

Objecting to the Order:

Trustees of the Rampisham Manor Estate

Rampisham Parish Council

Mr M A J Southwell MRICS
Greenslade Taylor Hunt
22 Princes Street
YEOVIL
Somerset
BA20 1EQ

Countryside Access
County Hall, Colliton Park
Dorchester
Dorset DT1 1XJ

Telephone: 01305 or 01202 224778
Fax: 01305 or 01202 224835
Minicom: 01305 267933
Email: c.j.slade@dorsetcc.gov.uk
DX: DX 8716 Dorchester
Web site: www.dorsetcc.gov.uk

Date: 14 April 2003
Your ref: MS/SHM
My ref: CJS/JLC T238

Dear Mr Southwell

PATH AT RAMPISHAM

Thank you for your letter dated 31 March 2003 and enclosures.

I have passed them to our Solicitor, Miss Gillian Parkinson, who will reply to you fully. I hope we can arrive at an agreed solution.

Yours sincerely

CHRIS SLADE
Senior Rights of Way Officer

Copy to: Gillian Parkinson, Legal services, Corporate Services Directorate

07

GREENSLADE TAYLOR HUNT
PROPERTY SPECIALISTS

MS/SHM

31 March 2003

C Slade Esq
Countryside Access
Dorset Countryside
County Hall
DORCHESTER
Dorset
DT1 1XJ



Yeovil Office:
Commercial & Survey

22 Princes Street
Yeovil
Somerset BA20 1EQ

Telephone 01935 423474
Facsimile 01935 432588
Website www.gth.net
Email yeovil.commercial@gth.net

Dear Mr Slade

Re: Path at Rampisham

W40

Thank you for your letter of 24th February 2003. Delay in replying is regretted, but I have now been able to discuss this matter with the Trustees.

The Trustees considered it their duty to have Council's opinion on the deposit under Section 31 (6) and this opinion reinforced their belief that the deposit 'was erroneous, and this was therefore carried through into the map on a mistaken basis'. I enclose a copy of Council's opinion for your reference.

As mentioned in earlier correspondence the Trustees wish to be as co-operative as possible. However, the restrictions on their freedom of action, imposed by the fiduciary nature of their ownership, makes it impossible for them to go quite as far as you would wish. They are therefore, unable to dedicate a footpath. Nevertheless, to be as helpful as possible they are prepared to allow the use of a footpath on a permissive basis only.

In order to protect and preserve the Trustees' position and the status of a permissive footpath it would be necessary for them to enter into an agreement with the Highway Authority. No consideration has as yet been given to the precise terms of such an agreement, but if you wish to explore this possibility further perhaps you would let me know.

I do appreciate that this is not exactly the answer that you are looking for but you will no doubt appreciate that the Trustees have to stay within the confines of their trust obligations.

Yours sincerely



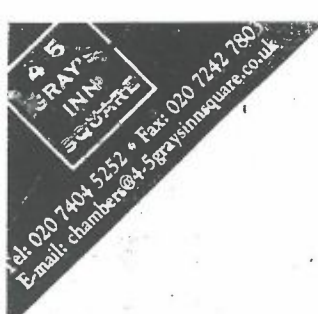
M A J Southwell, MRICS
Greenslade Taylor Hunt



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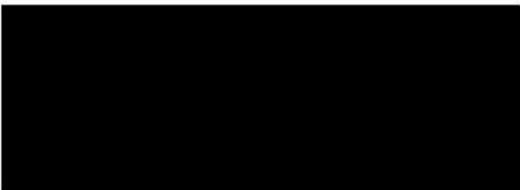


RAMPISHAM MANOR FARMS LTD

OPINION

1. I am asked to advise whether the inclusion of a footpath on the Definitive Map (but not Statement) maintained by Dorset County Council for the purposes of Part III of the Wildlife and Countryside Act 1981, as a result of erroneous statements deposited pursuant to section 31(6) of the Highways Act 1980, precludes a Modification Order deleting the path from the Map.
2. The County Council assert that by these statements "the footpath was admitted and cannot be 'un-dedicated'". I consider the County Council's approach to be misconceived for the following reasons.
3. Section 31(6) has a two-fold purpose. It enables a landowner to indicate ways admitted to have been dedicated, and it also enables a landowner to evince a lack of intention to dedicate any additional ways (my emphasis). It operates evidentially, not substantively.
4. In relation to admitted ways the lodging of a deposit under section 31(6) does not, of itself, constitute a dedication: it only indicates what has already been dedicated.

