

STATEMENT OF CASE
IN OPPOSITION TO THE CREATION OF A FOOTPATH FROM EAST
LANE (D20502) TO D20503 PUBLIC ROAD EAST OF COOMBE
COTTAGES, BRADFORD ABBAS)

MR ROBERT ARNOLD LANZER

1. Introduction

I write in opposition to the proposed creation of the footpath described above, as the owner of a lodge on the Saxon Maybank holiday development, the whole site owned by Saxon Holiday Lodges Limited.

2. Reasons for Objection

There are two principal strands of evidence to support the creation of a footpath by virtue of its implied existence, i.e. the representation of the footpath on maps and reliable testimony to the effect that usage has been sufficiently persistent as to have established the route. Either or both of these strands can be used to support the creation of a footpath, if the evidence is sufficiently compelling.

On the first point, Dorset County Council's (the predecessor local authority) Regulatory Committee of 12th March 2015 (**Document Reference Agenda Item 7, 20150315 Regulatory Committee.pdf**) considered a number of maps whose combined evidence can at best be described as mixed in establishing or not the persistent existence of the claimed route.

Regarding the second source of evidence, this is addressed in Section 3 below.

There are a number of other reasons for objection which nobody with a presence at Saxon Maybank would wish to see overlooked, and which are relevant in Section 26 of the Highways Act 1980, specifically the effects on the rights of persons with an interest in the land.

2.1 The granting of planning permission for a holiday park at this location implied a lack of any opposition by the then local planning authority on the grounds of there being any compromise to an established footpath.

2.2 Concerns over the impact to privacy and security of owners, site users and the holiday properties.

2.3 East Lane, leading up to Saxon Maybank, is single-track with no passing places and is unlit, implying safety risks for pedestrians.

2.4 The possibility of people leaving rubbish and flytipping.

2.5 Nuisance caused by dogs running loose. The existing site planning permission prevents the putting up of fencing.

2.6 Safety issues presented by the site itself being unlit.

3. Dorset Council's Comments on Objections (Document Reference 6, 6 Comments and Objections – Bradford Abbas_Redacted.pdf)

Desirability, suitability, purpose and safety of the route

The Council's response seems to assume that we have an existing footpath, which at the time of writing is not the case. This is about the creation of a footpath meaning that Section 26 of Highways Act 1980 is relevant.

"Section 26 of the Highways Act 1980 gives an authority the power to create a footpath, bridleway or restricted byway. To confirm a creation order, an Inspector must be satisfied that:

There is a need for a footpath, bridleway or restricted byway and it is expedient to create it having regard to:

(a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the local area; and

(b) the effect the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation."

The Council's response should therefore consider need and the rights of persons interested in the land, but has not done so.

User Evidence

Although the Council refers to user evidence, this is effectively challenged in letters from Pardoes Solicitors to Dorset County Council.

29th July 2014 (Document 12603, Pardoes.pdf)

7th October 2014 (Document 12659, Pardoes.pdf)

This challenging analysis seems not to be present in Dorset Council's Comments on Objections.

4. Conclusion

The creation of the proposed footpath is not justified by the evidence base that has been presented, i.e. from the maps and accounts of alleged usage of the claimed route as a footpath. Coupled with the lack of evidential justification is the obvious impact on the

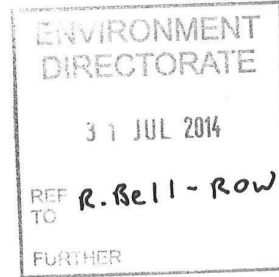
owners and users of Saxon Maybank. We have a proposal with insufficient evidence, an unarticulated need and deleterious impacts on the Saxon Maybank owners and users. The proposal should be refused.

Robert Lanzer

1st November 2024

Pardoes

Incorporating Marsh Warry



FAO Mr Roger Bell
Dorset County Council
Dorset Countryside
County Hall
Colliton Park
Dorset
DT1 1XJ

Your Ref:
Our Ref: TM/
Date: 29 July 2014
Please ask for Tracey Merrett
tracey.merrett@pardoes.co.uk
Direct Line: 01278 454405
Mobile: 07973 156218

Dear Roger

**WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER - BRADFORD
ABBAS**

My principal concern regarding this application is that my clients have not been served with a notice of the application pursuant to Schedule 14 of the above Act.

My clients are owners of part of the land over which the alleged right of way passes and Schedule 14 of the Wildlife and Countryside Act 1981 states at section 2(1) that "the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates".

The provisions of Subsection (2) clearly do not apply.

The application has a completed but unsigned Certificate of Service of Notice of Application for Modification Order stating that the notice has been served at the date of the application which was 7th July 2008 on Mr Michael Shaw of Charter Oak Estates. Mr Shaw has received no notification from the applicant and therefore this is incorrect and consequently the application is invalid and the County Council have no jurisdiction to determine it.

I have also spoken to the estates bursar at Winchester College the owners of the remainder of the route, Mr Chute made the following comments,
"There has never been either a Wilson nor an Ede working in this part of the College. Anything to do with the estates addressed to Winchester College since 1981 would eventually arrive with me.

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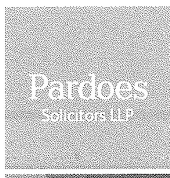
Pardoes

My predecessor from 1961 to 1981 was a D Vellacott assisted by a Mr B Pink. Before 1961 the estates were looked after by a De Lande Long. There have only been three or four Estates Bursars since the second world war! Neither I nor anyone else at Winchester College has ever received any communication from Bradford Abbas about this track".

I look forward to hearing from you

Kind regards

PP
Tracey Me



Incorporating Marsh Warry

12659
T474
DEFINITIVE
MODIFICATION
7 OCT 2014
ROW
R Bell

FAO Mr Roger Bell
Dorset County Council
Dorset Countryside
County Hall
Colliton Park
Dorset
DT1 1XJ

Your Ref:
Our Ref: TM/11772/0002
Date: 7 October 2014
Please ask for Tracey Merrett
tracey.merrett@pardoes.co.uk
Direct Line: 01278 454405
Mobile: 07973 156218

Dear Roger

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MODIFICATION ORDER-BRADFORD ABBAS

I have now had an opportunity to consider the user evidence in this application by the Parish Council to Modify the Definitive Map and wish to make the following objections.

Firstly there are some generic points to be made and evidence to be discounted or qualified.

The site was previously a dairy and before that a feed mill, both of these uses would have entailed the public visiting the site and using the track to buy animal feed or buying milk see Rachel Fry's evidence as an example.

Mr Brian Chant kept chickens and calves there and had people visiting him on site and coming to buy eggs see Rachel Fry's evidence.

There is also the usage by the Wallis's who live on site and their visitors whose evidence should be discounted. Clearly the people who live on site would use the access everyday this is not evidence to create a public right of access.

A number of the witnesses would have been visiting the people who live on site,

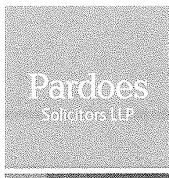
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Mr and Mrs Wallis, see Mrs Wallis's evidence and it is not possible to quantify this usage which therefore puts in doubt the usage evidence of many of the locals.

The use of the site has clearly been used as a shortcut on bicycle and by car to the village as stated in some of the witness statements e.g. Mr Bennett.

Some of the witnesses e.g. Betty Barber and Mr Houston state that they have not seen anyone else using the route recreationally which is surprising when considering the level of usage that is alleged. We know that a lot of the affirmative answers to 1 F refer to seeing the farmworkers or tenants on the route which is not relevant evidence for this application and the answers to 1F can therefore be afforded no weight..

One of the witnesses Betty Fellows evidence relates to times completely outside the relevant time frame i.e.1987 to 2007.

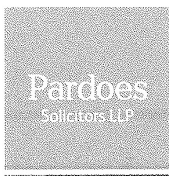
Three of the witnesses have since died, Mr Lisle, Peter Pepper and Betty Fellows and therefore their evidence cannot be cross examined and tested at an inquiry.

In addition with respect to the reference to witnessing other people using the track, of course they would have done, and this does not amount to evidence of use of the route as a public right of way. Both of the business uses of the site would have entailed delivery and collection vehicles visiting and customers and employees vehicles coming and going from the site.

Whilst the site was a Feed Mill the operation was 24 hours a day and there would have been a large amount of traffic visiting the site including artics night and day.

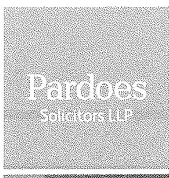
Going through the witness statements in turn;

1. Raymond Allwright states that he used the path for pleasure on foot and a few times in a private car. To use the route in a private car signifies that he had a purpose in visiting the site other than walking for pleasure, he was possibly buying eggs or visiting the occupiers, the Wallis family, however evidence of car usage does not support the application for a footpath.
2. Mr and Mrs Balch, this evidence is of no weight as the period is outside the relevant period being considered and in any event they used the path with consent.
3. Mrs Barber she states that she used the route 40 or 50 times a year and no one else used this route(1f). Not willing to give evidence.
4. Mr Barber, not willing to give evidence.
5. Mr Richard Bennett statement of use of 6 times a year is split between usage on foot, in the car on a bicycle. We cannot put any



weight on this as it is not possible to determine how many times he used the route on foot which is the evidence which is required for the application. Mr Bennett clearly had a purpose other than dog walking to use other methods of transport and he states his purpose was driving down to the village therefore this is not good evidence of recreational use. He also states that he has seen notices on the route restricting its usage see 7(e).

