



WILDLIFE AND COUNTRYSIDE ACT 1981

**COUNTY OF DORSET
DEFINITIVE MAP AND STATEMENT**

**DORSET COUNTY COUNCIL
(FOOTPATH FROM EAST LANE (D20502) TO D20503
PUBLIC ROAD EAST OF COOMBE COTTAGES,
BRADFORD ABBAS) DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2017**

**PROOF OF EVIDENCE
VANESSA PENNY PGDip MIPROW
DORSET COUNCIL**

1. INTRODUCTION

- 1.1 My name is Vanessa Penny, and I have worked for Dorset Council on Rights of Way matters since 2000, initially as an Area Rights of Way Officer, then as a Definitive Map Officer. In 2008 I was appointed to my current role as manager of the Definitive Map Team. I hold a Postgraduate Diploma in Public Rights of Way and Countryside Access Management, and I have been a member of the Institute of Public Rights of Way and Access Management (IPROW) since 2009.
- 1.2 My duties include overseeing case work involving applications for definitive map modification orders (DMMOs).
- 1.3 I set out my involvement with the application for the Dorset County 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**”; “the **Application**”) below. It is my opinion that it should be confirmed. The evidence demonstrates, on balance, that the footpath proposed to be added to the definitive map and statement by the Order (“the **Route**”) subsists.
- 1.4 I understand my duties as an expert witness; to give independent and objective evidence on matters within my expertise, based on my own independent opinion and uninfluenced by the instructing party. I confirm that I have stated the facts and matters on which my opinion is based, and that I have not omitted to mention facts or matters that could detract from my conclusions. I believe that the facts stated within this Proof of Evidence are true and that the opinions expressed are correct. I have drawn attention to any matters where I consider I lack sufficient information to reach anything other than a provisional conclusion. I confirm that I have adhered to the standards and duties of the professional body I am a member of.

1.5 Given the number of Statements of Case in objection to the Order (which I address in detail below), and the fact that the Inquiry is scheduled for one day alone, the Council has collated its evidence and other relevant documents into a bundle. This should allow for specific documents to be quickly accessed on the day. References to page numbers in this Proof of Evidence are page numbers in the Council's Bundle of Evidence unless otherwise stated. References to paragraph numbering refer to paragraph numbers in the officer's report which starts at page 31 of the Council's bundle, unless otherwise stated.

2. **MY INVOLVEMENT WITH THE APPLICATION**

2.1 The application to add a footpath along the Route was made by Bradford Abbas Parish Council on 7 July 2008.

2.2 The County Council case officer, Roger Bell, investigated the Application and prepared a report which was considered by Dorset County Council's Regulatory Committee on 12 March 2015. The officer's report ("the **OR**") concluded that the evidence of use of the Route by the public over a 20 year period between 1987 and 2007 was sufficient to demonstrate a deemed dedication under the Highways Act 1980 (OR para. 9). The documentary evidence demonstrated that the Route has existed on the ground in part at least since at least 1887 (but did not provide evidence regarding the status of the route) (OR para. 8). Roger Bell left the Definitive Map Team in 2015 and cannot therefore be called upon at this Inquiry. The case was taken over by the then Senior Definitive Map Officer, Phil Hobson, who then left the team in 2017.

2.3 I have had very limited involvement with this application until earlier this year (2024). I was not involved in the investigation process, or subsequently.

2.4 Essentially, the same material as in the OR is relied upon before the Secretary of State, duly supplemented with witness statements which have since been obtained from users of the Route. However, following further investigation, there are two minor corrections to be made to the OR, which I set out below:

2.4.1 The OR states that the claimed Route is shown on Ordnance Survey maps dating from 1887 (OR para 8.4-8.9). However, on closer inspection it is apparent that only part of the Route was shown on its present line. The entire Route was not shown on the maps in its current position until 1928.

2.4.2 The Report indicates in the evidence table (OR Appendix 4) that use of the Route by Mr and Mrs Houston was discounted as they were tenants of the owner. This was incorrect. It was assumed that they were tenants as their address was 1 Coombe Cottages, however they actually lived at a different 1 Coombe Cottages which is within Bradford Abbas village on North Street.

3 LEGAL FRAMEWORK

3.1 The Inspector will no doubt be familiar with the legal framework for the Application, which is made under and in accordance with section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ("the **1981 Act**"). As far as is relevant, the purpose of the Application is to ascertain what rights exist. It does not determine the desirability or suitability of the Route for any given purpose. This is made clear in the *Rights of Way Advice Note 9*, under the heading "Modification orders under Section 53":

6.2.3. It is important to note that the purpose of definitive map modification orders and reclassification orders is to ascertain what rights exist. It is not, for example, to determine the suitability of a way for particular types of traffic or whether use of a way may result in loss of amenity or environmental damage). ("Rights of Way Advice Note 9: General Guidance on Public Rights of Way Matters", §6.2.3).¹

¹ Paragraph 1.3 of the Guidance states "1.3. This Advice Note should only be regarded as a basic guide to, rather than an authoritative interpretation of, the law on public rights of way, it is publicly available but has no legal force". However, it is commended as an accurate description of the law which the Inspector will (respectfully) be invited to apply.

