

Agenda item:

Roads and Rights of Way Committee

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Dorset County Council



Date of Meeting	23 November 2012
Officer	Director for Environment
Subject of Report	Application for a definitive map and statement modification order to upgrade Bridleway 6, Little Bredy and Bridleway 7, Winterbourne Steepleton at Black Down to byways open to all traffic
Executive Summary	In response to an application to upgrade Bridleway 6, Little Bredy and Bridleway 7, Winterbourne Steepleton at Black Down to byways open to all traffic this report considers the evidence relating to the status of the routes.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: The applicant submitted documentary evidence in support of his application. Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives. A full consultation exercise was carried out in July 2012, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.

	<p>One user evidence form from the applicant, as a user of the claimed route, was submitted during the investigation.</p> <p>Any relevant evidence provided has been discussed in this report.</p>
<p>Recommendations</p>	<p>Budget/ Risk Assessment:</p> <p>Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>That:</p> <p>(a) The application be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record:</p> <p>(i) Bridleway 6, Little Bredy as shown A – B – C; and</p> <p>(ii) Bridleway 7, Winterbourne Steepleton as shown D – E – F – G – H</p> <p>on Drawing 12/22/1 as restricted byways; and</p> <p>(c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) Subject to (b) below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist;</p> <p>(b) The available evidence shows, on balance, that a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and</p> <p>(c) The evidence shows, on balance the route claimed is a restricted byway. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p>
<p>Appendices</p>	<p>1 - Drawing 12/22/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ Winterbourne Steepleton Inclosure Award 1864 ▪ Winterbourne Steepleton Tithe Apportionment and Plan 1841 ▪ Plan of the Parish and Manor of Winterbourn Steepleton c1780

Background Papers	<p>The file of the Director for Environment (ref. RW/T399)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T399, which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Name: Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade Bridleway 6, Little Bredy and Bridleway 7, Winterbourne Steepleton to byways open to all traffic as shown A – B – C – D – E – F – G – H on Drawing 12/22/1 was made by Mr D Oickle on behalf of the Trail Riders' Fellowship on 13 October 2005.
- 1.2 The route claimed commences at its junction with the unnamed county road, the D11909, in the parish of Littlebredy at point A as shown on Drawing 12/22/1. The route continues in an easterly direction towards point B, the parish boundary with Winterborne Steepleton, being defined at its northern boundary by a mature blackthorn hedge and at its eastern boundary by scattered trees and scrub. The initial splay at point A extends to approximately 120 metres in width, reducing to approximately 8 metres at point B, the worn path being 2 metres wide with a grass surface.
- 1.3 From point B the route continues east, passing a barn at point B1 before turning southeast to its junction with the county road named "Coombe Road", the C10, at point C. From B the route is defined on its northern boundary by a stock proof fence and on its southern boundary by an old fence line, in an advanced state of dilapidation and the boundary of the adjacent woodland. This section of the route is partly overgrown, leaving a clear width of approximately 4 metres but an overall width between fences of approximately 8 metres. This 'overall' width reduces to approximately 6 metres from point B1 where there is also evidence of use by horses, pedestrians, cyclists and vehicles, the latter most likely being evidence of earlier use, probably agricultural. The surface of this part comprises a mixture of grass, stone, earth and gravel.
- 1.4 The route continues south east from point D, passing through a small parking area, the width at its junction with the road being approximately 18 metres. The surface initially comprises compacted road planings with a 2 metre width. A small bank has been constructed at D1 and several 'Dragon's Teeth' posts have been driven into the surface of the route, restricting the width and partially obstructing the path at this point.
- 1.5 From D1 to D2 the route continues south east, its width of approximately 8 metres being defined by a post and wire fence to the north east and the edge of the adjacent woodland to the south west. The surface is a mixture of grass, stone and gravel and compacted road planings.
- 1.6 From D2 to D3 the route continues south east, being defined by the post and wire fence to the north east and an old dilapidated post and wire fence to the south west, leaving a width of approximately 4 metres between the fences and 7 metres between the fence to the north east and the edge of the adjacent woodland. The surface comprises a mixture of grass, stone and gravel and several stretches of compacted road planings.
- 1.7 From point D3 to E the route continues south east, passing through a small 'oasis' of broad leafed woodland amongst the extensive coniferous plantation. The well defined track is approximately 6 metres in width with a surface comprising a mixture of earth, gravel and stone.

- 1.8 From E the route turns to the north east, gently climbing close to the southern edge of the adjacent plantation, the width being approximately 4 metres, reducing to 3 metres in the vicinity of point E1, where there is evidence of the formation of a 'hollow-way', normally attributable to the passage of vehicular traffic over a considerable period of time. The surface of this section comprises a mix of earth, turf, stone and gravel.
- 1.9 From E1 the route continues in a generally easterly direction through open countryside (following the clear felling of the trees) following a well defined track of approximately 4 metres in width, which reduces to approximately 2 metres at point F where the route joins a forestry service road. From F the route continues south east along a well defined stone/gravel surfaced track of approximately 5 metres in width, passing through its junction with Bridleway 6 at point G before terminating at its junction with the unnamed county road, the C112, at point H. At point H the route is obstructed by two box steel padlocked barriers of approximately 4 metres in width.
- 1.10 The total length of the route is approximately 1.85 kilometres (1.12 miles)
- 1.11 The land through which the route passes as shown between points A and B is owned by the Brideshead Estate and that between points D and H by Dorset County Council. No owner of the route as shown between points B and C has been identified, although Dorset County Council owns the adjacent land to the south and C Oliver and S Pinder the land to the north.

