

Agenda item:

# Roads and Rights of Way Committee

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**Dorset County Council**



Date of Meeting	6 March 2014
Officer	Director for Environment
Subject of Report	<b>Application for a definitive map and statement modification order to add two Bridleways at Great Coll Wood, Sturminster Marshall and Little Coll Wood Spetisbury</b>
Executive Summary	In response to an application to add two bridleways 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:  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 September 2013 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. 16 user evidence forms from 15 users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

	<p><b>Budget:</b></p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p><b>Risk Assessment:</b></p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p><b>Other Implications:</b></p> <p>None</p>
<p><b>Recommendations</b></p>	<p><b>That:</b></p> <p>(a) An order be made to modify the definitive map and statement of rights of way to add bridleways:</p> <p>(i) In Sturminster Marshall alongside Great Coll Wood between points A – B – C – D – E; and</p> <p>(ii) In Spetisbury to the south east of and alongside Little Coll Wood between points F – G – H – I as shown on Drawing 13/33/1 (Appendix 1); and</p> <p>(b) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p><b>Reasons for Recommendations</b></p>	<p>(a) The available evidence shows, on balance, that the claimed rights of way subsist or are reasonably alleged to subsist.</p> <p>(b) The evidence shows, on balance, that the routes claimed should be recorded as bridleways. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders help to ensure the definitive map and statement of rights of way is kept up to date and achieves the corporate aim:</p> <ul style="list-style-type: none"> <li>• To safeguard and enhance Dorset's unique environment and support our local economy.</li> </ul>

<p>Appendices</p>	<ol style="list-style-type: none"> <li>1 - Drawing 13/33/1</li> <li>2 - Law</li> <li>3 - Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ 1777 Drax Estate Plan of Mapperton Farm</li> <li>▪ 1910 Finance Act plans sheets 33.7 &amp; 11</li> <li>▪ 1965 Deposit of copy plan</li> </ul> </li> </ul> </li> <li>4 - User evidence <ul style="list-style-type: none"> <li>• Table of user evidence</li> <li>• Charts to show periods and level of use</li> </ul> </li> </ol>
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T64)  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.  Copies (or photographs) of the documentary evidence can be found on the case file RW/T64, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson Rights of Way Officer  Tel: (01305) 22 1562  Email: p.c.hobson@dorsetcc.gov.uk</p>

## 1 Background

- 1.1 An application to add two bridleways at Great Coll Wood, Sturminster Marshall and Little Coll Wood, Spetisbury as shown between points A to E and F to I on Drawing 13/33/1 was made by Mrs C Fricker on 10 February 1992.
- 1.2 The application was considered by the Rights of Way Sub-Committee on 12 May 1994, when a decision was deferred pending consideration of legal points and to allow the landowner the opportunity to produce additional evidence.
- 1.3 The application was re-considered by the Rights of Way Sub-Committee at their meeting on 1 September 1994, which resolved that the application be accepted and an Order made.
- 1.4 An internal County Council memo dated 26 April 1995 from the County Solicitor's Office to the County Surveyor reveals that the making of the order was delayed for two months due to discussions that were taking place between the applicant, Mrs Fricker, and the Morden Estates Agent, Mr Chamberlain. The outcome of these discussions is not recorded.
- 1.5 It is not clear from the file notes what took place between 1995 and the request to Corporate Services to make the Order that was made on 6 October 2006. However, Legal Services advised Rights of Way Officers on 8 February 2007, to review the evidence and refer the case back to Committee in view of the length of time that had passed since the previous decision was made.
- 1.6 The route claimed within Sturminster Marshall Parish commences from a public road, shown as point A on Drawing 13/33/1 and follows a north westerly direction along a sandy gravel track towards Great Coll Wood. It is 11 metres wide at point A, reducing to 4 metres at point B and continues as far as a field gate, 3.7 metres wide with a gap to the south western side of 0.5 metres, located at point C. The track is defined by grassy margins to either side with a small length of hedge to the north western side approaching point C.
- 1.7 From point C the route continues north west for a short distance along a forestry access track within Great Coll Wood before turning south west at point D, following a 3 metre wide forestry access track, the surface of which comprises mainly earth. The route continues south westerly inside the south eastern boundary of Great Coll Wood to the parish boundary and its junction with Bridleway 5, Winterborne Zelston shown as point E.
- 1.8 The route claimed within Spetisbury Parish commences from its junction with Bridleway 27, Spetisbury, shown as point F on Drawing 13/33/1. It follows a north westerly direction along the south western boundary of an arable field, which is also the parish boundary with Anderson Parish, to point G. The route is not defined although there is a wide uncultivated margin of a width of 3 metres.

1.9 From point G the route turns north east, following the north western boundary of the field to point H, from where it then turns north west and enters Little Coll Wood. At point H there is a wooden post and rail barrier 3.2 metres wide. The route continues west north west through Little Coll Wood following a 3 metre wide forestry access track to its junction and termination point with Bridleway 9, Charlton Marshall at the parish boundary shown as point I. The surface from point H to I comprises mainly earth.

## 2 Law

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

## 3 Documentary evidence (Appendix 3) (copies available in the case file RW/T64)

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

## 4 User evidence (Appendix 4) (copies available in the case file RW/T64)

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

## 5 Additional evidence in support of the application

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/T64)

6.1 One objection was received following the submission of the application in February 1992 and a further two objections (one from the same person maintaining their 1992 objection) were received following the consultation that commenced in March 1994. Another objection was received following the latest consultation that commenced in September 2013.

Name	Objection (following application in 1992)
O J H Chamberlain, Agent, Morden Estates Company	Acknowledges receipt of application, objects to proposed modification.
Name	Objections (Consultation 1994)
O J H Chamberlain, Agent, Morden Estates Company	Maintains objection, refers to Quarter Sessions appeal in 1965 and Statutory Declarations of 1965 and 1988. Encloses copies of 2 letters, one of which gave permission to 1 rider to "ride through" Great Coll Wood (A to B), refers to locked gates and barriers on route
Mr Seare (Mapperton Farm)	States that users of both routes, Mrs Fricker (applicant) and Mr Strange had been told they had no right to use them and that the route through Great Coll Wood had been deleted in

	1965.
<b>Name</b>	<b>Objections (Consultation 2013)</b>
Mr Neville-Jones (Preston Redman Solicitors)	Disputes relevance & accuracy of historic maps. Asserts that Statutory Declaration of 1965 is relevant to this case. Refers to accuracy of application map and the conflict in evidence of user. Maintains objections to the proposed Order.

7 **Other submissions received** (copies available in the case file RW/T64)

7.1 Nine other submissions have been received, five in response to the 1994 consultation and four in response to the 2013 consultation.