6. Ailsa Bowring ,not willing to give evidence.
7. Elizabeth Chapman , not willing to give evidence.
8. Richard Coast-Smith, not willing to give evidence.
9. Beatrice Down, not willing to give evidence.
10. Betty Fellows passed away and was not willing to give evidence.
11. Rachel Fry is a tenant of the owner of the land and visited the site using the route to collect milk, visit the dairy, visit her brother, buy chicken food and to buy milk. Although she lists the purpose of her usage as pleasure or family outing these purposes do not present evidence of walking for pleasure and would not carry weight as evidence of use of the footpath as a public route particularly as she is a tenant of the owner of the land and therefore has implicit permission to use the route. She has not answered question 6 which inquires as to whether she had permission. None of her usage evidence can be considered to be relevant and she is not willing to give evidence.
12. Ian Houston states he used it 30 times a year as a pleasure walk, but his usage is to include using the route on bicycle and in a car and therefore he clearly had another purpose to visit the site/use the route other than pleasure and the proportion of usage which relates to walking cannot be implied and therefore his usage evidence can be given no weight. He also refers at 1(g) to other people using the route and he clearly state this relates to("rental of farm buildings and fields) referring only to the people renting the building and farming the land and not other recreational users.
13. K Houston used the route between 12 and 20 times a year the but her usage is to include using the route on bicycle and therefore she clearly had another purpose to visit the site/use the route other than pleasure and the proportion of usage which relates to walking cannot be implied and therefore her usage evidence can be given no weight.
14. Mr Lisle only gave evidence that he used the path frequently which



is vague in the extreme, and further details unfortunately cannot be obtained as he is dead and he was not willing to give evidence.

15. Caryl Parsons states that she used the route 2 or 3 times in 2006 and intermittently between 1990 and 2006. The purpose of her use of the route is to look for a lost cat and pleasure, this does not amount to adequate clear evidence of usage of the path on foot other than to say it was used at least once for pleasure in the whole period.
16. Peter Pepper states his use is for delivering literature and walking a dog 6-10 times a year, we have no clear evidence of the number of times it was used for walking a dog and unfortunately Mr Pepper cannot be asked to clarify this as he is dead. Whilst alive he was not willing to give evidence.
17. Mr and Mrs Wallis live on site in the middle of the route and are tenants of the owner, clearly as tenants they have permission to access their house. Evidence of the use of the route as an access to the Wallis's house is clearly not evidence of use of the route as a public right of way.
18. Mary Yoeman was not willing to give evidence.

In addition only 7 of the 19 living witnesses are willing to give evidence at inquiry and have their evidence tested, which should affect the weight to be given to their evidence. To conclude there is very little usage evidence that is clear and testable and I have been unable to find any historic evidence of a right of way along this route.

Kind regards

Tracey Merrett



Agenda item:

Regulatory Committee

7

Dorset County Council



Date of Meeting	12 March 2015
Officer	Director for Environment and the Economy
Subject of Report	Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas
Executive Summary	In response to an application to add a footpath at Bradford Abbas, this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence: The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.</p> <p>A full consultation exercise was carried out in June and July 2014, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.</p> <p>22 user evidence forms from 24 users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.</p>

	<p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p>
	<p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p>
	<p>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record a footpath at Bradford Abbas as shown A – B – C – D – E on Drawing 14/18/1; and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist;</p> <p>(b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset

	<ul style="list-style-type: none"> • Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live • Enable people to live in safe, healthy and accessible environments and communities
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 14/18/1 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1887 First Edition Ordnance Survey map ▪ 1928 Edition Ordnance Survey map ▪ 1838 Bradford Abbas Tithe map ▪ 1910 Finance Act map ▪ 1951 Bradford Abbas Parish Survey map 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/474).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.</p> <p>Copies (or photographs) of the documentary and user evidence can be found on the case file RW/T474, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to add a footpath from East Lane to the public road by Coombe Cottages, Bradford Abbas as shown A – A1 – B – C – D – E on Drawing 14/18/1 (Appendix 1) was made by Bradford Abbas Parish Council on 7 July 2008.
- 1.2 The route claimed commences at point A at the junction with the public road known as East Lane, travelling in an easterly direction. The surface of the claimed route is loose, hard stone. At point A1 a wooden field gate across the route displays a notice “Private No Public Right of Way”, which can be seen from users approaching from the west. The claimed route then passes between the buildings of the Saxon Maybank development on both sides. At point B the route changes course to run north easterly. At point C there is a wooden field gate and the route is hard surfaced with hedges on both sides. At point D there is a further field gate and the route widens out with Coombe Cottages to the north western side and cars parked on the south eastern side of the claimed route. It terminates at point E at its junction with the public road D20503.
- 1.3 Between points A and C the claimed route is owned by Mr Shaw of Charteroak Estates and between points C and E by Winchester College.
- 1.4 Its widest point at point E is 10 metres wide and its narrowest point at point B is 3 metres wide.
- 1.5 In October/November 2007 Charteroak Estates erected a gate with the notice across the claimed route at point A1 and it has remained locked, preventing public use.

2 **Law**

- 2.1 A summary of the law is contained in Appendix 2.

3 **Documentary evidence (Appendix 3)** (copies available in the case file RW/T474)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

4 **User evidence (Appendix 4)** (copies available in the case file RW/T474)

- 4.1 A table of user evidence summarised from witness evidence forms, together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 **Additional evidence in support of the application** (copies available in the case file RW/T474)

- 5.1 Two letters supporting the application were received in response to the consultation exercise.

Name	Comments
Mrs Jan Wardell, The Ramblers	States “until 2008, there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and notes “that the 1902 OS map shows a footpath leading to East Farm from the south, and then onwards north-east to where Coombe Cottages are now situated – part of the claimed route”.
Mr Derek Hayward, Chairman, Bradford Abbas Parish Council	Submitted an extract from a large scale, coloured 1916 map, similar to the 1903 Ordnance Survey map described below at 8.5. East Farm is shown as part of a red edged and pink shaded plot. The routes that are now recorded as roads to the west (including a continuation north from point A), south and east are shown uncoloured. The area including East Farm buildings, the claimed route (partly fenced and partly unfenced – as shown by double solid and double pecked lines) and the path shown with double pecked lines marked ‘F.P.’ (footpath) heading south are all in the land shaded pink.

6 **Evidence opposing the application** (copies available in the case file RW/T474)

6.1 Two letters opposing the application were received in response to the consultation exercise.

Name	Comments
Tracey Merrett, Pardoes Solicitors on behalf of Charteroak Estates (owner) Letter 1	“My principal concern regarding this application is that my clients have not been served with a notice of the application pursuant to Schedule 14 of the above Act.... Mr Shaw has received no notification from the applicant and therefore this is incorrect and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
Tracey Merrett Pardoes Solicitors LLP on behalf of Charteroak Estates (owner) Letter 2	<p>Comments on all the witness statements provided by the applicant in detail including:</p> <ul style="list-style-type: none"> • “Mr and Mrs Wallis live on site in the middle of the route and are tenants of the owner....Evidence of the use of the route as an access to the Wallis’s house is clearly not evidence of use of the route as a public right of way”. • “Only 7 of the 19 witnesses are willing to give evidence at Inquiry and have their evidence tested...” • The site was previously a dairy and before that a feed mill, both of these uses would have entailed the public visiting the site and using the track to buy animal feed or buying milk...” • “The use of the site has clearly been used as a shortcut on bicycle and by car to the village as stated in some of the witness statements...” • “To conclude there is very little usage evidence that is clear and testable and I have been unable to find any historic evidence of a right of way along this route.” <p>(Full Transcript in the case file RW/T474.)</p>

Name	Comments
Mr Patrick Pearce (owner of lodge at Saxon Maybank)	Raises issues such as: - <ul style="list-style-type: none"> • Safety – including from users with dogs • Pollution • Damage to privacy <ul style="list-style-type: none"> ▪ Security • Disruption to residents, wildlife and the natural environment • Noise • Suitability

7 **Other submissions received** (copies available in the case file RW/T474)

7.1 Another three submissions were received in response to the consultation exercise.

Name	Comments
Mrs Carol Shoopman on behalf of the British Horse Society	"No evidence to support this application."
Claire Pinder Dorset County Council senior Archaeologist	"No recorded archaeological finds or features or historic buildings on or the vicinity of the route affected by this proposal."
Southern Gas Networks	"We have no gas mains in the area of the enquiry."

8 **Analysis of documentary evidence**

8.1 As there is no Inclosure award affecting this area the most important documents in this case are Ordnance Survey maps.

Ordnance Survey maps

8.2 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Bradford Abbas parish was completed in 1805 and clearly depicts the public road travelling due north to point A. However, the road continues due north and neither the claimed route nor East Farm is shown.

8.3 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also does not show the claimed route.

- 8.4 The **1887 First Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route with a gate or barrier at point A1. A fenced track on the line of the claimed route leads eastwards to the buildings of East Farm and at the eastern side of East Farm there is a solid line across the route at point B. It continues with double pecked lines (an unfenced track), on the same route as that claimed, to point E. The route is not marked 'F.P.' or 'B.R.' alongside. There is a footpath annotated 'FP' from the farm heading due south to join the road. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.5 The **1903 Second Edition Ordnance Survey map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1887 First Edition, although the larger scale map shows more detail.
- 8.6 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route similarly to the larger scale 1903 Edition.
- 8.7 The **1928 Edition Ordnance Survey Map** at a scale of 25 inches:1 mile (1:2500) shows the claimed route but with no gate at point A1. The unfenced track starts at the western edge of the buildings (slightly west of point B). At point C a solid line is shown across the route, indicating a gate or barrier. Between points C and E the track is shown with a solid line on the north western side, indicating that this boundary was fenced or hedged, and a pecked line on the south western side, indicating that this boundary was unfenced. The footpath due south of East Farm is no longer shown.
- 8.8 The **1930 Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in the same manner as the 1928 Edition Ordnance survey map.
- 8.9 The evidence provided by the **Ordnance Survey maps** adds support to the route claimed and suggests that a gate at point C has been in existence since 1928. Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

Other documents

Tithe map and apportionment

- 8.10 The **1838 Bradford Abbas Tithe map** shows East Lane continuing north from point A but does not show the track or a farm along the claimed route.
- 8.11 The Tithe 'apportionments' are the numbered parcels that record the state of cultivation and area. The claimed route is not shown and therefore is unapportioned.
- 8.12 By themselves tithe documents rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment. In this case the tithe does not support the claimed route.

