December 1954 and is in a different format, on a printed Council form. It states that "Path Section No. 13" is a CRB (public carriage or cart road mainly used as a bridleway) and is described under the heading "Condition of Path" that the route is "Fit for vehicular traffic".
- 7.30 A letter dated 2 December 1954 from the County Planning Officer to the Clerk to Winfrith Newburgh Parish Council states "I have to inform you that I have added a CRB to your Survey, for continuity purposes from: The County Road South of Rushpond eastwards to the Coombe Keynes Parish boundary. This CRB is known as Claypit Lane and was erroneously assumed to be a county road." **(Appendix 5 @ appendix 2 p29)**
- 7.31 The **Dorset Council draft map for the south east area 1955 (Appendix 5 @ appendix 2 p33)** shows the Order Route, delineated by green pecked line in both parishes (and extending further west along what is now an unclassified road), as a RUPP (Road Used as Public Path). It is numbered 13 in Winfrith Newburgh and 4 in Coombe Keynes.
- 7.32 In June 1958 the Council's National Parks Sub-Committee recommended that "the designation of 'Public Carriage or Cart Road or Green (unmetalled) Lanes mainly used as (i) Footpath (C.R.F.) or (ii) Bridleway (C.R.B.) ... caused a considerable amount of confusion as to the right of way which the public could claim and that as the Council were required under the provisions of the National Parks and Access to the Countryside Act 1949, to establish the public rights on footpaths and bridleways only, references to any other uses should be omitted".
- 7.33 As a consequence of this decision the provisional map dated 1964 shows the Order Route coloured green as a bridleway and numbered 9 in Winfrith and 5 in Coombe Keynes. At the western end of Claypits Farm (Point A on the Plan) a pencil annotation indicates "C/R" with an arrow, presumably indicating the extent of the county road.

- 7.34 A letter responding to a representative of the Ramblers' Association dated 3 December 1965 refers to "a short section measuring approximately one quarter of a mile at the western end of BR.9 Winfrith, is maintained as a County Road and the remainder of the path and the whole of BR.5, Coombe Keynes, used to be County Roads which are now used only as bridleways".
- 7.35 The evidence concerning the existing Bridleway 5, Coombe Keynes, supporting its upgrading to RUPP status was also considered. The précis stated "This section formed part of an old road connecting Winfrith, Coombe Keynes, Highwood and East Stoke. The track varies in width along the route between 8' and 12'. The formation width in places is up to 40'. The whole length is passable to traffic although only farm traffic could negotiate the boggy 150 yards of Claypits Lane east of the County Road and the deeply rutted section through Coombe Wood. The section has been entered on the OS Map as a proposed byway".
- 7.36 On 21 November 1973 the **Special Review** Committee decided to "retain as a bridleway – no evidence of public vehicular use or rights existing over the way." **(Appendix 5 @ appendix 3 p38)**
- 7.37 On the **first definitive map** 1967 and the **revised draft map** 1974 the Order Route is shown as Bridleway 9, Winfrith Newburgh and Bridleway 5, Coombe Keynes. **(Appendix 5 @ appendix 3 p39)**
- 7.38 The **Special Review of rights of way** following the first definitive map, the Council recognised that various routes were "shown as roads on the rights of way map, but because of their narrow widths or for other reasons" were "suitable only as bridleways or footpaths". **(Appendix 5 @ appendix 3 p34)**
- 7.39 One of the two routes identified was "the whole of BR5, Claypits Lane, from MR. 815848 – 841845. This actually refers to the continuous route formed by both Bridleway 9, Winfrith Newburgh and Bridleway 5, Coombe Keynes and shown between Points A to I on the Application Plan.



