

WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

15 NOVEMBER 2017

WILDLIFE AND COUNTRYSIDE ACT 1981

THE WILTSHIRE COUNCIL PARISH OF BRATTON PATH NO. 42 AND THE PARISH OF EDINGTON PATH NO. 36 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017

Purpose of Report

1. To:
 - (i) Consider three objections to The Wiltshire Council Parish of Bratton Path No. 42 and the Parish of Edington Path No. 36 Definitive Map and Statement Modification Order 2017 made under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network which is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. On 3 October 2016 Wiltshire Council received an application from a resident of Bratton, for an Order to record a public footpath over land at Luccombe Mill, Bratton. The claimed footpath forms a semi-circular route commencing on Imber Road opposite No. 3 Imber Road, leading east through land that is part of Luccombe Mill, crossing over a water course and along a raised path over old watercress beds before reaching land owned by Wessex Water. The path then turns in a southerly direction and follows a track through the valley which loops back onto Imber Road (please see claimed route at page 2 of Decision Report at **Appendix 1**). The path is approximately 620 metres in length.
4. The application adduced evidence from 81 people who completed User Evidence Forms (UEFs) detailing their use on foot of the application route in part or in full for varying lengths of time dating from 1939 to 2016.

5. For public rights to have been acquired under statute law (see **Appendix 1** paragraph 9.7 – Highways Act 1980 Section 31) it is necessary for the use to have been uninterrupted for a period of at least 20 years in a manner that is 'as of right', that is, without force, without secrecy and without permission. This would give rise to a 'presumption of dedication'.
6. A presumption of dedication may be defeated in a number of ways, including the erection and maintenance of signage indicating that there is no intention to dedicate public rights, effective challenges to use, the closure of the claimed route (for example a closure for one day every year may be effective), the granting of permission or by depositing a number of documents with the council as prescribed by Section 31(5) and (6) of the Highways Act 1980 (see **Appendix 1** paragraph 9.7).
7. Wiltshire Council has a duty to consider all relevant available evidence and officers conducted an initial consultation on the application dated 13 October 2016 with an end date of 25 November 2016.
8. All of the evidence and responses were duly considered in the council's Decision Report appended here at **Appendix 1** (Section 8). Applying the legal test contained within Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (see **Appendix 1** paragraph 9.1), the application formed a reasonable allegation that a public right subsisted. An Order was made to record the path as a footpath in the definitive map and statement.
9. The Order was duly advertised and attracted three objections. A copy of the Order is appended here at **Appendix 2**.
10. Where objections are received to an Order Wiltshire Council may not confirm or abandon the Order and must forward it to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) for determination. However, it must first consider the representations and objections to the Order and make a recommendation to SoSEFRA regarding the determination of the Order.
11. It is important that only the evidence adduced or discovered is considered and it is noted that matters relating to desirability, the environment, need, privacy concerns or health and safety are irrelevant for the application of Section 53 of the Wildlife and Countryside Act 1981.

Main Considerations for the Council

12. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review.
13. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:

"the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”

14. Under Section 31(1) of the Highways Act 1980 “*where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*”
15. Evidence is the key and therefore objections to the making of the Order must, to be valid, challenge the evidence available to the Surveying Authority. The Authority is not able to take into account other considerations, such as the suitability of the way for use by the public, the proximity of any other paths or facilities, environmental impacts and any need or desire for the claimed route.
16. **Objections:**
- (1) Mr Henry Pelly
 - (2) Mrs Charlotte King (nee Seymour)
 - (3) Ms Sarah Seymour

These objections can be seen in full at **Appendix 3**.

Comments on the objections

17. **Mr Henry Pelly**

Mr Pelly in his objection states [**Appendix 3(iii)**]

“the route was not actually used throughout the 20 year period so as to bring home to the landowners that a right was being asserted against them”. From the evidence provided by the 81 UEFs it seems highly unlikely that any owner of the land would not have been aware of use of the path given the frequency of use that has been claimed. Mr Pelly’s objection alludes to use of the route, it is only the nature of the use that is contended in all other correspondence received.

“Use of the order route was not, throughout the period, “without interruption” as required by Section 31(1).” The evidence provided to the council does not demonstrate any break in usage during the relevant 20 year period of 1996-2016. One of the 81 UEFs states a nesting swan stopped them from using the path 15 years ago, and two users have documented signs asking people not to use the path during bird nesting season. These instances do not demonstrate a break in use of the path. These signs do not suggest there is no public right of way.

“the evidence demonstrates that relevant landowners have at various times taken steps effective to confer permission to use the Order Route”

As part of the initial consultation statements from the Seymour Family (the previous owners of Luccombe Mill) Gladys Drewtt (former parish councillor) and Tim Goode (gardener for Luccombe Mill since 2010) were submitted (see **Appendix A**) in which it is claimed notices were erected at various times to inform the public the route was private and not a public right of way. This is in direct conflict with the evidence supplied in the UEFs, in which only one user states they saw any sign stating the route was private or not a public right of way, 80 users make no reference to signs of this nature on the path – (see decision report Section 14, **Appendix 1**). No incontrovertible evidence has been produced by the landowners to demonstrate that notices were in place and viewed by the relevant audience.

“there is evidence that use of the Order Route over the land was, at various times, contentious or by force and so not as of right for that reason”.

Again there is a conflict of evidence between the users of the path and the previous landowners and objectors to the application with none of the 81 users stating they climbed or saw a barrier and three statements from objectors on behalf of Mr Pelly saying there was either a metal barrier or wooden fence erected across the way (see **Appendix A**). There is no incontrovertible evidence on this point and so it is appropriate that the Order was made (see paragraph 15.2 of the decision report, **Appendix 1**).

18. Objection from Charlotte King (nee Seymour) [Appendix 3(i)]

Ms King’s objection in letter form objects to the made Order on the basis that the route was used when in the ownership of her father by his permission when far fewer people used it and that use increased as the village grew larger. *“He did this because in those days the village was much smaller and it was a case of everyone knowing everyone else. The village has vastly increased in population over the years and the damage caused by walkers has also increased”*. This objection appears to be in conflict with Mr Pelly’s objection point discussed earlier in this report *“the route was not actually used throughout the 20 year period so as to bring home to the landowners that a right was being asserted against them”*. As Ms King states, her father who owned the property appeared to be fully aware the path was in use and in fact it was increasing over the years (this point is supported by the chart of use of the path which can be seen at Section 12.2 of the decision report at **Appendix 1**). Further points raised in Ms King’s objection are that use of the path led to crime such as her father’s chainsaw being stolen, bikes damaged the path, a dog off the lead killed the family cat, trespass occurred, the privacy of the house would be impeded and other routes can be used. All of these points cannot be considered as part of this application as they are not relevant to the legislation set out in Section 31 of the 1980 Highways Act which applies to this case.

19. Objection from Sarah Seymour [Appendix 3(ii)]

Sarah Seymour in objection claims that the path goes through the garden of Luccombe Mill and use was by permission of her father and grandfather (the previous owners) and that the pond which people have stated is important to them could be accessed via land owned by the Water Board, which has not

objected to the Order. She also states there are many other footpaths in Bratton for people to enjoy. The issue of privacy cannot be considered in this case; neither can the availability of other routes in close proximity. The issue of permission is a key argument which again is disputed by either side. Of the 81 UEFs submitted, 10 users state they had permission to use the path from Mr or Mrs Seymour (the previous owners) dating back to permission granted to one user in 1971. Nine other users claim it was widely known that the Seymours were happy for people to use the path and Mrs Seymour would see people using the path and wave - but no direct permission had been granted to them. Therefore, 71 users said no permission was granted to them. The objectors to the case, including the previous and current landowners and gardener, have stated use of the path was by permission only. The issue of permission is discussed at paragraph 15.4 - 15.6 of the decision report, **Appendix 1**.

20. It should be noted other objections were received to the application that were not received in time to be considered by the Decision Report and were received before the Order was made and so were not considered valid objections to the Order. These can be seen at **Appendix 4**. Two late submissions were also received in support of the order; these can be seen at **Appendix 5**. The content of these statements are available for consideration by the committee but do not change the officers' proposal.
21. The council cannot take into account the number of objections but must consider the evidence contained within those objections against the evidence contained within the representations of support and the evidence already before the council, as outlined within the Decision Report attached at **Appendix 1**. There will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, the Order has been made on a reasonable allegation that a right of way for the public on foot subsists, which is a lower test than the balance of probabilities (see **Appendix 1**- paragraph 28.2). Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the Order.
22. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen's Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective county councils for Orders to add public rights of way to the definitive map and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the councils should not be directed to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

"(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable

person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”

23. Owen J also held that:

“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”

24. It is notable in the Norton case that, the Secretary of State “...notes that the user evidence submitted in support of a presumption of dedication is limited to four persons claiming 20 years of vehicular use as of right; he must weigh this against the statements from the landowner, supported by 115 signed forms and the Layham and Polstead Parish Councils, indicating the use of the route has been on a permissive basis and that active steps to prevent a presumption of dedication arising have been taken...”. In both the Norton and Bagshaw cases Owen J concluded that:

“If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an order would seem likely to be appropriate.”

25. Even in a case with only limited supporting evidence and a large number of objections, Owen J held that an Order would seem appropriate. When this case law is applied to the Bratton case, where there are 81 completed UEFs, it suggests that the making of a definitive map modification order is appropriate.

26. In such a case concerning the balancing test to be applied to the evidence, the authority is correct in making the Order on the grounds that it is reasonable to allege that a right of way for the public on foot subsists. Where the objectors have not submitted incontrovertible evidence to defeat that reasonable allegation, the committee should recommend to the Secretary of State that the Order be confirmed without modification. The only way to properly determine the Order is to see the witnesses at a public inquiry where they may give evidence in chief and their evidence may be tested through the process of cross-examination to establish whether, on the balance of probabilities, the public right has been acquired.

Overview and Scrutiny Engagement

27. Overview and Scrutiny Engagement is not required in this case. The council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

Safeguarding Considerations

28. Considerations relating to safeguarding anyone affected by the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Public Health Implications

29. Any public health implications arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Corporate Procurement Implications

30. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 34 to 36 of this report.

Environmental and Climate Change Impact of the Proposal

31. Any environmental or climate change considerations arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

32. Matters relating to the equalities impact of the proposal are not relevant considerations in Section 53 of the Wildlife and Countryside Act 1981.

Risk Assessment

33. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the council pursuing this duty correctly. Evidence has been brought to the council's attention that there is an error in the definitive map and statement of public rights of way which ought to be investigated and it would be unreasonable for the council not to seek to address this fact. If the council fails to pursue its duty it is liable to complaints being submitted through the council's complaints procedure, potentially leading to complaints to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the council where it is found to have acted unlawfully.

Financial Implications

34. The making and determination of Orders under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
35. Where there are outstanding objections to the making of the Order it must be determined by the Secretary of State. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the council. If the case is determined by written representations the cost to the council is £200 to £300; however, where a local hearing is held the costs to the council are estimated at £300 to £500. A one day public inquiry could cost between £1,500 and £3,000 if Wiltshire Council continues to support the making of the Order (i.e. where legal representation is required by the council) and around £300 to £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the council and the case is presented by the applicant).
36. Where the Council objects to the Order, the Order must still be forwarded to the Secretary of State for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 35 above.