Finance Act documents

- 8.13 The 1910 Finance Act map uses the 1903 Ordnance survey base map and shows the claimed route not excluded from taxation but within part of Hereditament 41.
- 8.14 Within the same hereditament a footpath is clearly shown leading due south of the claimed route, clearly annotated 'F.P.' (see paragraph 8.4 above).
- 8.15 However, within the field books detailing the land valuation, Hereditament 41 has no deductions in respect of "Public Rights of Way or User".
- 8.16 Although these records indicate that the owners of this parcel did not acknowledge the existence of any public right of way over it, as members will be aware, this does not necessarily indicate that no public rights existed within them. Whilst it was a criminal offence with severe penalties to falsely claim tax deduction in lieu of the existence of a public highway there were no penalties for not acknowledging the existence of a public highway over the land.

Commercial maps

- 8.17 **Johnston's early 1900s small scale map** shows the current road to East Farm (East Lane) and a track to the farm itself between points A and B. It does not show any connection to the public road at point E.
- 8.18 Various other small scale maps do not depict a route, either completely or partially, on or in the general location of the application route (see table at Appendix 3).

Sales particulars

- 8.19 The **1954 Bradford Abbas Estate** sale did not include East Farm or the claimed route. However, it was included on the plan showing the area for sale at the time. It clearly shows East Lane and the whole of the claimed route, between points A and C through the buildings at East Farm and as an unfenced track between points C and E. Outside of the area of the estate being sold this map shows both public and private routes as unshaded.
- 8.20 The **1966 East Farm Bradford Abbas** sales document and plan shows East Lane and the D20503 road as uncoloured but the claimed route through the farm and north east to point E appears to be coloured pink, which is the colour used in this plan to indicate the area for sale. Between points C and E the route appears to be shown with a solid line (hedged or fenced) on the north western side and with a pecked line (unfenced) on the south eastern side. This plan indicates that if a route is not coloured it is not part of the sale and could be seen as a public route. Therefore, if coloured in it is part of the plot for sale.
- 8.21 The sales documents indicate the claimed route was in existence but do not add to the evidence to support the claim.

Parish Survey and County Council rights of way maps and records

- 8.22 The **1951 Bradford Abbas Parish Survey** map of rights of way shows that no public right of way between points A and E was claimed at the time. Between points C and E there is a hand written annotation marking this part of the claimed route as "Private".
- 8.23 The claimed route is not shown on the **draft, provisional** or the **first definitive maps** as a public right of way.
- 8.24 The application route was not subject to any investigation or claim during the **1973 Special Review** and therefore is not shown as a public right of way on the **1974 revised draft map** nor is it recorded on the **current definitive map sealed in 1989**. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist over the route.
- 8.25 The Parish Council did not claim the route during the original Parish Survey, or at the Review. However, their current claim indicates that they have evidence that the route has acquired public rights and should be recorded as a footpath.

9 Analysis of user evidence supporting the application

- 9.1 22 forms of evidence were received from 24 users of the claimed route.
- 9.2 Mr and Mrs Balch were given permission to walk and drive their car by the farm manager in 1986. Mrs Fry and Mr & Mrs Wallis are tenants/workers on the farm. Therefore evidence from these users must be given less weight than the other users.
- 9.3 All 24 of the witnesses state that they used the route (17 if use by tenants and those given permission is discounted), either individually or with other users, shown between points A to point E on Drawing 14/18/1 and that this use was on foot.
- 9.4 Mr Bennett and Mr & Mrs Houston used the route on a bicycle. Mr Bennett and Mr Houston also both used a car.
- 9.5 The earliest date of use is 1956 and 2007 is the last date of use.
- 9.6 The heaviest amount of use is between 1997 and 2002 when 23 users state that they used the claimed route (17 if the use by tenants and those given permission is discounted). 21 of the statements claim to have seen others using the route on foot, horseback, bicycle or by car.
- 9.7 18 users state that there were never any gates or stiles until notices "Private No Public Right of Way" and gates were erected at point A1 by the current owner from 31 October 2007. Eight stated that they were never challenged while on the claimed route.

- 9.8 Mr Allwright, Mr Bennett, Mr Coffin, Mr Houston and Mr & Mrs Yeoman all state that they believed that the owners or occupier was aware of public using the claimed route, as they spoke to workers and previous owners while using the route.
- 9.9 The frequency of use ranges from Mrs Down, who used it “every day” to Mr Coffin, who used the route between 3 and 4 times a year.
- 9.10 Nine users state the width of the claimed route, all commenting on the wideness of the track.
- 9.11 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) In comparison with an urban environment, to have 24 users giving evidence of their use in this rural location is considered to be significant.
- (b) The locked gate and private notice (31 October 2007) is evidence of bringing the use of the route into question. The user evidence before that date is sufficient reasonably to allege that a footpath exists.
- (c) The application was made on 7 July 2008 and is a further date of bringing that use into question.

10 **Analysis of evidence in support of the application**

- 10.1 The Ramblers’ evidence includes the Ordnance Survey Second Edition map as discussed at paragraph 8.6 above. They do not provide any other evidence to back up the statement that “there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and therefore this evidence does not add significantly to support the application.
- 10.2 The Parish Council’s 1916 map shows the route claimed but does not add significantly to the evidence in support.

11 **Analysis of evidence opposing the application**

- 11.1 In the first letter from Pardoes Solicitors LLP, on behalf of Charteroak Estates, Tracey Merrett notes that her client did not receive “notification from the applicant and therefore this is and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
- The application indicates that both Charteroak Estates and Winchester College were informed when the application was made in July 2008.
 - Within the case file there is a note dated 5 August 2009 that Mr Michael Shaw of Charteroak Estates had telephoned the Definitive Map Team Manager about the footpath claim. The call from Mr Shaw indicates that the Charteroak Estates have been aware of the application at least since 2009.

- A further file note dated 2 June 2010 records a telephone call representative from Battens Solicitors “representing the landowners, Charteroak”. He was advised that the applicant, Bradford Abbas Parish Council, had sent the Notice of Application (Form B) to them in July 2008 as the County Council had a Certificate of Service of the Notice (Form C) on file, which included Charteroak Estates and Winchester College as having been notified. Copies of the application and user evidence forms were subsequently sent to Battens.
- 11.2 She also states that she had contacted the other owner of the claimed route, Winchester College. The current Estates Bursar, Mr Chute, told her that “Neither I nor anyone else at Winchester College has ever received any communication from Bradford Abbas about this track”.
- Within the same file there is a copy of a Fax dated 17 October 2008 sent from Ms Penny of the Definitive Map Team to Emma Ede of Winchester Collage. The subject is the application at Bradford Abbas and a plan was attached, showing the claimed route with a thick dotted line. This also shows that Winchester College was aware of the application soon after the application was made.
- 11.3 In the second letter from Pardoes Solicitors LLP, Tracey Merrett states that some of the user evidence forms are not reliable because Mr & Mrs Wallis and Rachel Fry had connections with previous and current land owners.
- This is correct and therefore, as previously stated, their statements have been given less weight.
- 11.4 Ms Merrett states that “Three of the witnesses have since died, Mr Lisle, Peter Pepper and Betty Fellows and therefore their evidence cannot be cross examined and tested at an inquiry”.
- Their evidence forms do add to the user evidence to be taken into account even though it cannot be tested should there be a local public inquiry.
- 11.5 Ms Merrett adds that “only 7 of the 19 living witnesses are willing to give evidence at inquiry and have their evidence tested, which should affect the weight to be given to their evidence.”
- This is not the case: these forms have equal weight at this stage of the investigation. Should there be a local public inquiry then this issue may be relevant.
- 11.6 Ms Merrett also states that members of the public were using the track to visit the site to buy animal feed and milk and therefore this use should be discounted.
- Of those who completed user evidence forms only Mrs Fry indicates that her use was to visit the dairy (and her brother) and was therefore by invitation and not as of right. (Mr and Mrs Wallis are also still working for the land owners of A – C.)

11.7 She states that the site has been used as a shortcut on bicycle and by car.

- All the witnesses that used the claimed route on bicycle and by car also state that they have used it on foot.

11.8 The majority of the other submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

12 **Analysis of other submissions**

12.1 The other letters contain no evidence to be considered.

13 **Conclusions**

13.1 As the claimed route is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

13.2 Although there is documentary evidence showing the claimed route, notably the various Ordnance Survey maps from 1887 onwards, these maps are not strong evidence and only the earliest map carries no disclaimer as to the representation of a route being evidence of a right of way.

13.3 The documentary evidence is therefore insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route.

13.4 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

13.5 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date notices and gates were erected by the current owner on 31 October 2007. However, the notice may not have come to the attention of users from the eastern end of the route.

13.6 The user evidence indicates mainly public use on foot along the claimed route. There is some other use by bicycles and cars but this is not considered sufficient to have established higher rights. The user evidence is considered to be sufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to date of bringing into question, which is 31 October 2007.

13.7 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 or more years use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public footpath rights exist along the whole of the claimed route and an order should be made.