- 7.40 Conversely, it was also recognised that various sections of metalled roads were “shown as bridleways on the definitive map and should be deleted from the rights of way record”.
- 7.41 One of the two routes identified was “Claypits Lane – part of Bridleway 9 for a total distance of 0.21 miles as far as M.R. 815848”. This refers to the western end of Claypits Lane currently on the List of Streets west of Point A.
- 7.42 At the Special Review the new evidence concerning the existing Bridleway 9, Winfrith Newburgh, supporting its upgrading to RUPP status, states “The first field east of Claypit Lane has been ploughed, is now pasture and the old road lost. But the line can still be seen. In dry weather the whole section should be passable in an ordinary motor vehicle. The way would make an alternative route between Winfrith and Coombe Keynes and has been entered on the OS Map as a suggested byway”.
- 7.43 On 29 November 1973 the **Special Review Committee** decided to “retain as a bridleway – public vehicular rights not shown to exist over this way and furthermore the path is unsuitable for public vehicular use.” (**Appendix 5 @ appendix 3 p36**)
- 7.44 The **revised draft map** therefore shows the Order Route as a bridleway with a solid green line, although the Ordnance Survey base map used also shows it with green pecked line, which is visible alongside as the printing process showing the green lines as bridleways displaced them slightly to the north east. The **revised draft map** was sealed in December 1974 and published for comment. (**Appendix 5 @ appendix 3 p39**)
- 7.45 Objections were received (**Appendix 5 @ appendix 3 p39 onwards**) in respect of Bridleway 5, Coombe Keynes, again from Mrs M Baxter, Dorset Rights of Way Group, Mr D E Cox and Mr A Green. They objected to the Application Route being shown as a bridleway, saying that it should be a byway.
- 7.46 Mrs Baxter gives her grounds for objection as “That it is liable to be ploughed up” and quoted from Lord Sandford in an Official Report of the Committee on the Highways Bill 28 April 1971, which said that an objection could be based on the argument that “that particular way should not be made liable to plough”.

- 7.47 Mr Cox states that his grounds for objection are “Shown clearly as Roads in OS 1811 edition. Continuation of BOAT Route from Abbotsbury via Poxwell. The connecting road stub from BR9 at W. end lacks any status classification.”
- 7.48 Mr Green states his grounds for objection as “This route is shown on the first edition O/S 1” map as a road ie 1811 1” O/S map” and “The route is a lane known as “Claypits Lane” in Winfrith Newburgh”.
- 7.49 Objections were received in respect of Bridleway 5, Coombe Keynes, again from Mrs M Baxter, Dorset Rights of Way Group, Mr D E Cox and Mr A Green. They objected to the Application Route being shown as a bridleway, saying that it should be a byway.
- 7.50 The **Special Review** was abandoned before its completion in the parishes of Winfrith Newburgh and Coombe Keynes. Therefore, the Special Review claims for reclassification, arising from objections to the revised draft map, were not pursued. Other claims, which were not the subject of objections, were accepted and the changes recorded on the next definitive map in 1989 (the current definitive map).
- 7.51 Due to the abandonment of the review the claimed reclassification of the bridleways to byways open to all traffic was not investigated further.
- 7.52 In 1990 the **Weld Estate** completed a Statement and Plan showing the highways admitted under **Section 31(6) of the Highways Act 1980** The Order Route was shown coloured blue as a bridleway on the map accompanying the deposit (**Appendix 6**).
- 7.53 There is no record of a statutory declaration stating that no additional ways over the land delineated on the map have been dedicated as a highway since the date of the deposit. **Under Section 31(6)** such a declaration would be sufficient evidence to negative the intention of the owner to dedicate any such additional way as a highway, including admitting that an existing recorded public right of way has higher rights.

7.54 The Weld Estate completed a further deposit in 2005, again showing the Order Route as a bridleway. There is no record of a statutory declaration following this 2005 statement.

8. **USER EVIDENCE (Document Reference 4)**

8.1 Evidence forms were submitted, with and in support of the Application, from 6 people who have used the Order Route on Motorcycle. Each evidence form and an accompanying plan of the Order Route were signed by each witness. The information in the table below was taken from the forms.