Legal Implications

37. Where the council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicant may seek judicial review of the council's decision if he sees it as incorrect or unjust by them. The cost for this may be up to £50,000.

Options Considered

38. Members should now consider the objections received and the evidence as a whole in order to determine whether or not we continue to support the making of the Order. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for determination and members of the committee may determine the recommendation (which should be based upon the evidence) to be attached to the Order when it is forwarded to the Secretary of State as follow:
 - (i) The Order be confirmed without modification
 - (ii) The Order be confirmed with modification
 - (iii) The Order should not be confirmed

Reason for Proposal

39. Unless the objections and representations are withdrawn the Order must be forwarded to the Secretary of State for Environment Food and Rural Affairs for determination.

40. It is considered that nothing in the objectors' submissions demonstrates sufficiently that there was no intention to dedicate a public right of way and that no-one communicated any lack of intention to the relevant audience. This is demonstrated by the evidence that a considerable number of users of the path were unaware of a declared non-intention. Neither did they satisfy any statutory process of demonstrating a negative intention to dedicate the land, i.e. a valid deposit, plan, statement and subsequent statutory declaration under Section 31(6) of the Highways Act 1980, or a notice under Section 31(5) informing the relevant authority such notices have been torn down (see Section 16.2 through 16.5 on pages 32-33 of the Decision Report, **Appendix 1**).
41. The testimony of users of the path has been questioned by the objectors who claim that use has been by permission, signs were erected on the path declaring the way as private and that barriers were erected across the route. Where this evidence is conflicted it may be tested, along with all other evidence at a public inquiry. In *R v Secretary of State for the Environment ex p. Bagshaw and Norton* [1994] 68 P&CR 402 Owen J "*In a case where the evidence of witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.*"
42. In making this Order the council considered that a reasonable allegation as to the acquisition of public rights over the Order Route had been made. It is considered that no further evidence has been adduced that shows that, on the balance of probabilities, a public right was not acquired. The testing of witnesses will be key to the final decision in this case but the council's duty remains with supporting the Order based on the evidence it has before it.

Proposal

43. That "The Wiltshire Council Parish of Bratton Path No. 42 and the Parish of Edington Path No. 36 Definitive Map and Statement Modification Order 2017" is forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it is confirmed as made.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Craig Harlow

Acting Rights of Way Officer – Definitive Map

The following unpublished documents have been relied on in the preparation of this Report:

User Evidence Forms

(The above-mentioned documents are available to be viewed at the offices of Rights of Way and Countryside, Wiltshire Council, Unit 9, Ascot Court, Trowbridge.)

Appendices:

Appendix 1 - Decision Report

Appendix A to Decision Report – consultation response statements

Appendix B supporting evidence

Appendix 2 - “The Wiltshire Council Parish of Bratton Path No. 42 and the Parish of Edington Path No. 36 Definitive Map and Statement Modification Order 2017”

Appendix 3 - Objections to the Order

Appendix 4 - Other objections

Appendix 5 – Late submissions in support of the Order

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY – IMBER ROAD BRATTON

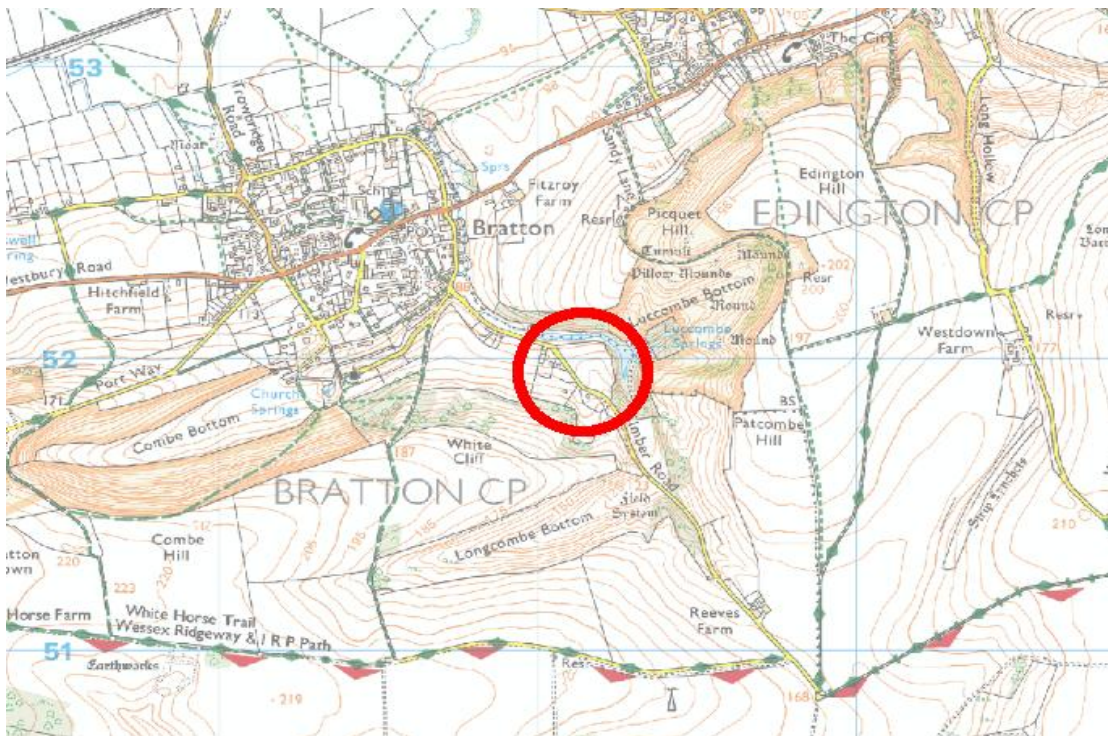
1. Purpose of Report

1.1. To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the Parish of Bratton, leading from Imber Road through the grounds of Luccombe Mill in a generally easterly direction before turning in a southerly direction through Wessex Water owned land and reconnecting to Imber Road, Bratton.

2. Relevance to Council’s Business Plan

2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

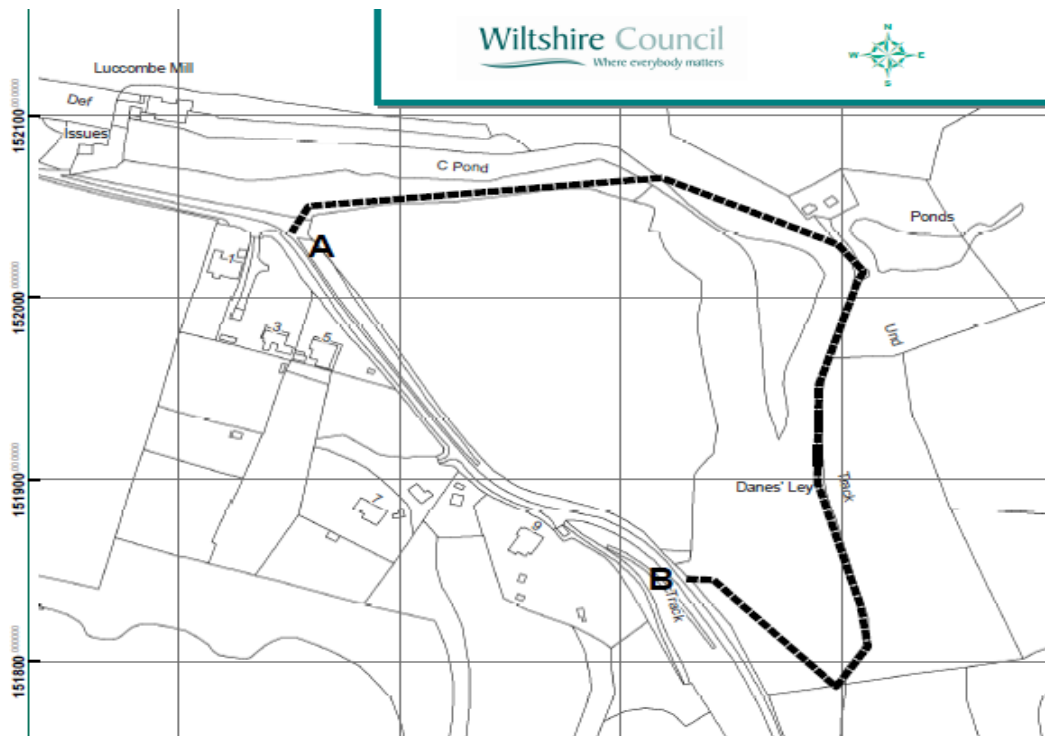
3. Location Plan



3.1 2014 Aerial Photo of area



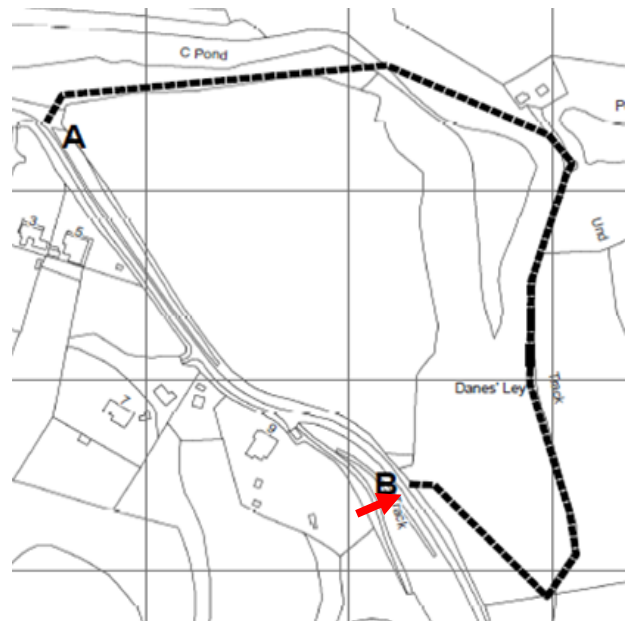
4. Claimed Footpath Route

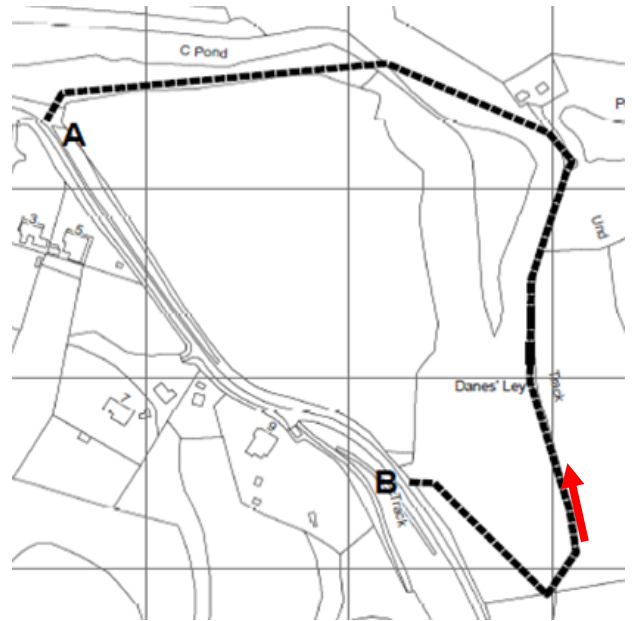
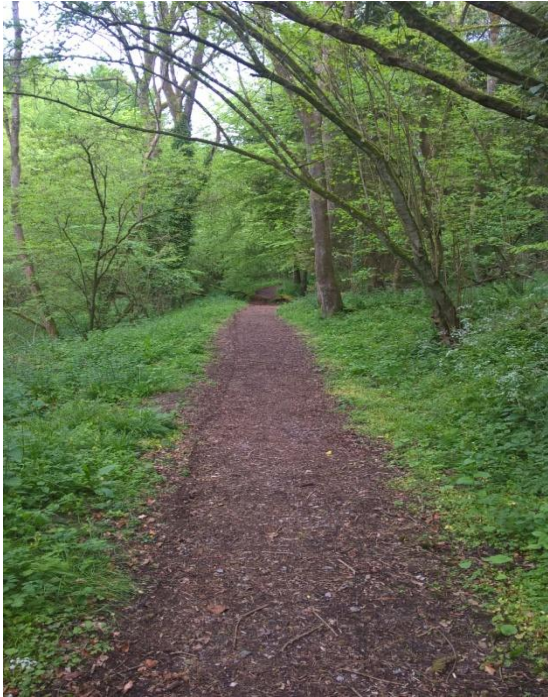


