

Wildlife and Countryside Act 1981 Section 53

Dorset Council: upgrading of BR9 Winfrith Newburgh and part of BR5 Coombe Keynes
(Claypits Lane) DMMO 2011

Dorset Council reference T368

STATEMENT OF CASE**for the Objectors**

Lulworth Estate Trustees Ltd & Weld Estate Trustees Ltd

Background

1. Dorset Council ("DC") have made an Order to which the Objectors have objected. The confirmation of the Order is now to be decided, on the balance of probabilities. It is agreed that the WR procedure will be adopted.

Nature of the Order

2. The Order is for a cul-de-sac restricted byway ("RB"). The Order Route begins at the east end of the extent of UCR known as Claypits Lane (this will either be point A or point B on the Order Plan depending on exactly where the UCR ends). It extends eastwards from A/B to the beginning of Coombe Wood at point F. The route as far as E is within Winfrith parish; the E – F stretch is within Coombe Keynes parish.

Claypits Lane

3. The name Claypits Lane was only applied by the Ordnance Survey to the first section leading up to point B on the Order plan. That stretch is a UCR, i.e. an unclassified county road and publicly maintainable, but only serving Claypits Farm and the clay pits themselves, and then stopping. The original clay pits are clearly shown on the 1768 Sparrow map. The eastern extremity of the county road is shown on the provisional definitive map of 1964 and helpfully arrowed (Appendix 5/appendix 2/page 33 of DC's bundle). There is no necessary presumption in law that a UCR carries public vehicular status: it depends on assessment of all the available evidence. See Carter letter (**attachment 1**); but we do know that that short western stretch is the only part of the Order Route which is adopted.

4. East of Claypits Lane, i.e from A/B eastwards, it is a public bridleway ("BR"). Were it not for the Winfrith Newburgh Inclosure evidence, there is no significant evidence pointing to public vehicular status, especially in view of the Finance Act 1910 inclusion.

Inclosure

5. There were awards for both Winfrith Newburgh ("WN") and Coombe Keynes ("CK") parishes, each with its own enabling Act, but DC have made no reference in their Statement of Case to the CK Award. The CK Award and its enabling Act merit careful study especially since the Order Route between points E and F is within CK parish and therefore governed by the CK Act and Award.

CK Inclosure

6. The Inclosure **Act** for CK (dating from just before 1761 the year of the Award) needs to be looked at. On pages 8 and 9 of the Act (there were no section numbers) there were set out the powers of the CK Inclosure Commissioners as follows:

"...Commissioners....shall and may set out, direct, and appoint, all such public and private rights, ways, passages, and watercourses, in, upon, or by, through, or over, any of the said commons, common heaths and waste grounds, or the Inclosures to be made thereof, or in or upon the same, as they shall think convenient (so as that all such public roads shall be 40ft broad between the ditches or fences)" [There followed further wording about ditches, sewers, bridges, gates and stiles, and their repair and maintenance] *"and that such allotments, directions and appointments, so to be made in relation to such fences, inclosures, roads, ways, passages, watercourses, ditches, sewers, bridges, gates, and stiles shall be inserted and sufficiently described and set forth in the said award or instrument so to be executed by the said Commissioners....And that all such allotments directions and appointments so to be made as aforesaid shall be binding to all and every person or persons whomsoever....And that after the setting out, directing, and appointing, such roads and ways as aforesaid, it shall not be lawful for any person or persons to use any other roads or way, either public or private, by through or over the said new Inclosures either on foot or with horses, carts, or carriages, and that all former roads and ways which shall not be set out directed or appointed as the roads or ways by through or over the said new Inclosures shall be deemed part of the lands to be divided and inclosed and shall be divided and allotted accordingly".*

A photograph of pages 8 and 9 of the CK Act is attached (**attachment 2**)

7. The CK **Award** (1761) then, and in accordance with those statutory powers in the CK Act, set out four public roads, each of which would be and remain 40ft wide and be repaired by the parish, namely the roads from CK to Povington, Wareham & Stoke, Wool, and West Lulworth. There is no reference to or mention of any road connecting with the Winfrith Newburgh Parish. We have checked each of those roads and none of them applies to E – F of the Order Route (or to any putative extension eastwards from F). They go south to Povington near Tyneham, north-east to Wareham & Stoke, north to Wool, and south-west to west Lulworth. A photograph of the extract from the CK Award dealing with the Publick Roads is set out at **attachment 3**.

8. The CK Award 1761 came ten years before the WN Award. Whether or not the WN Commissioners knew the details of the CK Award when they started the WN Inclosure process, they surely will have become aware by the time they published their own Award. If the WN Award had originally intended to set out a route connecting to CK, they will have had to reduce that aspiration significantly when they finalised their Award. It can be seen on inspection of the manner in which the 5th Road was written that the word "Wood" was super-imposed later, in darker ink, as if to suggest that even if, by virtue of the CK Award, you could not get through to CK village, at least you could get to the beginning of the Wood, hence point F being placed there to mark the eastern extent of the Order Route. But even that is wrong: the Order Route cannot have gone further east than E because that is where it would enter CK parish, in which no route had been appointed, and in which parish the use of an unappointed route would, according to the CK Inclosure Act, have been unlawful.

9. Thus, it is improbable that the WN Commissioners intended to, and actually did, set out and appoint a public carriageway from the Crown Inn Winfrith all the way to the beginning of Coombe Wood.