<b>Name</b>	<b>Comments (Consultation 1994)</b>
D J Greenslade (Trail Riders Fellowship)	Notes route was shown on 1811 Ordnance Survey Map and also on 1826 Greenwoods Map of Dorset, which may support the application.
D C Birt (Area Surveyor, DCC)	No information to add
N Harris (British Telecom)	BT apparatus should not be affected
Wessex Water	No objection
Mr Neville-Jones (Preston Redman Solicitors)	Responded on behalf of landowner following the decision to make the Order in 1994. Questions the interpretation of some of the documentary evidence and seeks clarification in respect of the legality of the Statutory Declaration.
<b>Name</b>	<b>Comments (Consultation 2013)</b>
C Shoopman (British Horse Society)	States that following the original decision to make the Order in 1994 does not understand why the application should be reconsidered by the present committee. No evidence to add.
Southern Gas Networks	No apparatus affected
Ramblers	No evidence to offer but would welcome the addition of the proposed routes.
Christchurch and East Dorset Councils	No comments

8 **Analysis of Documentary Evidence**

**Tithe Apportionments and Inclosure Awards**

8.1 The associated **Tithe Apportionments** and **Inclosure Awards** do not cover the area of the application and therefore do not provide any evidence for consideration.

### **Drax Estate Maps**

- 8.2 The collection of Estate Maps, depicting the landholdings of the Drax Estate, was produced by Isaac Taylor between 1773 and 1777. One map depicts Mapperton Farm, including Coll Wood (Great Coll Wood).
- 8.3 The map depicts two tracks within Coll Wood, neither of which corresponds to that of the application. However, it does show a track that corresponds to a route that was located just outside of the south eastern boundary of Coll Wood, which was later to be recorded as Bridleway 17 on the draft map and Bridleway 13 on the provisional map and then deleted (see paragraph 8.25 below). This evidence would suggest that in 1777 there was no evidence that the application route as shown between points A to E physically existed.

### **Finance Act 1910**

- 8.4 With the exception of that part of the route as shown between points F to H the remaining sections of the claimed routes are clearly visible on the Ordnance Survey 1:2500 (25 inches: 1 mile) maps used as the base maps for the Finance Act plans. The route within **Sturminster Marshall Parish** through **Great Coll Wood** between points A and E passes through **Hereditament 6 (A – C) and Hereditament 408 (C – E)** and does not appear to have been excluded from valuation.
- 8.5 The route within **Spetisbury Parish** through **Little Coll Wood** between points F to I passes through **Hereditament 6 (F – H) and Hereditament 221 (H – I)** and also appears not to have been excluded from valuation.
- 8.6 Reference to the accompanying **Valuation Books** reveals that no deductions for public rights of way or user were given in respect of any of the Hereditaments through which the claimed routes pass.
- 8.7 Although these documents provide no evidence that the claimed routes were regarded as public highways, because there were no penalties for a landowner who chose not to acknowledge public rights of way over their land they cannot, on their own, be taken as strong evidence that the routes shown were not public highways.

### **Other Documents**

#### **Statutory Declarations**

- 8.8 In accordance with **Section 34(6) of the Highways Act 1959** a landowner could express a lack of intention to dedicate by depositing with the County Council a map and statement, followed by a statutory declaration.
- 8.9 A copy of a plan was deposited (undated) with Dorset County Council, on which was annotated by hand, a reference to a statement claimed to have been deposited along with the original map on 11 August 1965.

- (a) It was claimed, on the annotation made to the copy plan, that the original deposit had been made under the **Rights of Way Act 1932** (but in all probability would have been made under the **Highways Act 1959**) in respect of the **Charborough and Bere Regis Estates**, the property of the **Drax Estate**. The copy plan includes the land over which the application routes run and which are not acknowledged as public rights of way.
  - (b) The Rights of Way Sub-Committee at their meeting on 12 May 1994 were advised that the deposited plan did not comply with the terms of the Highways Act 1959 and was insufficient evidence to show that the owner had no intention to dedicate (see paragraph 1.2).
  - (c) However, on reconsideration of the application on 1 September 1994 the Rights of Way Sub-Committee were advised that the “landowner validly deposited a map and statement in 1965”.
  - (d) However, as the records found consist only of a *copy* of the original map, the original map and its accompanying statement have never been discovered and there is no record of a statutory declaration being made to support any map and deposit until mentioned in a statement in 1988.
- 8.10 A further statement dated **21 December 1988** was made by **Preston & Redman**, Solicitors to the **Drax Estate**. There is no accompanying plan but reference is made to “a map of land...together with a statement of the highways over that land then dedicated to the public” deposited on 11 August 1965 and to their belief that regular statements had been deposited with the County Council since that time, the last of these being made in 1982.
- 8.11 On **25 October 1994** the **Trustees to Richard Drax’s 1987 Accumulation and Maintenance Settlement** deposited with Dorset County Council a Statutory Declaration and Plan made under **Section 31(6) of the Highways Act 1980**. The plan includes the land over which the application routes run and the claimed routes are not acknowledged as public rights of way.
- 8.12 A valid declaration allows a landowner to acknowledge existing rights of way and is evidence of a lack of intention to dedicate for a set period of years (currently 20 years) after it is made (in 1959 it lasted for 6 years). The claimed routes are not acknowledged as public rights of way on the 1965 plan and if shown to comply with the requirements of the legislation the plan and statement, together with subsequent declarations, would have had effect for a period of six years after each declaration. However, to remain in force new declarations would be required before the expiration of this period, in this case prior to **11 August 1971** and every six years after that.
- 8.13 The statement made on behalf of the **Drax Estate** in **1988** makes reference to the regular deposition of statements since the deposit of the *copy* of the original plan in 1965. In a letter dated **15 April 1994** from the **Morden Estates Agent, Mr Chamberlain to Mr Slade, Rights of Way, Dorset County Council**, Mr Chamberlain states that he has “*asked the Estate’s solicitors to provide copies of the Declarations to complete your files*”. To date these copies have not been provided and despite a search of the **Dorset History Centre Archives** no evidence of these depositions has been discovered.