3.2 Under section 31 of the Highways Act 1980, dedication of a route as a public highway is presumed after public use, as of right and without interruption, for 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period runs retrospectively from the date of bringing into question. The law is helpfully summarised in the Wildlife and Countryside Act 1981 – Definitive Map Orders: Consistency Guidelines (“the **Consistency Guidelines**”).² I consider each aspect in turn:

3.2.1 It is accepted in this case that the right was brought into question on or around 31 October 2007. That was when a locked gate and “private” notice were first installed. The relevant period of twenty years stretches from October 1987 to October 2007.

3.2.2 There is no definition of the term “public” in section 31 of the Highways Act 1980. The public must not be taken in its widest sense; it is “common knowledge that in many cases only the local residents ever use a particular road or bridge” (Consistency Guidelines, §5.2.12 (all references below to paragraphs of that document));

3.2.3 There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Often the quality rather than the quantity of evidence will be important (§5.2.15). In rural areas, one might generally expect the evidence of fewer persons than in an urban area to establish the presumption (§5.2.17). The Inspector will be invited to place particular weight on this, given the rural nature of the area;

3.2.4 The use must be as of right, that is without force secrecy or permission (§5.2.21). It is accepted in this case that use of the Route by workers of any farm on or around the Route and tenants adjoining the Route be discounted, as such use would be by permission (and in any event see §5.2.16). Such use has accordingly been discounted.

² The Consistency Guidelines are not definitive or exhaustive (paragraph 1.2.1). However, per paragraph 1.1.7, they should be followed unless “exceptionally” it is “appropriate to depart from the[m] [...]”.

3.2.5 As for the “proviso” (i.e. that there was no intention during that period to dedicate the Route), the central question is whether the reasonable user would have understood the landowner sought to disabuse him of the notion that the way was a public highway (§5.2.30). The Consistency Guidelines explain at §5.2.37 that the onus is on the person relying on the proviso to prove it. This is of particular importance in this case given that the landowners during the relevant periods of 1987 to 2007 have not adduced any evidence seeking to establish the proviso, as I explain below:

5.2.37. If there is no contradictory evidence in accordance with the proviso to s31(1), deemed dedication is made out and the Order should be confirmed. This is so whether there is an owner who cannot provide sufficient evidence of lack of intention or whether there is no identified owner available to produce such evidence.

3.3 If the section 31 claim fails, the Consistency Guidelines suggest that “there should be consideration of the matter at common law”. There is “no defined minimum period of continuous user in common law”, but – by contrast with section 31 – the legal burden is upon the public who asserted the right to prove it (§5.2.47). It is considered that the evidence provided more than meets the required test under section 30 of the 1980 Act. Common law dedication is therefore dealt with briefly.

4 THE EVIDENCE

(1) Documentary Evidence

4.1 In summary, there is documentary evidence which supports the physical existence of at least part of the Route since 1887. I summarise that evidence below.

- 4.2 The **1887 First Edition Ordnance Survey** (page 317) map at a scale of 6 inches:1 mile (1:10560) shows the claimed route A – B with a gate or barrier a few metres to the west of point A1 (not at point A1 as described in the OR at para. 8.4). 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 close to point B. It continues with double pecked lines (an unfenced track), not on the same route as that claimed (as described in the OR at para. 8.4), but starting at a point a few metres to the southwest of point B and continuing in a straight line to point E. The route is not marked 'F.P.' or 'B.R.' alongside. There is no disclaimer present on this map as to the representation of a route being evidence of a right of way.
- 4.3 The **1903 Second Edition Ordnance Survey map** (page 320) at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act 1910 valuation and depicts a route similarly to the 1887 First Edition, although the larger scale map shows the buildings in more detail and additional field/enclosure boundaries are shown.
- 4.4 The 1903 Second Edition Ordnance Survey Map (page 319) at a scale of 6 inches:1 mile (1:10560) shows a route similarly to the larger scale 1903 Edition.
- 4.5 The **1928 Edition Ordnance Survey Map** (page 321) at a scale of 25 inches:1 mile (1:2500) shows the whole of the claimed route but with no gate or barrier near to point A1. The unfenced track starts at the eastern 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. A gate or barrier is shown across the end of the route at point E.
- 4.6 The **1930 Edition Ordnance Survey Map** (page 322) 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.

- 4.7 The evidence provided by the Ordnance Survey maps adds support to the route claimed and suggests that a gate or barrier 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.
- 4.8 It is accepted – generally – that the Ordnance Survey maps do not provide evidence of the existence of public rights of access. It was for that reason that in the OR, it was concluded that the documentary evidence alone was insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the Route. However, in context, the documentary evidence supports the current Application given that it shows at least part of the route has been recognised since 1887.

(2) User Evidence

- 4.9 User evidence shows that there has been deemed dedication in accordance with Section 31 Highway Act 1980. That evidence takes the following two forms, which are briefly explained.