WN Inclosure

10. The WN Inclosure **Act** of 1768 provided that the Commissioners

"shall and may set out and appoint public and private highways through the said common fields, meadow grounds, sheep downs, commons, common heaths, and other waste grounds hereby intended to be divided and enclosed, and also private horse and carriageways to any allotments to be made by virtue of this Act, or to any old inclosures lying and being within the said parish of Winfrith Newburgh of such size and breadth and to any and for such uses and purposes as the said Commissioners in and by their Award shall Order and appoint; and all such public highways shall be set out and remain 60ft broad at the least between the ditches or fences (except bridle ways and foot ways); and that it shall not be lawful for any person or persons, after the execution of the said Award, to use or claim the use of any highway, either old or new, public or private, over, within, or through the lands and grounds hereby intended to be divided and enclosed, or any part thereof, either on foot or with horses, cattle, or carriages, or otherwise, other than such highways as shall be so ascertained, set out, and appointed by the said Commissioners; and that all former highways or so much thereof as shall not be set out and appointed as highways shall be deemed part of the lands to be divided and enclosed by this Act; and that all public highways and bridleways which shall be set out and appointed by the said Commissioners shall forever hereafter be maintained and kept in repair in the same manner as the respective public highways and bridleways in the said parish of Winfrith Newburgh are or ought to be repaired by law...."

A full copy of the WN Act is contained in DC Document Reference 7 appendix A.

11. The powers set out in this Act clearly only related to the parish of Winfrith Newburgh. No power was given to the Commissioners to award land or roads in any other parish.

WN Inclosure Award 1771

12. The WN Inclosure Award 1771: this provided for one new intended road and five others set out beneath it. The new intended road (which may or may not have been Winfrith Drove) was described in detail and stated to have the required statutory width of 60ft, and to be of an acreage of 13.65 acres approximately. The list setting out the five other roads, which appeared just after that new intended road, describes each of the five roads and at the end of each description has the words *"The same as hitherto"*.

13. It is not clear what those words *"The same as hitherto"* were intended to mean. DC argue that they effectively meant "as above" i.e. that all those roads had widths of 60ft and were of 13.65 acres in size. That is not a realistic argument.

14. We cannot tell at this stage exactly what the Inclosure Commissioners of WN intended by those words. This case is only about the fifth and final road in that list namely *"The road leading from the parish to Coombe Wood from the Crown Inn thro' Clay Street"*. The Objectors assert that that description relates to a route which went towards Coombe Wood, but didn't reach the Wood. It cannot have gone beyond E, as just mentioned. More likely the 5th Road actually extended from the Crown Inn WN in the west to Clay Street in the east. At the east end of what is now Claypits Farm, between points A and B on the Order Plan, the old maps mark *"Clay Pits"*. Those clay pits would have been a place of public resort, which explains why the current UCR stretch, from School Lane as far as point A/B on the Order Plan, is demonstrably and significantly wider than everything eastwards from point B to F.

15. That route starting at School Lane and going eastwards might be said to have been going towards Coombe Wood, but surely the parish of WN would not have wanted to pay for the repair and maintenance of the extra length of the route beyond the Clay Pits, if it was not serving any public purpose.

16. Nor would they have wanted to be lumbered with repair and maintenance of a route within the parish of CK. Further, there was no power for the WN Commissioners to award roads in other parishes. That is why the most probable interpretation of this is that the WN Commissioners, although describing a route which led towards another parish, and bearing in mind that they only had statutory power to award roads in WN parish, were only appointing as a public carriageway the stretch at the western end.

17. It is thus the Objectors' case that the 5th road awarded in the WN Award was not all of the route continuing eastwards but only the part at the western end which is still publicly maintained today. There was some purpose in public vehicular rights being needed to get to the clay pits, and stopping there, but no purpose in stopping at the parish boundary. No doubt the route continued east from the clay pits, but only as a bridleway, hence the length of the Order Route east of point A/B is demonstrably narrower than the adopted section of Claypits Lane in the west.

The two Sparrow maps

18. These two maps, and their accompanying survey schedules, make the eventual position clearer. The 1768 one is a survey of all the Weld Estate lands set out in 15 map sheets, plus a detailed survey book. The map shows the position before the WN Award, and actually the position before the CK Award too (which had already been done seven years earlier, but which appears not to have been taken account of by Mr Sparrow), as it (map sheet IV) shows as "*Road from Winfrith into Coomb Wood etc*", which then continues through the Wood and out on the east side of it to the public road.

19. On map sheet I is the "*Explanation*". It sets out the Roads Retained and Roads Rejected. Several questions arise from those two designations. One wonders who it was who had the power of decision as to which to retain and which to reject. This was all private Weld Estate land, so was this categorisation signifying the owners' own intentions? It was pre-Inclosure so it was not reflecting the Commissioners' intentions. In reality it is not easy to differentiate on the face of the map between Roads Rejected and footpaths as both were to be shown in single-pecked lines. For present purposes, the Order Route was shown, as a double-pecked route, going east to E and then continuing on a little way but with no destination sign.

20. The 1771 map, contained in book form, shows the position post-Inclosure. Pages 11 and 12 show the map of Winfrith and the Schedule describing the parcel numbers. The map (page 11) shows the route in WN as a double-dotted route, separate from parcel 8, but forming part of parcels 12, 11, and 1, unfenced on the south side. Parcel 8 is at the western end, and on the south side of the lane through Clay Pits Farm. 12 is immediately adjoining parcel 8. 11 and 1 are the fields through which the route runs between points D and E. The Schedule on page 12 mentions only one road (that is the new road); our Order Route – alleged to be a public carriageway – ran through fields 12, 11, and 1, but with no mention of the route.

21. The Schedule shows that parcel 1 was known as the West Field, 11 being land of Peter Norris, and 12 the land of Edward Berkeley. Roads were listed separately.

22. Then, on page 25 of the survey book, is the map showing the western edge of CK parish and Coomb Wood. See the extract below showing a copy of that plan, and a further extract showing it in closer detail.