8.14 The timeline for the events surrounding the deposit of these declarations is as follows;

- On 20 September 1965 Mr A C Templeman, Clerk of the County Council, wrote to Preston & Redman, Solicitors Drax Estate, acknowledging the deposit of a map and statement made under Section 34 of the Highways Act 1959.
- In December 1981 Mr M D Fortescue, acting as Agent for the Morden Estates Company, wrote to Dorset County Council referring to the deposit, a statement and map, made by their solicitors, Preston & Redman, on 11 August 1965 under Section 1(4) of the Rights of Way Act 1932 [Highways Act 1959]. Mr Fortescue noted that he believed the protection afforded by the Statement may have lapsed in 1972 and was considering whether or not to make a fresh Statement.
- Mr Woodroffe, Dorset County Council, responded on 18 January 1982 advising Mr Fortescue that the current legislation was contained in Section 31 of the Highways Act 1980. He advised Mr Fortescue that new declarations were required every six years in order to obtain the protection afforded by the Act but was not clear what the effect would be if they were not made within this period. He suggested that Mr Fortescue may wish to make a fresh declaration and deposit a map and as he had been unable to trace any files on the Morden Estate requested that they provided a copy of the 1965 Statutory Declaration.
- Mr Fortescue responded on 21 January 1982 advising the County Solicitor that he would be writing to the Estate Solicitors asking them to provide copies of the original documents.
- On 22 December 1982 Preston & Redman responded enclosing a copy of the original statement, dated 11 August 1965 and made under the Highways Act 1959, together with a copy of the original plan. (It is believed that it is this plan that is currently deposited in the Dorset History Centre the original plan and statement having never been discovered).
- On 21 December 1988 Mr D J E Neville-Jones, Preston & Redman Solicitors, deposited with the County Council a statement [no accompanying map] referring to the map and statement deposited in 1965. He stated that he believed that since the deposit in 1965 declarations had been deposited with the County Council on a regular basis the last being deposited in December 1982.
- In a letter of 30 December 1988 Dorset County Council acknowledged receipt of the declaration advising that it would be forwarded to the County Record Office to be kept with the plan deposited on 11 August 1965.
- On 24 October 1994 a new declaration and plan made on behalf of the **Trustees of Richard Drax's 1987 Accumulation and Maintenance Settlement** was deposited with the County Council.

- 8.15 An analysis of this series of events indicates that the declaration made on 11 August 1965 was in accordance with the legislation and to remain in force would have required a further statement to be deposited prior to its expiration on 11 August 1971. The letter from Mr Fortescue in December 1981 indicates that the Estate had not made any additional deposits since the original made in 1965, which had now expired. Mr Neville-Jones' statement made in December 1988 is clearly in conflict with Mr Fortescue's, as Mr Neville-Jones believed that regular deposits had been made, the last of which he believed to have been made in 1982. There is no record of a deposit being made in 1982 the next record of such an event being the deposit of 1988. The 1988 deposit was not accompanied by a new plan as required by the legislation. The deposit of 1994 was accompanied by a new plan and satisfies the requirements of the legislation.
- 8.16 As a consequence it is not possible to say that the deposits made prior to 1994 were valid and unless they are validly made in accordance with the relevant legislation they are not effective as evidence of a lack of intention to dedicate because they were never clearly communicated to the public.

### **Ordnance Survey Maps**

- 8.17 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of **Spetisbury and Sturminster Marshall Parishes** was completed in **1805**. The drawing depicts part of the route in Sturminster Marshall as shown between points A to D, which is defined by two parallel broken lines, suggesting that it was unfenced. The drawing also shows a route running parallel to the south east boundary of Great Coll Wood. However, this does not appear to be the claimed route (D to E) but another route that was the subject of an objection during the provisional stage of the first definitive map in 1965 (paragraph 8.22 below). The remainder of the claimed route in Spetisbury parish, F to I, is not shown.
- 8.18 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile provides the same information as found on the earlier drawing, showing only that part of the claimed route as shown between points A to D, on which there is no evidence of the presence of any gate or barrier.
- 8.19 The **1887 First Edition Ordnance Survey maps** at a scale of 6 inches:1 mile (1:10560), sheets 33 NE and SE show all of the claimed route within **Sturminster Marshall**, A to E, which is defined by means of two parallel broken lines. The route is not annotated either 'F.P.' or 'B.R.' alongside and there is no disclaimer present on these maps (see note in Table of Evidence, Appendix 3). In **Spetisbury Parish** only that part of the claimed route through **Little Coll Wood**, H to I, is shown, being defined by two parallel broken lines. That part between F to H is not shown. At points C and F solid lines through the route may indicate the presence of a gate, barrier, fence or hedge.

- 8.20 The **1902 Second Edition Ordnance Survey maps** at a scale of 6 inches:1 mile (1:10560), sheets 33 NE and SE, show the claimed route in a similar manner to the First Edition map. However, that part in **Sturminster Marshall** through **Great Coll Wood**, D to E, appears to have moved a little further to the south east, being closer to or abutting the boundary of the wood. In **Spetisbury** that part of the route from H to I is clearly shown and a route may also be shown between points F to G, being defined by means of a single broken line. However, it is also possible that this may merely define the extent of the prehistoric feature '**Coombs Ditch**'. The route is not annotated with either an 'F.P.' or 'B.R.'. At points C, H and I solid lines through the route may indicate the presence of a gate, barrier, fence or hedge.
- 8.21 The **1901 Second Edition Ordnance Survey maps** at a scale of 1:2500 (25 inches: 1 mile), sheets 33.7 & 11, are the maps used for the Finance Act valuation and depict the claimed route in a similar manner to the 6 inch:1 mile scale maps of 1887 and 1902. It depicts those parts between points A to E and H to I, these parts of the claimed routes being defined by two parallel broken lines. At points C,E, H, and I solid lines through the route may indicate the presence of a gate, barrier, fence or hedge.
- 8.22 Whilst the evidence provided by the **Ordnance Survey maps** suggests that parts of the claimed route did exist physically on the ground and were, therefore available for use, they do not provide any compelling evidence as to their status. Although the presence of solid lines across the route may indicate the existence of, for example, gates at these locations, there is nothing to indicate that if they were present that they were padlocked or otherwise made impassable.

### **Commercial maps**

- 8.23 A number of commercially produced maps of Dorset were examined, which 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. Several of those examined show a route or routes within the vicinity of the application route(s). However, due to a number of factors such as scale and detail it cannot be stated with any certainty that the routes shown correspond with those of the application.

### **National Parks and Access to the Countryside Act 1949**

#### **Parish Survey**

- 8.24 Neither the **Spetisbury** nor the **Sturminster Marshall Parish Surveys** of rights of way (**1951**) included any part of the application route. However, the **Sturminster Marshall** survey did include a claimed route, numbered 17, that commenced at or adjacent the same point (point A) as the application route but which led west, to the south of the application route, and then south west adjacent but outside the south eastern boundary of **Great Coll Wood** and terminating at the parish boundary with **Anderson** and **Winterborne Zelston** in the vicinity of point E.

#### **Draft, Provisional and First Definitive Maps**

- 8.25 The draft map for the **East area 1959** does not include either of the application routes although the route numbered 17 on the parish survey

running outside the wood is recorded as **Bridleway 17, Sturminster Marshall**. The provisional map **1964** also records this bridleway – but as Bridleway 13 and the route was subsequently crossed through with pencil and annotated on the border of the map “**BR 13 to be deleted QS 3/8/65**”, which presumably denotes its deletion following the successful appeal against its recording made to the Quarter Sessions in 1965.