- 4.9.1 User Evidence Forms “UEFs”. The UEFs contain a final section entitled “**DECLARATION**” in a lined black box. Each is signed by the maker of the form, next to the declaration that “I hereby certify that, to the best of my knowledge and belief, the facts that I have stated are true”. Whilst it is not contended that to knowingly give a false declaration in a UEF would necessarily amount to a criminal offence, it is nonetheless contended that weight can be given to the fact that the UEFs were signed by the makers; clearly bear the marks of a formal document, intended to be relied upon for administrative proceedings; and are warranted to contain true information.

4.9.2 Witness statements. In the usual way, the witness statements have been accompanied with a statement of truth. It would be a criminal offence to knowingly provide false statements in such a document. They should accordingly be given great weight. Some witnesses have indicated a willingness to attend the Inquiry, and to be cross-examined if necessary. Such evidence should be given the highest weight: Consistency Guidelines, §5.2.10

- 4.10 In addition, it will be noted from the table below that a number of individuals have since passed away since completing UEFs. It is respectfully submitted that their evidence should not be given less weight on account of them not attending the inquiry to be cross-examined, given the reason for not attending.
- 4.11 The use of the Route appears to have been brought into question when a locked gate was installed across the route at point A1 on 31 October 2007 together with notices stating, "Private No Public Right of Way". Many witnesses refer to the erection of the gate and sign on or around that time in their UEFs, and in their witness statements.
- 4.12 There has clearly been a 20 year period of use by the public as of right before the use of the Route was brought into question in 2007.
- 4.13 The user evidence indicates mainly public use on foot along the claimed route. There is some use by bicycles and cars, but this is not considered sufficient to have established higher rights.
- 4.14 At the time of the application, 24 people submitted evidence of use of the Route between 1956 and 2007/8. This clearly covers the 20 year period prior to 2007.
- 4.15 Of the 24 witnesses who completed user evidence forms, it was established that five had been given permission to use the route or were tenants of the landowner, so their evidence was not used in determining the application (and their use is not relied upon presently). They were:
- 4.15.1 Mr and Mrs Balch,
- 4.15.2 Mrs R Fry and
- 4.15.3 Mr and Mrs Wallis.

- 4.16 It is noted that **seven** in the OR were discounted, however on closer inspection Mr and Mrs Houston were found not to be tenants of the landowner as explained in paragraph 2.4.2 above.
- 4.17 Many of the witnesses say that they saw other people using the Route and it is reasonable to assume that the users who have completed evidence forms represent a proportion of the actual use. This demonstrates that there has been significant use of the Route by the general public over many years, and in particular over the period of 1987 to 2007.
- 4.18 The table below lists details of all those who completed user evidence forms in 2007/8, six of whom also provided witness statements in 2024. In addition, a further 14 witnesses have come forward and provided witness statements.
- 4.19 Those with a single asterisk are persons whose use has been discounted because it was as of right. However, a number of such persons attest to the use of the Route by others. That evidence should not be discounted.
- 4.20 Those with a double asterisk are persons whose use was outside the relevant period and has therefore been discounted.

Table 1. USER EVIDENCE

* = use by right, and whose use is therefore discounted;

** = use outside the period of 1987 to 2007, and whose use is also discounted

User No.	NAME	DATES OF USE	TYPE OF USE	USER EVIDENCE FORM	WITNESS STATEMENT
1.	Mr R E Allwright	1963 – 2007	Foot	Yes	N
	Mr and Mrs C J Balch*	1989-2008 (form actually stated 1908)	Foot	Yes	N
2.	Mrs B G Barber	1997-2008	Foot	Yes	N
3.	Mr K J Barber	1997-2008	Foot	Yes	N

User No.	NAME	DATES OF USE	TYPE OF USE	USER EVIDENCE FORM	WITNESS STATEMENT
4.	Mrs L Bennett	1980-2007	Foot	N	Yes
5.	Mr R J Bennett	1983-2008	Foot, car and bicycle	Yes	Yes
	Mrs J Bowman*	(1995-2003 with permission) 2003-2007	Foot and car	N	Yes
6.	Mrs A Bowring	1982-2007	Foot	Yes	Yes
	Mr B Chant *	1970 onwards?	Not known	N	Yes
7.	Ms E J Chapman	1978-2008	Foot	Yes	N
8.	Mr R Coast-Smith	1996 – 2007	Foot	Yes	N
9.	Mr A M Coffin	1974 – 2008	Foot	Yes	Yes
10.	Mrs D S Coffin	1960 – 2008	Foot	Yes	Yes
11.	Mr C Daniel	1990-2007	Foot	N	Yes
12.	Mrs M Daniel	1990-2007	Foot	N	Yes
13.	Mrs B Down	1974-2002	Foot	Yes	N
	Mr R Down**	1982	Foot	N	Yes
	Mr T Down*	1990-2010	Foot	N	Yes
	Miss B M Fellowes** (deceased)	1956+ 1960+ 1970+	Foot	Yes	N
	Mrs R Fry*	1978 – 2005	Foot, car and bicycle	Yes	N
14.	Ms S Gully	1973-2007	Foot	N	Yes
	Ms J Hayward**	1972-1976	Foot	N	Yes
	Mr E P Hindle*	1965-1984 1990-2007	Foot	N	Yes
15.	Mr I S C Houston	1986-2007	Foot, bicycle and car	Yes	Yes