23. This is of central importance. By the CK Award of 1761, the route from E to F, and on through Coombe Wood, was not set out; thus this map shown above reveals no route entering CK parish from the west. The point where it would have entered it, at

point E, is at the north-western corner of the field known as Twenty-Five Acres. Point F will have been the north-eastern corner of that field. Had there been a route set out, it would have run along the inside of the northern boundary of that field, but the 1771 map shows no route. By way of contrast, the accommodation track **is** shown, linking Eighteen Acres to Barn Close, but there is no showing of the E – F stretch or of the continuation of the route east and south-east from F.

24. The contrast is readily apparent between the respective showings on the 1768 and 1771 maps. In the earlier one, there was shown the destination sign approaching point E from the west "Road from Winfrith into Coomb Wood etc". By stark contrast, there was on the later map no such indication and no route at all.

25. Coombe Wood is numbered in red 11. The survey shows parcel 11 as "Woods in hand: Coombe Wood. 108a 2r 35p". There is no mention of a public carriageway through the Wood and no showing of one on the map.

26. The clear conclusion of this is that, after Inclosure, the 5th Road in Winfrith cannot have gone further east than E, even if it ever reached E. Thus it was a cul-de-sac ending at a point of no public resort. If ever it had been a public carriageway east of the clay pits, it was cut off by the effect of the CK Award, and rendered a nugatory and purposeless cul-de-sac.

Highway drainage

27. The western end of the route, where it runs past Claypits Farm buildings to the clay pits, lies at a lower level than the land further east, and thus would have been prone to highway drainage issues, which would explain the one and only reference to highway maintenance which DC have come up with in this case (see the Highway Board Minute in appendix 11 on page 77). DC do not explain which part of the route that drain and ditch issue arose but by far the most probable place is the lowest level namely in the western end near point A/B. That is in the currently adopted road section. The following further evidence reinforces that point.

28. In the aerial photograph (**attachment 4**) there will be seen a red line which depicts approximately the direction of waterflow from the top of the hill down towards the eastern end of Claypits Farm, following the contours of that land. The blue line indicates where (approximately) there has historically been washout along the field edge. The red line and the blue line are necessarily approximate but, at or near the point where the two lines cross, they mark an obvious reason why, if there were to be any drainage issue, it would occur in the western end of the Order Route in the A – B area of it. A further point is that just to the north of Clay Pits Farm there is a reservoir, and a pond on the corner. In addition, the name attached to the property to the north-west of Claypits Farm is Rushpond. That area of Claypits Farm has always been notoriously low-lying and therefore in need of drainage, which is why we are confident in saying that the drainage issue reported to the Highway Board in 1896 is much more likely to be in that western stretch than anywhere else on the Order Route.

Repair and maintenance provisions

29. In the WN Act it was provided that all public highways and bridleways "shall forever thereafter be maintained and kept in repair in the same manner as the respective public highways and bridleways in the said parish of Winfrith Newburgh are or ought to be repaired by law". In the WN Award it was said in respect of all the five public roads listed that they were "to be maintained and kept in repair by the parishioners of Winfrith as the old roads were"; but surely the Winfrith parishioners were not encumbered with a duty to repair anything outside their own parish. Given the lack of evidence of any repair whatever of this Order Route (save in relation to highway

drainage just mentioned) the most probable explanation is that the 5th Road was going to be repaired by the Winfrith parishioners but only in the western section. In the CK Award set out four public roads as listed and specified that each of the four was to be repaired by the parish.

Minimum statutory width

30. The minimum width for public roads in CK parish was said in the CK Inclosure Act to be 40ft, but under the WN Inclosure were to be 60ft. In their Comments on our Letter of Objection of July 2011, DC (at Document Reference 7) make interesting points on the question of the 60ft width. The WN Commissioners were obliged by statute to set out public highways "*which shall be and remain 60ft broad at the least between ditches or fences (except bridle ways and foot ways)*". The question is what the WN Award actually provided about width (which we have discussed at paras 12 and 13 above). In their para 2.2.3 of the Comments, DC submit that the WN Act "*specifically states that all public roads shall be awarded at a breadth of 60ft except for bridle ways and foot ways. The road is awarded under the public road section with a breadth of 60ft which clearly demonstrates the Commissioners' intention to record the road, and by virtue the route, as a public vehicular highway*".

31. The difficulty for DC, in advancing that argument, is that the Order Route has never been anything like 60ft in width. It has been relatively wide in its western end, which is the adopted section as mentioned, but everything east of point B has been significantly narrower than that. This obvious contrast in widths helps to highlight the point that the Commissioners were intending to set out only the first stretch and not the rest, i.e. the stretch from School Lane to the Clay Pits. The rest of the Order Route east of point B, having been significantly narrower than 60ft, would have been a bridleway, which is what it is now, and which we assert it always was.

32. The difficulty for DC's interpretation is that, because the stretch of the Order Route east of point B was not and is not and can never have been 60ft wide or anything like it, it will not have been lawful to use it otherwise than as a BR or FP. It is because of that, that DC came up with the idea that "the same as hitherto" meant "as above", because that was the only way of escaping the unlawfulness point.

33. The WN Inclosure Act, in providing that all the public highways had to be and remain at 60ft broad at the least, also specified that that measurement had to be taken between the ditches or fences, unless it was a BR or FP. Clearly it will have been easy to have measured the western end from School Lane to point B, because it ran between fences or ditches. However, as the lane goes eastwards from point C, it is an open and unfenced track across the down with no ditches or fences to measure by. Between point D and just west of point E, there is a boundary feature along the north side but not on the south side, but still difficult to gauge whether or not that open route east of C was statutorily compliant as to width. In any case, it is apparent to the eye that east of B/C it never was or could have been anything like 60ft wide; but that wouldn't matter if it was only a BR.