2 Law

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

3 Documentary evidence (Appendix 3)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T399.
- 3.3 In summary, the applicant states "there is a weight of evidence to indicate it is more likely this route carries public carriageway rights rather than any lesser rights".

4 User evidence

- 4.1 An analysis of the single user evidence form, completed by the applicant, is contained at paragraph 9 of this report.

5 Additional evidence in support of the application T399)

- 5.1 No additional evidence has been submitted in support of this application.

6 **Evidence opposing the application** (copies available in the case file RW/T399).

6.1 Six letters were received as a result of the consultation. Only one of these from Mrs K Gocher, representing the Ramblers' Association, made a direct objection to the application although she did not provide any evidence in support of this stance. Mr H Klaentschi, whilst making it very clear that he does not support the application, did not object directly and provided no relevant evidence for consideration.

Name	Comments
Mrs K Gocher, Ramblers' Association	Objects to the application "but would not object to the route becoming modified to restricted byway status". No evidence provided.
Mr H Klaentschi	Clearly unhappy with the removal of trees in the area and with this application but gives no relevant evidence.

7 **Other submissions received** (copies available in the case file RW/T399)

Name	Comments
Mrs C Voce	She uses the route regularly but has never witnessed any use with mechanically propelled vehicles.
C Oliver and S Pinder	Adjacent landowners – have witnessed and have no objection to public use on foot, horse, bicycle and motorcycle. However, due to concerns with security they would not welcome the route being made available to larger vehicles.
Claire Pinder, Senior Archaeologist, Dorset County Council	There are at present no recorded archaeological finds or features on or in the immediate vicinity of the route affected by this proposal.
Natural England	The application does not affect a statutory site for nature conservation.
Mr G Plumbe	No comment.

8 **Analysis of documentary evidence**

Inclosure Award

8.1 The **1864 Winterbourne Steepleton Inclosure Award** was undertaken under powers conferred by "**The Acts for the Inclosure, Exchange, and Improvement of Land**" and is believed to refer to the "**Act to amend and further extend the Acts for the Inclosure, Exchange, and Improvement of Land 1852**".

- (a) **Section 34 of the 1852 Act** states “In citing this Act, the said recited Acts, and the Acts passed in pursuance of the annual or any special reports of the commissioners, or any or either of them, in other Acts of Parliament, in conveyances, documents, and legal instruments, it shall be sufficient to use the expression, **“The Acts for the Inclosure, Exchange, and Improvement of Land.”**”
- (b) **Section 30 of the 1852 Act** states “The Commissioners may, if they shall think fit, direct the Valuer to annex to his award, in substitution for the Map referred to by his report, a copy thereof, of which the Accuracy shall be certified under their Seal”.
- 8.2 This Inclosure Award differs from general Inclosure Awards in that it was not concerned with the creation of public highways but merely with the division or exchange of existing inclosures. However, the annexed plan identifies a number of public roads, one of which, “Public Road” No. 20, in the opinion of the applicant, provides support to the application. However, as the term ‘road’, which can be applied to any highway to which the public has access, is ambiguous as to the status of the highways concerned, further evidence is required in order to determine, on balance, what the actual status of these roads may be.
- 8.3 Part of the claimed route as shown between points B and E is shown on the Inclosure plan and is identified as Public Road No 20. It passes through or is adjacent allotments numbered 11, 13, 15, 16 and 17 and is annotated at the western end, point B, as being “From Little Bredy” and at its eastern end, point E, as leading “To Weymouth”.
- 8.4 In total, five “Public Roads” are identified on the Inclosure plan, the majority of which are currently recorded as public highways, including several public carriageways. All of these routes are shown in exactly the same manner, being colour-washed in brown and annotated with their origins and destinations. These details, which follow the conventional method for the depiction of public carriageways on maps of this period, may suggest that all these routes were vehicular highways.
- 8.5 There is also a public quarry, allotment 16, which was awarded to the Waywardens of the Parish “for ever” in order to provide a source of materials for the ongoing maintenance and repair of these public roads. This is located alongside two of the roads, including that of the claim. It is reasonable to presume that this material would have been collected and transported by horse drawn carts and taken where required by means of the highway network including the ways shown on the plan. In addition to the above, the accompanying schedule demonstrates that the owners or occupiers of the allotments adjacent these roads and including Public Road No. 20, were required to erect and maintain fences against them.

- 8.6 The accompanying schedule provides the area of land occupied by these roads, which in the case of No. 20 was 2 acres and 3 perches (or approximately 9,771 square yards). By reference to the Ordnance Survey Second Edition Map scale 6 inches:1 mile (1:10560) it can be calculated that the length of Public Road No. 20 equates to approximately 1000 yards. In dividing 9,771 yards by 1000 yards the approximate width of the road can be ascertained, which in this case is approximately 30 feet ($9771 / 1000 = 9.771$ yards), which, coincidentally, is the required minimum width of a public carriage road under the Inclosure legislation from 1801.
- 8.7 This document was created through a legal process and its accuracy confirmed by the application of the Commissioners' seal. Although it does not appear to be directly concerned with the creation or alteration of the highway network it nevertheless depicts existing public roads and a public quarry that was awarded for their ongoing repair. The widths of the roads have been determined to be approximately 30 feet, which was the minimum width required for a public carriage roads post-1801 and would be considered a generous width were they to be only footpaths or bridleways. Consequently, although not conclusive, this evidence nevertheless strongly indicates that, on balance, the public roads shown on the Award, including public road No. 20, hold the status of public carriageways.