5. It is trite law that, apart from the creation of a public highway by statute, no public highway can be created except by dedication on the part of the owner, and acceptance of the right by the public, see *Pratt and Mackenzies's Law of Highways, 21st Ed, p 16*. Acceptance is shown by public user. When that user has occurred at least over a 20 year period, the owner's intention to dedicate is to be presumed, section 31(1) Highways Act 1980.
6. In a case such as the present, when there are evidently physical factors that preclude the alleged path's use, and as a matter of fact it never has been used, then even though there may have been a purported dedication (which I do not accept as having occurred in this case), there cannot have been an acceptance.
7. In this case it is therefore apparent that the public right never came into existence. The deposit under section 31(6) was erroneous, and this was therefore carried through into the Map on a mistaken basis. The Map should therefore be corrected. If the Council do not agree, then I consider it would be appropriate to apply for a Modification Order under section 53 of the 1981 Act.



JOHN HOBSON QC

**4-5 Gray's Inn Square
Gray's Inn
London WC1R 5JP**

3rd February 2003

F

GREENSLADE TAYLOR HUNT
PROPERTY SPECIALISTS

Your ref: T.238

Your ref: MS/SHM

5 March 2003

C Slade Esq
Countryside Access
Dorset Countryside
County Hall
DORCHESTER
Dorset
DT1 1XJ



Yeovil Office:
Commercial & Survey

22 Princes Street
Yeovil
Somerset BA20 1EQ

Telephone 01935 423474
Facsimile 01935 432588

Website www.gth.net
Email yeovil.commercial@gth.net

Dear Mr Slade

Re: Path at Rampisham

Thank you for your letter of 24th February.

Mr Boileau is away until the middle of March on holiday, but immediately I see him I will be able to answer your letter and perhaps then a meeting on site would be beneficial and hopefully we can finalise the matter to everybody's satisfaction.

Yours sincerely



M A J Southwell, MRICS
Greenslade Taylor Hunt

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M.A.J.Southwell
Greenslade Taylor Hunt
22, Princes Street
Yeovil
Somerset
BA20 1EQ

Countryside Access
County Hall, Colliton Park
Dorchester
Dorset DT1 1XJ

Telephone: 01305 or 01202 224778
Fax: 01305 or 01202 224835
Minicom: 01305 267933
Email: c.j.slade@dorsetcc.gov.uk
DX: DX 8716 Dorchester
Web site: www.dorsetcc.gov.uk

Date: 24 February 2003
Your ref: MS/SHM
My ref: T.238

Dear Mr Southwell

Path at Rampisham

Thank you for your helpful letter of 21st February 2003.

It appears that together we shall be able to find a way forward that will content ourselves as Surveying Authority, the Trustees as owners of the Estate and, most importantly the public as users.

I am not sure where the difficulty lies with the evidence as to the existence of the path. My recommendation to the Committee, which they accepted, was based upon the actions of the Trustees and of yourself in your deposits under Section 31 (6) of the Highways Act, which are now part of the public record. Whether or not there was a route there historically is no longer relevant.

I hope that the Trustees will be able to agree soon to dedicate the permissive route as a public right of way. The easiest way to achieve this would be by way of a diversion order to transfer the path from the old to the new route. As there would be a slight saving to the public purse by not having to confirm the Modification Order, and in the light of the Trustees' cooperation in making a good crossing point, DCC could do this in house without charge to the Trustees.

Please let me know whether the Trustees agree with this approach.