User No.	NAME	DATES OF USE	TYPE OF USE	USER EVIDENCE FORM	WITNESS STATEMENT
16.	Mrs K P J A Houston	1986-2007	Foot and Bicycle	Yes	N
17.	Mr C J Lisle (deceased)	1994-2008	Foot	Yes	N
	Mr D Loxton*	1975-1979	Not known	N	Yes
18.	Mrs C Parsons	1990 2006	Foot	Yes	N
19.	Mr P A A Pepper (deceased)	1986-2002	Foot	Yes	N
20.	Mrs M Pople	1974-2002	Foot	Yes	Yes
21.	Mr C Pople	1975-1990	Foot	N	Yes
	Mr K Ring*	1956-1966	Foot	N	Yes
22.	Ms L A Smith	1987-2004	Foot	N	Yes
23.	Mrs V Stanley	1994-2007	Foot	N	Yes
	Mrs & Mrs R & S Wallis*	1972-2008	Foot, car and bicycle	Yes	N
24.	Mr D N Yeoman	1994-2006	Foot	Yes	N
25.	Mrs M Yeoman	1993-2007	Foot	Yes	N

4.21 If the evidence within the user evidence forms and the witness statements is combined, it can be seen that there are **25** users of the Route who have provided evidence of use as of right during the relevant period. To be clear this discounts, *first*, those who had permission to use the route (use by Mr and Mrs Balch, Mrs Bowman, Mr Chant, Mr T Down, Mrs Fry, Mr Loxton and Mr and Mrs Wallis has been discounted) and *second* those who used the route outside the relevant period (Ms Hayward, Miss Fellowes and Mr R Down). This leaves 25 users who all used the Route on foot.

4.22 The frequency of use varies from daily (Mrs B Down, Ms L Smith and Mrs V Stanley) to weekly (Mr Allwright, Mr and Mrs Barber, Mrs Bennett, Mr Daniel and Mrs Pople) to annually (Ms Gully).

- 4.23 At the beginning of the relevant period in 1987, 15 witnesses were using the Route and at the end of the relevant period in 2007, 18 witnesses were using the Route. The heaviest amount of use was in 2002 when 24 witnesses were using the Route.
- 4.24 None of witnesses say they were challenged, and none recall stiles or gates along the route prior to the installation of the locked gate in 2007.
- 4.25 Evidence provided in the witness statements clearly indicates that users of the Route were never challenged by owners or occupiers of the land until the erection of the gate and signs in 2007. More detail is provided on this in paragraphs 4.28 to 4.31 below. Also, it is notable that witnesses often saw others using the Route. It is therefore considered that the evidence submitted is only a proportion of the actual use that took place. For example,
- 4.25.1 Richard Bennett states that “it wouldn’t be rare to meet others walking the route”.
- 4.25.2 Ailsa Bowring used the route at least once a week and would “occasionally bump into other walkers”.
- 4.25.3 Brian Chant worked on the Farm as Dairy Manager from 1970 until 2004 and stated that he “would see people walking the Route on a daily basis, some with dogs and some without.”
- 4.26 This suggests a considerable level of use, particularly given the rural location of the Route. It is also apparent that several of the witnesses used the Route frequently. Veronica Stanley used the Route nearly every day between 1994-2007, Lorraine Smith used the route daily from 1987-2004, Margaret Pople used the Route weekly from 1990 and Ian Houston used the Route 2-3 times a week. This indicates that the level of use was sufficient to come to the attention of the landowners/occupiers. This supports Brian Chant’s statement above, to which further weight can be given.

4.27 The Application does not need to prove that there was a need for the Route, or that the Route was desirable. Nor does it need to show why people were using the Route. However, it is telling that many witnesses refer to the extensive views that can be seen from the Route which adds to its recreational value to those who used it. Witnesses also refer to enjoying seeing the animals which were kept alongside the Route. For example, Diane and Andrew Coffin, Mary Daniel and Judith Hayward. Other reasons for using the Route include that it provides a good circular walk from the village (Christopher Daniel, Ian Houston and Ailsa Bowring). This tends to confirm the use of the route, as it indicates that people were using it for recreational purposes.

The proviso: evidence of lack of intention to dedicate

4.28 There is no evidence of actions on the part of the landowners between 1987 and 2007 that indicate a lack of intention to dedicate a public right of way.

4.28.1 At the start of the relevant 20 year period, **Winchester College** owned all of the land crossed by the Route. In August 2007 they sold the land crossed by the Route between points A – C to **Charteroak Estates** but retained possession of the land crossed by the Route between points C – E.

4.28.2 Winchester College initially objected to the Order, they provided no further evidence to support their objection. The College subsequently sold the cottages near to point E and withdrew their objection as they were then "...unaffected by the proposals."