Tithe Apportionments

- 8.8 The **1841 Littlebredy Tithe Apportionment and Plan** does not include the area through which that part of the claimed route, A to B, would have passed.
- 8.9 The **1841 Winterbourne Steepleton Tithe Apportionment and Plan** depicts that part of the claimed route as shown between points B and H. It is shown to be within apportionments numbered 77, 79 and 80 but is clearly un-apportioned. The route is uncoloured but well defined by two parallel broken lines. At point B the plan is annotated as being "from Littlebredy" and at point H is annotated as leading "to Weymouth".
- 8.10 By themselves Tithe Apportionments rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment. Although opinion is divided some experts argue that when a route is colour-washed and annotated with a destination and/or origin this may indicate that it was regarded as a public highway, probably a public carriageway. On their own these Tithe Apportionments provide some support to the application as evidence to the physical existence of the route at the time. However, in light of the Winterbourne Steepleton Inclosure Award it is considered that in this case more weight should be attributed to them.

Plans of the Parish & Manor of Winterbourn Steepleton, Conveyance & Mortgage

- 8.11 There are two plans of the **Parish and Manor of Winterbourn Steepleton**, the first being what appears to be a draft, sketched in black and white and which was presumably prepared in preparation for the second document that is coloured.

- 8.12 The survey for the 'draft' **Plan of the Parish and Manor of Winterbourn Steepleton 1778** was undertaken during October 1778. This plan depicts the claimed route between points B and H, which is roughly defined by two parallel lines that are unbroken for the vast majority of its length. The plan is annotated with the names of the parishes, owners of the land, names and numbers of the allotments and their respective areas, destinations and origins. However, some of this information, for example, the depiction of allotment 16 as being under the ownership of the Waywardens of the parish, would appear to have been added at a later date as the plan pre-dates the Inclosure Award by 86 years and the Tithe Apportionment by 63 years.
- 8.13 The second **Plan of the Parish and Manor of Winterbourn Steepleton c1780** is of much higher quality than the 'draft' and is also coloured. The claimed route is shown between points B and H, being defined by two solid parallel lines and is colour-washed in brown. At point B it is annotated as being "from Little bredy" and at point H as leading "to Weymouth". Although these plans precede the Tithe Apportionment Plan by some 60 years they do bear a striking resemblance to it and may well have been used during its production.
- 8.14 A **Conveyance** of landholdings within the parishes of Winterbourne Steepleton and Winterbourne Abbas between F H Lambert and W C Lambert in March 1869 includes a plan of the area showing the lands to be exchanged. The plan also shows the surrounding area and depicts a number of roads, including one that generally corresponds to that part of the claimed route as shown between points B and H. It is defined by two parallel broken lines and, at what would correspond to point C, a public gravel pit, awarded in the 1864 Inclosure Award for the repair of the parish roads, is clearly shown and annotated. At point B it is annotated as leading from Little Bredy, the annotation being in the same style as that shown at either end of the section of the county road leading from Martinstown to Portesham. There is no indication that the land occupied by these roads was considered to be included within the surrounding allotments and the manner in which they are braced together across the roads would suggest the opposite.
- 8.15 A further document, the date of which is difficult to distinguish but is possibly from around the same period, concerns the **Mortgage** of an Estate at Winterbourne Steepleton, the area concerned being the same as that of the conveyance above. The parties involved were W C Lambert and Sir W Erle and others. The documents include a plan which, although similar to that accompanying the conveyance, is drawn in a different style. This plan shows the same roads as the conveyance plan including that part of the claimed route from B to H, which is also annotated at point B as being "from Little Bredy".
- 8.16 All of these documents share one feature in common with the Winterbourne Steepleton Tithe Apportionment and Plan of 1841, which may suggest that the Conveyance and Mortgage plans derived some or all of their data from it. They all show two additional routes in the vicinity of the public quarry, features that do not appear on the later Inclosure Award and Plan. Only the mortgage plan has an accompanying key and this provides no assistance in determining the status of the route as it is concerned only with land ownership.

- 8.17 The majority, if not all of the routes shown on the plans are recorded as public highways and the manner in which the application route is depicted upon them and its accompanying annotation suggests that it was not part of any of the adjacent landholdings but was more likely considered to be a public carriageway. However, the status of the route cannot be determined from these plans alone and consequently, whilst they provide good evidence of the routes physical existence, they provide no conclusive evidence towards its status.