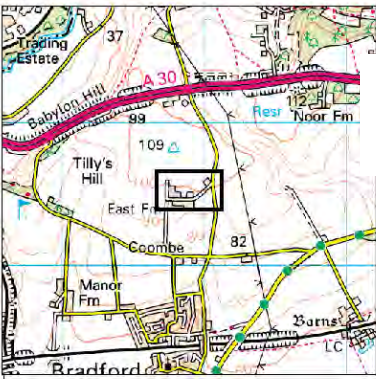
Page 13 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

- 13.8 Therefore it is recommended that an order be made to record the claimed route between points A and E on Drawing 14/18/1 as a footpath.
- 13.9 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Mike Harries

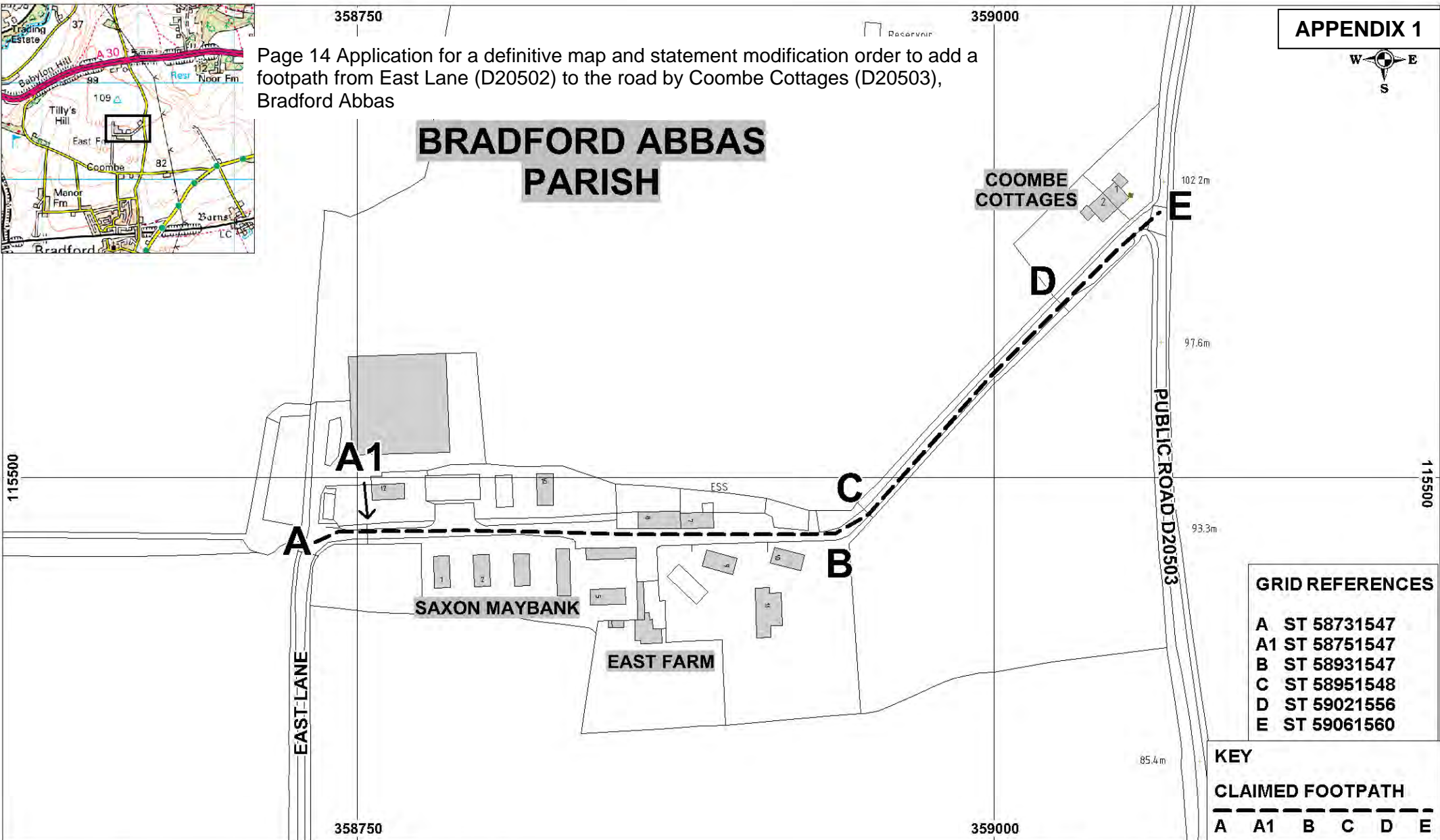
Director for Environment and the Economy

February 2015



Page 14 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

APPENDIX 1



GRID REFERENCES

A	ST 58731547
A1	ST 58751547
B	ST 58931547
C	ST 58951548
D	ST 59021556
E	ST 59061560

KEY

CLAIMED FOOTPATH

A	A1	B	C	D	E
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WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD A FOOTPATH FROM EAST LANE TO THE PUBLIC ROAD EAST OF COOMBE COTTAGES, BRADFORD ABBAS

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 14/18/1
 Date: 13/024/2015
 Scale 1:2000
 Drawn By: ACWH
 Cent X: 358893
 Cent Y: 115521

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

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LAW

General

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to add a right of way to the definitive map and statement if the balance of evidence shows either:
- (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.
- #### 2 Highways Act 1980
- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. 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 did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.4 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act may bring proceedings against the authority under the Act in the appropriate court or tribunal or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
 - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Case specific law

4 Finance Act 1910

4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

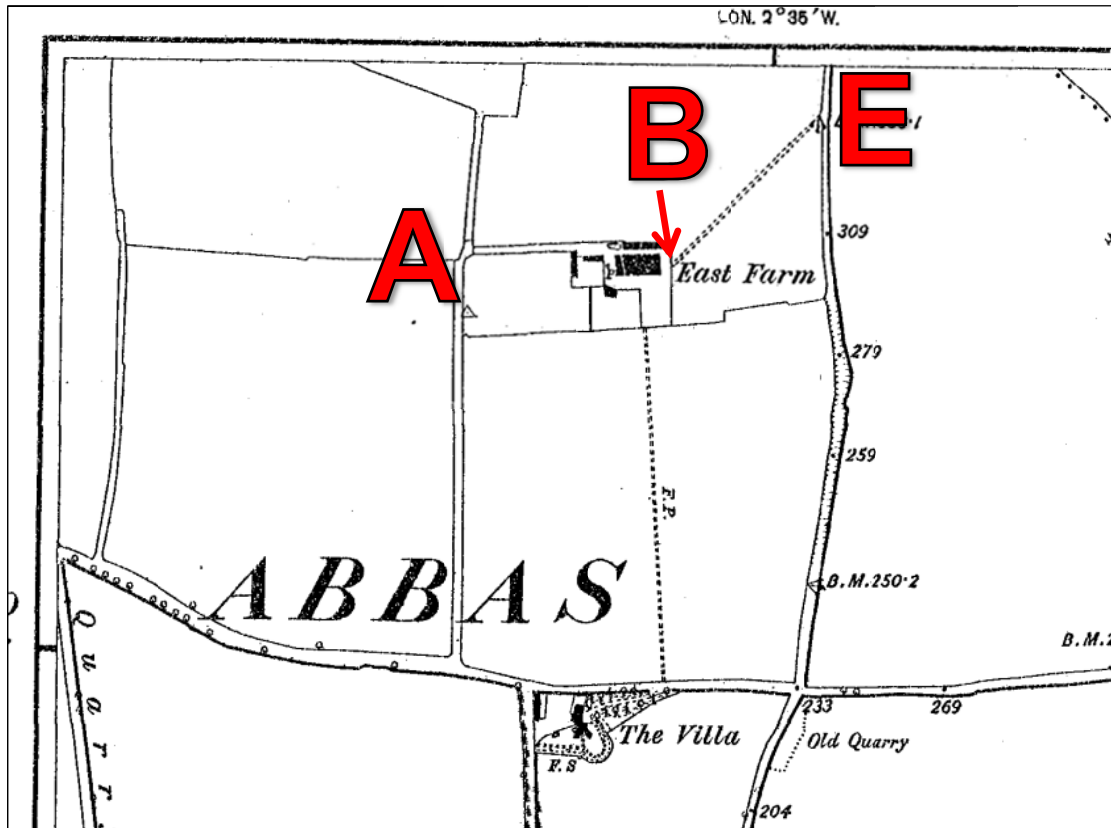
Table of documentary evidence

Date	Document	Comment
1773	Map of Dorset by J Bayly	Not shown
1796	Isaac Taylor's Map of Dorset	Not shown
1805	Ordnance Survey Drawings	Shows East Lane only, not claimed route.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows East Lane only, not claimed route.
1815	J Arrowsmith's Map of Dorset	Not shown
1826	Greenwood Map of Dorset	Not shown
1839	Bradford Abbas Tithe Map	Shows East Lane only, not claimed route.
1846	Gazetteer Dorset	Not shown
1863	Crutchley's Railway Map of Dorset	Not shown
1887	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1889	NOTE: 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.	
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1900s	W & A K Johnston Map of England scale 3 miles:1 inch	Not Shown
1900s	Bacon's New Revised Map of Dorsetshire	Not shown
1900s	Bacon's Geographical Map of Dorsetshire	Not shown
1900s	Weller Despatch Atlas	Not shown