4.28.3 Whilst Charteroak Estates initially raised an objection to the proposal, they did not, however, progress that to a formal objection to the Order. They did state that they had not acquiesced to use of the land. There is therefore no evidence, so far as I can tell, which has been adduced by the landowners to contradict the intention to dedicate the Route.

4.29 The current landowners of A - C are Saxon Holiday Lodges Ltd. They bought the land from Charteroak Estates in August 2018. The current landowner of C - D is Charlotte Anne Townshend of Ilchester Estates who purchased the land from Winchester College in January 2019. It is the case that Saxon Holiday Lodges Ltd (through Mr Funnell) has objected to the Order, but the fact remains that the landowners during the relevant period do not object to the same, and they have not provided any evidence to suggest that they objected to the dedication.

4.30 I note that there is clear and cogent evidence from the UEF and the witness statements that the landowners did not seek to preclude dedication (noting that, in any event, it would be on the person relying on the proviso to prove that it applied). By way of context, the land the Route crossed at the time was farmed by a family called the Loxtons. Brian Chant was the Dairy manager at the farm. Those witnesses who have provided statements say that the landowners and tenants never objected to their use of the Route. Thus:

4.30.1 Lynne Bennett states that she would often stop and talk to Brian Chant who used to keep pigs there.

4.30.2 Ailsa Bowring would stop and speak to Mike Tozer who had an aviary near to point B.

4.30.3 Andrew Coffin would see farm workers but was never prevented from using the Route.

4.30.4 Diane Coffin would occasionally chat to farm workers when passing the cottages but was never told not to use the route.

4.30.5 Ron Down would quite often stop and pass the time of day with one of the farm workers but was never prevented from using the Route.

4.30.6 Mr and Mrs Pople would always say hello to farm workers if they saw them and were never prevented from using the Route.

4.30.7 Veronica Stanley would sometimes say hello to the farm workers or the couple who lived in East Farm House and was never prevented from using the Route.

4.30.8 Only Susan Gully said she was told not to use the Route, and this was during the 2020 lockdown period and therefore outside the relevant 20 year period.

4.31 In addition, those who worked on the farm and/or were tenants state that they were never instructed to prevent people from using the Route. Brian Chant worked for Richard Loxton on the farm and also used to keep his own pigs on site. He saw people walking the Route on a daily basis and was “never instructed by the Loxtons or anyone else to stop people using the Route”. David Loxton worked on the farm from 1975-9. His father was Richard Loxton the tenant farmer and at that time the land was owned by Winchester College. He (David Loxton) was “never instructed to stop people using [the Route]”. Mr Ring spent a lot of time at the farm when he was young as his father worked there and he often saw people using the Route. He says it was “free and open”.

4.32 Given that (1) the landowners at the relevant time do not put forward any evidence contradicting an intention to dedicate and (2) witness statements from workers at the farm confirm that they were not instructed to stop people using the Route, it is clear that the proviso is not satisfied.

Inferred dedication

4.33 If the inspector is not persuaded that the evidence indicates a deemed dedication of the Route, I suggest that it can be inferred from the evidence available that past landowners have dedicated the Route for use by the public under the common law.

5 COMMENTS ON OBJECTIONS & STATEMENTS OF CASE

Objections to the Order

- 5.1 There are 20 objections to the Order. Detailed comments on each objection are contained in the Council's Comments on Objections (page 155), and the response to the Statements of Case (below) cover those Objections which are not repeated here.
- 5.2 I raise one additional point here. One of the objectors stated that 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, they say, this may have had an impact on the decision to purchase the property. The Council's position is that what was shown on the search would not be relevant to the application of the test under the 1981 Act. But in any event, having considered the search provided by the objector, it would appear that the search accurately recorded the correct position. That search contained the following 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?". The answer was "none". That is correct because the Route does not "abu[t]" the property in question as there is a parcel of land in between the claimed footpath and the property.

Statements of Case

- 5.3 Ten Statements of Case have been received objecting to the Application. What follows is detailed response to why the Council considers the Statements of Case disclose no reason to refuse to confirm the Order, with a view to saving Inquiry time.
- 5.4 Four overall points are made dealing with cross-cutting issues. It is understood that all the objections are from persons who have come to the land after the relevant period ended in 2007. Whilst in the usual way such persons can object to the Order, unless they can put forward cogent evidence of lack of use during the period of 1987 to 2007 the Inspector will be invited to accept the evidence relied upon by the Council as unchallenged evidence.

5.5 *Desirability, suitability, purpose and safety.* Objectors are primarily concerned about desirability, suitability, purpose and safety. 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. As addressed above in paragraph 3.1, these are not matters which I understand are relevant to the Application.