34. East of E, the route is not in WN parish at all so the WN Commissioners could not have awarded that stretch as a public carriageway; that difficulty is compounded by the fact that we know from the CK Inclosure that there was no public highway in that stretch of CK parish and that it would have been unlawful to use it.

Cul-de-sac authorities

35. The leading textbook on Highway Law is Sauvain. In the 5th edition para 1-22 the following is said on the need for a terminus ad quem "*the existence of a public right of passage across land implies some reason for the public to exercise the right of way*".

Then in para 1-23 he says "*However, there is certainly no rule of law that a cul-de-sac may not be a highway, whether it be in a town or in the country. It has long been accepted that roads leading to a river, to the sea, or to a public beauty spot, may be highways. Essentially the existence of a public terminus is an important element in the evidence to prove a highway*". Sauvain then quotes from *Moser v Ambleside UDC*

'One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects to other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort you wish to see you have to return on your tracks by the same highway'.

Where no obvious reason for public use of a cul-de-sac appears, then other evidence (for example, of repair) will assume greater importance in establishing that the road is a highway".

This route (the 5th Road in the WN Inclosure Award) is said to lead from the parish to Coombe Wood. It is the literal following of that description which has led to the present Order. If this route really was a public carriageway, there is no apparent reason why it should go to Coombe Wood and stop. Coombe Wood was a private wood with (according to the CK Inclosure) no public road leading out of it into WN parish. Access to the wood with vehicles is much more probable as a private route for farm/forestry purposes. There is no rational basis for a public carriageway to go there and stop.

36. As Sauvain says, where no obvious reason for public use of a cul-de-sac appears then other evidence, for example of repair, will assume greater importance in establishing highway or in this case carriageway status. We believe there is no evidence of repair of that eastern stretch of this Order Route, and until the 1980s no evidence of any public use at all (and even then only a small amount of sporadic motorbike).

37. This is further reason why we argue that the public carriageway status in this Order Route was and is limited to the adopted section at the west end, the purpose of it historically having been access to the Clay Pits.

38. There is also reference to cul-de-sacs in Sydenham 4th edition Public Rights of Way and Access to Land para 7.6 "*When considering evidence as to the existence of a highway, a cul-de-sac without purpose may indicate that no public right of way exists. In Roberts v Webster, Widgery J said 'The authorities clearly show that there is no rule of law which compels a conclusion that a country cul-de-sac can never be a highway...however if there is some kind of attraction at the far end which might cause the public to wish to use the road, it is clear that may be sufficient to justify the conclusion that a public highway was created'*".

39. Once again, it is our case that for the public to have vehicular access to the western edge of Coombe Wood but no further does not suggest that it was a public carriageway at all beyond the end of the adopted section.

Conclusion on the Inclosure evidence

40. For the reasons stated above, the combination of the WN and CK Acts and Awards, when viewed together, results in the most probable explanation being that the fifth and final route in the public roads section of the WN Award related only to the western end, where it had some purpose. There was no purpose in the 5th Road continuing beyond the clay pits to point E; and it couldn't have been appointed east of E as that was CK parish, and no public roads existed on E – F.

41. In the WN Act it provided that a public BR need not be of the minimum 60ft width. The route between the clay pits and E was self-evidently of insufficient width to satisfy the 60' statutory requirement, which is why it remains a BR. The Act referred to public highways and bridleways. Many Awards set out public carriageways, but this Award set out public roads. We make this point on the basis that a road encompasses any type of road whether or not vehicular. DC have interpreted "public road" as inevitably carrying public vehicular rights, i.e. as a public carriageway, but we assert that that interpretation is too wide: it can still be a public road even if it was a public bridleway.

42. For all these reasons, the Objectors assert that the combination of the two Acts and Awards is not sufficient to justify confirmation of the restricted byway Order.

Other evidence

Tithe evidence

43. It was not the purpose of the tithe map process to determine status of routes. The WN tithe map shows, again, the western end from School Lane up to the gate at point B as a double-sided route. East of B, the route is braced into the fields it passes through and/or shown fenced only on one side and forming part of the fields on the southern side. The brown colouring is not necessarily indicative of status (the farm track northwards to Newburgh Farm is also coloured). The CK tithe map shows that the route was privately owned and occupied, and that it was a drove (rough pasture). There is a large number of gates across the route in both parishes. Public carriageways are capable in principle of being gated, but to have a large number of gates across the route in a relatively short length in this way is much more probable to have been consistent with a BR or FP. This impression is added to by the route either forming part of the fields it passes through and/or being a rough-pasture drove: not impossible to have been a public carriageway but highly improbable.

Old map evidence

44. There is much evidence in the maps exhibited of the **existence** of this route, which is not surprising. It is an old BR. References to the word "road" are not surprising: roads come in all types, some public, some private, some vehicular, some not. The *Greenwood* map for instance, is well known to show private routes as well as public ones (indeed, in Mr Greenwood's own prospectus, he asserted that his map showed private routes as well as public); and the reference to a cross road does not necessitate it being public at all, let alone public vehicular. A cross road was every route of any type which was not a turnpike. The use of directional signs, pointing to another parish, is an indication that a route of sorts existed in that direction, but not its status, though we know that it was a BR. What is in doubt is whether the Order Route ever became public vehicular. The Objectors argue strongly that it did not, save of course at the western end.

Wareham Highway Board

45. There is only one short reference adduced by DC in their Statement of Case, concerning a complaint to the Highway Board by WN parish council. This was a road drainage issue, and almost certainly arose in the adopted road section at the west end of this Order Route. We dealt with the point above (paras 27 & 28). If this Order Route really had been public vehicular, you would have expected there to be more maintenance records than that.