Finance Act 1910

- 8.18 The claimed route passes through or is adjacent **Hereditament 69** (A to B) in **Littlebredy** and **Hereditament 258** (B to H) in **Winterbourne Steepleton**. No part of the route is excluded for the purpose of valuation although by reference to the accompanying valuation books it can be seen that a deduction of £100 for public rights of way or user was granted in respect of **Hereditament 258**.
- 8.19 Both of these hereditaments are generally large areas covering many acres of land and although **Hereditament 258** received a substantial deduction in respect of the acknowledged public rights of way and user within it, the information contained within the valuation book is insufficient to establish whether the claimed route may have been the subject of this deduction.
- 8.20 Although the exclusion of a way upon these documents would provide strong evidence towards the conclusion that the route was regarded as a public carriageway the reverse is not necessarily true. Whilst there were severe penalties for wrongfully claiming tax relief there were no penalties for not acknowledging the existence of public highways. Consequently, this evidence provides nothing conclusive for or against the claimed status of the route and is therefore considered as being neutral.

National Parks and Access to the Countryside Act 1949

Parish Surveys

- 8.21 The precise date that the **Little Bredy Parish Survey** was undertaken is not known. However, correspondence contained within the County Council's file does show that the County Council wrote to the Parish Council on 12 July 1954 advising them that Winterbourne Steepleton parish had claimed a bridleway from Smitten Corner to Northfield Plantation (H to B). At this time it appears that Little Bredy parish had made no claim for a public right of way over that part of the route within their parish (A to B). The County Council suggested that it appeared reasonable to include the route within their survey and the Parish Council agreed to this part of the route being recorded as Bridleway 11.

- 8.22 The precise date that the **Winterbourne Steepleton Parish Survey** was undertaken is also unknown. However, from the correspondence contained within the Littlebredy file it would be safe to assume that it was prior to July 1954 and one of the routes was dated as having been surveyed in 1952. The claimed route as shown B to H was included by the parish within their survey as a bridleway and given the number 6 for identification. It is described as commencing from Smitten Corner and leading to Northfield Plantation and references to the presence of Field Gates and Wicket Gates is included within the schedule. The reason for claiming the route was due to the knowledge of its use within living memory.

Draft, Provisional and First Definitive Map

- 8.23 The information collated during and immediately following the parish surveys was used in the production of the draft map of public rights way, which in turn resulted in the publication of the provisional and first definitive maps.
- 8.24 The part of the route within **Littlebredy** as shown A to B was recorded as **Bridleway 11** on the **draft map** for the **South Area**, which was published in January 1955. That part of the claimed route within **Winterbourne Steepleton** as shown B to H was recorded as **Bridleway 6**.
- 8.25 On both the **provisional map** published in 1964 and the **first definitive map** published in 1966 the route within **Littlebredy** as shown A to B was recorded as **Bridleway 6** and that part in **Winterbourne Steepleton** as shown B to H was recorded as **Bridleway 7**.

Special Review – Revised Draft Map – Current Definitive Map

- 8.26 No part of the claimed route was subject to investigation during the **Special Review of rights of way (1973)**. As a consequence the claimed route remained unchanged and was shown on the **revised draft map (1974)** as a bridleway, **Bridleway 6 in Littlebredy** and **Bridleway 7 in Winterbourne Steepleton**.
- 8.27 No objections were received in respect of the revised draft map and the route is recorded on the **current definitive map (1989)** as a bridleway throughout its length (A to H), **Bridleway 6 in Littlebredy** and **Bridleway 7 in Winterbourne Steepleton**.

Ordnance Survey and Commercial Maps

- 8.28 The **Ordnance Survey Drawings**, which were made in preparation for the publication of the First Edition of the one inch scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later one inch maps. The drawing that includes the area of the claimed route was completed in 1806 and clearly depicts the route throughout its length (A to H). The route is defined by two parallel lines both of which are, in the main, broken suggesting that no fences or hedges were present. However, there are also stretches defined by solid lines, suggesting that here fences or hedges were present. The route is shown as a through route and is depicted in the same or similar manner as other public highways within the vicinity.

8.29 The **Ordnance Survey First Edition map of 1811** at a scale of 1 inch:1 mile shows a route that corresponds to both that of the 1806 drawing and that of the claimed route throughout its length from A to H. It is clearly defined by two parallel lines that, with the exception of the northern boundary between points A to B, are broken lines, suggesting that at this time the majority of the route was not defined by hedges or fences. The route is depicted in the same manner as other routes in the vicinity, many of which are recorded as public highways, including public carriageways. The manner in which it is depicted suggests that it was a significant through route capable of accommodating vehicular traffic and had no gates or barriers to prevent or control such use.

8.30 The **1888 Ordnance Survey First Edition map** at a scale of 6 inches:1 mile depicts a route that generally corresponds with that of the claim throughout its length A to H. The **Second Edition, 1903 map** at the same scale depicts the route in the same manner throughout its length, A to H.

(a) On both the **First and Second Edition Maps** the claimed route is annotated with the letters 'B.R.', indicating that this was the status the surveyor thought the route might hold. However, the route is clearly defined by two parallel broken lines, suggesting that it was of a width that would accommodate vehicles and that it was also unfenced. In addition, at the equivalent of point C the public quarry, awarded under the Inclosure Award to provide materials for the repair of the highways within the parish, is also shown, being annotated as an 'Old Gravel Pit'. There is no line across the route at point A or at the termination point shown as H, which suggests that the route was not gated against the adjoining public carriageways. However, the depiction of solid lines or bars through the route suggests that gates or barriers may have been located at points B and E.

