

WILDLIFE AND COUNTRYSIDE ACT 1981**COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY
DORSET COUNTY COUNCIL****UPGRADING OF BRIDLEWAY 9, WINFRITH NEWBURGH AND PART OF BRIDLEWAY
5, COOMBE KEYNES (CLAYPITS LANE) TO RESTRICTED BYWAYS)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2011 ("THE ORDER")****REPRESENTATIONS AND OBJECTIONS TO THE ORDER (INCLUDING SUPPORTERS)**

The Weld Estate Solicitors: Dyne Drewett 65 High Street Shepton Mallet Somerset BA11 5AH	Objection letter dated 13 July 2011
Mr Tony Hendy [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Representation dated 7 July 2011 Letter confirming 'no objection to proposal' dated 21 December 2013
Jim McDonald The Ramblers' Association Group Footpath Secretary (Purbeck) [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Representation dated 1 July 2011

Legal and Democratic Services
Dorset County Council
DX 8716
Dorchester

By email to r.l.buck@dorsetcc.gov.uk

Our Ref: MJCC/sh/59799/1

Your Ref: RLB/E106155

Date: 13 July 2011

Dear Sirs

Claypits Lane

We write to confirm the objection of our clients, the Weld Estate, to the Order to make the western half of the claimed route A – C a restricted byway.

We agree with the County Council that the case for the eastern half (D – I) is not proved. This decision means, in effect, that the County Council believe that, at most, public vehicular rights existed to the wood, but not further east.

The route must thus have been, at most, a cul-de-sac.

That fact alone makes it more than likely that none of the route was ever used by the public as of right with vehicles. It was not a public vehicular through route and it is most unlikely that the public would have used it to go up to the wood and back again.

These factors militate strongly against the claim as a whole, and demonstrate that the Order on A – C is not well-founded.

The documentary evidence shows no public carriageway east of the wood on the route claimed. It is much more likely that the route that the Inclosure Award described as the road **leading to Coombe Wood** was a way benefiting or accommodating the wood, and the lands on the way to the wood, and not a public carriageway at all.

That proposition is reinforced by the unusually high number of gates on this short stretch: there are as many as ten gates on the route as a whole.

It is further reinforced by the way being **included** within the hereditaments under the Finance Act 1910. Officers frequently make much of the fact of a way being **excluded** as meaning that public vehicular rights must have existed (not actually the case), but are less keen to draw a contrary conclusion from cases such as this where the route was shown included within the hereditaments. It is our case that no part of the route was thought in 1910 to be a public carriage road. The colourwash crossed the route unbroken in as many as six places.

The Officer's report (para 9.3) admits that the documentary evidence does not support the existence of a through-route, but that it is saved by the user evidence. This would seem to be something of a circular argument, for if the public user evidence were to be found to be insubstantial it would bring us back to the route never having been a through route; and if the route had never been a through route it is insupportable (as well as being a nonsense) to make a cul-de-sac Order now.

It is important therefore to look at the user evidence.

The public vehicular user evidence is insufficient to satisfy section 31 Highways Act. This was explained by the County Council's solicitor to the Committee (see the minutes para 26.3), but that explanation was itself in contradiction of the Officer's report (the conclusion at 9.2).

It is more difficult for the claimant to prove a common law claim than a statutory claim, because under the common law the onus rests entirely on the claimant to show public vehicular use as of right, by the public in sufficient numbers and for sufficient time, and to prove that the owner did nothing to challenge, prevent, or permit that use.

The user evidence here is particularly thin: as few as six recreational motorcyclists. We will say that cannot be said to constitute use by the public as a whole.

Did the owner (the Weld Estate) take steps to demonstrate lack of intention to dedicate? The answer is most definitely Yes.

First of all, there has historically been the existence of as many as ten gates on this route, the presence of which further reduces the weight of the user evidence, and tends to undermine the claim based on common law.

Secondly there is the very important point about the section 31(6) deposit put in in 1994. That deposit was sufficient to demonstrate lack of intention to dedicate during the whole of the following six years (the then time limit) even if a statutory declaration was not lodged. The effect of it would have come to an end on expiry of the six years without the submission of a statutory declaration or renewal.

The expiry of the six years without a statutory declaration having been lodged cannot have had the effect of negating the validity and efficacy of the deposit retrospectively.

During those six years, the deposit alone was sufficient to demonstrate lack of intention to dedicate.

Thirdly, there is the point about the dairy buildings on this route, at or about point E. The dairy unit (a 350-cow unit) was put in, in that position, about 40 years ago in order to optimise flat ground in the area, and, as the bridleway was so little used, the perceived interference with multiple cow movements from field to dairy would be negligible. The route does actually pass through the unit. Had there been any motorised use of this route it is inconceivable that the buildings would have been placed there. The existence of these buildings over the last 40 years and the fact that no interference has taken place in the operation of the dairy unit, by virtue of attempted motorised use, shows how little motorised use, if any, there has actually been along this route.