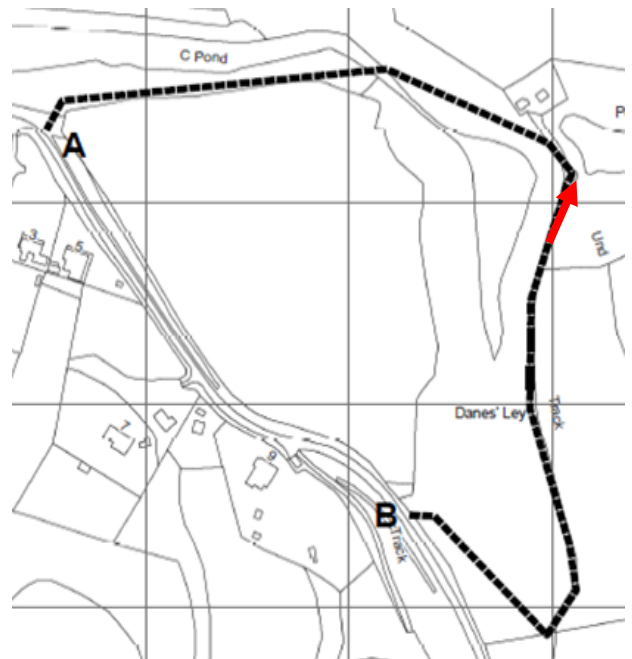
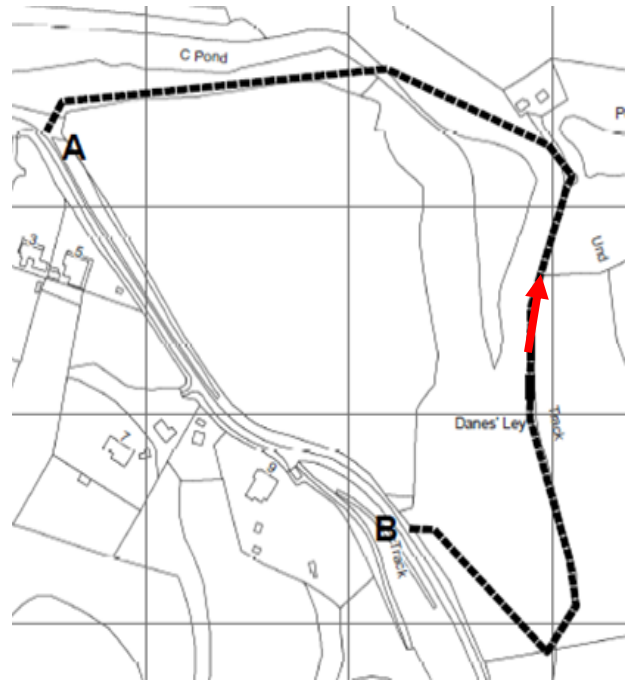
4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Bratton, leading from point A, on Imber Road, opposite number 3 Imber Road, in a generally easterly direction then turning south and then west to its junction with Imber Road, at point B.

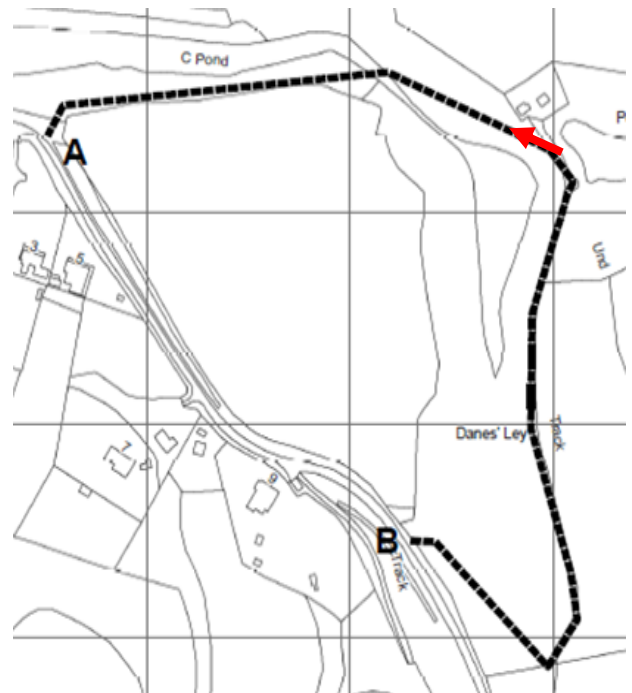
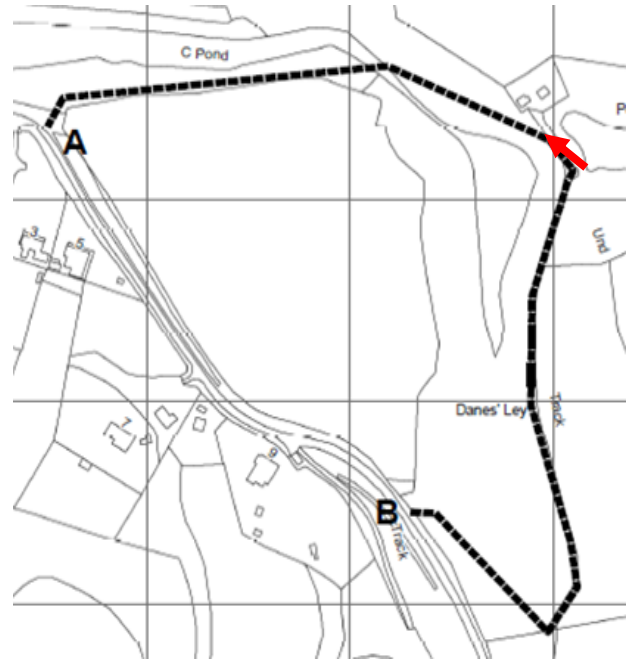
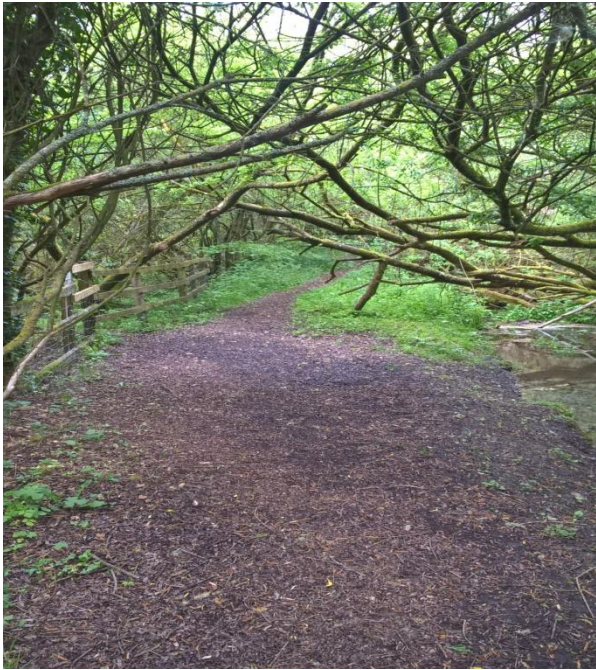
5. **Photographs**

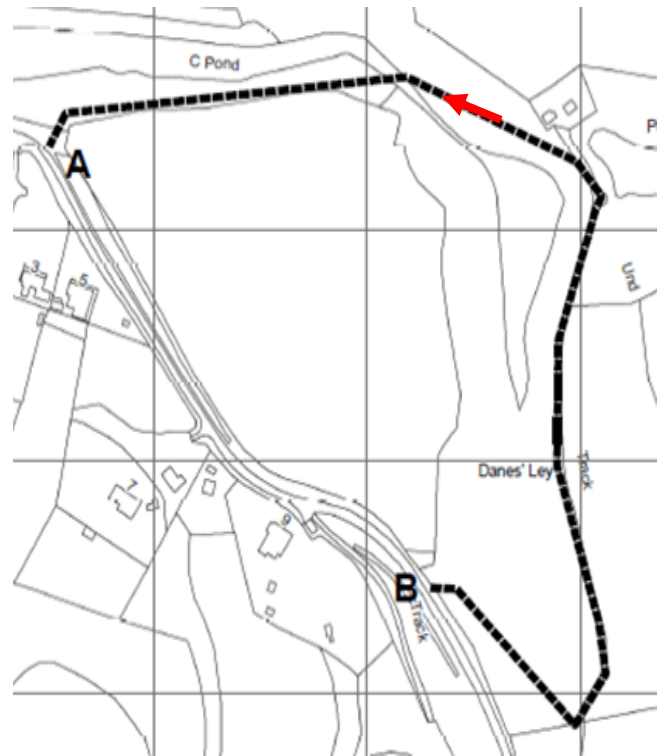
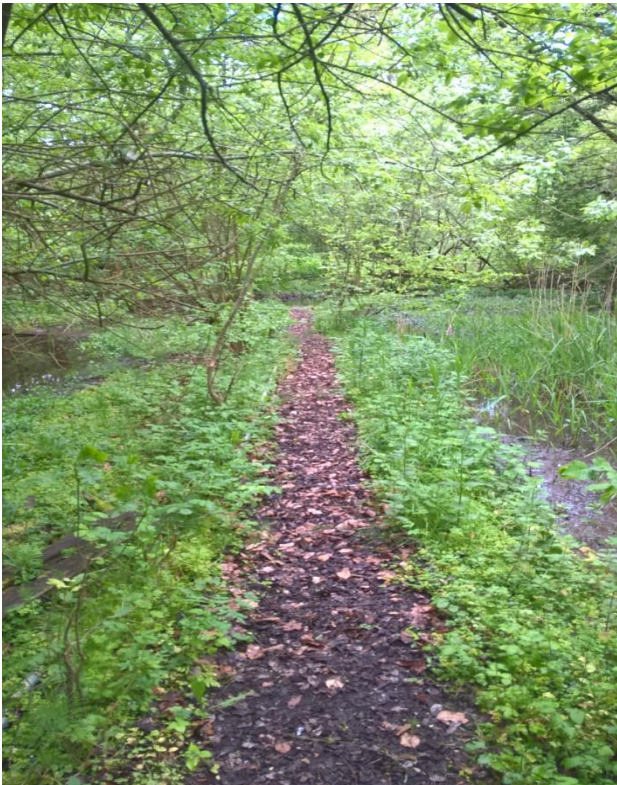
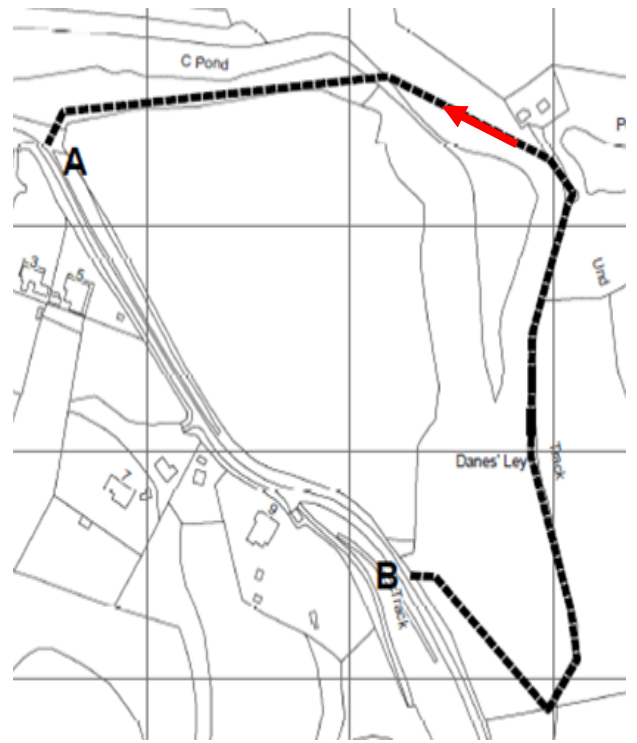
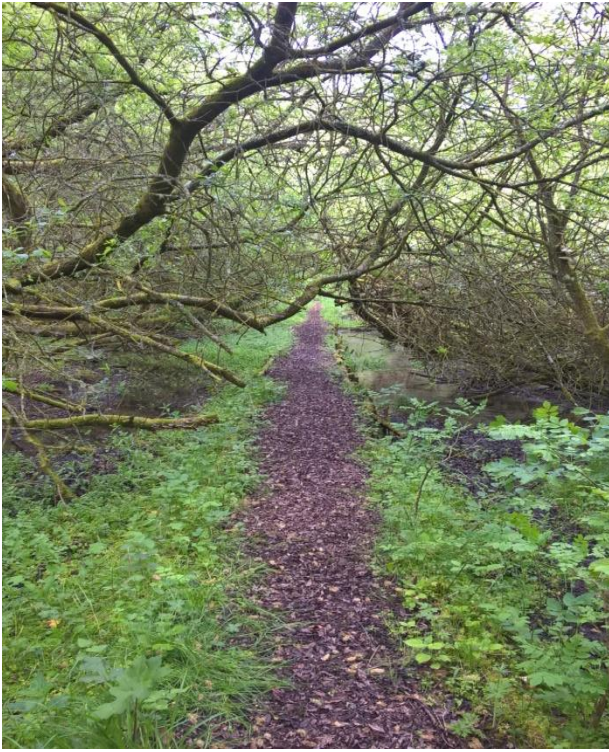
Photos taken on 12th May 2017 of the claimed route.