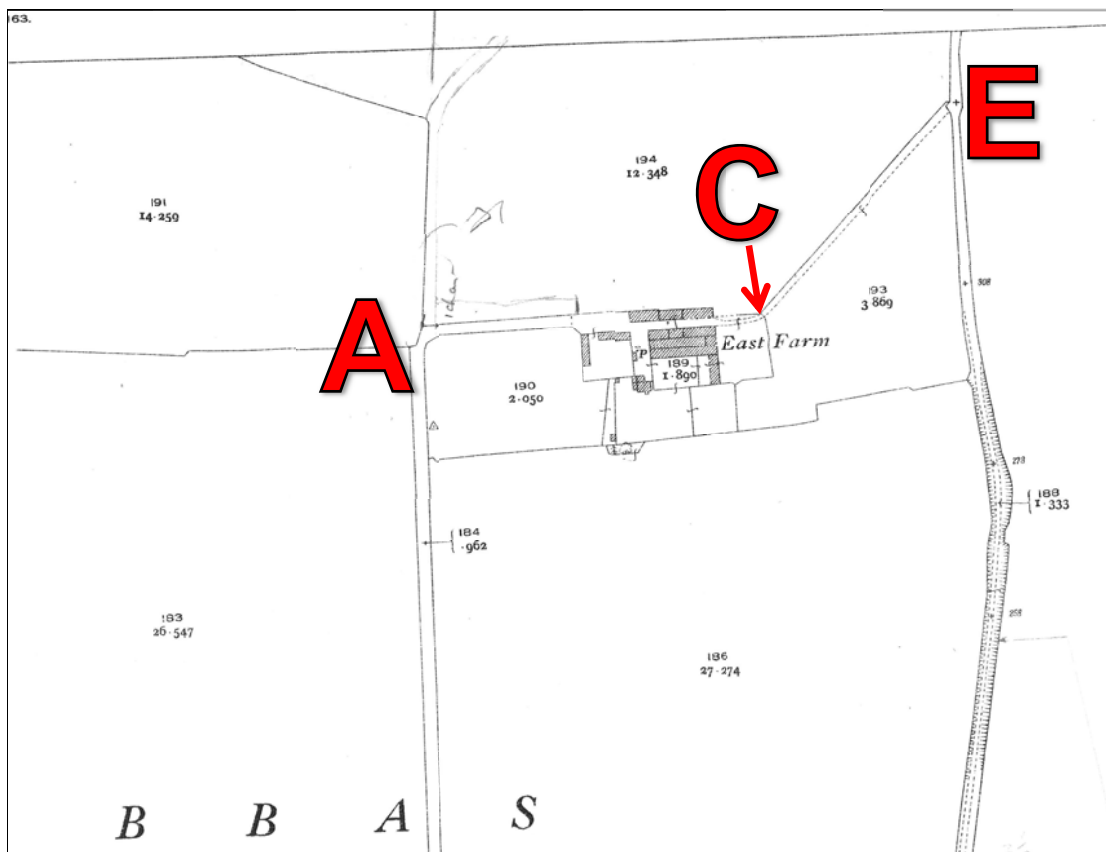
Date	Document	Comment
1910	Finance Act plans	The claimed route is not excluded from taxation. It runs through Hereditament 41 but there are no deductions for public rights of way in this hereditament.
1928	Ordnance Survey Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
1930	Ordnance Survey Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Bradford Abbas Parish Survey	Route not claimed. Between points B and E annotated "Private" alongside.
1959	Draft map for the west area	Not Shown
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1954	Bradford Abbas Estate sales particulars	Shows the claimed route but not part of sale.
1964	Provisional map	Not Shown
1966	Sales Particulars for East Farm	Claimed route in part of land for sale. Claimed route shown fenced and between farm buildings A – C and fenced on north eastern side C – E.
1966/7	First definitive map	Not Shown
1974	Revised draft map	Not Shown
1989	Current definitive map	Not Shown

Extracts from key documents
(See the Director for Environment's file RW/T474 for copies of other documents mentioned)