8.31 The **1902 Ordnance Survey Second Edition map** at a scale of 25 inches:1 mile depicts the same or a very similar situation as the Ordnance Survey 6 inches:1 mile second edition map.

8.32 The applicant also provided extracts from several other Ordnance Survey maps in support of the application.

(a) The **Reduced Ordnance Survey One Inch map** produced by G Richmond, Birmingham, circa **early 1900s**, has no key but the route claimed is prominently defined by two parallel solid or broken lines from point A to point H, being depicted in the same manner as other public roads in the vicinity.

(b) The **1937 Ordnance Survey 1 inch:1 mile map, sheet 140** depicts the route by means of two parallel broken lines from D to H and reference to the key defines it as a 'minor unfenced road'. That part of the route from A to C appears to be defined by a single broken line and reference to the key suggests it was defined under the heading of footpaths and bridleways.

- (c) On **Ordnance Survey 1 inch map sheet 178, 1945**, that part from A to E is depicted by two parallel broken or solid lines, the key defining it as an unmetalled, unfenced 'minor road'. Between points E and H the route is depicted by a single broken line, the key defining it under the heading of footpaths and bridleways.

8.33 The applicant also provided a number of extracts from various commercially produced maps of Dorset at both large and small scales, most of which are held at the Dorset History Centre (Ref DC/BTB:R5). Several other maps have also been submitted and or examined as part of the investigation.

- (a) **Isaac Taylor's Map of Dorset 1765** clearly depicts a route that generally corresponds to that of the claimed route throughout its length. The accompanying key defines the route as a 'road over open heath etc'.
- (b) **J Bayly's Map of Dorset 1773** shows a route that generally corresponds to that of the claimed route throughout its length, the accompanying key defining it as a 'cross road'.
- (c) **J Cary's Map of Dorset c1787** shows a route broadly corresponding to that of the claim and although there is no key accompanying the map it appears that it depicts only the more significant routes throughout the county.
- (d) **Isaac Taylor's Map of Dorset 1796** clearly depicts the claimed route throughout its length A to H. The accompanying key defines the route as an 'open road over heath'.
- (e) The **British Gazeteer Map c1800s** shows a route generally corresponding to that of the claim. Reference to the accompanying key reveals that it was defined under the heading of 'Bye Roads'.
- (f) **C Smith's Map of Dorset 1801** shows a route generally corresponding to that of the claim. Reference to the accompanying key reveals that it was defined under the heading of 'Cross Roads'.
- (g) **J Stockdale's Map of Dorset 1805** shows the claimed route throughout its length. It is shown in the same manner as other routes upon the map and although this map has no accompanying key it appears to only show the most significant routes, which consist predominantly, if not entirely, of public carriageways.
- (h) **Greenwood's Map of Dorset 1826** depicts the claimed route throughout its length it is defined as a 'cross road' in the accompanying key.
- (i) **Thomas Moule's map of Dorset c1830** depicts the claimed route throughout its length although there is no accompanying key to suggest any status.
- (j) **Pigot & Co's Map of Dorset c1832** shows a route that generally corresponds with that part of the claim from D to H. Reference to the key reveals that it was defined as a 'cross road'.

- (k) An **1848 Map of Dorset** depicting roads and railways shows a route generally corresponding to that of the claim. However, there is no accompanying key to assist in determining its status.
- (l) **Weller's Map of Dorset c1860** depicts a route that corresponds to that of the claim throughout its length. It is clearly defined by two parallel lines and although there is no accompanying key the manner in which it is depicted may suggest that at that time it was regarded as a route of some significance.
- (m) **W & A K Johnston's Map c1900s** at a scale of 3 inches:1 mile shows the route throughout its length, A to H. It is shown in a similar manner to other public carriageways but there is no accompanying key to assist in determining its status.
- (n) Both the **Botanical and Geological Maps of Dorset produced by George Philip & Son (undated)** show a route that would generally correspond to that of the claim. However, there are no accompanying keys to assist in determining its status.

8.34 The evidence provided by the large and small scale **Ordnance Survey Maps** suggests a route that was quite capable of accommodating vehicular traffic that is generally shown in the same manner as other public carriageways located in the vicinity being clearly defined throughout its length on all of them. Although annotated as a Bridleway (**B.R.**) this information, on its own, is not definitive as to the correct status of the route and is not prejudicial to the existence of vehicular rights over the route.

8.35 The extracts from the **Large Scale Maps of Dorset** examined or submitted in evidence by the applicant, or examined as part of the investigation, are mainly of a commercial nature and in all probability derive their data from other surveys such as the Ordnance Survey. Very few, if any, are wholly independent surveys and several have no accompanying key.

8.36 With the exception of the **Richmond Map** the **smaller scale commercial maps** appear to contradict one another and should be regarded as unreliable in this instance. However, although it is considered that these maps do provide evidence of the physical existence of the route they do not, on their own, provide any conclusive evidence as to its status. Consequently it is considered that this evidence may be seen as adding some support to the claim, although no significant weight has been attached to them.

Aerial Photographs

8.37 The **aerial photographs** from **1947** show that, at the time, the majority of the adjoining land consisted of heath or rough pasture and the public quarry awarded under the Inclosure award of 1864 is clearly visible. The route itself is shown prominently and appears of sufficient width to accommodate the passage of vehicles.