Yours sincerely

CHRIS SLADE
Senior Rights of Way Officer

GREENSLADE TAYLOR HUNT

Your ref: MJCC/mjiRAM008-1 **PROPERTY SPECIALISTS**

MS/SHM

21 February 2003

Mr C Slade
Countryside Access
County Hall
Colliton Park
DORCHESTER
Dorset DT1 1XJ

Yeovil Office:
Commercial & Survey

22 Princes Street
Yeovil
Somerset BA20 1EQ

Telephone 01935 423474
Facsimile 01935 432588
Website www.gth.net
Email yeovil.commercial@gth.net

Dear Mr Slade

Thank you for your letter to Mr Cheal of Messrs Thring, Townsend dated 11th February 2003.

I have discussed your letter with the Trustees of the Rampisham Manor Estate which they found very helpful.

They also wish to be as co-operative as possible and thank you for opening up the possibility of diverting the Public Foot Path onto an agreed line. The Trustees inform me that they have given instructions to implement the 'Permissive' path on the line agreed between ourselves when we met on site. The river crossing will be completed this spring when we have a digger on site.

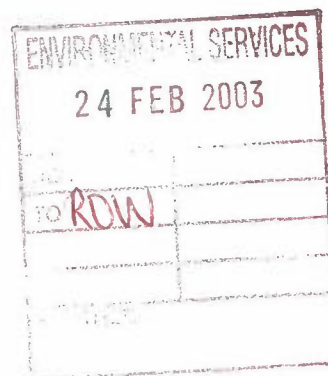
However, the Trustees find themselves in some difficulty as to dedicating this path because of the unresolved matter of whether a path ever existed from the river to the South to the Council Road.

They have asked me to explore with you the possibility of joining in a 'friendly action', to check the validity of this path and should it prove to be fact, the Trustees can see no reason not to dedicate the Permissive path which will be there in any event.

Yours sincerely



M A J Southwell
Greenslade Taylor Hunt



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C Slade Esq
Senior Rights of Way Officer
Dorset County Council
Countryside Access

**DX 8716
DORCHESTER**



19 February 2003

Your Reference: RW/R238
Our Reference: MJCC/mji/RAM008-1

Direct Line: 01225 340060
Direct Fax: 01225 319735
E-mail: jcheal@ttuk.com

Dear Mr Slade

Footpath at Rampisham

Thank you for your letter of 11 February and its enclosures.

I am talking again to the Trustees and will come back to you as soon as possible.

Yours sincerely



PP **M J C CHEAL**

Mr M J C Cheal
Thring Townsend
DX 8002
BATH

Countryside Access
County Hall, Colliton Park
Dorchester
Dorset DT1 1XJ

Telephone: 01305 or 01202 224778
Fax: 01305 or 01202 224835
Minicom: 01305 267933
Email: c.j.slade@dorsetcc.gov.uk
DX: DX 8716 Dorchester
Web site: www.dorsetcc.gov.uk

Date: 11 February 2003
Your ref: MJCC/mjiRAM008-1
My ref: RW/T238

Dear Mr Cheal

FOOTPATH AT RAMPISHAM

Thank you for your letter dated 30 January 2003.

I note that the Trustees object to the Order and so have passed your letter to the County Council's legal officers as they deal with objected orders.

When I met Mr Boileau and Mr Southwell on site they did point out to me that the line of the path ran somewhat to the west of where I thought it did. Upon further investigation more evidence, namely the Section 31(6) deposits, came to light and I agree that the path is on the more westerly line as shown on the Order plan.

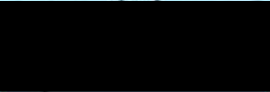
When we met on site Mr Boileau and Mr Southwell discussed with me the nearby permissive route and the possibility of transferring the definitive path onto it. I enclose a copy of my file note of the meeting. You will see that they considered the Trustees would not be inclined to dedicate it as a definitive path.

Purely on a without prejudice basis and in order to be as co-operative as possible I point out that the County Council is still willing to discuss the possibility of diverting the definitive footpath onto an agreed line that would be acceptable to the Trustees. There would be advantages to the Estate in that their land would be least encumbered; to the public in that they would have a less arduous route as a right of way; and to the public purse in avoiding a bridging operation and the legal costs of an opposed order.