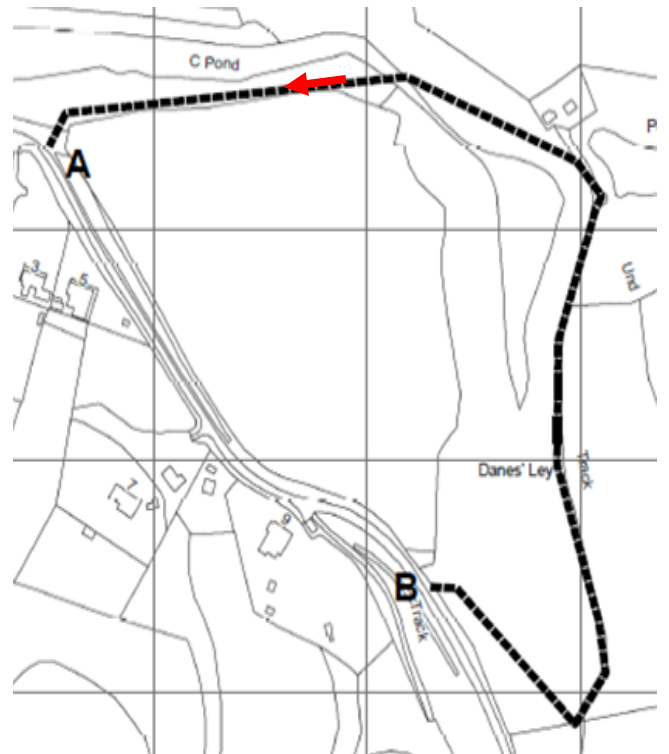
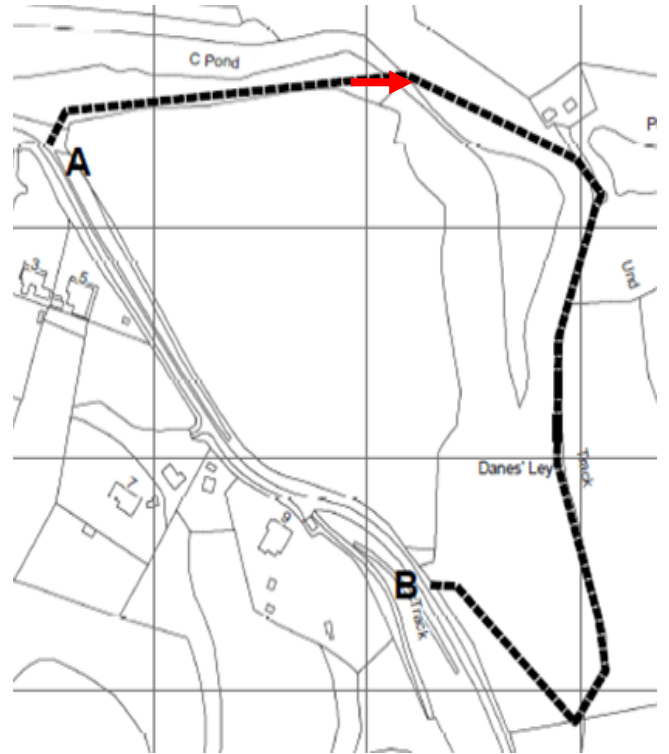


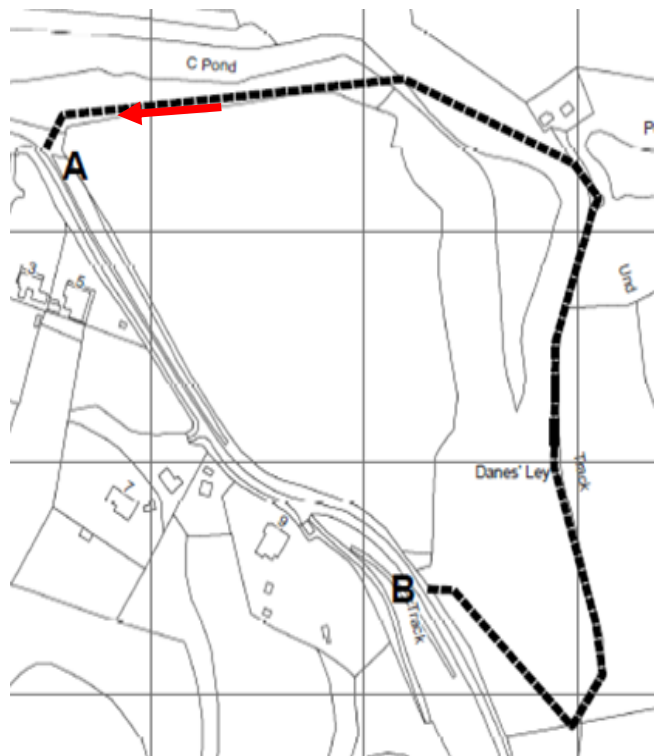
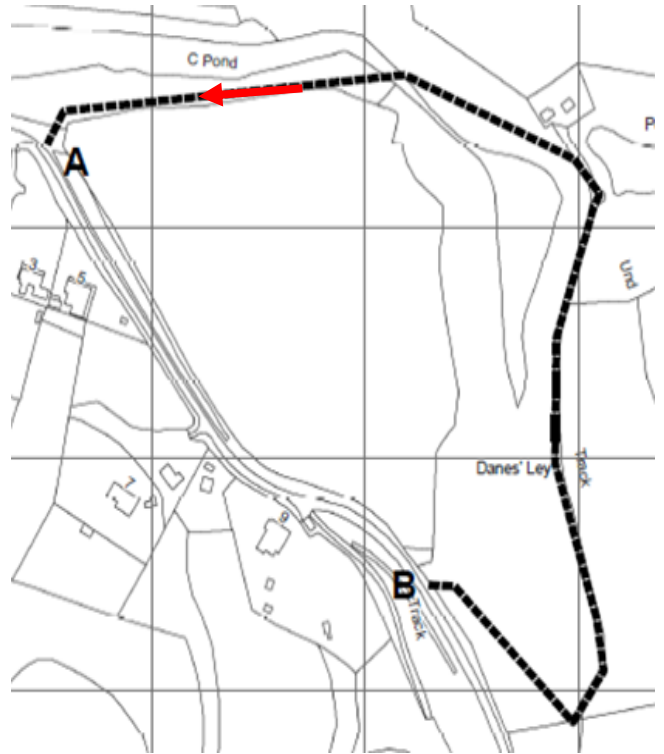