8.38 The **1972** photographs show the gradual forestation of the area and the recently constructed forest service roads are clearly visible, extending northerly from point E on the claimed route, which is clearly visible and remains well defined.

8.39 The later photographs from **1997** show that the plantation has matured, although the claimed route remains reasonably well defined and its course can be easily followed. The **2009** photographs show that large areas of trees to the south of the claimed route, from point E towards point H, have been felled. The claimed route remains well defined.

8.40 Although the **aerial photographs** provide no conclusive evidence towards the status of the route they do demonstrate that from 1947 they were available for and would appear to have been used by vehicles with no obvious impediments to vehicular use being present.

9 **Analysis of user evidence supporting the application**

9.1 Only one written form of user evidence was submitted by the applicant and was a record of his own use of the route. A summary of this evidence is set out below, but reference should be made to the actual form contained within the file of the Director for Environment Ref RW/T399 for all the information.

9.2 The witness has not been personally interviewed. The information has been taken from the form of evidence, which has been signed stating: "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true".

9.3 The witness states that he has used the route on foot and a motorcycle, as shown between points A to H on Drawing 12/22/1. His use was for pleasure and he was aware of other users either on foot, motorcycles and horses.

9.4 His period of use is from 1988 to 2005, encompassing a period of 18 years. His frequency of use varied from 6 to 8 times a year.

9.5 During this period of use the witness does not recall being challenged, turned back or having been given permission to use the route and, although he was aware of 'bridleway' signs, did not recall seeing any other notices prohibiting the use of vehicles. The witness is of the opinion that the landowner(s) must have been aware of his use of the route due to the tyre tracks left during the winter months.

9.6 The witness recalls the presence of one barrier across the route at point H, which he states was locked.

9.7 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route (in this case with mechanically propelled vehicles) was brought into question.

9.8 As no confirmed date of challenge has been identified that would be considered sufficient to have brought the use of the route with vehicles into question the date the application was made on 13 October 2005 will be taken to be the date of bringing such use into question.

10 Analysis of evidence opposing the application

- 10.1 There has been only one overt objection to the application, which was made by Mrs K Gocher on behalf of the Ramblers' Association and relates to their position of opposing the use of vehicles in the countryside, which is not relevant to the investigation and cannot be taken into consideration when determining whether or not the claimed rights exist.
- 10.2 Although Mr Klaentschi did not overtly object to the application it is clear from his correspondence that he is opposed to it. However, the issues he raises are not relevant to the investigation of the application and cannot be taken into consideration when determining whether or not the claimed rights exist.

11 Analysis of other submissions

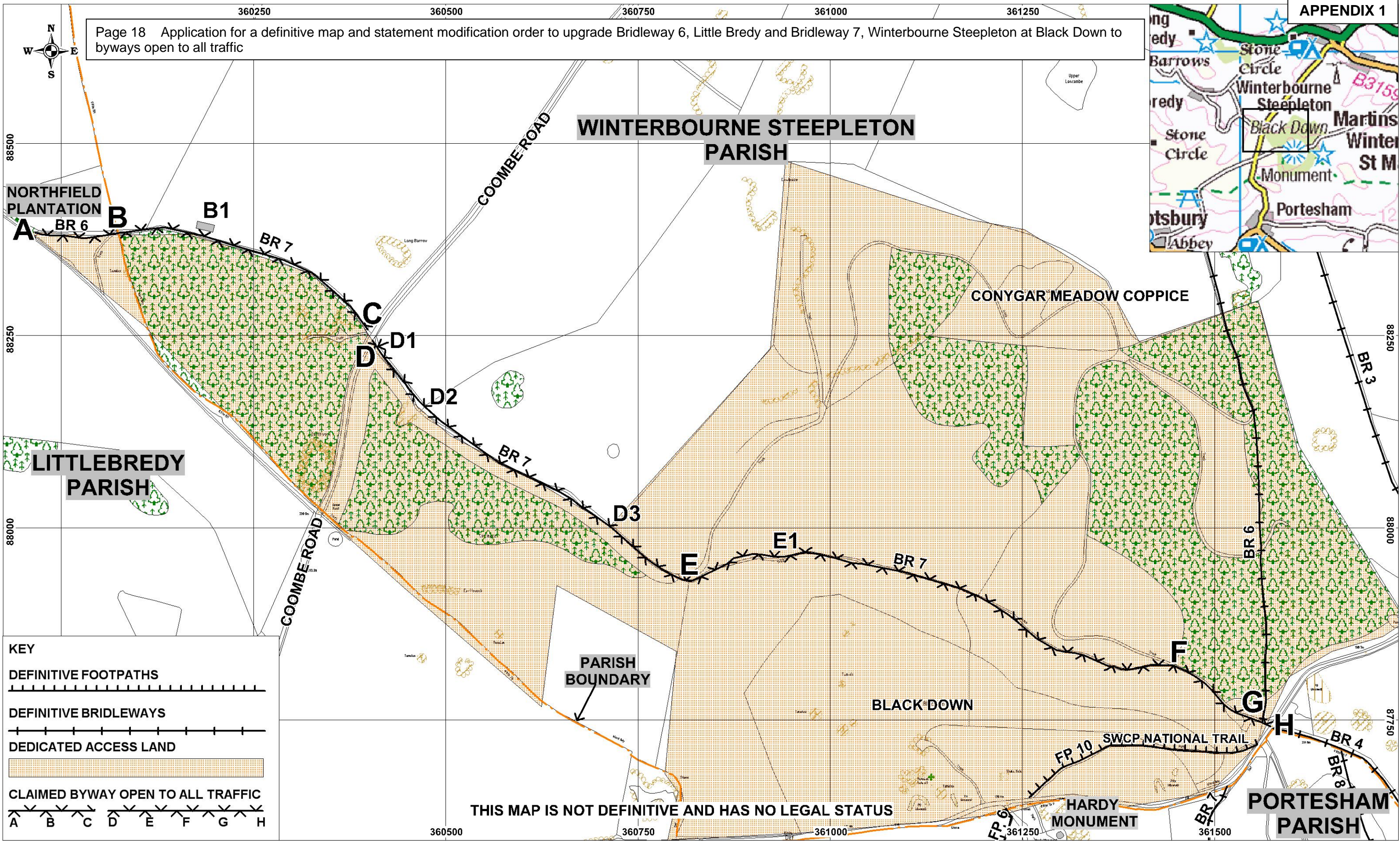
- 11.1 Although Mrs Voce states that she has never witnessed any vehicular use of the route during her visits this is not evidence that use has not taken place during other periods or in the past. There is also evidence of use provided in the statements of other witnesses, an example of which is provided by the statement of C Oliver and S Pinder, who have witnessed use of the route by mechanically propelled vehicles.
- 11.2 The other letters contain no evidence to be considered.