5.6 *Human rights objections.* A number of the objectors have concerns about privacy and other issues that relate to the Human Rights Act 1998 as the location of the claimed route runs in close proximity to their properties. This, too, I understand to not be relevant to the present Application. I draw attention to the Guidance Rights of Way Section Advice Note No 19 - Human Rights Act 1998, paragraph 4.4.2, and invite the Inspector to “turn away” such representations. That paragraph reads:

“the primary legislation” [i.e. the 1981 Act] “offers no scope for personal circumstances to affect the decision on the order, the Inspectorate’s recommended approach is to turn away any human rights representations”

5.7 *Passage of time and unfairness.* Some objections complain of the passage of time since the Application. Such objections often expressly recognise that they have no evidence to rebut the evidence put forward by the Council. This significantly detracts from the objections put forward, as the sole evidence of use during the period 1987 to 2007 is that of the Council. It is not accepted that the proceedings are unfair. The evidence put forward by the Council can in the usual way be tested during the Inquiry.

5.8 *Strength of evidence.* Some of the objectors also consider that the user evidence is insufficient to lead to the accrual of public rights. As explained in section 4 above, I consider that given the rural nature of the route, the level of use is significant enough to suggest that a right of way subsists. I note that 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 to satisfy the requirement of use ‘as of right’ by the public.

5.9 I now consider the ten Statements of Case in turn.

5.10 **Mr and Mrs D J Ash** are lodge owners and object to the proposed footpath “mainly on the grounds of security and privacy”. They would not have bought the lodge had they known about the footpath and are “concerned about vandalism” and property damage.

COMMENT: As above, at paragraph 5.5, these are comments about desirability, suitability, purpose and safety and are not presently relevant.

5.11 **Mr and Mrs Bayfield** summarise their objection under three headings:

5.11.1 First, regarding user evidence, they state that a sizeable number of the statements provided should not have been relied upon when making the order. They go on to say that they believe visitors were allowed particularly for commercial reasons and therefore people would not have been questioned or turned back. They considered that use would have been with permission. The claim by witnesses that there were no gates or notices on the site seems unreasonable as it was a working farm. Also, the other users seen by witnesses may have been farm workers or residents going about their business. Much of the use of the road was and is for access and commercial purposes.

COMMENT: The Council refers to the evidence which it has gathered, and which clearly shows the required use during the relevant 20 year period from 1987 to 2007. It is noted that user by those persons with permission has been discounted.

5.11.2 Second, they raise issues regarding the claimed route. They do not believe that a public right of way can be lawfully claimed along the entire length of the route as access from A - A1, C - D and D - E has never been blocked or denied. The measurements quoted in the order are incorrect and they object to rights being claimed over the whole width of the road. They claim there has been maladministration as the application has been incorrectly mapped on the Council's system. Also, there are private rights of access to Coombe Cottages and describing the access as a footpath is misleading and inaccurate.

COMMENT: The Application is legally valid and is supported by evidence. The measurements reflect the useable width of the path on the ground and were taken by a Dorset Council Officer prior to the Order being made. With regard to the mapping, I believe they are referring to the Dorset Explorer website which is available to the public and shows public rights of way and current DMMO applications. The width of the line representing this application varies depending on the scale at which the map is viewed, and unlike (say) a river, the width of that line is not in proportion to the width of the public right of way. The closer the viewer zooms in, the thinner the line appears relative to the base map. The information bar relating to the DMMO layer states “*This layer shows the basic detail of the line. For the full application, check the Dorset Council website*”. Private rights of access are not affected by the application.

5.11.3 Third, they consider that the process was flawed as the landowners were not correctly notified of the application and other procedural failings and delays have prejudiced owners and affected parties.

COMMENT: It is not accepted that the process was flawed in the way that they contend or at all. The evidence base which the Council has collected relates to the relevant period from 1987 to 2007. That evidence can in the usual way be examined and tested at Inquiry. There is no unfairness resulting from delay or any other factor relied upon by Mr and Mrs Bayfield.

5.12 **Susie Bracken** says that “parking would be a concern” due to the narrow roads, and that some of the properties are a “business investment” whose value would be adversely affected.

COMMENT: As above, at paragraph 3.1, these are comments about desirability, suitability, purpose and safety and are not presently relevant.

5.13 **Shaun Cripps** asserts that there is negligible evidence that the footpath was ever used for simply recreational purposes in the past.

COMMENT: I refer to the discussion above in Section 4.

5.14 **Nick Funnell** is the current owner of Saxon Holiday Lodges Ltd and the Route between points A – C. His objection raises concerns in three sections, which I address in turn

5.14.1 A – legal and practical concerns.

5.14.1.1 **Point 1** appears to suggest that the footpath is narrow and, as such, “unsuitable for footpath designation”. No authority is cited for this proposition. The test under section 53 of the WCA 1981 turns on use for a period of 20 years. It matters not whether the footpath is or is not suitable for such use. It is in any event unclear why a path of 3.17m would be too narrow for footpath use.

5.14.1.2 **Point 2** suggests that the previous use was limited to farm and agricultural use. That is not supported by the evidence provided by the Council, in particular the witness statements from persons using the Route for recreational purposes which have been summarised above.

5.14.1.3 **Point 3** refers to safety and a claimed failure to maintain the existing public highway which is not relevant for the reasons given above.

5.14.1.4 **Point 4** refers to perceived impact on property and service access which is also irrelevant.

5.14.1.5 **Point 5** suggests inconsistencies in historical evidence and testimony. I consider that the evidence summarised above in section 4 is clear and cogent and is sufficient to support the Order.