- 8.26 It should be noted that it is Bridleway 17/13 that some of the objectors mistakenly refer to as being one of the application routes.
- 8.27 The claimed routes are not recorded on the first definitive map published in 1967, although that part of the route through Great Coll Wood is annotated ‘F.P.’ on the Ordnance Survey base map, suggesting that the surveyor may have regarded it as being consistent with a footpath. Bridleway 17, Sturminster Marshall has also been deleted from the map.

### **Special Review and Current Definitive Map**

- 8.28 The application routes were not subject to any investigation or claim during the **Special Review 1973** and no part of the application route is recorded on the **current definitive map 1989**. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist over the route.

### **Aerial Photographs**

- 8.29 The **1947** aerial photographs show a route broadly corresponding to that part of the claimed route as shown from A to C. It is difficult to ascertain whether the route through Great Coll Wood is visible. From F to G there may be a route shown along the field margin but this may also represent the ancient earthworks Coombs Ditch. A route generally corresponding to that as shown from H to I can also be seen.
- 8.30 The **1972** photographs appear to show a similar picture to those from 1947, as do those from **1997**.

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

- 9.1 A total of 16 written forms of user evidence from 15 users of the way were submitted. An analysis of these forms of evidence is set out below (and a summary of each can be found in the table at Appendix 4). Reference should be made to the actual forms contained within the file of the Director of Environment, ref. RW/T64 for all the information.
- 9.2 Not all of the witnesses have been personally interviewed. The information has been taken from the forms of evidence, which have been signed by each witness. The second witness statement made by Mrs Tory in 2006 includes a signed declaration stating: “I hereby certify that to the best of my knowledge and belief the facts that I have stated are true”. The earlier forms do not carry such a declaration.
- (a) Fifteen of these forms are derived from the original application made in 1994.
- (b) An additional form of evidence was submitted by one user, Mrs H M Tory, in 2006.

9.3 All of the witnesses state that they have used the route, either on horseback or on foot and horseback, as shown between points A and I on Drawing 13/33/1, either individually or with family or friends and were aware that others also used the route. Use of the route by all users encompasses a period between 1954 and 2006. The frequency of each individual's use of the route varies from several times a week to several times a year. All of the witnesses state that they have used the route on horseback and seven witnesses state that they also used the route on foot.

- (a) The majority of the witnesses recall there being 'wire' gates along the route. Several witnesses note that these gates were located at the entrance/exit to both Great and Little Coll Woods but that they were not locked and did not prevent them from using the route. One witness, Mrs Tory, states that the gates were locked sometimes but they had access provided to the side (point D). The applicant, Mrs Fricker, and several other witnesses refer to being prevented from using the route after the erection of a solid wooden rail fence at the entrance to Little Coll Wood, point H, in 1992, which action led to this application being made.
- (b) At the time of the application in 1992 none of the witnesses recall ever seeing any notices the effect of which would have suggested to them that the route was not public. In her second witness statement Mrs Tory refers to a sign erected in 2006 stating "No public access Forestry Operations in Progress".
- (c) With the exception of Mrs Hooper, prior to the erection of the wooden barrier in 1992, none of the witnesses recall ever being challenged or prevented from using the route. In her second witness statement Mrs Tory recalls being given permission to use the route in 1995/96 by a tenant of the Drax Estate, Mr R Seare, Mapperton Farm.

9.4 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.

- (a) The erection of the wooden barrier in 1992 is evidence of bringing the use of the route by the public into question.
- (b) The application was made on 10 February 1992 and is a further date of bringing that use into question.

## 10 **Analysis of evidence opposing the application**

10.1 In April 1994 Mr O J H Chamberlain, Agent, Morden Estates Company, faxed to Mr Slade, Rights of Way, Dorset County Council, a statement maintaining the objection to the application. Included with this statement were copies of two letters, one of March 1973 to Lady Anderson, Blandford, the other of October 1985 to Mrs G Hooper, Winterborne Zelston.

- (a) The letter to Lady Anderson refers to the path adjacent the south eastern boundary of Great Coll Wood, which was claimed by the Parish Council (Bridleway 17, Sturminster Marshall) and subsequently deleted following an appeal by the landowner in 1965.

- (b) The letter to Mrs G Hooper refers to that part of the claimed route between points A and E at Great Coll Wood in which Mr Fortescue, an Agent of the Morden Estate, informs Mrs Hooper that she may take the letter as her “permit” to ride through Great Coll Wood.
- 10.2 As the letter to Lady Anderson relates to a different path its content has no bearing on the status of the claimed route A – E.
- 10.3 The letter to Mrs G Hooper clearly indicates that she and any friends accompanying her had been given permission to ride the route through Great Coll Wood in October 1985. However, there is nothing to suggest that the wider public had been made aware of this and none of the other user witnesses recall having sought or being given permission to use the route.
- 10.4 In April 1984 Mr Seare, the tenant of Mapperton Farm, wrote to say that users of the route, namely the applicant, Mrs Fricker and also Mr Strange, had been informed that they had no right to use the route. He also stated, mistakenly, that the route at Great Coll Wood had been deleted in 1965 when in fact the route deleted was a different route located outside the south eastern boundary of the wood.
- 10.5 Following the decision to make an Order in 1994 Mr Neville-Jones, Preston & Redman Solicitors, acting on behalf of the landowner, disputed the relevance and accuracy of the evidence considered. He also asked for clarification as to why the statutory declarations had been disregarded.
- 10.6 Mr Neville-Jones also responded to the present consultation. He raises four issues to which he believes he had not had a response following his submission in 1994. The four outstanding issues were as follows:
- Relevance and accuracy of historic maps.
  - The validity of the Statutory Declaration.
  - Accuracy of the application route plan.
  - Conflict in evidence of user.

On the basis of these issues and the delay since the application was made it is Mr Neville-Jones’ opinion that it is not appropriate for the order to be made and the matter should be reviewed before any decision is reached.

- 10.7 In an exchange of emails the following responses were given to Mr Neville-Jones:
- The historic maps provided nothing of significant substance to the case.
  - It was explained that in respect of the statutory declarations, as these had not been made in accordance with the legislation they could not be considered as being valid.
  - Although the 1994 application plan may have contained minor inaccuracies, as these had been resolved by the time the consultation took place there were no doubts as to which route was the subject of the consultation. Furthermore, the applicant’s plan was accompanied by a statement, which clearly described the route.