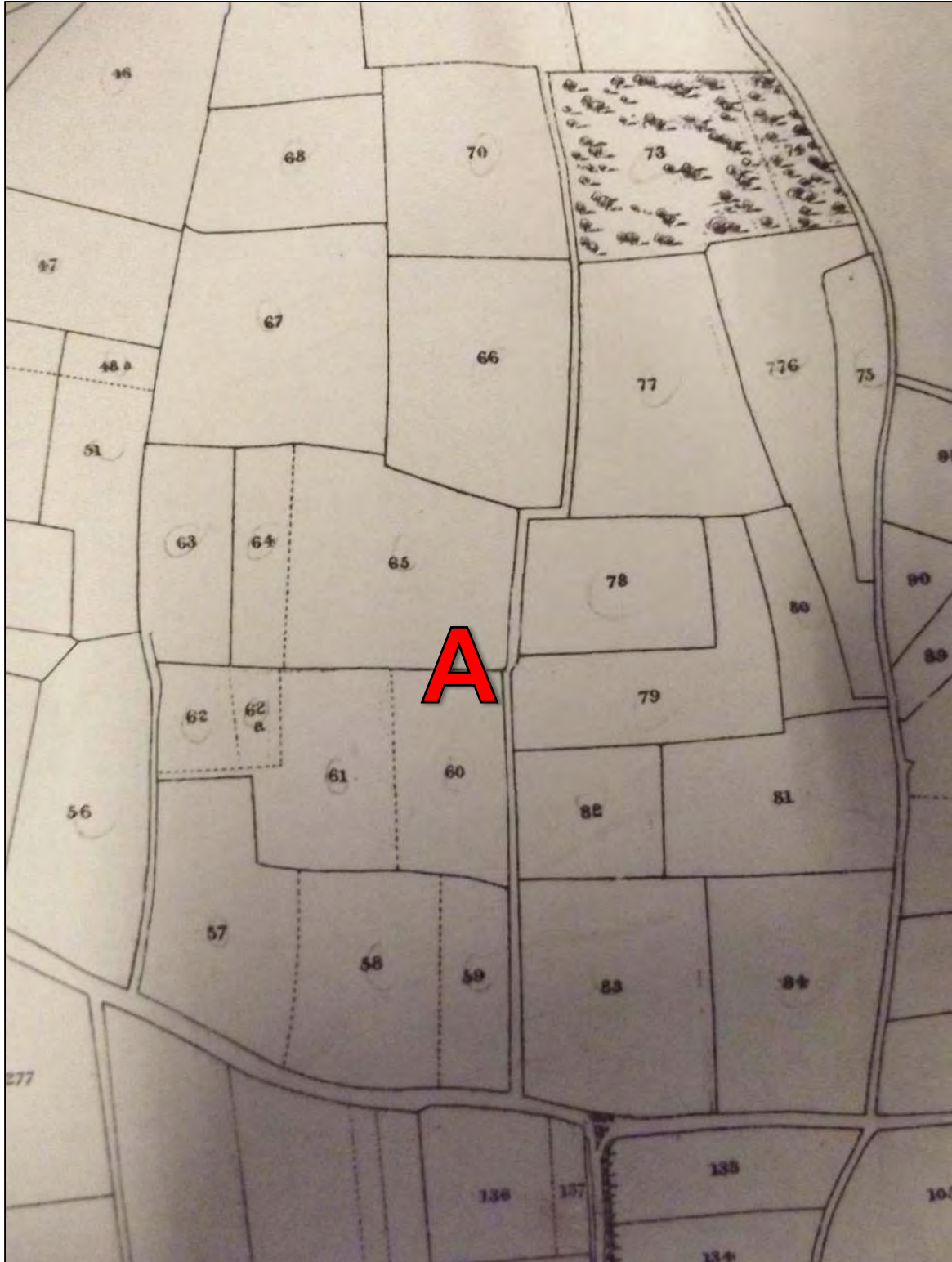
1887 First Edition Ordnance Survey map



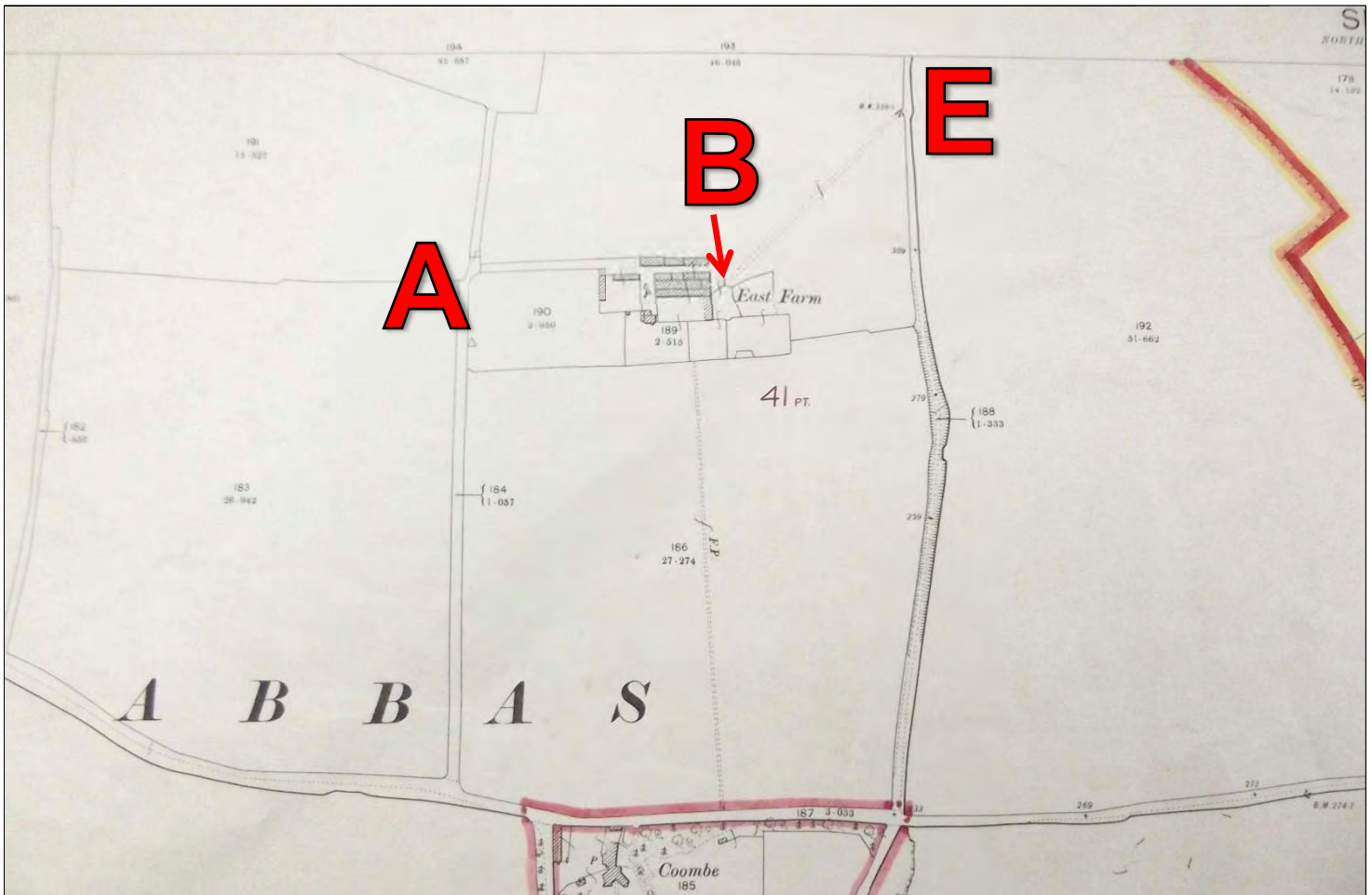
1928 Edition Ordnance Survey map



1838 Bradford Abbas Tithe map

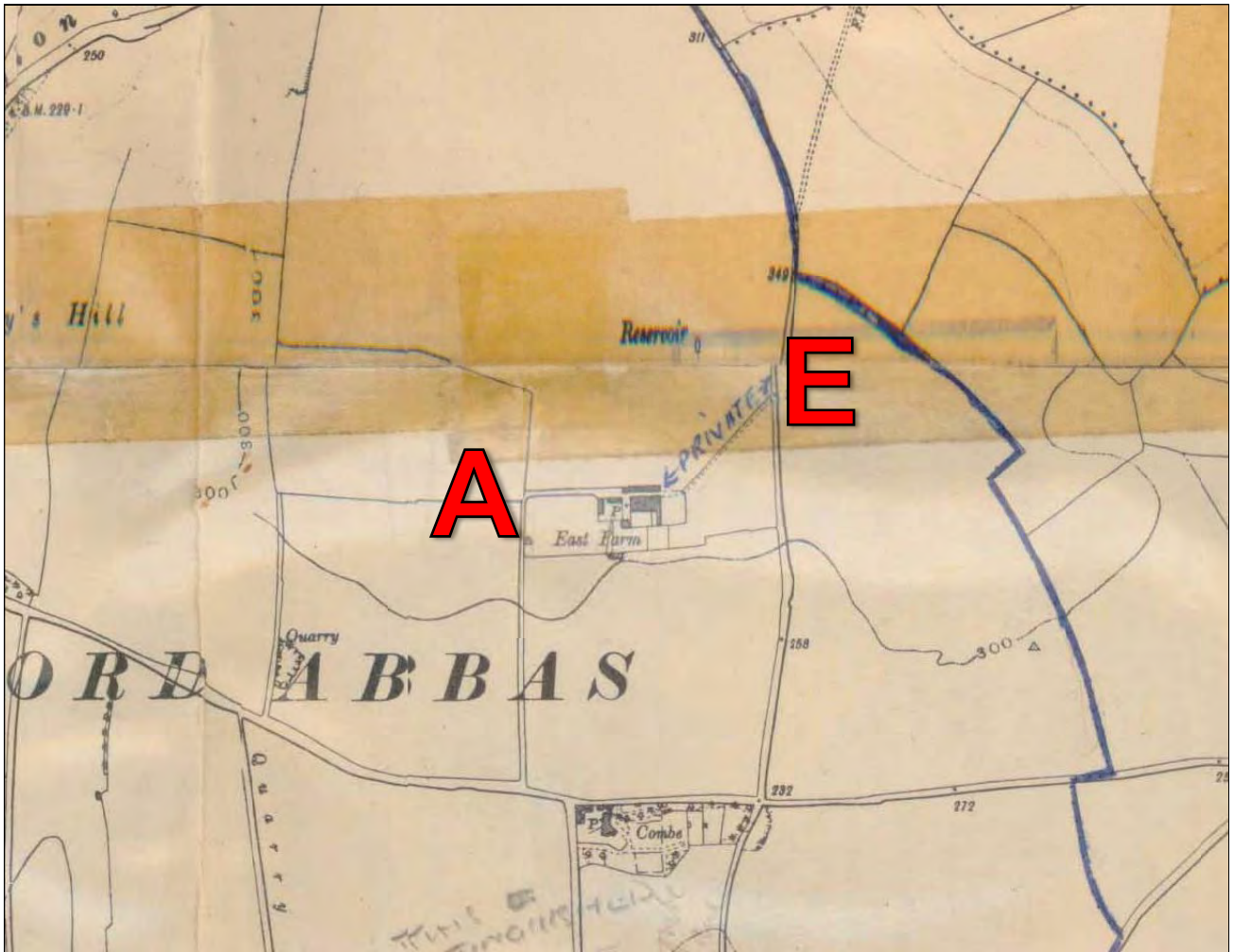


1910 Finance Act map



Page 23 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

1951 Bradford Abbas Parish Survey map



User Evidence
Table summarising user evidence from forms

USER EVIDENCE (FROM FORMS COMPLETED IN 2007 & 2008)

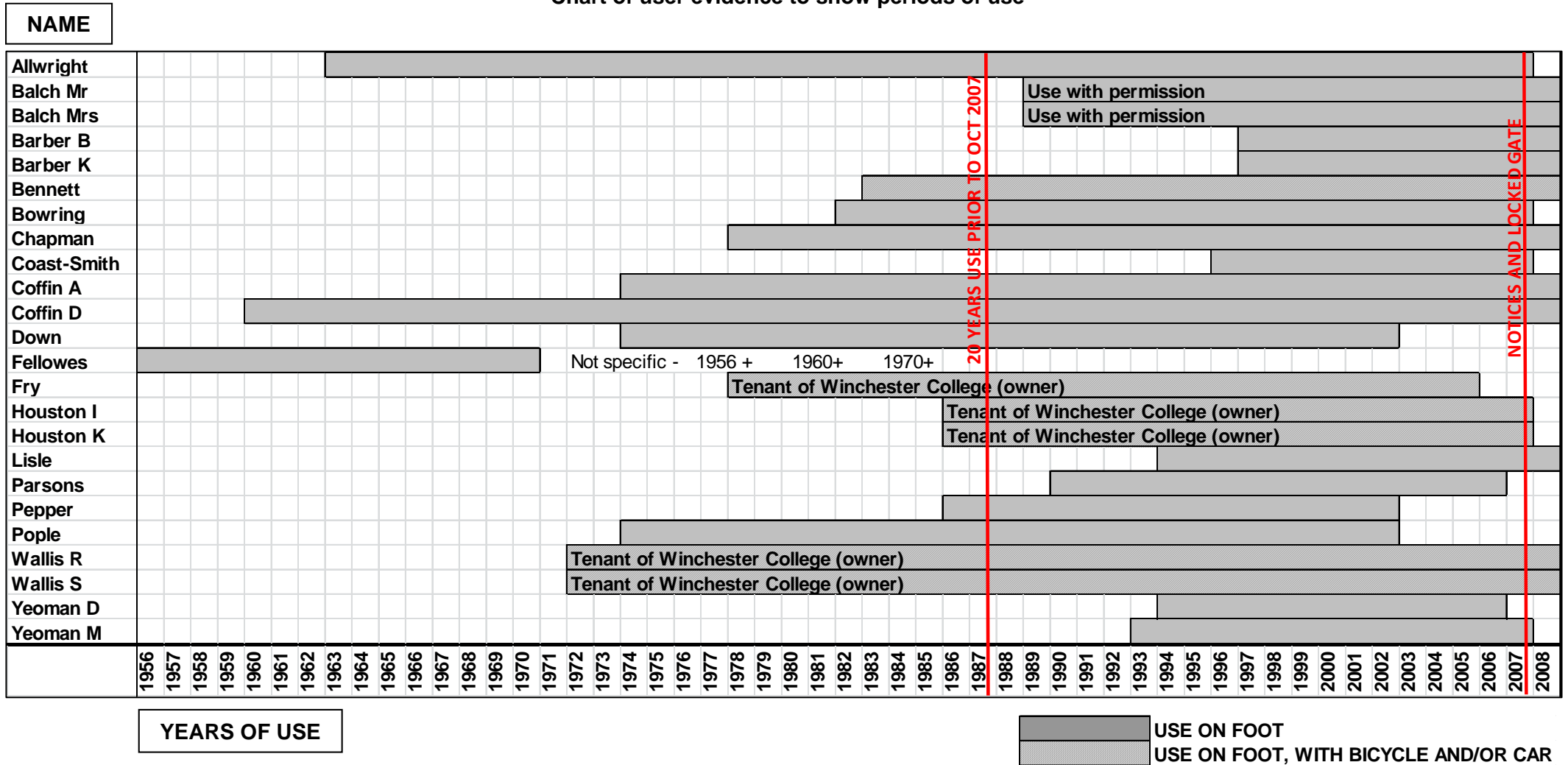
NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R E Allwright	1963-2007	About 50 times a year. Less in recent years.	Foot	Also used a few times in private car. Used by others on foot and in farm vehicles. No stiles, gates, notices or other obstructions. Believes the owner or occupier was aware the public was using the way as has met the occupiers and employees on the way. Never challenged.
Mr and Mrs C J Balch	1989-2008 (form actually stated to 1908)	Once a week	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Obtained permission to use the route by Brian Chant in 1986 who was an ex-employee (farm manager). Did not walk route voluntarily during 90's due to outbreak of foot and mouth. Believes owner/occupier was aware of public using route due to being seen using the route.
Mrs B G Barber	1997-2008	40-50 times a year	Foot	Not used by others. No stiles, gates (until now), notices or other obstructions. Never challenged.
Mr K J Barber	1997-2008	40-50 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr R J Bennett	1983-2008	6 times a year	Foot, car and bicycle	Used by others on foot, car and bicycle. Believed owner/occupier was aware of public using the way as met farmer on many occasions there. Route is full road width.
Mrs A Bowring	1982-2007	24-30 times a year	Foot	Used by others on foot and by farm vehicles. No stiles, notices or other obstructions. Gates present. Prevented from using route by gates and notice 31/10/2007.
Ms E J Chapman	1978-2008	Average 6 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Early Dec 2007 – gates and notices. Notice in 2007 – Private.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R Coast-Smith	1996-2007	Up to 200 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Gates erected across path November 2007. 12 feet width across path and verges.
Mr A M Coffin	1974-2008	3-4 times a year	Foot	Used by others on foot. Gates present (locked and erected 2007) No stiles, notices or other obstructions. Believes owner or occupier was aware the public was using the way as used to see the farmer when it was farmed. Width of a single carriage road.
Mrs D S Coffin	1960-2008	4-10 times a year	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Route used to belong to Winchester College – no restriction. A rough track, possibly two cars wide in most places.
Mrs B Down	1974-2002	Every day	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Other owners have restricted the track. Route is a "2 car width".
Miss B M Fellowes	1956+ 1960+ 1970+	8-10 times a year	Foot	Unlocked gates. No stiles, notices or other obstructions. Far too narrow for extra traffic.
Mrs R Fry*	1978-2005	Regularly	Foot, car and bicycle	Used by others on foot, bicycle, cars and tractors. No stiles, gates, notices or other obstructions. Has been tenant of Winchester college from 1978. Wide enough to drive through.
Mr I S C Houston*	1986-2007	30 times a year	Foot, bicycle and car	Used by others on foot, bicycle and by car. No stiles, gates, notices or other obstructions. 2008 – Several gates and notices prevent access. Believes owner/ occupier was aware the public were using the way as he engaged occupier and farmers in conversation. Wide enough for farm vehicles. Single track.
Mrs K P J A Houston*	1986-2007	Between 12 and 20	Foot and Bicycle	Used by others on foot, horseback and by car. No stiles, gates, notices or other obstructions. Never challenged. Width approx. single track road.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr C J Lisle	1994-2008	Frequently	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Has been greeted cheerily. Never challenged.
Mrs C Parsons	1990-2006	Inter-mittently from 1990, most recently in 2006	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr P A A Pepper	1986-2002	6-10 times a year	Foot	Delivering literature. Used by others on foot. No stiles, gates, notices or other obstructions. Gates only put in place by new owner. Width of the tracks is about 14 feet.
Mrs Pople	1974-2002	Most days	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Never challenged. Lorry width.
Mrs & Mrs R & S Wallis*	1972-2008	365 times a year	Foot, car and bicycle	Used by others on foot, cycle, car and horseback. No stiles, gates, notices (until now) or other obstructions. Working for owner/ occupier of land 1972- present. Never obtained permission to use the route until Charteroak purchased the access road. Friend visiting them was prevented from using it in Nov 2007. Charteroak Estates erected padlocked gates. Notices Autumn 2007 – by Charteroak Estates.
Mr D N Yeoman	1994-2006	35 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner or occupier was aware of public using the way as spoke to occupiers. Track wide enough for vehicle.
Mrs M Yeoman	1993-2007	90 times for last 4 years approx and approx 24 times for previous 10 years	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Spoke to persons using buildings and land. Never challenged.