Object Names Book

46. The Object Names Book evidence would, if it were available, reveal the OS description of the Order Route (or at least the west end of it which had the name imposed on it). That book evidence provides a detailed description of every place name which is imposed upon the map. In this case we have the words Claypits Lane printed by the OS on their 2nd edition map and placed equidistant between School Lane in the west and the gate at point B in the east. The positioning of those words reveals that the OS believed that Claypits Lane only extended along the adopted section, because of course it led to the clay pits. Sadly, thus far we have been unable to find any ONB evidence in this case.

Finance Act 1910 Map

47. This is usually a source of evidence strongly relied upon by those claiming public vehicular status. If the route were to be shown excluded from the hereditament, the colourwash delineating the hereditament boundary would have been broken to show the route passing through the land but not part of it. Parallel lines would have been drawn along either side of that excluded route, just as in this case the extent of Claypits Lane was shown excluded. That is a helpful contrast with the rest of the route eastwards which is included. Being shown excluded is normally (but not necessarily) indicative of public vehicular status, coupled with lack of ownership. Here, we have evidence of long-standing private ownership in the Weld family, in both parishes, and unbroken colourwash at every hereditament boundary east of point B. That is a strong indication that no public vehicular status existed on this route at the time that the valuation and map were prepared in 1910. No doubt, there are some claimed deductions for "rights of way"; that is no surprise, as there are several existing FPs crossing these hereditaments, and the route itself is a BR.

Parish claim in WN

48. DC have helpfully set out the convoluted development of designation of this route between 1951 and 1973, the key points of which are as follows.

49. The usual procedure under the 1949 Act was for the parish to prepare their survey plan and cards, setting out what routes were claimed, and to specify the status of them. That survey would (once approved in parish meeting) be sent in, and eventually the county would begin the definitive map preparation process. It would be unusual for the county to intrude into the process of specifying the status of a route.

50. However that is what has happened in the present case. The county wrote to WN parish council in December 1954 to inform them that they had added CRB to the WN parish survey "for continuity purposes". This was going to apply "from the county road south of Rushpond eastwards to the Coombe Keynes parish boundary. *This CRB is known as Claypit Lane **and was erroneously assumed to be a county road***". Note that the officer was only referring to the stretch eastwards as far as point E, being the Coombe Keynes parish boundary.

51. Several questions arise here. The use of the expression CRB tended to be applied with some variation of understanding. CRB has often been used to describe a farm track used by farm vehicles which was also a BR. That is essentially what the present use is on the Order Route. Theoretically the definition of CRB was public carriageway used as a BR, but in reality the vehicular use which gave rise to the CRB designation was often not public but private farm use. This whole process of designation caused much confusion (as confirmed for example in the Sub-Committee recommendation: see DC Statement of Case para 7.32).

52. When the county added CRB to this route in 1954, they made two written comments. One was "*for continuity purposes*". Continuity of what, one wonders. It cannot be assumed that he meant continuity of public vehicular status as a through route; there is no evidence of that. The second comment was "*fit for vehicular traffic*". No doubt it was fit for vehicular traffic in its western stretch, and may have been in the rest up to point E, but the vehicular traffic will have been private, farm use. The officer will have had no evidence before him of public vehicular use.

53. What did the officer mean when he said "*erroneously assumed to be a county road*"? Did he mean in terms of use or maintenance status? There was no evidence in the 1950s of public vehicular use, and no evidence at all of public maintenance (we deal above with the 1896 drainage issue). We know that the first stretch, from Rushpond to the clay pits was historically, and still is, adopted. But the rest of the Order Route from A/B to F is not, and never has been. Thus the officer was correct in saying that it would have been erroneous to describe the Order Route as a county road, save obviously for the first stretch. Yet he confused the issue by imposing the CRB designation.

54. Eventually, understanding was reached when in 1964 the provisional map confirmed that the western end was a county road and the rest BR. This was the map with the helpful pencil indication of the extent of the county road in the western stretch.

55. Unfortunately, that clarity was then clouded by the letter to the Ramblers Association (we presume it was written by Dorset County Council, but no copy of it has been adduced). The letter is referred to in DC's Statement of Case para 7.34, which said (correctly) that the western end was maintained as a county road and the rest were bridleways but then said that the bridleways "*used to be county roads*". This is the issue. We dispute that this Order Route east of the western section was ever a county road. The officer in 1954 had correctly used the word "*erroneously*" when referring to the assumption of county road status. There was no public maintenance evidence or public vehicular use evidence. The only conceivable basis for the county road suggestion on B-F was the WN Inclosure evidence, which we have dealt with at length above.

56. In November 1973 the Special Review Committee concluded: "*retain as BR – public vehicular rights not shown to exist*".

57. The definitive map now shows BR status between A and F.

Parish Claim in CK

58. DC do not make reference to this in their Statement of Case, but there are in their documents (at pages 31 & 32) copy extracts from the survey plan and the survey sheet for path 4.

59. The copy survey plan shows a route numbered iv and marked in crayon CRB. Again, we make the point that there was much variation in the application of the terms CRB & CRF. The "C" letter by no means necessarily was always used to signify a public, as opposed to a private, cartway.

60. This point is reinforced on page 32 in the CK survey sheet. The route is described not only as being "*poor through Coombe Wood*" but crucially that it was under plough at its western end. The western end is between points E and F on the Order Plan. A ploughed surface is not conducive to BR use, let alone vehicular use.