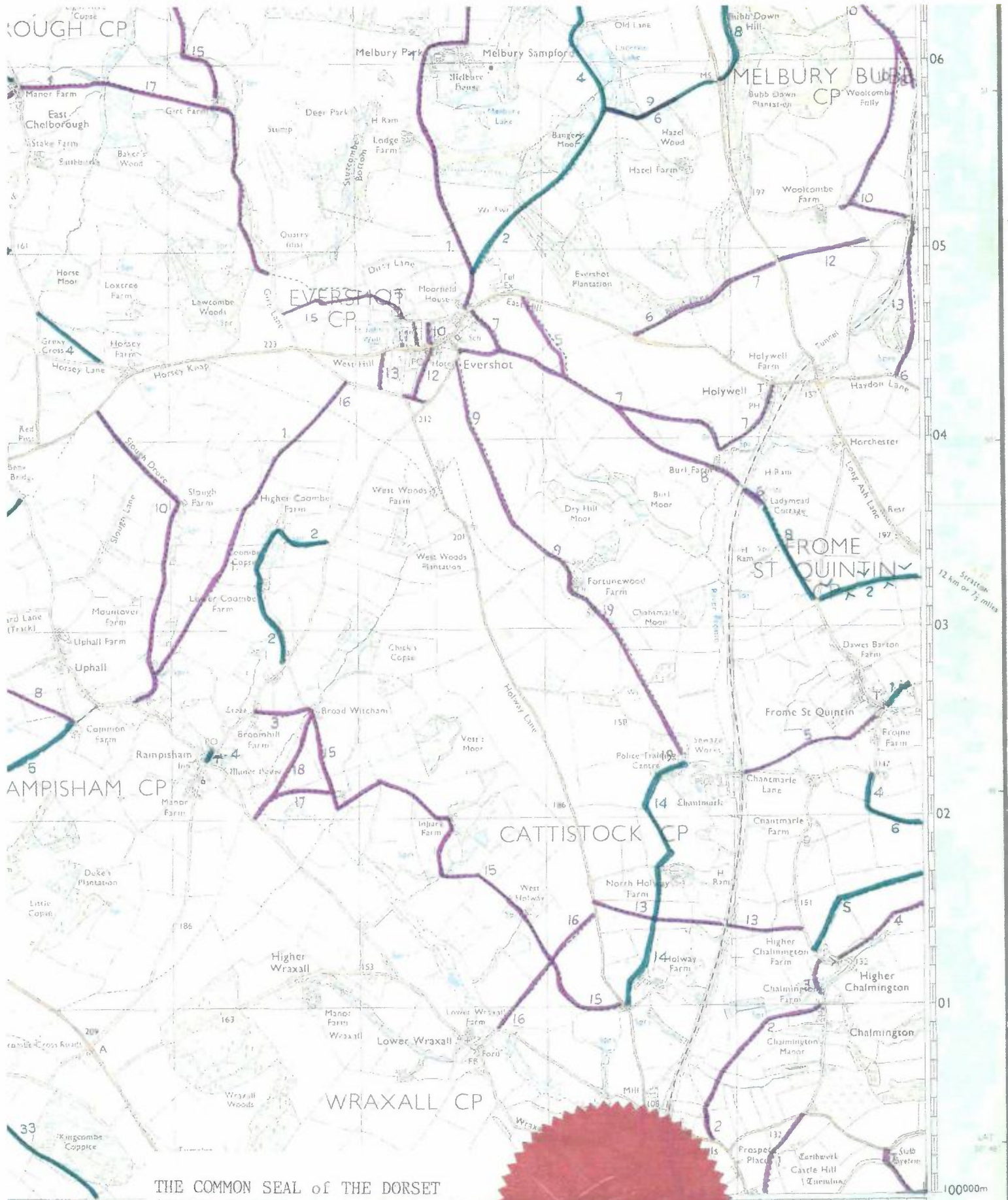
If your clients do wish to discuss these possibilities I would hope that matters could be moved along within a reasonable time so the public can have a usable definitive right of way in this vicinity.