8.2

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr M Diamond	1986 - 2005	2 - 4	Motorcycle	Used for pleasure. Others used the route on foot, horseback and on motorcycles. There were unlocked gates. Was often seen using the route by farm workers. Width 15 feet plus, narrows at entrance to Coombe Wood.
Mr D J Greenslade	1988 – 2006	Twice a year	Motorcycle	Used for pleasure. Others used the route on foot, horseback and on motorcycles. Gates on route unlocked. Visible motorcycle tracks.
Mr M Mason	2003 – 2006	3 or 4 times a year	Motorcycle	Used for pleasure. Route was used by a group of motorcyclists. Gates were often not locked.
Mr D Oickle	1990 – 1997	1 – 2	Motorcycle	Used for pleasure. Others used the route on foot, horseback and on motorcycle. Unlocked gates on route. Passed a farm and visible tyre tracks. A wide route but

				narrows near wooded area.
Mr T Stapleton	1990 – 2006	6	Motorcycle	Used for pleasure. Others used the route. Gates not locked. Was seen using the route by farm workers. Width 3m – 4m approx. Part of route ploughed sometimes and narrows in wooded part.
Mr W J Williamson	1996 – 2006	3 or 4	Motorcycle	Used for pleasure. Was a member of a group of other motorcyclists who used the route. Unlocked gates. Passed Claypits Farm. Wide enough for a four wheeled vehicle, except through Coombe Wood.

## 9. **OBJECTIONS TO THE ORDER**

- 9.1 Following publication of the Order one objection (**Document Reference 6**) was received from The Weld Estate (“the Landowner”).

## 10. **COMMENTS ON THE OBJECTION**

- 10.1 The Council’s comments on the objection can be found at **Document Reference 7** to the submission bundle.

## 11. **ANALYSIS OF EVIDENCE**

### **Documentary Evidence**

- 11.1 The 1768 Thomas Sparrow Estate Plan clearly shows, on all three maps, that the Order Route existed at that time.
- 11.2 The Winfrith Newburgh Inclosure Award 1771 clearly states, under the heading public roads (not under private roads), that this was a “road leading from the Parish to Coombe Wood from the Crown Inn thro’ Clay Street”.

- 11.3 The 1771 John Sparrow Estate Map makes reference to the Winfrith Award and as stated previously, it is recognised as the enclosure map for Winfrith. It clearly shows how the Order Route that had previously been shown in the 1768 Thomas Sparrow Estate plan and mentioned in the Winfrith Inclosure Award, would have appeared on the ground at that time. An avenue of trees is drawn on the plan, indicating that it was landscaped at conception. This suggests that this was intended to be, in part, a public road.
- 11.4 No Stopping Up Order has been found in relation to the Order Route. This indicates that public vehicular rights continue to exist along the Order Route and provides very strong evidence as to its status being that of a public carriageway.
- 11.5 The Winfrith Newburgh 1839 and Coombe Keynes 1940 Tithe Maps show the Order Route coloured as the same other routes on the map. The Tithe Survey was not completed to show status of the ways and routes at that time. It does however give an indication of the routes that could be used to access the titheable land.
- 11.6 All the Ordnance Survey maps from 1811 to 1928, including the small scale and 6" and 25" maps, show the Order Route with its current location and shape. The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889. As previously stated, especially with regard to those maps printed after this date, Ordnance Survey maps are not conclusive of public status but show physical characteristics on the ground at the date of the map.
- 11.7 Most of the commercial and small-scale maps researched show the Order Route and describe it the keys in various ways. The depiction of the Order Route on the commercial and small-scale maps might be indicative of a route with public status as there would seem to be little point showing routes that the public could not use. However, the weight of such evidence supporting higher public rights is minimal.
- 11.8 The Ordnance Survey Boundary Sketch map shows the Order Route crossed the parish boundary in 1886 but does not give any indication as to its status.