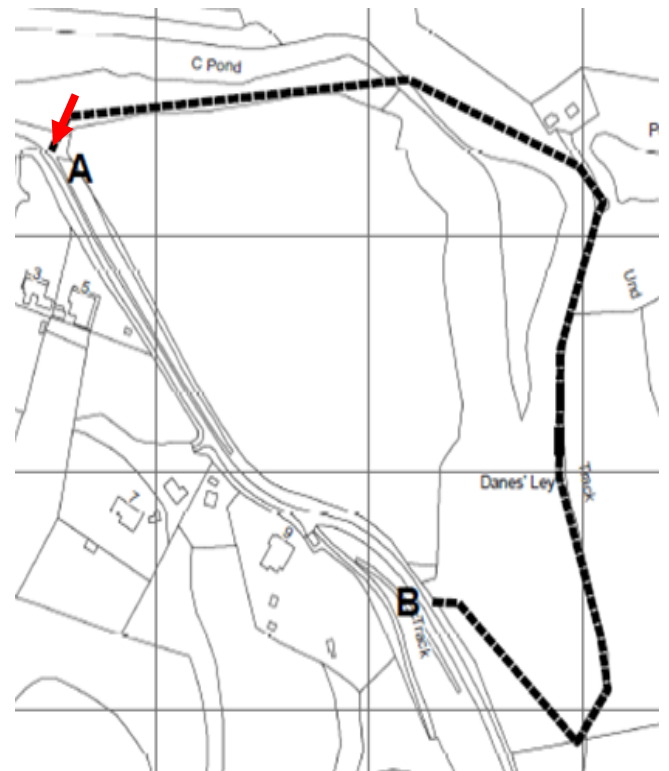
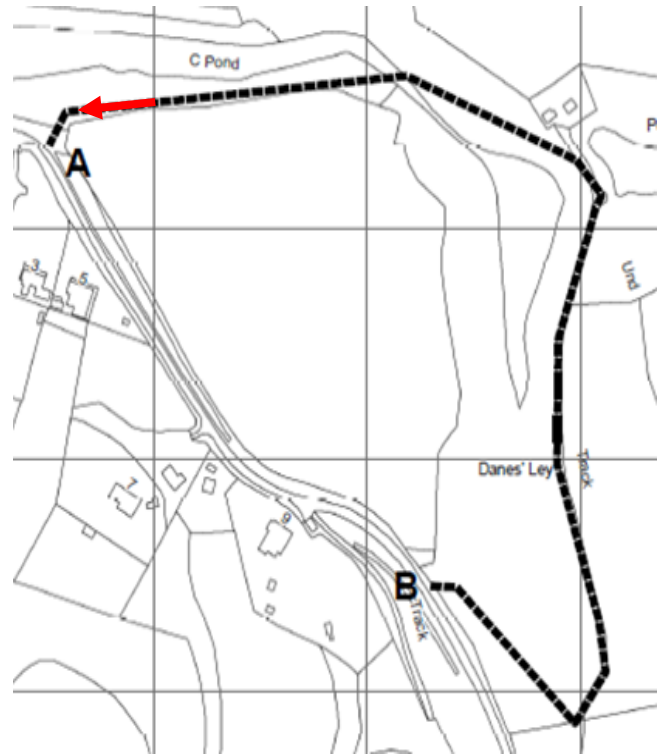
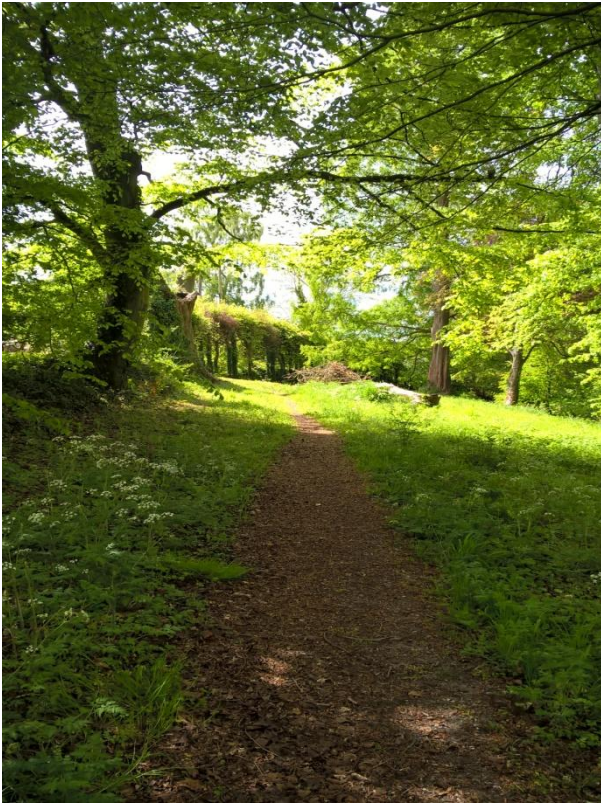


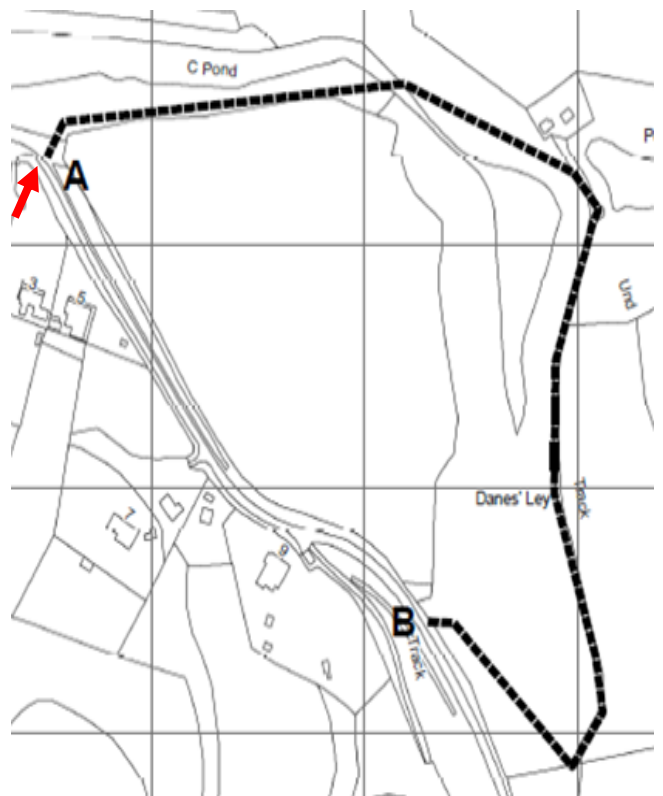
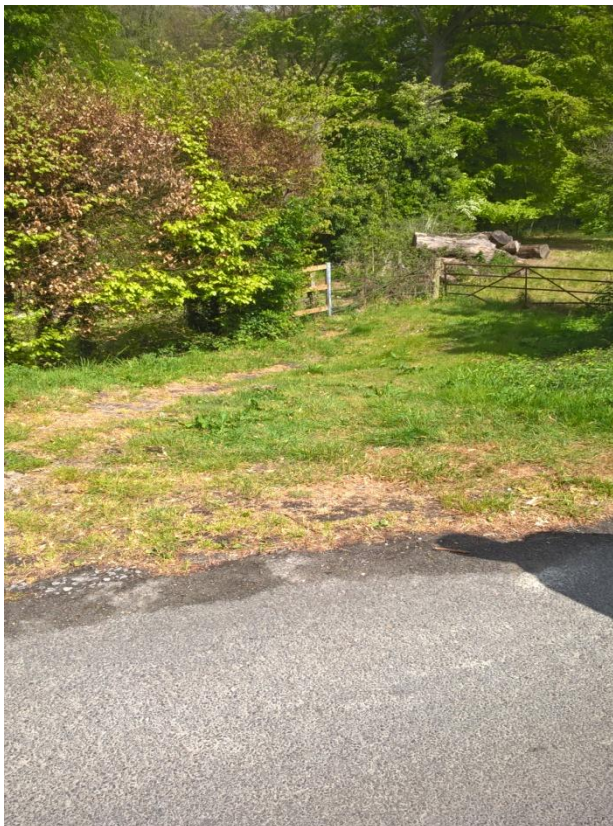
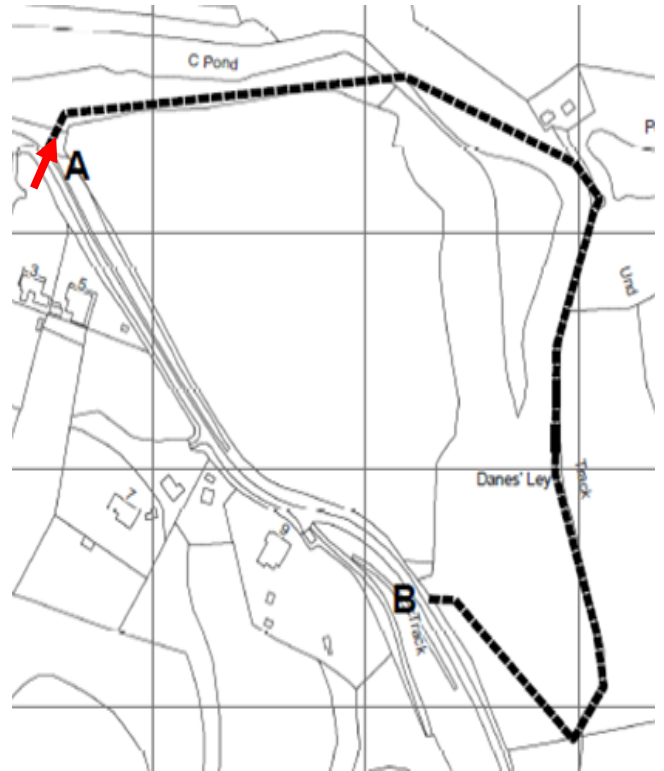












6. Registered Landowners

6.1. The two owners of the land affected by the application are :

Mr Henry Pelly of Luccombe Mil, Imber Road Bratton , Wiltshire, BA13 4SH

Wessex Water, Claverton Down Road, Claverton Down, Bath, BA2 7WW

6.2. The applicant, Mr Phillip Workman has served formal notice on the landowner Mr Henry Pelly using the "Form of Notice of Application for Modification Order as set out in regulation 8(3) Schedule 7 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No 12. Wessex Water did not have formal notice served to them by the applicant but have since been consulted in the initial consultation period.

7. Background

7.1. Wiltshire Council are in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Bratton, running from Imber Road through the grounds of Luccombe Mill and land owned by Wessex Water before looping back onto Imber Road. The application is dated 3rd October 2016 and is made by Phillip Workman of 58 Manor Fields, Bratton, Westbury, Wiltshire , BA13 4ST on the grounds that public footpath rights can be reasonably alleged to subsist or subsist over the land, on the balance of probabilities, based on user evidence and should be recorded within the definitive map and statement of public rights of way.

7.2. The application forms comply with the regulations set out in regulation 8(3) Schedule 7 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No 12 and are accompanied by a plan drawn at a scale of 1:5000 highlighting the claimed route, 56 completed witness evidence forms and supporting evidence. A further 25 witness forms were received within a few weeks of the application, taking the total of witness forms to 81.

7.3. The claimed route is located in the parish of Bratton, which lies to the east of Westbury and south west of Devizes with the B3098 passing through the village. The claimed route forms a semi circular route on Imber Road, Bratton. Starting on Imber Road opposite 3 Imber Road the route runs east through land owned by Luccombe Mill, crossing over a water course and along a raised path over old watercress beds before reaching land owned by Wessex Water.

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The path then turns in a southerly direction and follows a track up the valley which loops back onto Imber Road. The path is approximately 620 metres in length in total.

8. Initial Consultation

Wiltshire Council undertook an initial consultation regarding the proposal on 13th October 2016. User groups (including The Ramblers), Bratton Parish Council, landowners, the Council member for area, neighbouring properties and all interested parties were consulted as part of this process. The following replies were received.

8.1. Bratton Parish Council replied by letter, the contents of which were as follows:

“Dear Craig With regard to the above DMMO I would like to confirm that Bratton Parish Council support the application due to the significant number of witness statements made by local residents and the strength of feeling about this issue in the village.”

“Your faithfully Amanda Callard Chair, Bratton Parish Council”

8.2. Wendy Brook replied by email :

“I would like to add my name to support the efforts of local residents to secure the public right of way for the Watercress walk.

My involvement with the walk goes back to the 1980s when my sister lived in the village. I live in Trowbridge. We often took our children there for its magic and peace. She has since died and I return with my grandchildren to recapture those days and to remember her.

The natural world has always meant a lot to both of us. The area is a valuable habitat with beautiful flora and fauna and was probably an ancient site for religious waterside ceremonies and should be viewed as a conservation site. We have seen long eared owls roosting in the hedges on the roadside which flanks the site.

The new owners may not have an interest in this. Their privacy is still intact, as we have never observed anyone across the lake EVER and the walk does not intrude on this.

Local walkers have been accessing the walk for well over the required 20 years and as a warden hope you will see the relevance to their enjoyment of this peaceful and calm place. We have few of these left in our environment.