In the meantime I enclose a photocopy of the definitive map for this area, which I think answers your query about the alignment of the Order route.

Yours sincerely


CHRIS SLADE
SENIOR RIGHTS OF WAY OFFICER

Copy to: Gillian Parkinson, Legal Services, Corporate Services Directorate
Helen Whitby, Committee Services, Corporate Services Directorate



THE COMMON SEAL of the DORSET COUNTY COUNCIL was hereunto affixed in the presence of:-

P. L. Hawley

County Solicitor 29 September 1989

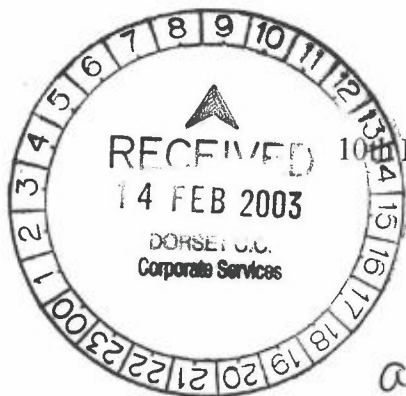
SHEET ST 40/50

Chris Slade
F

RAMPISHAM PARISH COUNCIL

Mayden Revel
Rampisham
Dorset
DT2 0PR

your ref: HMW E4570



Acknowledged
17/2/03
tw

Elaine Taylor
Director of Corporate Services

Dear Ms Taylor

I wish to object to the proposed addition of a footpath at Rampisham for the following reasons:

There has never been a footpath across the stream at this point, and I know of no evidence to support this claim, I have lived in the village for 37 years and have an intimate knowledge of all the paths which I walk regularly.

The route of footpaths 17 & 18 shown on the proposal map attached to the modification order vary considerably from the correct line marked on the Definitive Map, I have marked the incorrect line in red on the enclosed copy.

If a footpath were to be created from the termination of footpath 17 at the stream, (red dotted line) this would then lead directly into a considerable fall of water which gushes under the road from the large spring shown on the Definitive Map. It would also pass directly over the collection points for the village water supply (there is no mains water in Rampisham) and would pass adjacent to the building containing the purification plant underground collection chambers and pumping apparatus concerned with this supply. This is at present an area of restricted access for obvious reasons, and has been since I came to live in the village.

There is an existing Permissive Path, marked green on the map, which has been a reality for some years, it has been well fenced and has stiles provided by the landowner. I have had a meeting on-site with the landowner's agent who assures me that it is their intention to maintain these fences and stiles their own expense and is prepared to improve the stream crossing by lowering the banks. The agent explained to me that the trustees of Rampisham Manor Estate are not prepared to dedicate the Permissive Path as desired by Mr Slade of WDDC as they do not consider that WDDC have proved that any route crosses the stream, and should this be the case they would be in breach of their duty.

As Parish Rights of Way Liaison Officer for Rampisham I am astonished that I was not informed or consulted on this proposed course of action. The Highways Act section 26 states that *...it must appear to the authority that there is a need for the new path and they must be satisfied that it is expedient to create it, having regard to the extent to which it will add to the convenience or enjoyment of a substantial section of local residents, and the effect that the creation would have on the rights of those with an interest in the land.* The path is seldom used.

As Chairman of Rampisham Parish Council I am deeply concerned as to the possible risk of pollution to the village water supply, also the risk of vandalism and damage to