5.14.1.6 **Point 6** raises an objection to the claim of no existing gate at the farm. However, the gate Mr Funnell refers to is not on the claimed Route but is on the existing public highway south of point A and was installed in or after 2009 as evidenced by a photograph (below) taken in 2009 by the Council’s case officer as part of his investigation into the Application. The photograph shows newly installed gateposts with no gates present at the time the photograph was taken.



[This photograph post-dates the application.]

Commented [MR1]: Please exhibit the photo and explain why it was taken

- 5.14.1.7 **Points 7 and 8** suggest the Council overlooked letters from Pardoes Solicitors on behalf of Charteroak Estates. I stress that Charteroak Estates do not object to the Order. In any event, the letters are addressed in the OR at paragraph 11 (page 31). It is not accepted as suggested in that letter that the user evidence is inadequate. I refer to my discussion above in section 4.
- 5.14.1.8 **Point 9** notes – expressly – that it is “practically impossible for any property to gather credible evidence” to contest the Application. It accepts on its face that it lacks cogent evidence to contradict that of the Council and which I have summarised above in section 4.
- 5.14.1.9 **Point 10** suggests a lack of authority for public access but misunderstands the legal test. The very nature of the use establishing the footpath in 1987 to 2007 would have been without permission.

- 5.14.1.10 **Point 11** relates to the mapping of the footpath application. This appears to refer to the depiction of the application route on the publicly available Dorset Explorer website. This has been covered above at paragraph 5.9.2.
- 5.14.1.11 **Point 12** refers to the absence of use after 2018, which is substantially after the relevant period in question from 1987 to 2007.
- 5.14.1.12 **Point 13** questions the practical use of the route which cannot be considered.
- 5.14.1.13 **Point 14** suggests the proposal is inconsistent with Council objectives which is also irrelevant.
- 5.14.1.14 **Point 15** suggests that the Council has overlooked the 20 objections submitted in response to the Order. However, the concerns raised have been clearly addressed in the Council's Comments on Objections (page 155).
- 5.14.2 B – Procedural concerns and delays in the DMMO process.
- 5.14.2.1 **Point 1** suggests there was a lack of proper notification and communication of the original landowners. As a preliminary point, I do not understand how Mr Funnell can complain of any alleged failure to notify and/or communicate with *previous landowners* (one of whom, I note, made a full objection to the Application and which was duly considered in the OR). Still less do I understand how Mr Funnell could validly complain of alleged procedural flaws given that he has submitted a fulsome Statement of Case and appears likely to appear at Inquiry. I therefore address this objection in outline only.
- The applicant served notice on the two landowners of the affected land at the time - Charteroak Estates (land between points A - C) and Winchester College (land between points C - E) as well as the owners/occupiers of Coombe Cottages and East Farm House adjacent the route.

- A pre-Order consultation was carried out in 2014. The consultees included Charteroak Estate, Winchester College, the owner/occupiers of Coombe Cottages and East Farm House.
- It is not therefore accepted that there were procedural flaws in relation to consultations with or notification of the landowners.

5.14.2.2 **Point 2** refers to unacceptable delays. The Council has a long backlog of outstanding DMMOs which it is working through as quickly as resources allow. The process was slowed further by two case officers leaving the team. This case was prioritised for submission to PINS due to the potential availability of witnesses. As explained above, the evidence for the inquiry put forward by the Council can be tested in the usual way by Mr Funnell, and it is not accepted that the delay results in any unfairness.

5.14.2.3 **Point 3** suggest there is potential for adverse legal and financial impact. This cannot be taken into consideration.

5.14.2.4 **Point 4** refers to Planning conditions which are also irrelevant.

5.14.3 C – Additional considerations:

5.14.3.1 This section raises issues such as potential local economic impact, security and safety issues all of which are irrelevant under the legal tests. The suggestion is also made that “Legal precedents exist where footpath orders have been denied under similar circumstances, reinforcing our position.” but no particulars of such authority are given. The Council would in the usual way expect such legal authority to be provided clearly and ahead of time.

5.14.3.2 Mr Funnell also provided a summary objection containing photographs which “illustrate the current usage of the access road by large farm machinery and vehicles, and clearly demonstrate its status as a private access point.”

COMMENT: The photographs of vehicles and a gate are taken on the existing public highway south of point A on the Order plan, not the claimed Route. Safety concerns cannot be considered as part of this process.

- 5.15 **Sally Humphreys** objects as she does “not believe that there is sufficient evidence to show that rights of way for the public at large exist across the Saxon Maybank site” (point 8). She says the footpath has not been used for a continuous period of 20 years (point 5). Saxon Maybank is securely fenced and gated and any person accessing the site “would be asked” politely leave (point 4). To her knowledge no permission has been given by any landowner to allow the public to walk through (point 7).

COMMENT: I refer to the Council’s evidence as summarised in section 4, above.