*Tenants of Winchester College or Charteroak Estates

Chart of user evidence to show periods of use



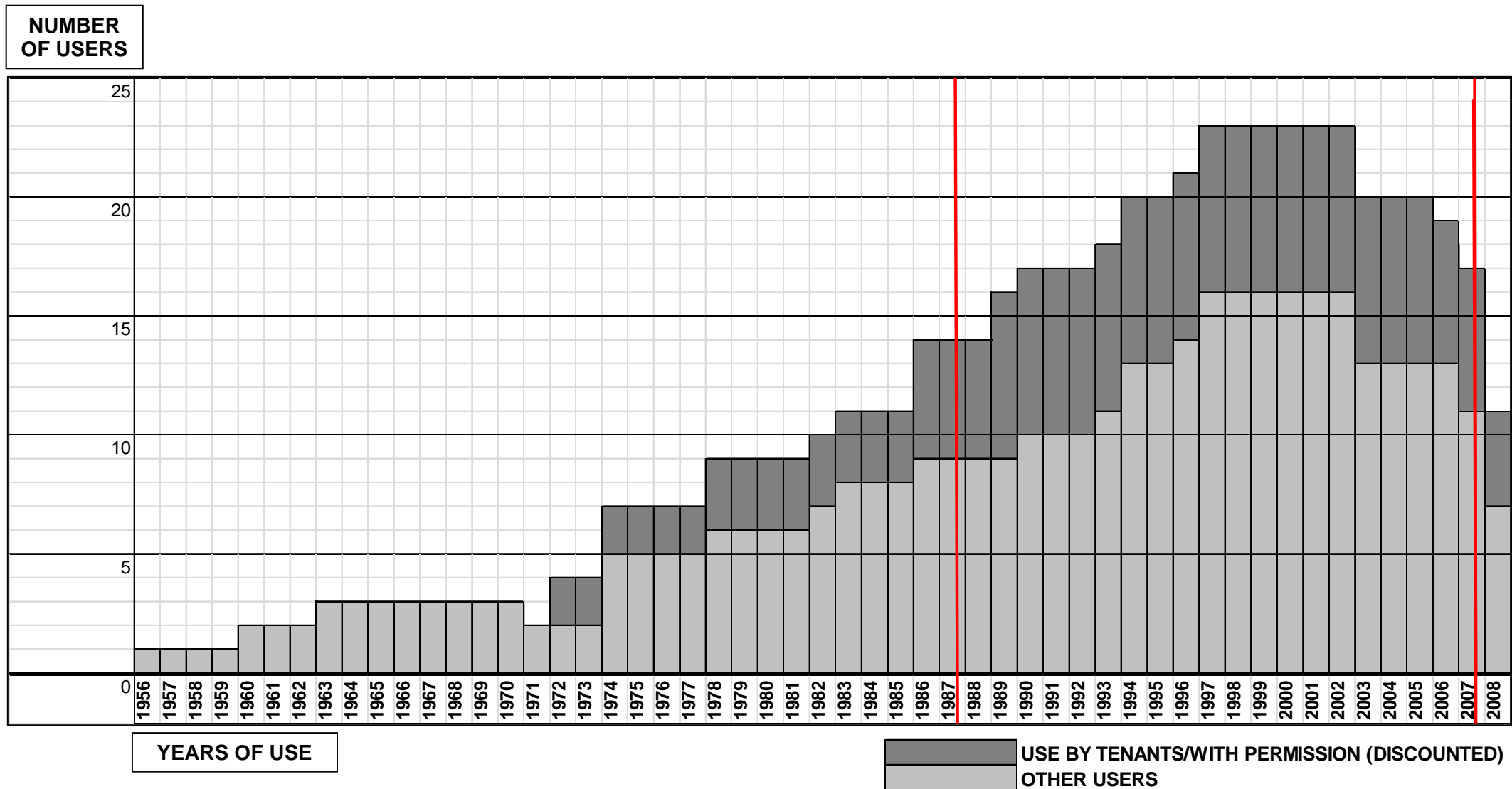
20 YEARS USE PRIOR TO OCT 2007

NOTICES AND LOCKED GATE

YEARS OF USE

USE ON FOOT
USE ON FOOT, WITH BICYCLE AND/OR CAR

Chart to show level of use



WILDLIFE AND COUNTRYSIDE ACT 1981**Definitive Map and Statement Modification Order
Dorset Council (Footpath from East Lane (D20502) to D20503 Public Road East of
Coombe Cottages, Bradford Abbas) Definitive Map and Statement Modification
Order 2017 (“the Order”)****STATEMENT OF DORSET COUNCIL
CONTAINING COMMENTS ON THE OBJECTIONS****Objections to the Order**

There are 20 objections to the Order.

1. Paul Smith objects to the Order on the grounds of desirability stating that the footpath is pointless because it has no destination, no access to wildlife or the countryside and passes through a built-up area.

2. Gloria Smith submitted the same objections as Paul Smith.

3. Shaun Cripps submitted the same objections as Paul and Gloria Smith.

4. Colin and Carol Martin object to the Order on the grounds of insufficient user evidence and the lack of desirability of the route. They state that because use of the footpath has only been by those connected, working, doing business or tenancing the land from the landowners. It provides no purpose or benefit to locals or visitors, and does not connect to any walking routes or public parking. They also do not feel that that due care and attention to the process was given by the Council when considering whether to make an Order and the user evidence was insufficient to support their decision.

5. Philip Brutton objects to the Order on the grounds of desirability stating that the footpath is pointless because it has no destination, no access to wildlife or the countryside and passes through a built up area.

6. Mr Johnstone objects to the Order on the grounds of desirability because the footpath is not necessary, and also because of concerns about privacy and security.

7. Patrick Pearce objects to the Order on the grounds that there is insufficient user evidence to demonstrate a dedication under the Highways Act 1980 and to conclude that footpath rights exist over the claimed route. In addition, the route has no current purpose, and is inconsistent with Articles 1 and 8 of the Human Rights Act 1998 due to the effect on the property owners along the route of the path. The decision to add the claimed route to the definitive map is contrary to the Council's Corporate Plan objectives as set out in the Regulatory Committee Report to the meeting on 12 March 2015. Further, the pre order public consultation was not adequate as it was not sent to all interested parties. Mr Pearce believes that if the claimed route has been in place for 20 years it would now satisfy the provisions of Section 118 of the Highways Act enabling a Public Path Extinguishment Order to be made.