The RSPB may well be interested in the habitat for rare birds, and so would endorse its protection.

Please can you contact me with an update of the current application and I would be happy to

meet with you or others who are appealing.

Yours sincerely

Wendy Brook”

8.3. Trevor Cherrett replied by email:

“Dear Mr Harlow

I am writing to submit my strong support for an application for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton. Unfortunately I was away in September and missed the opportunity to submit a formal statement.

I have enjoyed the regular use (on average once a month) of this path for over 16 years, benefitting like others in the area from the quiet enjoyment of a beautiful and secluded woodland and stream. It is well away from the main property residence, Luccombe Mill, and enjoyed the tacit support of the previous property owner for local people to enjoy. There have never been any signs or indications that the path is private or not a public right of way.

Preventing access to the path from the road (points A and B on the Application map) would destroy a much valued amenity for the village and represent a huge loss to the local community. I hope very much that the application to make this a public footpath is successful.

Please let me know if you need further information – my contact points are below.

Thank you Yours sincerely Trevor Cherrett”

8.4. Jason Oliver of Parker Bullen Solicitors replied on behalf of Mr Pelly the owner of Luccombe Mill:

“Dear Mr Harlow

My firm has been instructed by Henry Pelly in relation to the above application, and I have received a copy of your letter to my client dated 13 October 2016. Mr Pelly wishes to oppose the application and will submit evidence for your consideration in due course.

Yours sincerely Jason Oliver”

Mr Oliver in due course sent through statements from 6 individuals opposing the proposal and supporting documents, these will be considered and discussed at section 13 of this report.

9. Main Considerations for the Council

9.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

“As regards every definitive map and statement the Surveying Authority shall-

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

9.2. The event referred to in subsection 2 (as above) relevant to this case is:

“(3) (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*

9.3. Section 53 (5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”

9.4. Schedule 14 of the Wildlife and Countryside Act, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

The prescribed scale is included within the *“Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993”*, which states that *“A definitive map shall be on a scale of not less than 1/25,000.”*

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description ‘owner’ or ‘occupier’ of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

- 9.5. The application to add a right of way to the definitive map of public rights of way in the parish of Bratton was not strictly compliant with section 53 (5) of the Wildlife and Countryside Act 1981, specifically Schedule 14 (2) of the act as the applicant failed to serve notice on one of the landowners over which part of the claimed route leads. Wessex Water did not have a form 2 served on them by the applicant; however they have been consulted on the application during the consultation period undertaken by the Council.
- 9.6. The failure to comply with the terms of paragraph 2 of Schedule 14 and its effect on an application were considered in the Court of Appeal in the case of R (Warden and Fellows of Winchester College and Humphrey Feeds Limited v Hampshire County Council & Secretary of State for Environment , Food and Rural Affairs (SoSEFRA) [2008] EWCA Civ 431). Although the first and principal issue related to public vehicular rights the court considered the implications of the failure of the terms of paragraph 2 as a second issue. Dyson LJ considered that the matter rested on the consequences of the defect rather than requiring strict compliance.

“69 It is true that the certificate was not properly issued, but it does not follow that the consequent determination was invalid. In R v Soneji [2005] UKHL [2006] 1 AC 340 at [23], having reviewed the authorities on the distinction between mandatory and directory requirements, Lord Steyn said “the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction.”

“70 Adopting that approach, I conclude that Parliament cannot fairly be taken to have intended that, if a paragraph 2(2) certificate is wrongly issued, it must follow that a determination on which it is based is invalid. The facts of the present case show that the better approach is to examine the consequences of the defect in the certificate. If they are serious and the defective certificate has caused real prejudice, then it may be that the determination of which it is based should be declared to be invalid. But in my judgement, on the facts of the case, the judge reached the correct conclusion on this issue and for the right reasons.”

Taking this into consideration Wiltshire Council has continued to process the application and made all efforts to ensure all landowners have had a fair opportunity to make any representations they wish.

9.7. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

- “(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) Where the owner of the land over which any such way as aforesaid passes –*
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*
- (6) An owner of land may at any time deposit with the appropriate council-*
- (a) a map of the land on a scale of not less than 6 inches to 1 mile and*

(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;

And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –

(i) within ten years from the date of deposit

(ii) within ten years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) For the purpose of the foregoing provisions of this section, ‘owner’, in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above ‘the appropriate council’ means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the land is situated in the City, the Common Council.

(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

(8) *Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes.*”

9.8. Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

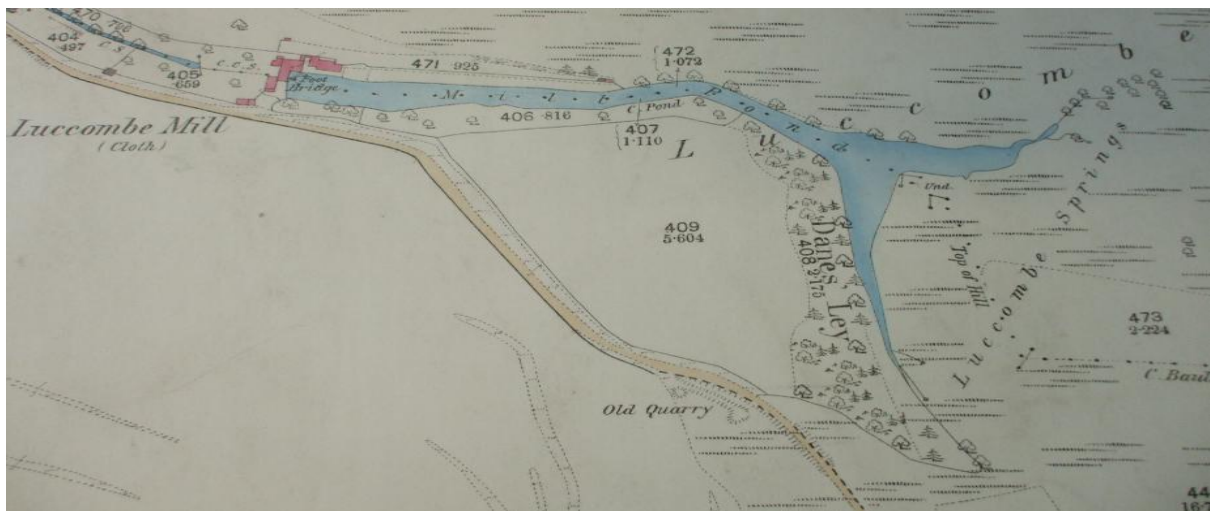
“Evidence of dedication of a way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

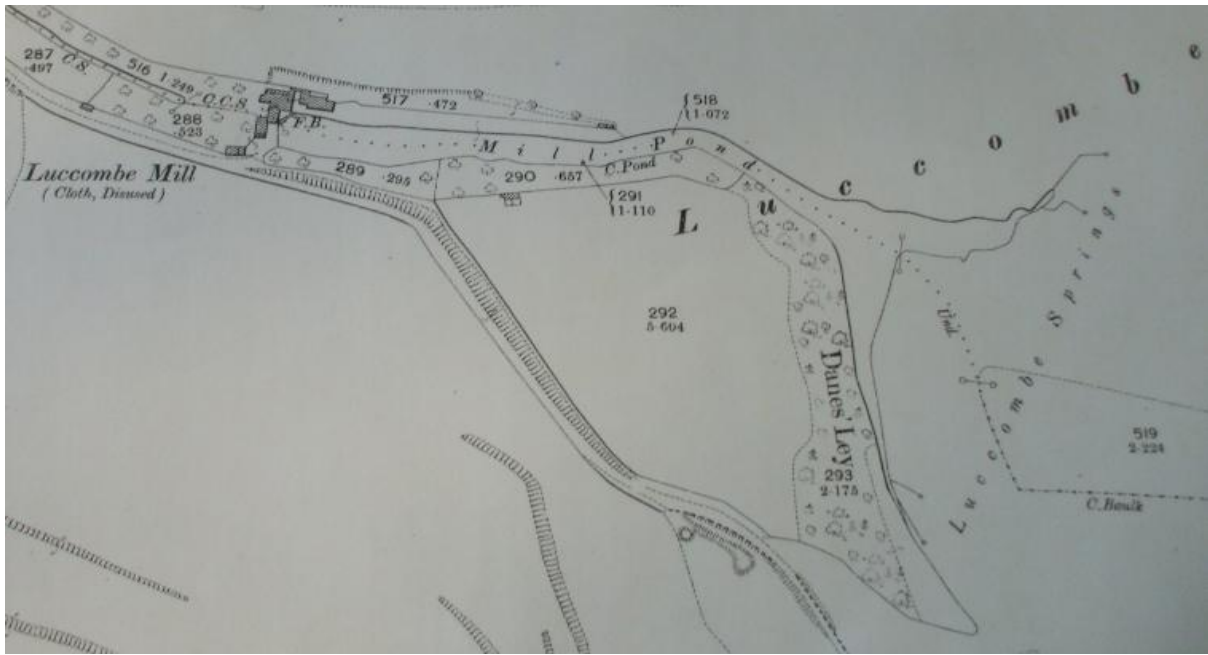
10. Documentary Evidence

10.1. Ordnance Survey (OS) maps covering the area were viewed at the Swindon and Wiltshire History Centre in Chippenham to ascertain if any historical evidence could be found of a public right existing over the claimed route.