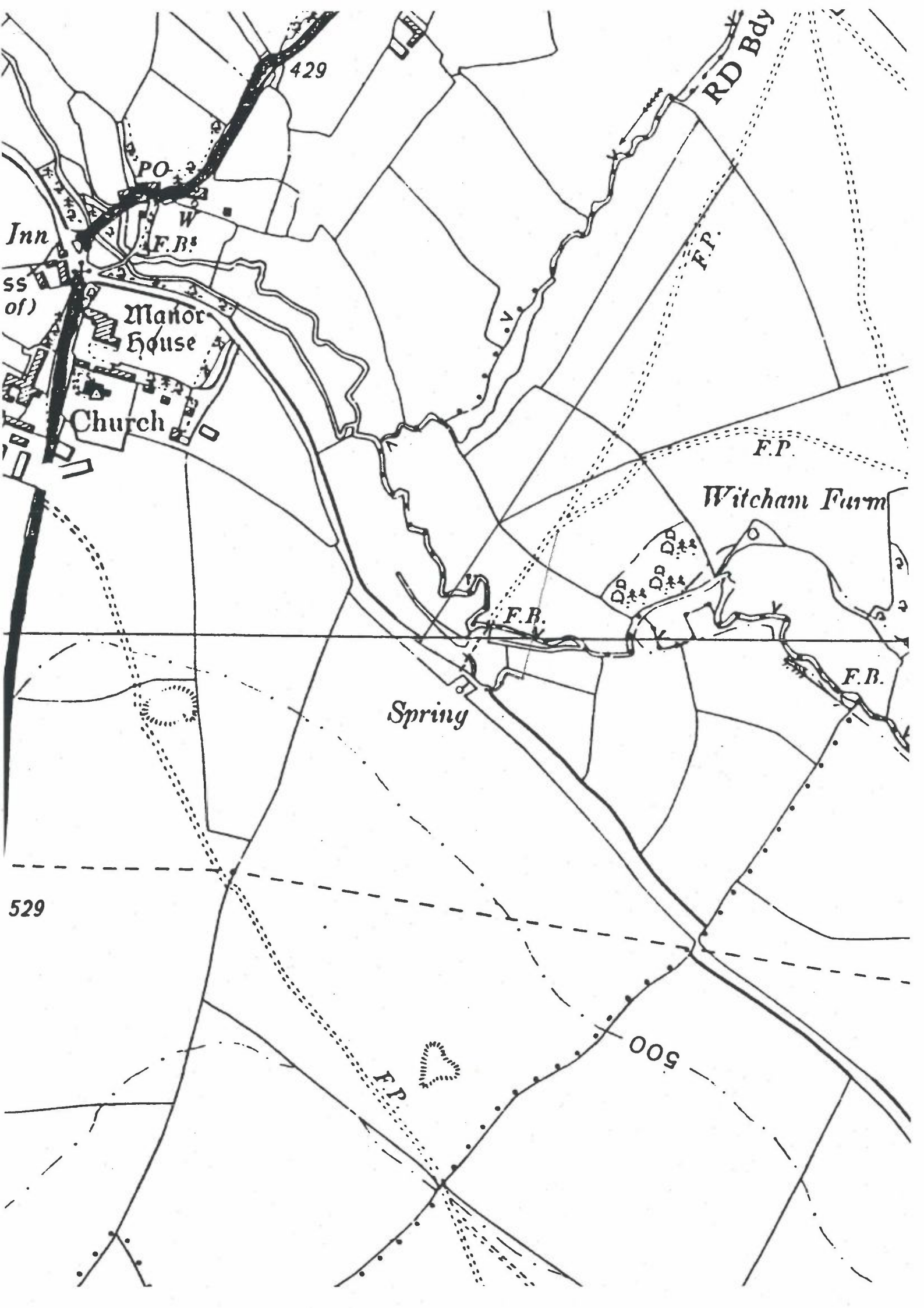
sensitive equipment housed nearby. I have to consider that if damage were to occur then insurance rates would rise which would be a burden on all parishioners, all of whom have a vested interest in the land . Any interruption of the supply would also be disastrous to the local dairy farmers.

I strongly urge the Council to reconsider this order and to consult with the landowner to come to a satisfactory conclusion .

yours sincerely

Rodger Huband

A black rectangular redaction box covers the signature of Rodger Huband. A small handwritten mark is visible to the left of the box.



429

RD Bdy

PO

F.B.

F.P.

Manor House

Church

F.P.

Witcham Farm

F.B.

Spring

F.B.

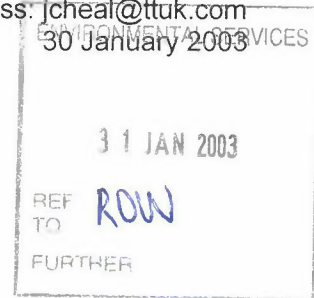
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F.P.