- 5.16 **Robert Lanzer** in section 2 of his statement of case at paragraphs 2.1 to 2.6 refers to a long list of considerations which are not presently relevant. He contends that the desirability, suitability, purpose and safety of the route are relevant, relying on section 26 of the 1980 Act. However, it is not that Act which is relevant; it is the 1981 Act that governs this Application. He also refers to the Pardoes Letter, written on behalf of Charteroak Estates. It is not the case that that letter was ignored, it was expressly addressed in the OR. I refer again to my analysis in section 4, above.

- 5.17 **Mr and Mrs Mitchell** object to the proposed reopening of the footpath which has not been used for many years. They are particularly concerned about safety especially from traffic. They feel the use is historical when it was once a working farm which it is not now. The gate has never been locked in the 6 years they have lived at Coombe Cottages and there has always been a sign saying private.

COMMENT: The relevant period is prior to Mr and Mrs Mitchell living there, and on which they offer no evidence to contradict the Council. Safety issues are not relevant to the legal tests.

- 5.18 **John Oakley’s** objection is based on the grounds of privacy, security and health and safety.

COMMENT: These concerns are not relevant to the legal tests.

5.19 **Mr and Mrs Pearce** raise a number of issues under various sub-headings:

5.19.1 **Section 1** - They consider that the Council's consultation process was insufficient, and the evidence of use and the mapping evidence is insufficient to demonstrate a footpath exists.

COMMENT: Mr Pearce was contacted during our initial pre-order consultation process and responded at that time objecting to the proposal, The Council considers the evidence is sufficient.

5.19.2 **Section 2** – presents ownership of the site.

COMMENT: This is not relevant to the legal tests, but the contents of this section are noted.

5.19.3 **Section 3** - presents the nature of the site and its planning details.

COMMENT: These, too, are not presently relevant.

5.19.4 **Section 4** – They provide a timetable of events surrounding the Order.

COMMENT: It is not clear how this applies to the consideration of the evidence.

5.19.5 **Section 5** – This section calls into question the Council's evidence in support of the Order.

COMMENT: This is not accepted, and my position is that the evidence clearly justifies the making of the Order. I make two further points;

(1) I invite the Inspector to place no weight on the "local resident" whom Mr Pearce says he spoke to. It is not clear who that person is, when Mr Pearce spoke to him, or what period in question he is alleged to have lived at Coombe Cottages. Such anonymous hearsay should be excluded from consideration.

(2) The quote in 1/D/07/001761 was from a planning report dated 14 February 2008, for an application registered on 1 November 2007. It mentions, in that context, that there “**are** no public footpaths or bridleways through or close to the site” (emphasis mine). That was correct because at that point the Application had not been made (it was made on 7 July 2008).

5.19.6 **Section 6** – They refer to the effect of the Order “on our houses”.

COMMENT: This is not relevant to the consideration of the Order for the reasons given above.

5.19.7 **Section 7** – Mr and Mrs Pearce consider that they are “victims of...violations of the Human Rights Act 1998.”

COMMENT: The Inspector is invited to turn away this aspect of the objection for the reasons given above. For the avoidance of doubt, it is not accepted. The Order does not seek to *create* new rights which are capable of affecting Article 1 of the first protocol or the Article 8 interests that Mr Pearce and his wife refer to. Rather, it would *recognise existing rights* and record them on the Definitive Map and Statement. It would do so in the public interest, which is to maintain an accurate and publicly accessible record of existing public rights of way. This would not result in any unjustified infringement of the rights relied upon. Nor is it clear how Article 6 is engaged. The Application determines whether the DMMO should be modified, and a PROW registered on land outside Mr and Mrs Pearce’s property. It is not clear how these proceedings determine any “civil rights and obligations” of Mr and Mrs Pearce (as would be required if their Article 6 rights were engaged).

5.19.8 **Section 8** – They refer to what they see as the current trend in changes in the Rights of Way laws since the Countryside and Rights of Way Act 2000 came into force. They refer to excepted land under the 2000 Act. They also refer to extinguishments under Section 118 Highways Act 1980 as well as proposed changes under the Deregulation Act 2015 and other unspecified Acts. They consider that the path is not needed due to the lack of evidence of current usage.

COMMENT: This is not relevant to the consideration of the current Order. Excepted land relates to Open Access land not public rights of way. An extinguishment under Section 118 Highways Act can only be considered if public rights are found to exist, which Mr and Mrs Pearce say do not.

- 5.19.9 **Section 9** – Refers to proportionality and it is suggested that “Taking into account the extremely low number of verifiable historic or current users, the availability of more suitable local alternatives and the imbalance between those affected and those likely to use the route ... the Order should not be confirmed as such an action would be disproportionate and unfair.”

COMMENT: The Council considers that the evidence is sufficient for the Order to be confirmed. Perceived matters of proportionality are not relevant under the legal tests.

6 SUMMARY

- 6.1 The extent of user evidence available clearly demonstrates that the Route has been used by members of the public at large, on foot, as of right and without interruption for 20 years before being called into question.
- 6.2 There is no sufficient evidence of an intention not to dedicate on the part of the landowners during that 20 year period.
- 6.3 Alternatively, I consider that use of the Route is sufficient at common law for the acquisition of public footpath rights.