So, the user evidence is indeed insubstantial. Reverting to the point above about the circular argument, it can never have been a through route, so that the decision for a cul-de-sac restricted byway cannot be right.

Bearing all these points in mind, it was correct to refuse to make an order re D – I, but incorrect to make an order A – C.

It was also incorrect to make an order A – C on the basis set out in minute 28.2. By making a decision that the way claimed subsisted or could reasonably be alleged to subsist, the Council used the **wrong statutory test**.

It must be borne in mind that this is not a c(i) case but rather one under c(ii) because the route is already a bridleway. It is not a question of a reasonable allegation of subsistence, but rather of having to find that the route **ought to be shown** as having public vehicular rights (albeit – post NERC – a restricted byway).

This was a muddled decision and an incorrect one, both on the evidence and on the law.

That is the basis of our objection. Please acknowledge receipt and confirm that this objection is validly made.

We would go further and urge the County Council, when sending the papers, including this objection, to PINS, to decide that you have reconsidered your position, that the balance of the evidence has shifted, and that you no longer support your own Order. It is possible and even recommended for you to do this (and there is authority to that effect in the Guidance on Procedures).

Yours faithfully



Dyne Drewett
jcheal@dynedrewett.com

Your Ref R2B/E 106155.

Date 14/1/10

T.367
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ENVIRONMENT SER

Dorset County Council. 11 JUL 2011

Definitive Map, ~~EXEMPTED~~ TO FURTHER ROW

7th July 2011

Dear Mr Bell.

My walk today took in what was a delightful footpath which meandered through woodland with wild flowers and natural wild life shelter. That, just as I feared has gone. Now walkers such as myself are left with a footway, driven straight through the wood and ripe for use by leisure drivers of motor vehicles. Yet another part of lovely Dorset gone for ever.

I am ashamed for you, as the only ultimate protection of our country-side that you should allow this to happen. My original protest which I recorded has been ignored and the result is devastation. Winfrith drive is no longer a

walk but a Highway to be.

Yours very disappointed



12447

21st December 2013

Dorset County Council.
County Hall.
Colliton Park.
Dorchester

F.R.O. Roger Bell.

Dear Roger

Further to our telephone conversation,
I have no objection to your proposal to
up-grade tracks BR 9 and BR 5.

Might the farmer from Newburgh Farm
now be accepting of walkers like myself
using these tracks including the one from
Newburgh Dairy south to Winfrith Drove
without his verbal abuse?

yours sincerely

SIGNATURE REDACTED

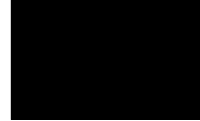
your ref RB. ~~RW~~ RW/T367, T368 & T369.

ENVIRONMENT DIRECTORATE
30 DEC 2013
REF TO FURTHER
RB RW



The Ramblers, East Dorset Group

Jim McDonald
Group Footpath Secretary (Purbeck)

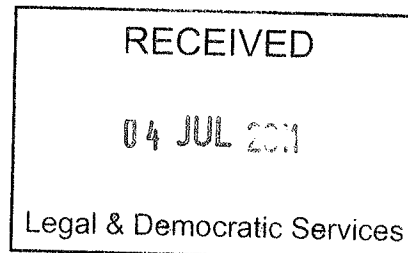


Tel: [REDACTED]
E-mail: [REDACTED]
Group website:-
www.eastdorsetramblers.org.uk

Rebecca Buck
Legal and Democratic Services
Dorset County Council
County Hall, Colliton Park
Dorchester, Dorset
DT1 1XJ

Your ref:RLB/E106155

1 July 2011



Dear Ms.Buck

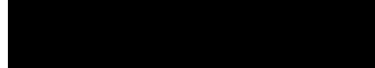
Wildlife and Countryside Act 1981

**County of Dorset Definitive Map and Statement of Rights of Way
Dorset County Council (Upgrading of Bridleway 9, Winfrith Newburgh and Part of
Bridleway5, Coombe Keynes(Claypits Lane) to Restricted Byways
Definitive Map and Statement Modification Order 2011**

I acknowledge and thank you for letter and enclosed documents with map of the above order and I am authorised to respond on behalf of the Ramblers East Dorset Group.

I am pleased to inform you that the Ramblers East Dorset Group has no objection to the Order as made.

Yours sincerely



Jim McDonald
Group Footpath Secretary (Purbeck)

c.c. Brian Panton
Area Footpath Secretary