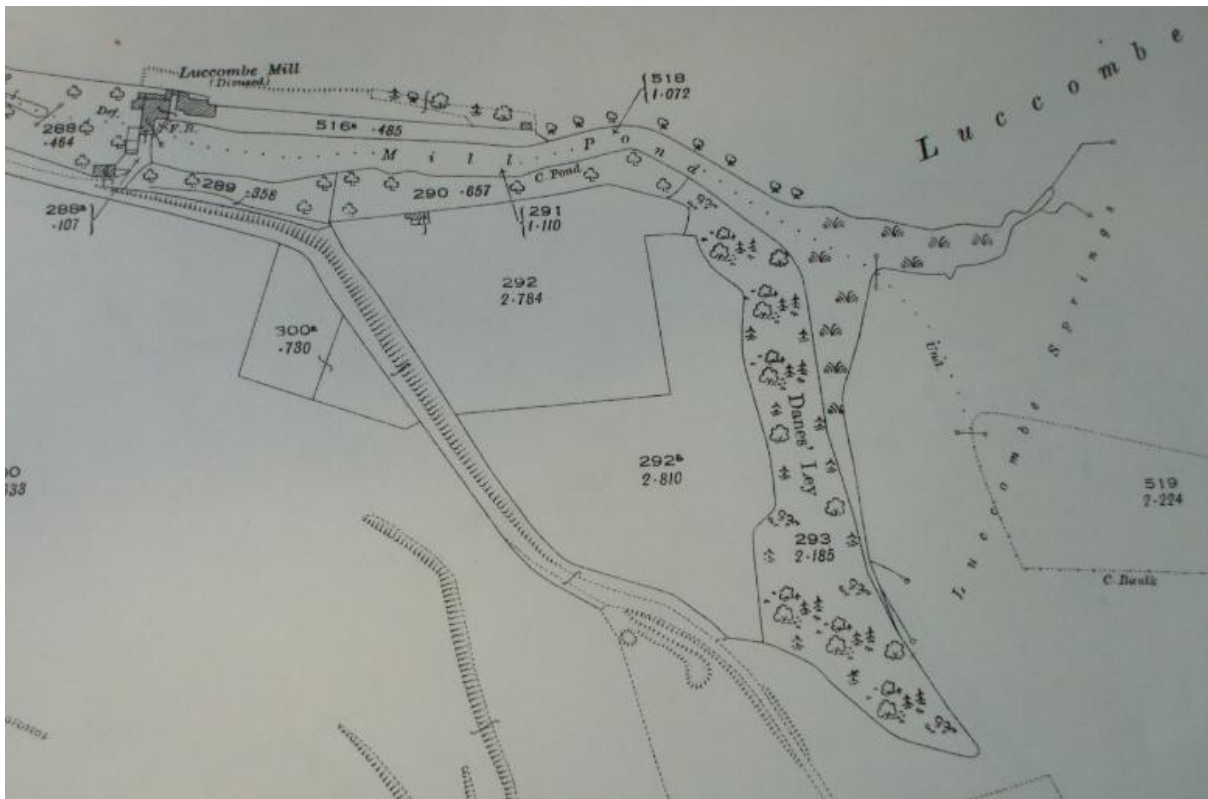
OS Map 1887 Scale of 1:2500



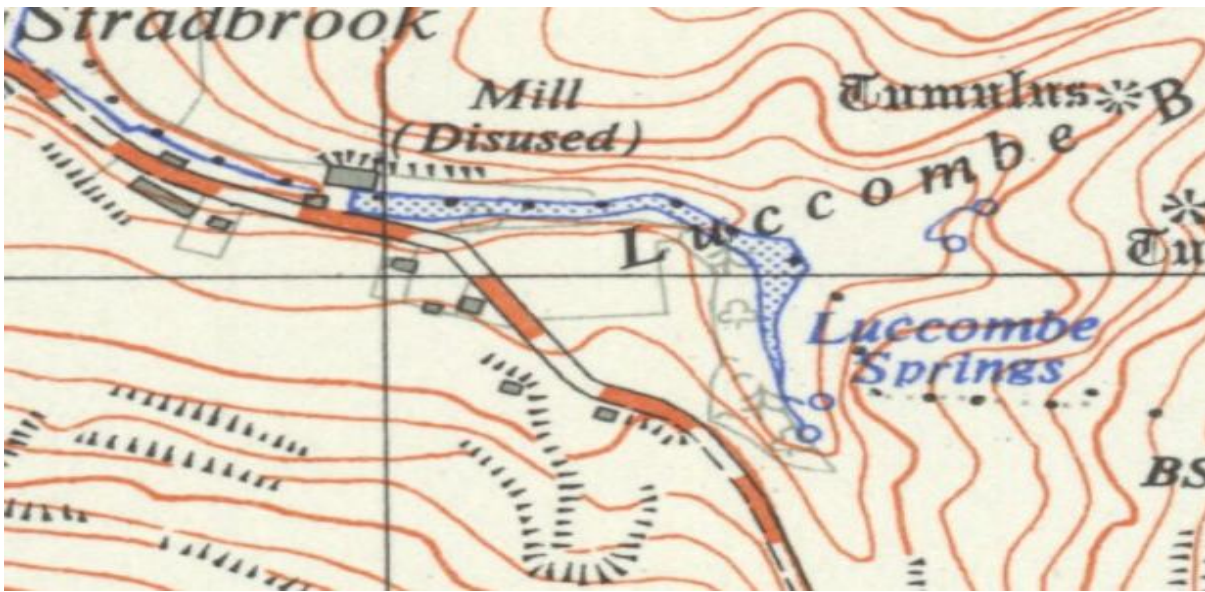
10.2. OS Map 1900 Scale of 1:2500



10.3. OS Map 1924 Scale of 1:2500



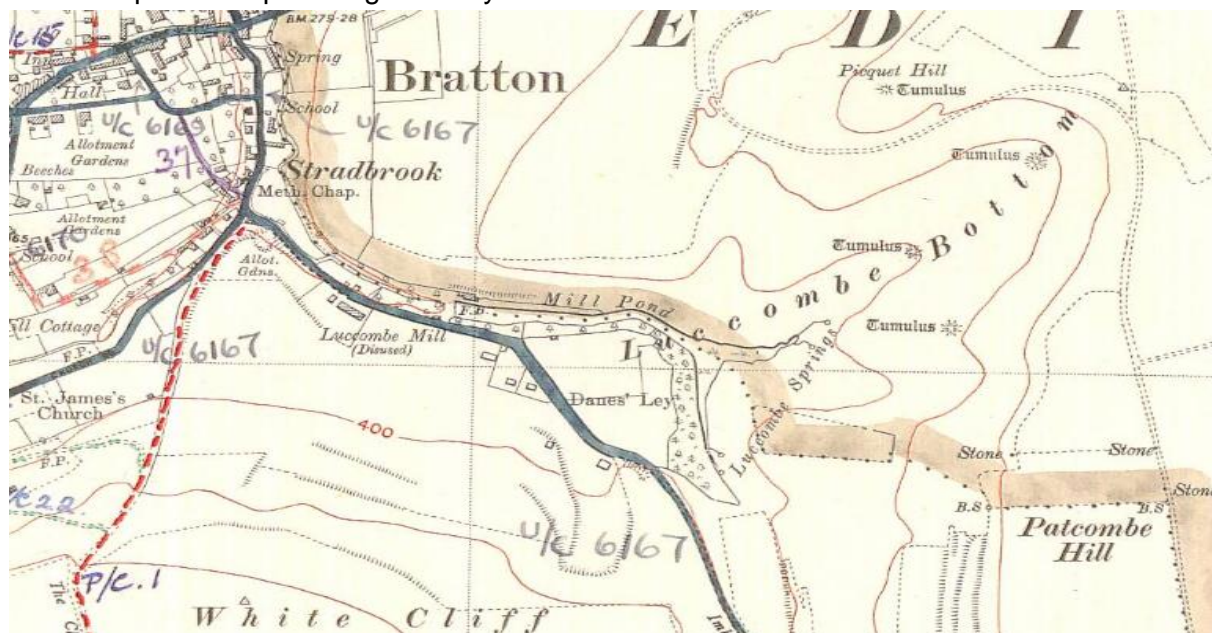
10.4 OS Map 1958 Scale of 1:25000



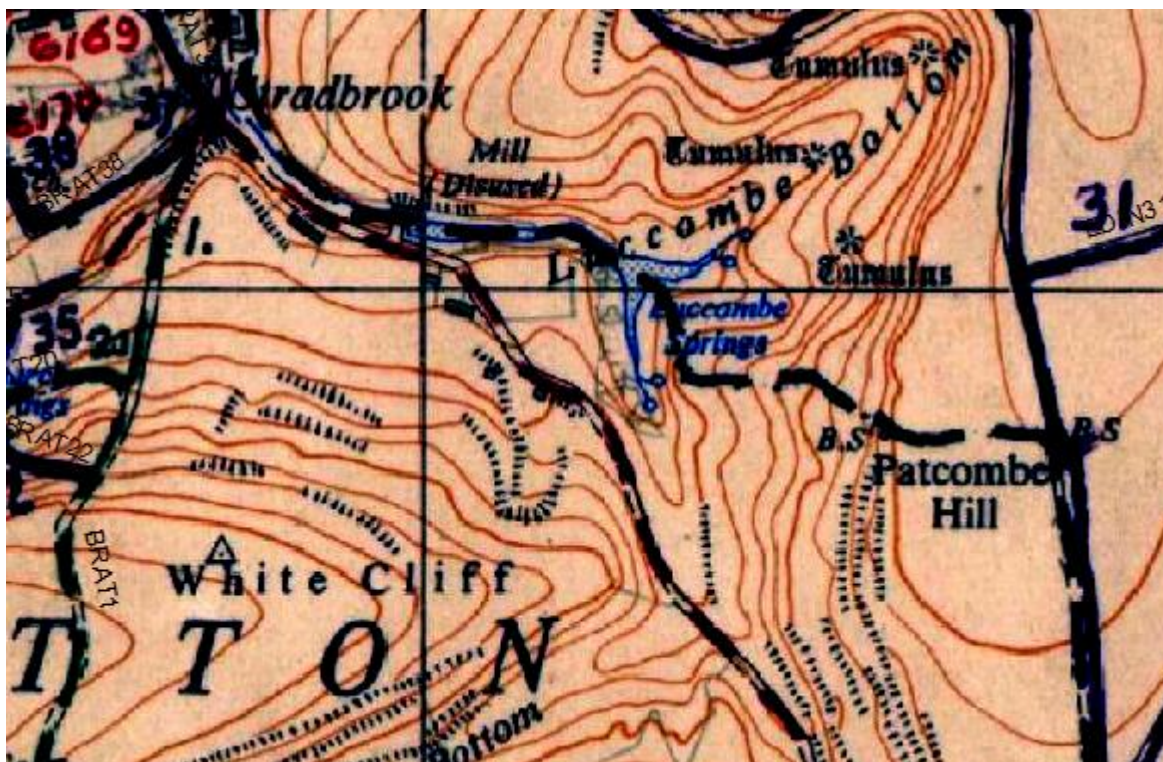
10.5. In the maps above it can be seen that no recorded footpath or any other path was recorded on any of the OS maps dating back to 1887. It should be noted from 1888, OS maps carried a disclaimer that the representation of a track or way on the map was not evidence of a public right of way.

10.6. The preliminary step to creating the definitive map of public rights of way as a result of the NPACA 1949 was for each parish to submit a map to the county council marking the public rights of way which they believed existed in their parish.

10.7. The parish claim map and statements, submitted by Bratton Parish Council do not record the claimed path as a public right of way.



10.8. The 1953 Warminster and Westbury District Council Definitive Map does not record the route as a public right of way.



10.9. In summary, no evidence has been found that the claimed route has been recorded as a public footpath or a path of any kind in the various documents examined.

11. Twenty Year Use

11.1. Section 31 of The Highways Act 1980 states: (see paragraph 9.7 of this report for section 31 in full)

“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

11.2. The period of 20 years is taken as 20 years counted back from the date that the way was first called into question. In this case it is deemed the way was brought into question when the previous landowner of Luccombe Mill submitted a deposit and declaration with the council

under section 31(6) of the Highways Act 1980 in January 2016 declaring there was no intention to dedicate any public rights over that land. The definitive map modification application was submitted on 3rd October 2016. Therefore the relevant 20 year period is 1996-2016.