61. The definitive map for Coombe Keynes shows the route as being BR 5, with part of the path closed.

Deposits

62. DC state that landowner statements were lodged by the Objectors in 1990 and in 2005, but they cannot trace a declaration having been lodged in either case. If it is the case that no declaration was lodged in support of either or both of those landowner statements, the two statements will nonetheless have had the effect of bringing into question the public right.

User Evidence

63. There is very little evidence of any use of the Order Route by members of the public with vehicles. What evidence there is is limited to a group of six motorcyclists who claim to have used the route sporadically between 1986 and 2006. It was not until 1990 that there were even as many as four users. The bar chart shows that in the years 1996 and 1997 there were five users, and again between 2003 and 2006 there were five users but in the other years fewer than that. The six evidence forms show that the frequency of use was low.

64. This cannot be said to be sufficient use to constitute use by the general public. The public use must be at a level which, when viewed objectively, would bring home to a landowner that a continuous right to enjoyment was being asserted and ought to be resisted (*Hollins v Verney*). The number of users must be such as would have been expected if the way had unquestionably been a public highway (*Mann v Brodie*).

65. The Objectors assert strongly that the user evidence in this case is insufficient, whether by statute or common law.

SUMMARY AND CONCLUSIONS

66. This case hangs principally on the true meaning and effect of the WN Inclosure process. The WN Award (and its Act) is to be interpreted in the light of all other relevant evidence, including specifically the Act and Award for the CK parish.

67. The remainder of the evidence on its own is not, on the balance, sufficient to prove public vehicular status. Thus, unless the Inclosure evidence as a whole points clearly to a public carriageway having been appointed on the whole of this Order Route, the case for confirmation of the Order must surely fail.

68. Everything hangs on the true intent and effect of the 5th Road. The fifth was different from the first four, which is why it was put at the end of the list. The first four were routes which went from the parish to a town or other settlement (Dorchester, Weymouth, Wareham, Wool and so on). The parish appointed so much of each of those routes as was in WN, but thereafter the routes went on to their respective destinations.

69. The difference with the 5th is that it was only part of a route. The route as a whole went from the parish in the direction of Coombe Wood, but the key lies in the sub-details of the description of the 5th Road "*from the Crown Inn thro' Clay Street*". That means along the length of Clay Street and stopping at the end of it. The word "*through*" is now only used in this sense in American vernacular – it means "*through to the end of*" rather than "*via*" - but there is no reason to believe it meant anything different from that in 1771.

70. Clay Street was what the OS called Clay Pits Lane, from School Lane to the clay pits at A/B.

71. If you took DC's argument, it would be a public carriageway all the way to point F, the beginning of Coombe Wood. But we know that the E-F stretch could not have

been appointed by WN (a) as it was in CK parish and (b) as CK had already done their own Award ten years earlier showing that E – F was not a public road and that it would be unlawful to use it.

72. The non-setting out in the CK Award of any public carriageway, other than those listed in that Award, dealt a blow to the Order Route, a blow which was arguably terminal, and which ensured that the route from A/B to the parish boundary at E was a purposeless cul-de-sac, leading to no place of public resort, and demonstrably less than the minimum statutory width.

73. If you factor that in, you realise that it must have meant "*through to the end of Clay Street*". DC misunderstood this and applied too literal an interpretation of the 5th Road, and did not bear in mind the CK Act and Award.

74. DC also misinterpreted the expression "*same as hitherto*" as meaning "as above". It cannot have meant that all those first four roads must have been not only of the same width but also of the same acreage as the new intended road.

75. The WK Commissioners may have misinterpreted their own Act – which stated that all routes had to be 60ft at the least – interpreting it in such a way that that minimum width only applied to new intended routes, and that existing roads would carry on as before.

76. DC, in their attempts to enforce the Act and Award, had to find a way of proving the 60ft width, by their interpretation of "*same as hitherto*", which self-evidently must have been wrong.

77. The width of the route from the Crown Inn to the east end of Clay Street may or may not have been 60ft wide measured between the respective boundary features, but what is completely clear is that that stretch up to point A/B on the Order plan is demonstrably and significantly wider than everything to the east, i.e. the whole of the Order Route. The BR as it climbs the hill away from the site of the old clay pits runs across the down without any ditching or fencing to take a measurement from. Virtually the whole of the Order Route is free of double-fence lines.

78. It can be said that, with some prescience, the WN Commissioners foresaw the position today (adopted stretch continuing as BR), or, put it another way, today's system has faithfully reproduced the effect and intent of the WN Commissioners 250 years earlier.

79. The best illustration of the position as it appeared on the ground is the extract from the Finance Act 1910 map (DC Appendix 5/appendix 9 page 68). This shows the essence of the case: a stretch of adopted road in parallel lines, labelled Claypits Lane, ending at the gate just before point B on the Order plan. The unfenced BR track continuing eastwards from there is less than half the width of the adopted stretch; thus illustrating the stark contrast between the adopted stretch and the rest. That was the 1910 position, 113 years back from where we are now. There is no reason to doubt that it also reflected the position which existed 140 years before that, when the WN Award described the 5th Road.

80. The WN Inclosure Act used the expression public highway, by which they might have meant public carriageways, or any public route. When the WN Award was published it talked not of highways, still less of carriageways, but only of roads, and, as mentioned in para 41 above, roads can be of various types including bridle roads.

81. Then factor in the tithe evidence (narrowness of width, multiplicity of gates, and in CK parish a rough-pasture drove road).

82. Then factor in the Finance Act 1910 evidence (no break in the colourwash at every point where the Order Route passes through the hereditaments, coupled with deductions in the book entries which will have related to the various FPs crossing the hereditaments and the Order Route itself as a BR).

83. Then factor in the parish survey and definitive map evidence (the route ending up as a BR, with "*no evidence of public vehicular rights*" and "*erroneously thought to be a county road*"), and in CK parish the route having been ploughed up at its western end i.e. E – F.

