

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")**

**STATEMENT
OF DORSET COUNCIL
CONTAINING COMMENTS ON THE OBJECTION**

There is one objection to the Order.

1. The **Weld Estate's ('the Landowner') objection** relies on the following points:

- 1.1. The Route would be a cul-de-sac ending at the wood – unlikely that the public would have driven to the wood only to go back again.
- 1.2. More likely that the Inclosure Award reference to 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.
- 1.3. Point made in paragraph 1.2 reinforced by number of gates on route – as many as ten.
- 1.4. Further reinforced by the Route being included within the hereditaments under the Finance Act 1910
- 1.5. User evidence –not sufficient to satisfy s31 Highways Act (19 not 20 years)
- 1.6. User evidence – not enough to constitute the public as a whole (only 6 motorcyclists)
- 1.7. The Landowner demonstrated lack of intension to dedicate;
 - 1.7.1. As many as ten gates
 - 1.7.2. Section 31(6) statement and plan deposited in 1994
 - 1.7.3. Dairy built on the Route 40 years ago
- 1.8. Wrong legal test in minute 28.2 – 'reasonable allegation' instead of 'ought to be shown'

2. Dorset County Council's response:

- 2.1. The Committee were unable to accept the Application because there was insufficient evidence to support, on balance, that public vehicular rights existed on the whole of the Application Route. That is not to say that public vehicular rights do not exist on the section C-D-E-F-G-H, only that the evidence available at the time the Committee determined the Application was not adequate to meet the legal test. The Order was made as a result of the strength of evidence in relation to the Order Route. That aside, a route can be a cul-de-sac and still be a public right of way.

2.2. The Winfrith Newburgh Inclosure award 1771 ('the 1771 Award') clearly sets out, under the section headed 'Publick Roads', a 'Road leading from the Parish to Coombe Wood from the Crown Inn through Clay Street' ('the Road').

2.2.1. The Crown Inn was situated on the site of what is now the Post Office on the corner of High Street and School Lane, Winfrith Newburgh. There is no modern day road called Clay Street and research has not provided any further historical record of Clay Street. The County Council asserts that the reference to Clay Street is likely to refer to Clay Pitts Lane or part of the Road between the Crown Inn and Clay Pitts Lane.

2.2.2. The Act for 'Dividing and Inclosing the Common Fields, Meadow Grounds, Sheep Downs, Commons, Common Heaths, and other Waste Grounds in the Parish of Winfrith Newburgh, the County of Dorset' 1768 ('the 1768 Act')(**Appendix A to this Statement**) granted power to the Commissioners to set out and appoint public and private highways:

'...the said Commissioners... and by their Award shall order and appoint; all such publick Higways shall be set out and remain Sixty Feet broad at the least between Ditches or Fences (except Bridle Ways and Foot Ways)..' (**Page 10 of the 1768 Act**)

The Award states that the Road will be set out '*the same as hitherto*', that being the breadth of 60 feet as stated at the beginning of the 'Publick Roads' section (**Appendix B to this Statement**)

2.2.3. The County Council submits that the 1768 Act specifically states that all public roads shall be awarded at a breadth of 60 feet except for bridleways and footways. The Road is awarded under the public road section with a breadth of 60 feet which clearly demonstrates the Commissioners' intention to record the Road, and by virtue the Route, as a public vehicular highway.

2.3. The Council submit that the evidence available suggests the Route was awarded as a public vehicular highway by virtue of the Inclosure Award 1771. The gates on the Route are most likely modern additions to the Route.

2.4. The Route was included within hereditaments 93 and 199 but both hereditaments have a deduction for the landowner for public rights of way or user (£100 and £50 respectively).

2.5. The Committee's legal adviser made members aware at the Committee Meeting that the user evidence only totalled 19 years and was therefore not sufficient to satisfy s31 Highways Act 1980. The Order was made on the basis of the documentary evidence not the user evidence. Although dedication under s31 is not applicable the Council will consider dedication at common law in its Statement of Case.

2.6. The Council will consider whether there has been sufficient use for a sufficient period for a common law dedication. It 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.

2.7. The Landowner's objection states that "there has historically been the existence of as many 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". There are

many rights of way and county roads that have gates along their length. The presence of gates does not negate the existence of highway rights. All the user evidence forms state that the gates were not locked, so the use was not impeded.

- 2.8. The Landowner's objection also states that "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 ... even if a statutory declaration was not lodged."
- 2.9. In 1990 the Weld Estate deposited a statement and plan with the Council under Section 31(6) Highway Act 1980. (**Appendix 6**) (the Council does not have any record of a deposit being made in 1994). In the statement the order route was shown as a bridleway. Section 31(6) sets out the process required to make a valid deposit, Section 31(6)(b)(i) specifically states a statutory declaration shall be made within 10 years from the date of Deposit (this was changed from 6 years in 2004). No statutory declaration was received within the 6 years from 1994. The Council submits that without a statutory declaration within the prescribed timeframe the statement alone is not valid for the purpose of section 31(6). (see PINS Appeal Decision FPS/Y3940/14A/13 para. 26)
- 2.10. A further deposit was made in 2005 (**Appendix 6**) and to date no statutory declaration has been received. The Weld Estate has 10 years from 2005 in which to do this. The Council submits that this deposit is not sufficient evidence of a lack of intention to dedicate the Order Route as having higher rights than that of a bridleway.
- 2.11. The final point raised by the landowner refers to the construction of the dairy 40 years ago "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 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".
- 2.12. The user evidence supports use of the order route by people on motorcycles. None of the users were challenged during the period of use.
- 2.13. The clerk to the Committee uses the wording from the 'Reasons for Recommendations' section in the Committee report to compile the 'Reasons for Decision' section of the minutes. The wording was incorrect in the Committee Report and therefore incorrect in minute 28.2. The details in the rest of the Committee Report are correct and the Council submits that minute 28.3 demonstrates that the Committee were in fact using the correct test.