- The conflict of evidence was acknowledged at the time and it was stated that it was for the Sub-Committee to determine whether the alleged challenge took place and, if so, whether it was sufficient to have brought any lack of intention to dedicate the route home to other users of the way. The Sub-Committee concluded, on balance, that it had not and consequently was no impediment to dedication taking place.

10.8 It should be noted that the purpose of this report is to enable Members to review the matter in view of the delay since the application was made.

## 11 **Analysis of other submissions**

11.1 The other letters contain no evidence to be considered.

## 12 **Conclusions**

12.1 As the claimed route is currently unrecorded the County Council must make a modification order to add a right of way to the definitive map and statement if the balance of evidence shows either:

- (a) that a right of way subsists or
- (b) that it is reasonably alleged to subsist.

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

12.2 With the exception of the evidence relating to plans, statements and declarations deposited by the landowner none of the additional documentary evidence examined during the investigation provides anything of significance that would assist in determining the application. However, there is evidence that statutory declarations have been made, which if properly made in accordance with the prescribed time limits would protect the land identified, which includes the land over which the claimed routes run, against the accrual of any additional rights of way. A deposit and declaration was made in 1994 which would have been an effective expression of a lack of intention to dedicate from 1994 until 2000.

12.3 It is considered that the documentary evidence is insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route.

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

12.5 It is considered that the erection of a fence in 1992 was sufficient to bring the use of the routes into question. 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 and the erection of the fence in 1992.

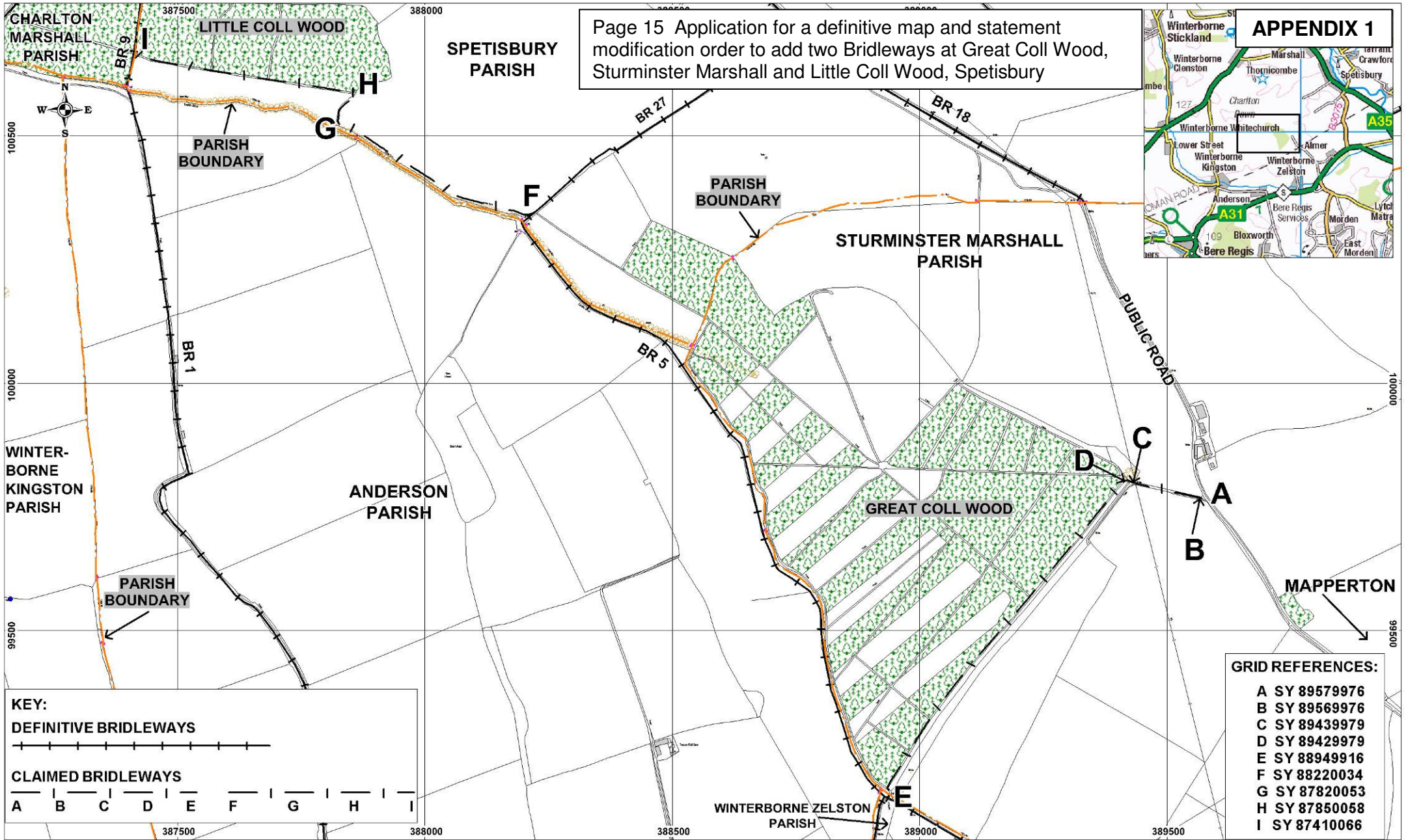
- 12.6 There is evidence of use by the public on horseback and on foot. It is considered as sufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question.
- 12.7 Evidence of a challenge and permission in 1984/85 is limited to a few users and is not considered to be sufficient evidence of a lack of intention to dedicate.
- 12.8 On balance it is considered that the evidence of declarations by the landowner during this time period is insufficient to show that they were properly made in accordance with the legislation and so does not indicate a valid lack of intention to dedicate.
- 12.9 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 or more years use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public bridleway rights exist along the routes claimed and an order should be made.
- 12.10 If there are no objections to a modification order, the County Council can itself confirm the order if satisfied, on balance, that the evidence demonstrates that the routes exist.