C J Slade Esq, Sr Rights of Way Officer
Dorset County Council
County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Your ref: CJS/JLC RW/T238
Our ref: MJCC/mjiRAM008-1
Direct dial: 01225 340060
Email address: jcheat@ttuk.com
Date: 30 January 2003



Dear Mr Slade

Disputed footpath at Rampisham

Thank you for your letter of 16th January and its enclosures. This is most surprising, to say the least.

What the new Order seems to be doing is

- to move FP18 some way to the west
- to extend the line of FP17 westwards in consequence, so that the junction between 18 and 17 is quite a bit further to the west of its definitive junction and
- to move the A-B stretch substantially to the west, in consequence.

This is all because you cannot rationalise on the ground the definitive alignment of A-B. You cannot surely, in order to get over this difficulty, just move all three paths westwards.

Enclosed is a copy of your 3rd May 2001 drawing, with the new proposed routes superimposed on it in red, so as to illustrate the true effect of your new proposal.

Part I of the Schedule to the Order states that there are no alterations to the Definitive Map, but this is clearly not so: you are proposing the significant realignment of three paths.

The points made in my letter to you of 8th March 2002 still stand. Your only substantive response to that is in your letter of 22nd August 2002 in which you say that, despite my 8th March 2002 submissions, the Trustees are bound by their s.31(6) deposits. I reserve the Trustees' right to argue that point; but even if the Trustees **are** bound by those deposits (which is definitely not admitted) that cannot now justify you trying to realign three definitive paths. If the deposits bind the Trustees, they only do so on the route "admitted".

What is your evidence for now saying that the true line of 18, 17 and A-B is as shown on your 18th November 2002 drawing?

Please note that the Trustees object strongly to this Order. There can be no justification for your arbitrarily moving 18 and 17 in this way, and then inserting A-B on this entirely new route.

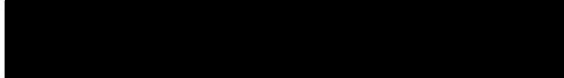
Cont/...

C J Slade Esq

• Page 2

Meanwhile, there is still an agreed permissive line, to the east, as mentioned in Mr Boileau's letter to Mr Philip Drake dated 24th May 1999 (and shown on the plan attached to that letter).