84. Then factor in the printing by the OS of the name Claypits Lane only in the western stretch.

85. As a result of those further factors, it will be seen that the balance of the non-Inclosure evidence is strongly against confirmation of this restricted byway Order.

86. The only thing which could bring about confirmation of this restricted byway order is if the Inspector is clear that the true intent and effect of the 5th Road in the WN Award was that a public carriageway really did run all the way from School Lane and stopped at the west edge of Coombe Wood.

87. It is the Objectors' case that there is no sufficient basis for that finding. If a public carriageway really had been intended and set out all the way to point F, we question how it can be that the subsequent evidence (tithe, Finance Act 1910, parish surveys, as well as the CK Act and Award) indicate to the contrary. Instead, we assert that the position is as we have set it out herein: the 5th Road only described the western stretch.

88. This case is to be decided on the balance of probabilities, i.e. which is the more likely: that the WN Award intended to and actually did set out the route as a public carriageway all the way to point F; or that the rest of the evidence shows that that never happened. We assert the latter.

89. On this basis, and as set out in this Statement of Case, we respectfully urge the Inspector not to confirm the Order.

90. If, despite that, the Inspector is minded to confirm the Order we request that it should be with modifications, to reflect all the gates shown by the historic map evidence, namely at point B on the Order plan or just to the west of point B, and at D, and at a point halfway between D and E (just to the west of the buildings on the south side of the route); and just to the west of Newburgh Farm Dairy, and at point E, and at point F. The retention of these gates is crucial for farm security, and we refer the Inspector to the Police Report attached (**Attachment 5**).

Dated this 22nd day of August 2023

Mogers Drewett

Mogers Drewett, Solicitors

Wells Office (ref: MJCC)

On behalf of the Objectors

Attachments

1. Carter Letter
2. Pages 8 and 9 of the CK Act
3. Extract from the CK Award
4. Photo re drainage
5. Police Report

24 AUGUST 1998

Dear Chief Executive,

UNCLASSIFIED COUNTY ROADS

1. This letter is to advise you of the conclusions reached by Department of the Environment, Transport and the Regions on the interpretation of the term "unclassified county road" (UCR). This advice replaces previous advice, usually given in response to specific enquiries rather than a general statement, which was withdrawn in March 1998.
2. We have reached the following conclusions (with the usual proviso that the Secretary of State cannot give an authoritative interpretation of the law as only the Courts can do that):
 - i) The Highways Act 1980 places a duty on highway authorities to maintain highways, which includes footpaths, bridleways and carriageways. Highway authorities have a further duty under section 36(6) of the Highways Act 1980 (and earlier Highways Acts) to prepare a list of highways maintained at public expense.
 - ii) The Local Government Act 1929 made provision for "unclassified roads", "classified county roads" and "county roads". The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense.
 - iii) In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide

evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

iv) It would, therefore, be possible for a way described as a UCR on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way, provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act.

3. Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs. Any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case-by-case basis.

*Yours sincerely,
Susan Carter*

SUSAN CARTER

and at all Times he or she, be respectively intitled to have, receive, and enjoy, the same and the like Kind of Tythes and Portions of Tythes, out of and from the several and respective Parts, Shares, and Proportions of the said Commons, common Heaths, and waste Grounds, so to be allotted, assigned, and marked and set out, as aforesaid, as the same shall annually or otherwise arise, as the said several Impropriators and Vicars, and such other Person and Persons as aforesaid, now is or are intitled to have and receive, out of and from the Lands already inclosed in the said several Parishes of *East Lutworth* and *Combe Keynes*.

Allotments in East Lutworth to be made according to the Number of Cotes:

And in Combe Keynes, according to the Number of Acres.

Commissioners to direct by whom the Fences shall be made and maintained.

And be it further Enacted, That the said Commissioners and their Successors, and the Survivors, or any Three or more of them, in the making the aforesaid Allotments to the several Parties interested therein, shall observe the following Rule (that is to say); that the respective Parties, Shares, or Proportions, which shall be allotted, assigned, and marked and set out, to and for such of the said Parties who are or may be intitled to a Right of Common, or to have or enjoy any other Property, in the said Commons, common Heaths, and waste Grounds, in *East Lutworth* aforesaid, shall be computed, regulated, and adjusted, by and according to the Number of Cotes which each of the same Parties shall then have or be intitled to in the said Parish of *East Lutworth*: And that the respective Parts, Shares, or Proportions, which shall be allotted, assigned, and marked and set out, to and for such of the said Parties, who are or may be intitled to a Right of Common, or to have or enjoy any other Property, in the said Commons, common Heaths, and waste Grounds, in *Combe Keynes* aforesaid, shall be computed, regulated, and adjusted, by and according to the Parts and Proportions of the arable Lands lying in the common Fields of the said Parishes of *Combe Keynes*, which each of the same Parties shall have or be intitled to, at the Time of such Allotments, so to be made as aforesaid.