**Mike Harries**

Interim Director for Environment

February 2014





**WILDLIFE AND COUNTRYSIDE ACT 1981**

APPLICATION TO ADD TWO BRIDLEWAYS AT GREAT COLL WOOD, STURMINSTER MARSHALL AND LITTLE COLL WOOD, SPETISBURY

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/33/1  
 Date: 21/01/2014  
 Scale 1:7000  
 Drawn By: ACWH  
 Cent X: 388562  
 Cent Y: 99922

GEOGRAPHICAL INFORMATION SYSTEMS

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## LAW

## APPENDIX 2

### General

#### 1 Wildlife and Countryside Act 1981

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

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

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

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
  - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 Section 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 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 Finance Act 1910

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

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

#### 5 National Parks and Access to the Countryside Act 1949

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

**Table of documentary evidence**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1777	Drax Estate Plan of Mapperton Farm	Shows Great Coll Wood - no evidence of the existence of the application route as shown from A to E.
1805	Ordnance Survey Drawing	Shows part of route claimed from A to D
1809	Spetisbury Inclosure	No parts of the claimed routes are shown.
1811	Ordnance Survey 1 <sup>st</sup> Edition 1":1 Mile Map	Shows part of route as claimed from A to D
	Inclosure	No parts of the claimed routes are shown.
1839	Spetisbury Tithe	No parts of the claimed routes are shown.
1844	Sturminster Marshall Tithe	No parts of the claimed routes are shown.
1845	Sturminster Marshall Inclosure	No parts of the claimed routes are shown.
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.	
1887	Ordnance Survey First Edition map scale 6 inches:1 mile – sheets 33 NE & SE	Shows whole of route claimed in Sturminster Marshall, A to E and part of route claimed in Spetisbury through Little Coll Wood, H to I.
1901	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500) – sheets 33.7 & 11	Shows whole of route claimed in Sturminster Marshall, A to E and part of route claimed in Spetisbury through Little Coll Wood, H to I.
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560) – sheets 33 NE & SE	Shows whole of route claimed in Sturminster Marshall, A to E and part of route claimed in Spetisbury through Little Coll Wood, H to I, may also show that part from F to G.
1910	Finance Act plans	Shows parts of routes claimed between points A to E and H to I. No part excluded from valuation, no deductions for public rights of way.
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.	
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1947	Aerial Photograph	Appears to show parts of the claimed routes A to C, F to G and H to I.

Date	Document	Comment
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Sturminster Marshall Parish Survey	Application route not claimed but a bridleway, number 17, was claimed adjacent the application route outside south eastern boundary of Great Coll Wood
1951	Spetisbury Parish Survey	Application route not claimed.
1959	Draft map (East area)	Bridleway 17, Sturminster Marshall shown but no parts of claimed routes shown.
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1964	Provisional map	Bridleway 17, Sturminster Marshall shown but no parts of claimed routes shown.
1965	Provisional map	Bridleway 17, Sturminster Marshall deleted.
1965	Drax Estate Deposit of Copy Map	Route not acknowledged as a public right of way.
1967	First definitive map	Route not recorded. Track through Great Coll Wood D to E annotated 'F.P.' denoting footpath.
1972	Aerial Photograph	Shows parts of routes claimed A to C and H to I.
1973	Special Review	No reference to application routes.
1988	Drax Estate Statutory Declaration	No accompanying plan. Reference is made to earlier deposit in 1965 and to the belief that regular deposits had been made, the last being made in 1982.
1989	Current definitive map	Application routes not recorded
1994	Trustees (Drax Estate) Statutory Declaration & Plan	Statement and plan deposited - route not acknowledged as a public right of way.
1997	Aerial Photograph	Shows parts of claimed routes A to C and H to I

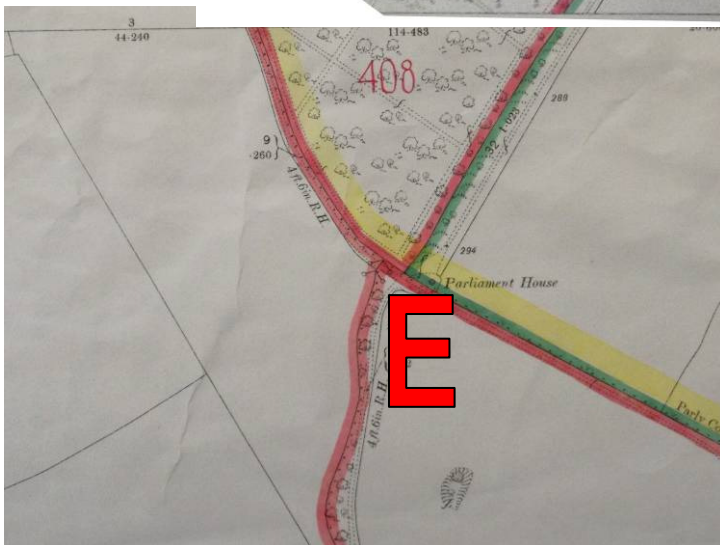
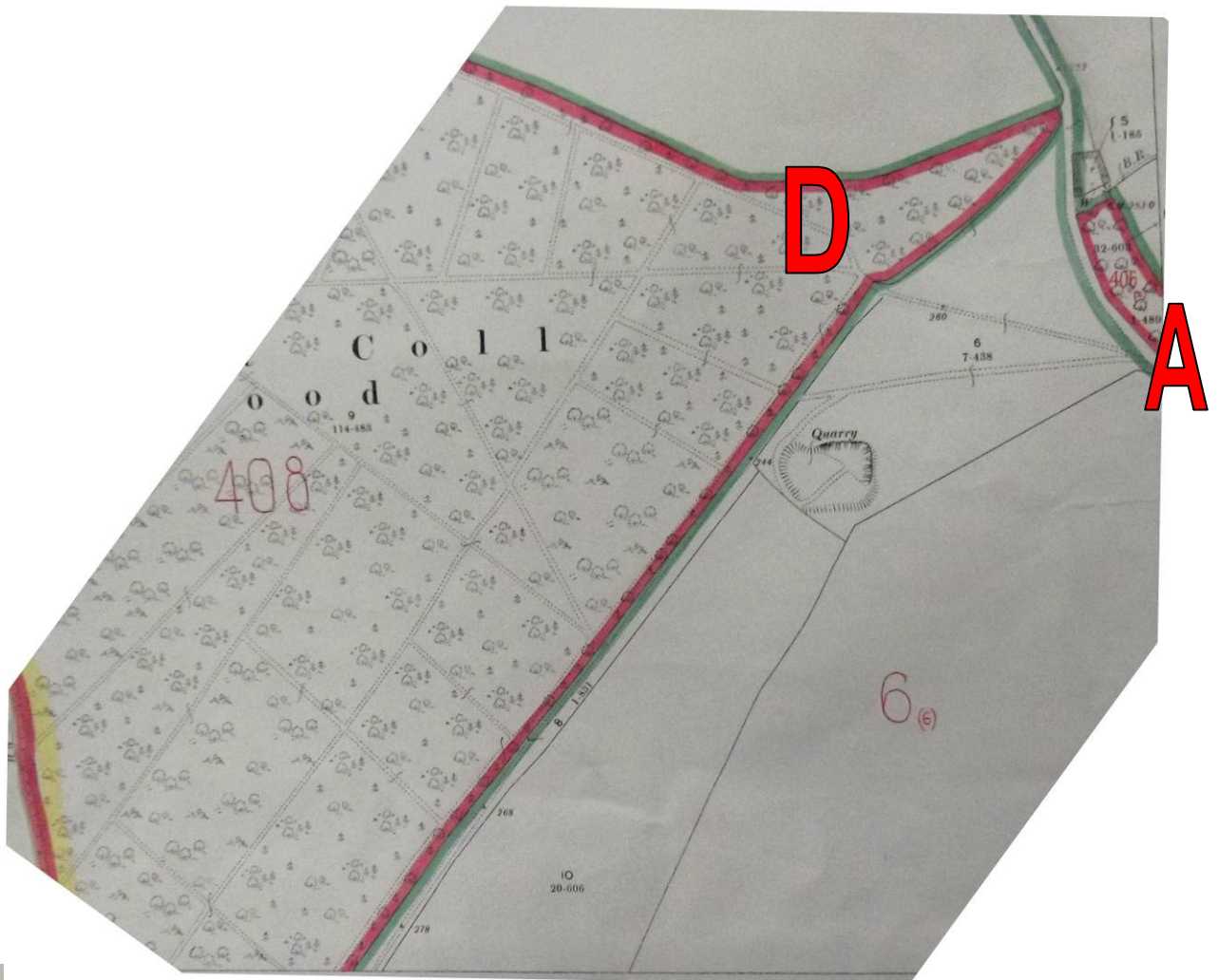
**Extracts from key documents**