Yours sincerely

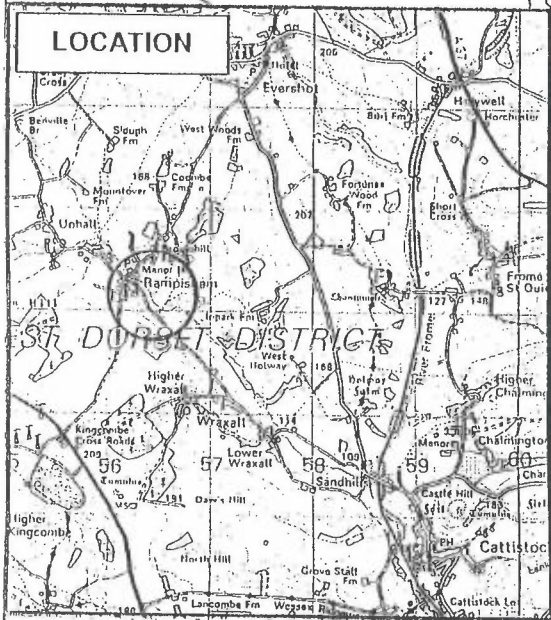
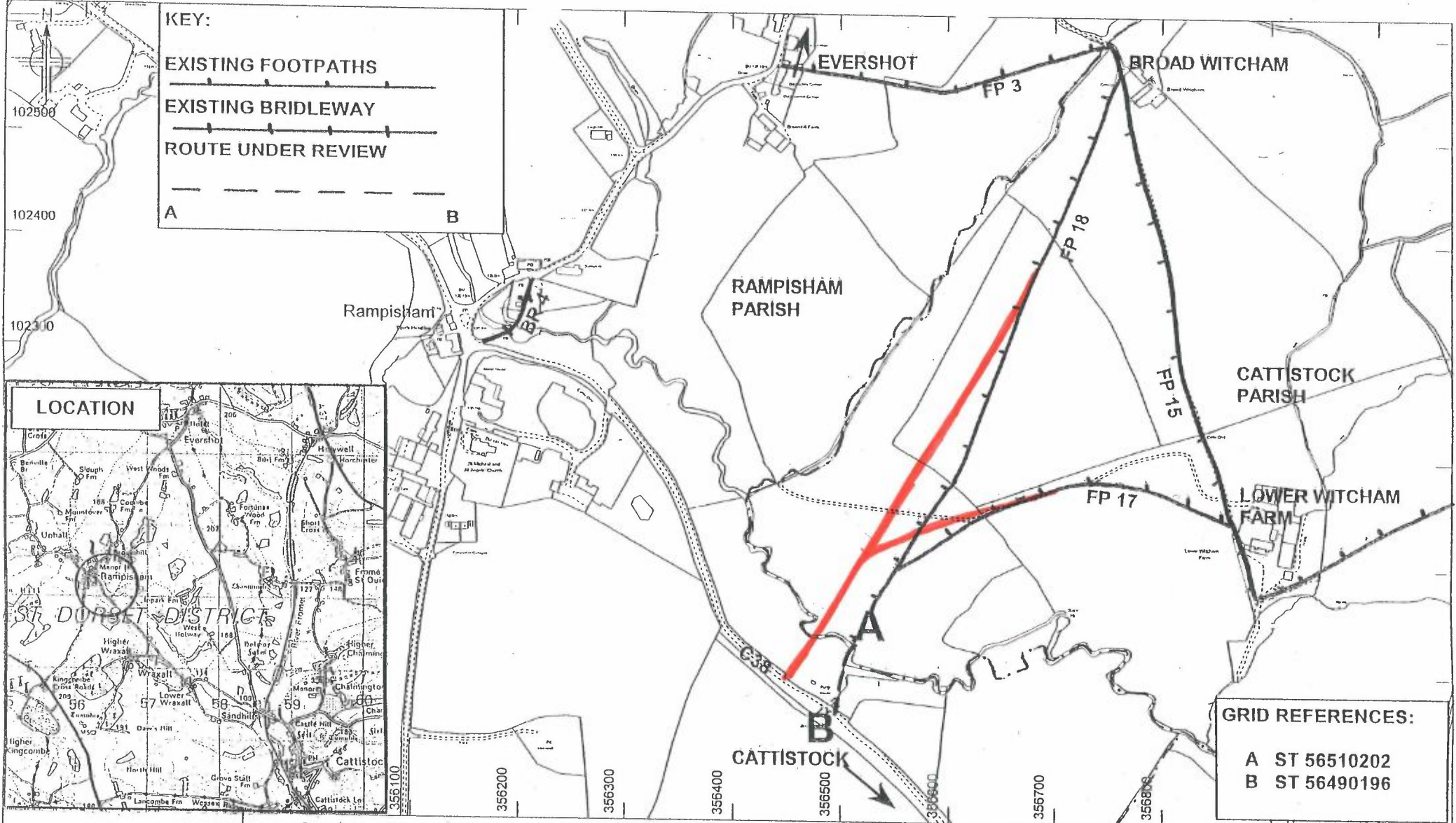
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M J C CHEAL

KEY:

EXISTING FOOTPATHS
 EXISTING BRIDLEWAY
 ROUTE UNDER REVIEW

A B



GRID REFERENCES:

A ST 56510202
 B ST 56490196

DORSET COUNTY COUNCIL

**WILDLIFE AND COUNTRYSIDE ACT 1981
 REVIEW OF STATUS OF A ROUTE AT RAMPISHAM**

G.D.Spencer
 Director
 County Hall
 Dorchester

Environmental Services

SCALE
 1:5000

DATE
 3 May 01

DRAWN BY
 JLC

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DRG No.
03/01