12 Conclusions

- 12.1 It is necessary for members to decide, by applying the relevant legal test to the evidence, whether or not the right of way claimed subsists. As the whole of the claimed route is already recorded upon the definitive map and statement as a public bridleway it is necessary for members to determine whether, on the balance of probability, the highways (or parts of them) shown on the definitive map and statement as bridleways ought to be shown as highways of a different description.
- 12.2 It is considered that the most significant piece of evidence is that of the **Winterbourne Steepleton Inclosure Award 1864**. Although the Award does not specifically describe the public roads shown on it as public carriageways there is sufficient information contained within the Award and schedule to conclude that, on balance, these public roads were in all probability public carriageways.
- 12.3 Although not conclusive on their own, in light of the conclusions in respect of the Inclosure Award above, the evidence derived from the **Winterbourne Steepleton Tithe Apportionment and Plan 1841, the Plans of the Parish and Manor of Winterborne Steepleton 1778 and 1780** and the **Winterbourne Steepleton Conveyance and Mortgage Documents and Plans circa 1869** support the existence of public vehicular rights.
- 12.4 The **Ordnance Survey and Commercial Maps** provide no conclusive evidence towards the status of the claimed route although they do provide evidence in support of its physical existence throughout the period they encompass.

- 12.5 The cumulative weight of the documentary evidence analysed in paragraph 8 provides strong evidence towards the existence of public vehicular rights over the whole of the claimed route as shown between points A to H on drawing 12/22/1. It is considered sufficient to demonstrate, on balance, that the claimed public rights exist along the whole of the claimed route and an order should be made.
- 12.6 If members are not satisfied that the documentary evidence shows, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes a deemed or inferred dedication.
- 12.7 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date of the application in 2005.
- 12.8 The user evidence submitted covers a period of 18 years and therefore does not satisfy the qualifying period of 20 or more years of use of the way. In addition, although there is no prescribed minimum number of users required to satisfy a presumption of dedication, as in this instance there is only one user it is considered this would not satisfy use as of right by the public.
- 12.9 With evidence of only one user it is considered, on balance, that no inference of dedication of a public vehicular right under the common law arises.
- 12.10 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.
- 12.11 Therefore it is recommended that an order be made to record the claimed route as restricted byways as shown between points A to C and D to H on Drawing 12/22/1.
- 12.12 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation have been met.

Miles Butler
Director for Environment
November 2012



KEY

- DEFINITIVE FOOTPATHS
- DEFINITIVE BRIDLEWAYS
- DEDICATED ACCESS LAND
- CLAIMED BYWAY OPEN TO ALL TRAFFIC

A B C D E F G H

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

WILDLIFE AND COUNTRYSIDE ACT 1981
 APPLICATION TO UPGRADE BRIDLEWAY 6, LITTLEBREDY AND BRIDLEWAY 7, WINTERBOURNE STEEPLETON TO BYWAYS OPEN TO ALL TRAFFIC

GRID REFERENCES

A SY 59968838	E SY 60818793
B SY 60078838	F SY 61448782
C SY 60398825	G SY 61568774
D SY 60408824	H SY 61578774

Ref: 12/22/1
 Date: 29/10/2012
 Scale 1:4500
 Drawn By: ACH
 Cent X: 360832
 Cent Y: 88137

GEOGRAPHICAL INFORMATION SYSTEMS

DORSET
County Council

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LAW

General

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to alter the status of a route on the definitive map and statement if the balance of evidence shows that a highway shown in the map and statement ought to be shown as a highway of a different description.
- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
 - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.

2.3 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.

- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:

- (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

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

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

Case specific law

4 Inclosure Consolidation Act 1801

- 4.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.
- 4.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.
- 4.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.
- 4.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.
- 4.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

5 Finance Act 1910

- 5.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.
- 5.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

6 National Parks and Access to the Countryside Act 1949

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

7 Natural Environment and Rural Communities Act 2006

- 7.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. Where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.