(See the Director for Environment's file RW/T64  
for copies of other documents mentioned)

**1777 Drax Estate Plan of Mapperton Farm**

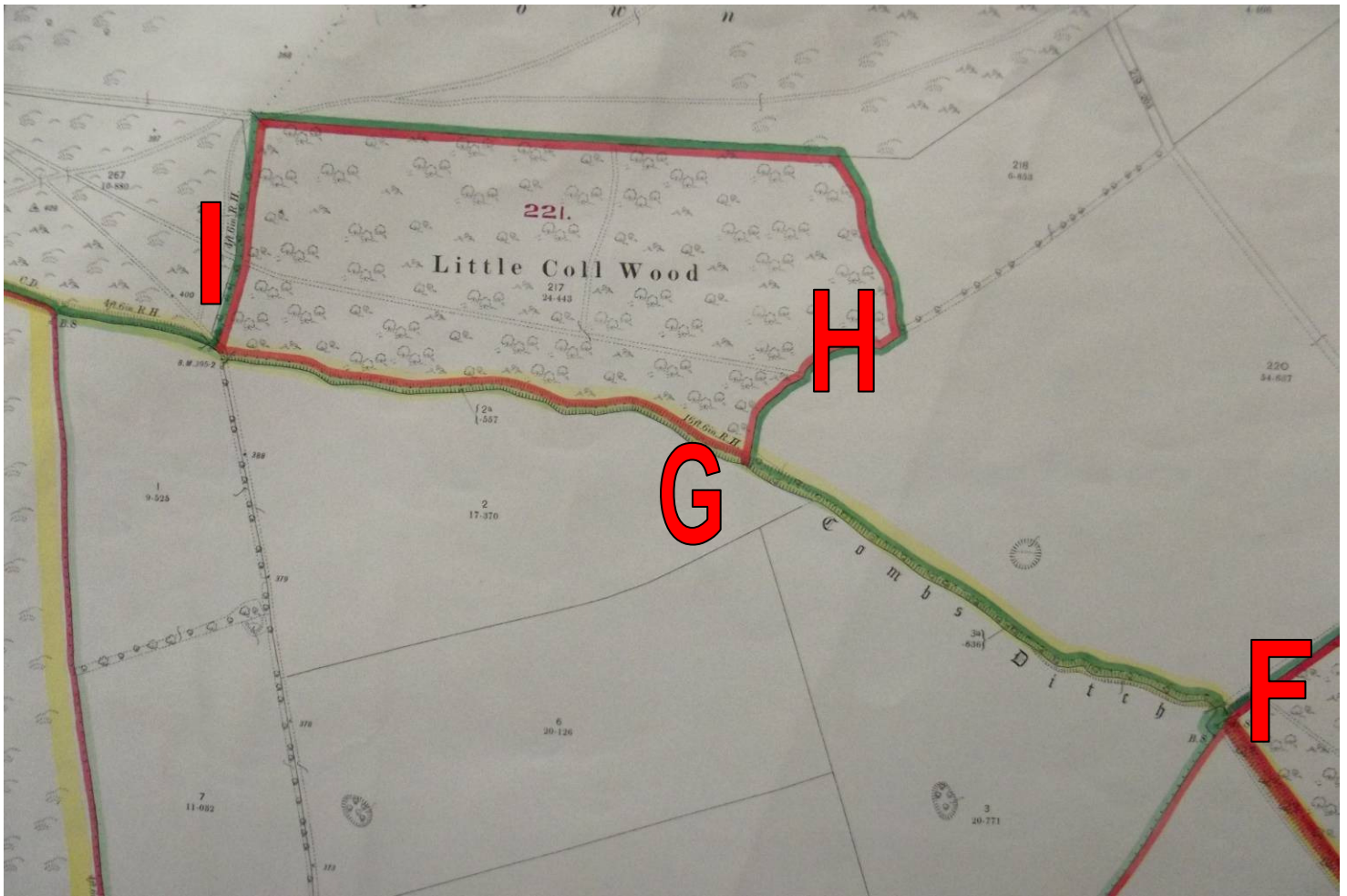


**1910 Finance Act maps –  
Sheets 33.7 & 11**





Sheet 33.7




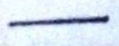

1965 Deposit of copy plan

CHARBOROUGH & BERE REGIS ESTATES

SCALE:- 6 inches to 1 mile

Note: This plan is compiled from Ordnance Survey Sheets ST 80 SE ST 90 SW, SY 89 NW, NE, SW & SE, SY 88 NE & NW, SY 99 NW & SW, and SY 98 NW published 1962 & 1963.