8. Alison Pearce submitted the same objections as Patrick Pearce.

9. Mrs S A Fiddes objects to the Order on the grounds that during her purchase of [REDACTED] the public footpath was not mentioned and queries why it was not raised during the planning process for the site. She also believes that the user evidence is not sufficient and that those using the route were trespassing. Mrs Fiddes also feels that the route serves no purpose and does not benefit the public. She feels the process is wasting time and public money and that it is against her human rights under Article 8 of the Human Rights Act.

10. Chris Fiddes raises the same objections as Mrs S A Fiddes.

11. Mrs S Bracken objects to the Order on the grounds that the documentary evidence does not show the existence of a footpath and that the user evidence is insufficient because previous use of the site was as a dairy and therefore it would be impractical to challenge users of the track, some users were given permission to use the track and the number of witnesses is low with some unwilling to substantiate their claims. She also states that Winchester College, (former owner of part of the track and current owner (in 2017) of another section) does not accept that it is a public right of way and their view should be given weight because of their long involvement with the land. Mrs Bracken also raises safety concerns and suggests an alternative route for the footpath.

12. Susan Jenkin objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order.

13. Neil Jenkin objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order.

14. Paul Howard objects to the Order on the grounds that the user evidence was insufficient to support the Council's decision to make an Order, stating that 7 alleged users over a 20 year period to 2007 is insufficient to demonstrate public rights. The fact that the documentary evidence was deemed insufficient, seems to support the view that user evidence is insufficient.

15. Jane Howard raises the same objections as Paul Howard.

16. Bob Lanzer objects to the Order on the grounds that the documentary evidence is insufficient to demonstrate that public rights exist along the route and that the user evidence by bicycle and car is not considered sufficient to have established higher rights. Mr Lanzer also queries the route being used as a shortcut as the alternative route by road is a similar length. He states (in Oct 2017) that he has owned a lodge at the site since September 2014 and that he has only seen two non-residents (together at the same time) using the route as a footpath. Mr Lanzer feels that the user evidence does not show a high level of interest in the route but the claimed footpath could impact on his quiet enjoyment of his property and that of his neighbours.

17. Alexia Recurt objects to the Order on the grounds that the user evidence is insufficient and that there is no public benefit in having access through Saxon Maybank. The footpath was not revealed in the Local Authority Searches that were carried out before she bought a property in the area in March 2017. Had the footpath been revealed this may have had an impact on the decision to purchase the property.

18. Sarah McDowall objects to the Order on the grounds of desirability stating that the proposed footpath is unnecessary and detrimental to the interest of property owners on the site. She states that the claimed footpath is a longer route than the alternative way via road, the new path would generate foot traffic through a quiet and private site and create a security concern.

19. Jeremy Hurst objects to the Order on the grounds that there is insufficient user evidence to support the footpath claim. He states in October 2017 that he has owned [REDACTED] for nearly a year and never seen anyone attempting to use or look for the footpath.

20. Mr and Mrs Park object to the Order on the grounds of desirability and user evidence. NB Their letter of objection dated 1 October 2017 is not on file.

Comments on objections

Desirability, suitability, purpose and safety of the route

Several of the objections cite matters that relate to the desirability of the claimed route including the suggestion that the footpath is pointless because it has no destination, that it provides no access to wildlife or the countryside and passes through a built-up area, and that the notion that it provides a short cut is not true because there is a route via road that is similar in length.

In accepting the application the Council is not able to consider issues such as desirability, suitability or safety. A Modification Order does not seek to create a right of way, it is the process through which an existing right of way, acquired through presumed dedication or which for one reason or another has never been recorded, is recorded on the Definitive Map and Statement. In recording an 'existing' right of way the legislation does not consider whether it is needed or required, that would be something taken into consideration should an application to divert or delete a right of way was made. With a few exceptions, such as Crown Land, private land is not exempt from any presumption of dedication of a public right of way, the act of trespassing when unchallenged can lead to the acquisition of a right of way over said land.

Privacy and Security / Human Rights

A number of the objectors have concerns about privacy and other issues that relate to the Human Rights Act as the location of the claimed route runs in close proximity to their properties.

The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations. A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

User Evidence

Of the 24 witnesses who provided evidence, it was established that 7 had been given permission to use the route or were tenants of the landowner so their evidence was not used in determining the application. The remaining 17 witnesses were deemed to have used the route 'as of right'. There is no legal definition as to the minimum number of users required only that the use must be by the public. Each case is determined on its own merit and in this instance the rural location of the route has implications for the number of witnesses that is considered sufficient.

Dorset Council considers that the user evidence sufficient to satisfy the legal requirements. There is no legal definition as to the minimum number of users required to

satisfy an application only that the use must be by the public. Each case is determined on its own merit and in this case, bearing in mind its rural location, the number of witnesses is regarded as sufficient to satisfy the requirement of use 'as of right' by the public.

Documentary Evidence

Documentary evidence is not a pre-requisite for a successful application, nor is user evidence as an application can be successful based on either or a combination of both. Whether it is or was impractical to challenge users of the way, if public use went unchallenged then such use would have been 'as of right', without force, secrecy or permission. If the owner felt it impractical to challenge users there are other means by which they could have prevented the accrual of public rights. For example, the erection of notices or the deposit of a statutory declaration, however no evidence of such action was discovered or submitted during the investigation.

Local Authority Searches / Planning Permission

Prior to July 2016 the ongoing DMMO application would not have been revealed in a Land Charge search unless the question was specifically asked. Since July 2016 the question regarding public rights of way became compulsory in Land Charge searches, however some solicitors use personal search companies, who may not reveal the existence of a DMMO.

1. The objection from Paul Smith solely relates to desirability which is dealt with in the paragraph above.
2. Comments on objection from Gloria Smith - See comments on objection from Paul Smith (1) above.
3. Comments on objection from Shaun Cripps - See comments on objection from Paul Smith (1) above.
4. The objection from Colin and Carol Martin concerns desirability and user evidence which are dealt with in the paragraphs above.
5. The objection from Philip Brutton solely relates to desirability which is dealt with in the paragraph above.
6. The objection from Mr Johnstone solely relates to desirability which is dealt with in the paragraph above.
7. The objection from Mr Pearce raises a number of issues including user evidence, desirability of the route and matters relating to the Human Rights Act all of which are dealt with in the paragraphs above.

Regarding the Council's Corporate objective, as the processing of Modification Orders is a legal 'statutory' requirement their investigation does not have to comply with all or any of the Council's Corporate objectives. However, those objectives that their investigation may be relevant to are generally related to Enabling Economic Growth and Health, Wellbeing and Safeguarding.

Concerning the consultation exercise, the Council made every effort to contact all owners and occupiers, when it became apparent that contacting the occupiers/owners of the individual properties was presenting difficulties, the contact details of the owners were requested from Charteroak. Charteroak would not provide these details and therefore details of the application addressed to each property were provided to Charteroak with the request that they be forwarded to the individuals concerned, and at no time have we been informed that this had not been completed. In addition notices had been placed on site and the Order was advertised within a local

newspaper. It is therefore believed that all of the occupiers are aware of the Order and have been given the opportunity to respond.

With respect to the suggestion that the route could be extinguished, this is not something that can be taken into consideration when determining the application.

8. Comments on objection from Alison Pearce - See comments on objection from Patrick Pearce above.

9. The objection from Mrs S A Fiddes raises matters concerning Local Authority Searches / Planning permission, user evidence, desirability and the Human Rights Act which are all dealt with in the paragraphs above.

10. Comments on objection from Mr C Fiddes - See comments on objection from Mrs S A Fiddes above.

11. The objection from Mrs S Bracken raises a number of issues. Her comments about documentary evidence and user evidence are dealt with in the paragraph above. With regard to Winchester College's objection, it is not unusual for affected landowners to object to an Order to add a public right of way on their land. However, after consideration of the arguments Winchester College (landowner of part of the route at the time the Order was made) subsequently withdrew their objection. The alternative route proposed by Mrs Bracken is not something that can be taken into consideration with regard to the proposed modification.

12. The objection from Susan Jenkin raises the issue of user evidence which is dealt with in the paragraph above.

13. Comments on objection from Neil Jenkin - See comments on objection from Susan Jenkin above.

14. The objection from Paul Howard discusses user and documentary evidence which are dealt with in the paragraphs above.

15. Comments on objection from Jane Howard - See comments on objection from Paul Howard above.

16. The objection from Bob Lanzer covers user and documentary evidence, the desirability of the route and its effect on his privacy all of which are dealt with in the paragraphs above.

17. The objection from Ms Recurt raises the issue of user evidence, desirability of the route and Local Authority Searches which are dealt with in the paragraphs above. With particular regard to Ms Recurt's property purchase, Ms Recurt has provided a copy of the search that was undertaken when she bought the property. It has been clarified that the questions relating to public rights of way were correctly answered, i.e. the relevant question "Are there any pending applications to record a public right of way that abuts, or crosses the property, on a definitive map or revised definitive map?" was answered "none" which was correct because the application route does not abut Ms Recurt's property as there is a parcel of land in between the claimed footpath and Mr Recurt's property.

18. The objection from Sarah McDowall raises issues concerning the desirability of the route and matters relating to security and privacy. These are dealt with in the paragraphs above.

19. The objection from Jeremy Hurst raises the issue of user evidence which is dealt with

in the paragraph above.

20. The objection from Mr and Mrs Park raise the issues of desirability and user evidence which are dealt with in the paragraphs above.