- 11.9 The Wareham Highway Board Minutes 1896 show the Order Route being discussed at the local highway authority meetings at that time. Public money was used to pay surveyors to carry out inspections on the 'Coombe Wood Road' and report back on its safety. This suggests that this was a publicly maintainable carriageway at this time. However, the minutes give no indication of the location and the western end of Claypits Lane (which was not part of the claim) which was and still is, an unclassified road.
- 11.10 The **Winfrith Newburgh Parish Survey 1954** shows the Order Route with green colouring, indicating a CRB (public carriage or cart road mainly used as a bridleway) and adds to the evidence that the Council considered it to have higher public rights than that of a bridleway at this time.
- 11.11 The Dorset Council **draft map 1955** shows the Order Route as a RUPP but this was overruled by the decision of the National Parks Sub-Committee in 1958 and shown only as a bridleway on the following provisional map in 1964.
- 11.12 At the Special Review the Council considered claims that the Order Route shown on the revised draft map as bridleways should be reclassified as a byway open to all traffic. However, the evidence was never thoroughly tested as the Special Review in the south east was abandoned and the claims were not pursued.

### **User Evidence**

- 11.13 There are 6 witness forms from people who have used the Order Route. All of the witnesses state that they used the Order Route, either individually or with other users and that this use included use on motorcycles. All state that their use was for pleasure.
- 11.14 The earliest date of use is 1986 and 2006 is the last date of use, supporting use over a 20-year period.
- 11.15 The Order Route appears to be used more towards the end of the period and between 1996 to 1997 and 2003 to 2005 five users claim to have ridden the Order Route, on motorcycles.

- 11.16 All user evidence forms state that no signs were visible and gates were unlocked, that they were aware of other users on foot, on horses and by tracks left in the lane by other wheeled vehicles.
- 11.17 With no other evidence of a challenge by some means sufficient to bring it home to the public that their right to use the way is being challenged, the Council submits that the date of calling into question is 1 June 2005 which is the date of the Application.
- 11.18 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 (in this case, with mechanically propelled vehicles) was brought into question.
- 11.19 Prior to 1 June 2005 there is only 19 years use, so section 31 of the Highway Act does not apply.
- 11.20 In the absence of a dedication under section 31, the Council will consider whether evidence to support a dedication at common law. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner took no steps to bring it home to the public that their right to use the way was being challenged. There is no set time period under the common law.
- 11.21 The evidence suggests that users drove motorcycles through Newburgh Diary at Point E. The gates were not locked and no signs were noted by users.
- 11.22 The Council submits that evidence from 6 users over the 20 years period was carried out in an open manner but it is uncertain whether the intensity of the use was sufficient to support dedication at common law.

12. **SUMMARY OF POINTS FOR CONSIDERATION**

- 12.1 The user evidence only provides 19 years use prior to the date of calling into question, therefore a claim under section 31(1) Highways Act 1980 is not applicable.
- 12.2 The Council submits that the inspector may wish to consider whether the user evidence is sufficient to establish dedication at common law.
- 12.3 The Winfrith Newburgh Inclosure Award 1772 awarded the Order Route as a public road. The 1772 Award specifically sets out footpaths under the 'Private Roads' section so it is reasonable to deduce that any reference to a road was referring to a highway with public vehicular rights rather than that of a footpath or bridleway.
- 12.4 There is no evidence to suggest that the highway rights have been extinguished.
- 12.5 The conclusion in 12.3 is supported by other documentary sources including the Winfrith Newburgh Tithe Map 1839 and other historic maps.
- 12.6 The Council submits that on balance the evidence demonstrates the existence of public vehicular rights along the Order Route.
- 12.7 Unless an exemption applies, the public rights for mechanically propelled vehicles have been extinguished under NERC 2006. There is no evidence of an exemption in relation to the Order Route. Accordingly, the Council submit that the correct status of the Order Route is restricted byway.

### **13. CONCLUSION**

- 15.1 The Council asserts that the evidence supports the existence of public vehicular rights along the Order Route. With the application of NERC the Council submits that the Order Route should be recorded as a restricted byway.
- 15.2 The Council requests that the Inspector confirm the Order as made.