Table of documentary evidence

Date	Document	Comment
1765	Taylor's Map of Dorset	Shows all of the route A to H - Key defines as 'open road over heath'
1773	Bayly's Map of Dorset	Shows all of the route A to H - Key defines as 'Cross Road'
1778	Map of Parish and Manor of Winterbourn Steepleton	Shows route from point B to point H
1780	Map of Parish and Manor of Winterbourn Steepleton (colour)	Shows route from point B to point H at B annotated "from Little bredy" at H "to Weymouth"
c1787	Cary's Map of Dorset	Shows all of the route A to H
1796	Taylor's Map of Dorset	Shows all of the route A to H - key defines as 'an open road over heath'
c1800	British Gazeteer Map	Shows all of the route A to H - key defines as 'Bye Road'
1801	Smith's Map of Dorset	Shows all of the route A to H - key defines as "Cross Road"
1805	Stockdale's Map of Dorset	Shows all of the route A to H
1806	Ordnance Survey Drawing	Shows all of the route A to U
1811	Ordnance Survey First Edition Map scale 1 inch:1 mile	Shows all of the route A to H
1826	Greenwoods' Map of Dorset	Shows all of the route A to H key defines route as a 'Cross Road'
c1830	Moule's Map of Dorset	Shows all of the route A to H
c1832	Pigot & Co Map of Dorset	Shows all of the route A to H key defines route as a 'Cross Road'
1841	Winterbourne Steepleton Tithe Apportionment and Plan	Shows part of route from B to H. Uncoloured but well defined by two parallel broken lines. At B annotated "from Littlebredy" at point H annotated "to Weymouth".
1841	Littlebredy Tithe Apportionment and Plan	Does not show route as area of apportionment does not include that through which the route passes
1848	Map of Dorset	Shows all of the route A to H
c1860	Weller's Map of Dorset	Shows all of the route A to H

Date	Document	Comment
1864	Winterbourne Steepleton Inclosure Award	Shows part of route B to E being identified in schedule as Public Road No 20. Annotated at B "From Little Bredy" and at E "To Weymouth". Schedule determines width as being approx 30 feet
1869	Conveyance & Plan	Shows part of route B to H at B annotated "from LittleBredy"
c1869	Mortgage & Plan	Shows part of route B to H at B annotated "from LittleBredy"
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows all of the route A to H annotated 'B.R.' (Bridle Road)
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.	
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
C1900	Philip & Son Botanical and Geological Maps of Dorset	Shows all of the route A to H
C1900	W & A K Johnston's Map	Shows all of the route A to H
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile	Shows all of the route A to H annotated 'B.R.' (Bridle Road)
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile	Shows all of the route A to H annotated 'B.R.' (Bridle Road)
C1906	Ordnance Survey Second Edition map scale 1 inch:1 mile (coloured)	Shows parts of the route A to P and Q to U defined in key as an 'Unmetalled Road'
c1906	Richmond's Map of Dorset	Shows all of the route A to H
1910	Finance Act	Route not excluded - deduction of £100 for public rights of way in Hereditament 258 (B to H)
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1937	Ordnance Survey scale 1 inch:1 mile sheet 140	Shows part of route from D to H - reference to the key defines it as a 'minor unfenced road'

Page 24 Application for a definitive map and statement modification order to upgrade Bridleway 6, Little Bredy and Bridleway 7, Winterbourne Steepleton at Black Down to byways open to all traffic

Date	Document	Comment
1945	Ordnance Survey scale 1 inch:1 mile sheet 178	Shows entire route A to E key defining A to E as an 'unmetalled unfenced minor road' and E to H under 'footpaths and bridleways'.
1947	Aerial Photograph	Shows all of the route A to H
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1952	Winterbourne Steepleton Parish Survey	Route claimed from point B to H as bridleway
c1952	Littlebredy Parish Survey	Route not claimed
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1964	Provisional map	Entire route A to H recorded as bridleway
1967	First definitive map	Entire route A to H recorded as bridleway
1972	Aerial Photograph	Shows all of route A to H
1974	Revised draft map	Entire route A to H recorded as bridleway
1989	Current definitive Map	Entire route A to H recorded as bridleway

Extracts from key documents
 (See the Director for Environment's file RW/T399
 for copies of other documents mentioned)

Winterbourne Steepleton Inclosure Award 1864



	14			South East against 310. 323 In respect
	15			"Westfield" of "The Glebe" of
	4	10	2 10	Against the roads the Parish of
				Winterbourne Steepleton
Fuel Allotment	1	3	20	On the South against
				the Road
The Waywardens of	16	"	2 20	
the parish	19	"	1 24	
Public Roads	20	2	" 3	
	21	1	3 28	
	22	3	1 7	
	23	1	2 9	
Acres		57	1 31	

AND The said Francis Williams Dymond do appoint that good and sufficient fences for inclosing the several described if not already set up and made shall be made within months from the confirmation by the said Inclosure Commission by the several persons owners for the time being of the said several sides hereinbefore in that behalf prescribed on which sides respect

Plan of the Parish and Manor of Winterbourn Steepleton c1780