And be it further Enacted, That the said Commissioners and their Successors, and the Survivors, or any Three or more of them, shall and may, and they are hereby authorized and required to allot, direct, and appoint, the several and respective Parts, Shares, and Proportions, of the Fences and Inclosures, which each of the Parties any-way interested in, or having any Right of Common in the said Commons, common Heaths, and waste Grounds, is to make, for or in respect of the Dividing, Separating, and Inclosing the same Commons, common Heaths, and waste Grounds, and the Time when and the Manner how such Fences and Inclosures shall be made, and which each of the said Parties is to make and do, at his, her, or their own proper Expence, or otherwise, as the said Commissioners shall direct (except as herein after is mentioned); and also, that the said Commissioners and their Successors, and the Survivors, or any Three or more of them, shall and may set out, direct, and appoint, all such public and private Reads, Ways, Passages, and Watercourses, in, upon, or by, through, or over, any of the said Commons, common Heaths, and waste Grounds, or the Inclosures to be made thereof, or in or upon the same, as they shall think convenient (so as that all such public Roads shall

shall be Forty Feet broad between the Ditches or Fences; and also all Ditches, Sewers, Bridges, Gates, and Styles, that are to be made, in and upon the Grounds which are to be so divided and inclosed as aforesaid, and by whom the same Fences, Inclosures, public and private Roads, Ways, Passages, Watercourses, Ditches, Sewers, Bridges, Gates, and Styles, respectively, shall be made, preserved, repaired, and maintained, for ever thereafter; and that such Allotments, Directions, and Appointments, so to be made in relation to such Fences, Inclosures, Roads, Ways, Passages, Watercourses, Ditches, Sewers, Bridges, Gates, and Styles, shall be inserted and sufficiently described and set forth in the said Award or Instrument, so to be executed by the said Commissioners or their Successors, or the Survivors, or any Three or more of them: And that all such Allotments, Directions, and Appointments, so to be made as aforesaid, shall be binding to all and every Person and Persons whomsoever, any way interested in or entitled to a Right of Common, or having or any way claiming to be intitled to any other Property in the said Commons, common Heaths, and waste Grounds, and their and every of their several and respective Heirs, Successors, Executors, Administrators, and Assigns, and all and every such Person and Persons, and their and every of their several and respective Heirs, Successors, Executors, Administrators, and Assigns, shall abide by and perform the same accordingly: And that after the setting out, directing, and appointing, such Roads and Ways as aforesaid, it shall not be lawful for any Person or Persons to use any other Roads or Ways, either public or private, by, through, or over, the said new Inclosures, either on Foot or with Horses, Carts, or Carriages: and that all former Roads and Ways, which shall not be set out, directed, or appointed, as the Roads or Ways by, through, or over, the said new Inclosures, shall be deemed Part of the Lands to be divided and inclosed, and shall be divided and allotted accordingly.

And be it further Enacted, That within the Space of Twelve Calendar Months after the Execution of such Award or Instrument as aforesaid, or within some other convenient Space of Time as the said Commissioners shall think fit, the several Parcels of Lands thereby allotted or assigned, shall be inclosed, hedged, ditched, or fenced, by the several Persons to whom the same shall be respectively allotted or assigned, in such Manner as the said Commissioners or their Successors, or the Survivors, or any Three or more of them, in their said Award or Instrument shall direct and appoint.

Provided always, That convenient Openings shall be left in the said Fences and Inclosures for the Space of Twelve Calendar Months next ensuing the Execution of the said Award or Instrument, or for some other convenient Space of Time as the said Commissioners shall think fit, for the Passage of Cattle, Carts, and Carriages through the same, unless the several Parties interested in the said intended Division and Inclosure shall agree that the same shall be sooner made up and inclosed.

And be it further Enacted, That all Charges and Expences of making the Fences and Inclosures, which shall be by them the said Commissioners

Combe Keynes.

Publick Roads That the Road from Combe Keynes to Torrington shall

be forty feet wide and shall pass as it now doe
thru Mr. Bennell's Allotment to Stone
and shall be repaired by the Parish.

That the Road from Combe Keynes to Thresham
shall be forty feet wide and shall pass as it
is through Mr. Bennell's Allotment and across the
Black Heath into Thake Common and shall be
repaired by the Parish.

That the Roads from Combe Keynes to Wood and
from Combe Keynes to West Culworth shall be forty
feet wide and shall pass as they now do through
Craze and be repaired by the Parish.

Private Road. That Mr. Robinson shall have a Husbandry Road
for cattle and carriages Twenty feet wide out of Combe
Keynes Parish into his Allotment across Mr. Bennell's
Allotment near the Brick Kilm the same way as Mr.
Bennell now goes to his present Inel houses.





**DORSET
POLICE**

☎ 101 Non-emergency
☎ 999 in an emergency
🌐 www.dorset.police.uk

📘 Dorset Police
🐦 @dorsetpolice
📷 dorset_police
📺 DorsetPoliceHQ

Debbie.Oldfield@dorset.pnn.police.uk

Contact Number: 07712 694995

31st July 2023

Mr Guy Clatworthy
Head of Property
Lulworth Estate

Dear Sir

Thank you for making me aware of the ongoing situation with the proposed modifications of bridleways 5 and 9 which cross your Estate and run through Newburgh Farm.

Unfortunately, I have not been approached to make comment in relation to the amendments but if I had I would object to the modifications.

Rural Crime is one of Dorset Police's main priorities and as such we have a dedicated Policing team to deal with such crimes associated with rural life including theft from farm buildings, theft of machinery, hare coursing and poaching. The team are working tirelessly with land owners and farmers to try and stop unauthorised vehicles accessing their land. I understand that you yourselves have been instrumental in putting physical barriers in place in the form of ditching and box bar gates.

Wildlife crime which includes poaching and hare coursing not only causes insufferable pain to the animals that are being chased by dogs, people and vehicles, for their own enjoyment, can also be linked to other serious crimes such as firearms and organised crime.

Opening up the bridleways and making them wider will enable offenders to use their vehicles to gain easy access to the Lulworth Estate, Newburgh Farm and surrounding areas facilitating crime to happen.

If you need any further information please do not hesitate to contact me.

Yours faithfully

Debbie Oldfield

Crime Prevention Advisor/Designing Out Crime Officer
TRiM Practitioner
Complex Problem Solving Team
Prevention Department