LEGEND:

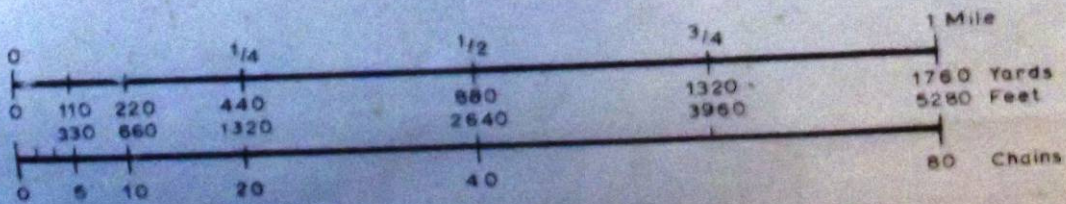
-  Bridle Roads
-  Footpaths
-  Estate boundary

*Copy of plan sent to Dorset County Council which was marked as follows:-*

*This is the map referred to in the Statement under the Rights of Way Act 1932 Sec 1(4) dated 11<sup>th</sup> August 1965 deposited with the Clerk of the Dorset County Council.*

*(Signed) Ruxton & Redman  
Solicitors for the Emble - Erle - Drox Estates.*

*11 Aug '65*



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CREE MAP COMPIERS

**USER EVIDENCE**  
**From witness evidence forms submitted with the application in 1992**  
**and some in 1994**

<b>NAME</b>	<b>DATES</b>	<b>FREQUENCY OF USE</b>	<b>TYPE OF USE</b>	<b>DETAILS OF USE / COMMENTS</b>
Mrs S Blandford	1965 - 1992	Once a month now but more frequently in the past	On horseback	Used for horse riding. Wire gate on route. Others also used the route.
Mrs E J Boorer	30 years (form completed in 1994)	Several times a week	On horseback	Used for pleasure. Others also used the route.
Mrs S A Collett	1963 – 1970 and from 1973 onwards (form completed in 1994)	1963-1970 weekly, 1973-1993 monthly and 1993 onwards weekly	On horseback and on foot	Used for pleasure. Wire gate on route. No notices. Others also used the route.
Mrs A Foot	Since 1970 approx (form completed in 1994)	Several	On foot and on horseback	Used for walking and horse riding. Wire fencing at entrance to the wood. Others also used the route. Was prevented from using the route by a fence.
Mrs A S Frampton	1970s & 1980s	Several times a year	On horseback	Used for horse riding. A rail at the entrance. Others also used the route. Wire erected once and had to turn back.
Mrs C E Fricker	1959 / 1992 known the route for 33 years (form completed in 1992)	At least once a month	On horseback & on foot	Used for pleasure. Temporary wire gates. Others also used the route.
M Goodman	1960 - 1990	About once a week	On foot and horseback	Used for pleasure. Wire with hand holds and solid wooden rails on route. Others also used the route.
Mrs C Graham	1977 - 1992	Weekly	On foot and on horseback	Used for pleasure. Father was employed by the landowner 1976-1991. Wire gates on route. Others also used the route.
Mrs S Hooper	1954 - 1993	Twice a week	On horseback & on foot	Used for pleasure. A gate on route – usually open. Others also used the route.

Mr K G Kerley	Since he was 7 (1966) (form completed in 1992)	Twice a week	On horseback	Used for pleasure. Wire gates on route. Others also used the route. Has been prevented from using the route.
Mrs S Kerley	1962 known route for 20 years (form completed in 1992)	Twice a week	On horseback	Used for pleasure. Was prevented from using the route and knows someone else who was also prevented from using it.
Mrs G Norman	1976 - 1993	Weekly	On foot & horseback	Used for pleasure. Gates on route when stock in the field. Wife of the manager for the landowner. Others also used the route. Part of route blocked in approx 1991.
Mrs V Smith	1967 - 1992	4 times a week	On horseback	Used for riding. Gates on route. Others also used the route.
Mr M Strange	1967 - 1992	At least 4 times a week	On horseback	Gates on route. Others also used the route.
Mrs H M Tory 2 forms completed	Since 1974 (form completed in 2006)	3-4 times a week	On horseback	Used for pleasure. Others also used the route on horseback. No stiles on route. Gates on route were sometimes locked. Notice erected in 2006 saying 'No public access, forestry operations in progress'. Had permission to use the route but was asked not to encourage others to use it. Was prevented from using the route in 1995. Wide enough for a vehicle to use the route.
Mrs M A Tory	22 years (form completed in 1994)	Twice weekly	On horseback	Used for exercising/training. Rails erected across track approx 1992. Others also used the route.

Chart of user evidence to show periods of use

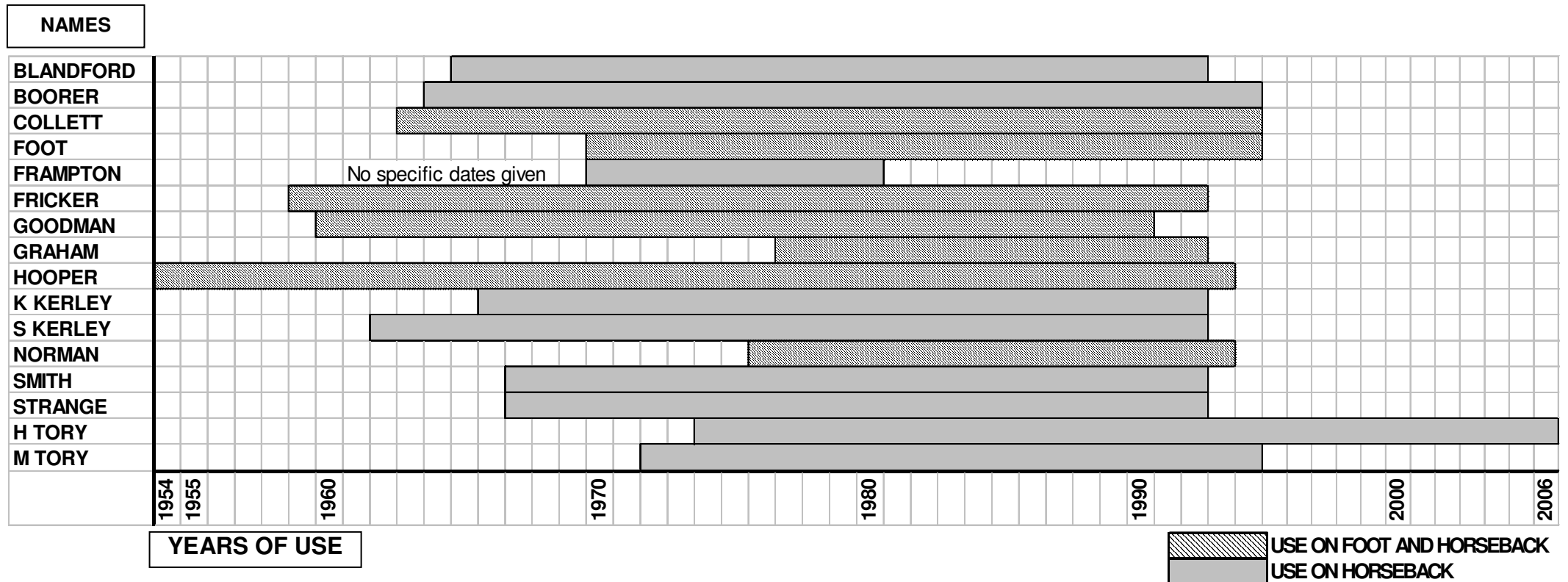


Chart to show level of use