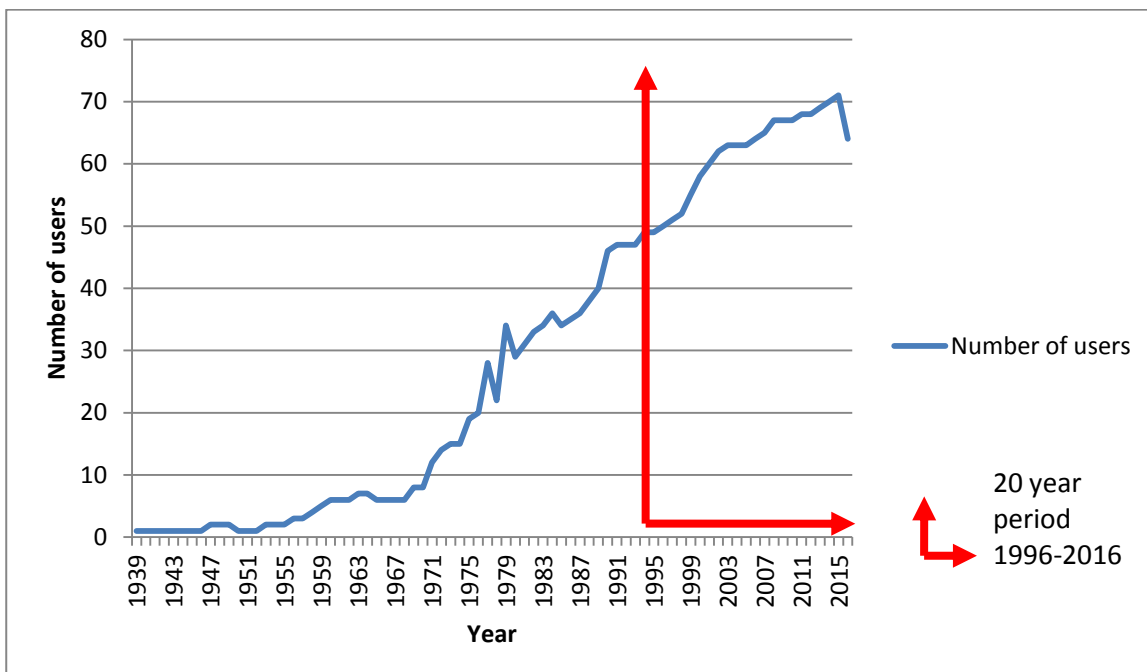
12. User Evidence Forms

As part of the application, a total of 81 witness forms were submitted as evidence. The use of the way claimed by these 81 users covers the period 1939-2016.

12.1. When considering the relevant 20 year period of 1996-2016 in this case, of the 81 users, 36 claim to have used the route for the whole 20 year period of 1996-2016 on a regular basis. A further 28 users have claimed 10+ years of use between 1996-2016 and 11 have claimed less than 10 years use in the 20 year period considered. This takes the total number of individual users in the 20 year period to 75. The other 6 completed user forms either did not fill out the question fully or their use was before 1996.

12.2. Below is a chart showing the number of individual users who claimed use in each year from 1939-2016.

Chart showing usage of way



For the relevant 20 year period it can be seen that over 50 individual users are using the path each year, with some significant use claimed from the 1970s onwards.

- 12.3. It should be noted that not all user forms claimed the entire route. There appeared to be some confusion as to which parts of the route should be claimed which arose from the fact that only the land through Luccombe Mill was blocked off to the public, the land owned by Wessex Water has not been blocked to date. The whole route is subject to this application including the land owned by Wessex Water. Upon analysing the submitted maps I have concluded that 49 of the 81 forms are claiming the whole route and 23 solely claiming the route through the grounds of Luccombe Mill and a further 9 are unclear. Some of the maps drawn by the users are of varying standard and at times do not match the route on the ground. I am confident having walked the route that the majority if not all users have used the same route, the topography of the valley and clear defined track the path follows only allows a recreational walker to have used one route. A large proportion of the maps are of sufficient quality to reassure me and the written descriptions of the route that all users are claiming the same route in whole or part.
- 12.4. All users have claimed to have accessed the path in part or whole by using the same structures. Taking the path from its more northerly junction with Imber Road users claim to have used a stile to access the path into the grounds of Luccombe Mill (now blocked), following the path in an easterly direction until reaching a watercourse over which was a bridge which was traversed onto the raised walkway through the old watercress beds. This bridge was not in situ upon my visit on 11th October 2016 and appears to have been removed. A number of users have provided photos of this bridge in use. If the application to add a footpath is successful a means to cross the watercourse will be installed, although this is not a point which can be considered when deciding this application. Once on the raised walkway the path then exits the land of Luccombe Mill and into Wessex Water land via a stile (now blocked). The path then follows a well defined track up the valley and back onto Imber Road via a 3rd stile (which is still available for use).
- 12.5. There is no statutory minimum level of users required for the presumption of dedication. The quality of the evidence i.e its honesty, accuracy, credibility, and consistency are of much greater importance than the number of users.

In *R (Lewis) v Redcar and Cleveland Borough Council* UKSK 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

Lord Walker goes on to quote Lindley L J in the case of *Hollins v Verney* [1884] giving the judgement of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised and if resistance to it is intended.”

12.6. What must be considered is the level of user, i.e. 81 witnesses whose claimed use is on the whole consistent. The 20 year period which must be considered, 1996-2016, as stated previously has 75 individual users claiming use at some point during that period with 71 users claiming to have used the route in 2015. The use of the path can be seen to be increasing in recent years (see chart at 13.2). It should be noted the population of Bratton has increased significantly in recent years, with a recorded population of 759 in 1971 and 1,248 in 2011. We must consider whether or not this claimed use is sufficient to make the landowners aware that a public right was being asserted against them? The high level of claimed use and clear public feeling and knowledge of this route would indicate the owners of the land would have been aware of the path being used and this is supported in a number of witness forms who claim the Seymours (who owned Luccombe Mill from 1935-2016) were aware of the use of the path.

12.7. The 81 people who filled out witness forms had an opportunity to give extra comments or observations at the end of the form. A number of people took the opportunity to fill out this section. Some of the comments were as follows;

“The watercress beds were a thriving village enterprise” “West Wilts health group used the path for last 10 years” “the route is included on a dog walking website” “2014 foraging workshop held on the route” “pre school gruffalo hunt on the path” “picked watercress when I was 14 for 3 pence a bunch” “guides and rainbows used the path” “British ornithological winter and summer atlas survey in 1982/82 and 2007-2011 carried out on path, also bird ringing from 1982-1988” “walk was on village facebook page”

Many other people commented on the fond memories they have of using the path as children and as adults using the path on family walks and as access to nature. It is clear this

route is important to the local community from the volume of responses in a relatively small village.

13. Objections

13.1. As part of the consultation process the landowners were consulted. The two owners affected are Mr Henry Pelly of Luccombe Mill and Wessex Water.

13.2. No response to the initial consultation letter sent on the 13th October 2016 was received from Wessex Water. A further email was sent to Wessex Water on the 23rd November asking for their comments and views on this application. No response was received. A phone call was then made in an attempt to find a contact to consult on this issue, the estates department of Wessex Water gave the contact name of Daniel Baker as the relevant person. An email was sent to Daniel Baker on the 25th November asking for his views or comments. No response was received. In December a phone call was made and contact made with Mr Baker who stated he was aware of the application and Wessex Water wished to remain neutral in the case not making an objection or any comments of support. This has not been confirmed in writing.

13.3. As discussed at 8.4 of this report Mr Pelly's solicitors, Mr Jason Oliver of Parker Bullen Solicitors, responded on his behalf to the consultation letter, submitting statements from 6 individuals (see appendix A) and two letters of supporting evidence (see appendix B) in support of their objection to this application.

13.4. The 6 statements are from four members of the Seymour family, Julian, Francis, James and Sarah Seymour who resided in Luccombe Mill at various times until it was sold to the current owner Mr Pelly in 2016. The other two statements are from Mr Tim Goode who has been gardener at Luccombe Mill since February 2010 and Gladys Drewett who was a parish councillor in Bratton for 25 years until 2015.

14. Signs and Notices

14.1. The statements from the Seymour family cover largely the same points. All four statements state that at various times signs were erected stating the path was private but that these signs were quickly taken down or removed. These claims are also repeated in Ms Drewett's statement and Mr Goode's statement who states in reference to Mrs Seymour "*On her instructions I put up several signs informing people that the land was private and that the path was not a public right of way*". These 6 statements are at odds with the user evidence forms submitted by the public. In the forms filled out by the 81 witnesses question 9 on the

form asks “ *Have you ever seen any signs or notices suggesting whether or not the application route is a public right of way? (for example “Private”, “Keep Out”, No right of Way “Trespassers will be prosecuted”)*” in response to this question many people stated yes since the new owners have moved in or in recent months. The only response of the 81 that stated they did see a sign of this nature before the new owners moved in answered the question “ *I believe there may have been a notice on the middle stile stating permissive route*” this user claimed to have used the path between 2013 and 2016.

In summary there are 6 statements stating signs were erected on the path stating the way was private and not a right of way and 1 stating there may have been a permissive sign on the middle stile. There are 80 statements which declared they did not see any sign declaring the path was private.

14.2. The intention or lack of intention to dedicate a path a public right of way is addressed in section 31 of the Highways Act specifically addressing erecting notices or signs in the following sections

- (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

- (3) *Where the owner of the land over which any such way as aforesaid passes –*
 - (a) *has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*

 - (b) *has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

14.3. As can be seen it is the landowner's responsibility to maintain any such notice and where it is torn down to give notice to the appropriate council that the way is not dedicated as highway. Wiltshire council have no record of any such notice or that any such notices were torn down. I did request any photographic evidence that Mr Oliver may be able to receive from the Seymours or others showing that the notices that they claim to have been in place were in place, Mr Pelly replied himself stating that unfortunately the Seymours or Mr Goode did not think to take any photos. We do not have the exact wording of the signs that are claimed were displayed.

15. As of right

15.1. Section 31(1) of the 1980 Highways Act requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

Without Force

15.2. None of the 81 users has declared in their form they used any force to access the path and that they have accessed the path by the stiles and bridge already in place. Julian Seymour and Francis Seymour both state "*A fence that was erected to block the path was removed*". This statement is not given a date as to when this fence was erected or subsequently removed. Gladys Drewett also states in relation to Mrs Seymour "*I recall that she replaced a metal fence with a boarded wooden one in an attempt to block access. This was unsuccessful as somebody used pieces of timber to make a stile to enable people intent on using the path to climb over the fence*". The statements of the objectors do not agree with the statements of the users in this case.

Without Secrecy

15.3. There is coherence from all parties that the use of the path was without secrecy, the Seymours were aware of the use of the path as stated in many user forms and by the statements written in objection to the application including the Seymours themselves.

Without Permission

15.4. The question of permission is contentious in this case. A main point of Mr Pelly's objection as stated in the witness statements submitted by Mr Oliver accredited to members of the Seymour family and others is that use of the path was by permission of Mr and Mrs Seymour throughout the time they owned the land at Luccombe Mill. Paragraph 14 of the statements of both Julian Seymour and Francis Seymour state *"I find it slightly galling that the applicants seek to interpret my father's community spirit and his generous easy going nature approach to use of the path by others as an indication that he intended to dedicate the path as a public right of way. This was never his intention for the reasons stated above there is no basis for presumed dedication when the use was with his permission."* James Seymour and Sarah Seymour stated in paragraph 3 of their statements *"It was never his intention that the path be a public footpath"*. Tim Goode and Gladys Drewett both state in paragraph 5 of their statements *"I do not consider that the Seymours' generosity in allowing people to use the path should be interpreted as implying that they intended to dedicate the path as a public right of way."*

15.5 Of the 81 witness forms submitted 10 people did say they had permission from the landowner to use the path and 9 people stated they were aware permission was given by the Seymours to use the path or the Seymours saw them using the path so this implied permission. 62 stated clearly they had no permission to use the path and the 9 people who stated they were aware of permission or permission was implied can be deemed to have used the path as of right as they were not expressly given permission directly to use the path.

15.6 Use of the path without permission as required under section 31(1) of the Highways Act is in this case challenged by the landowners' submissions. Wiltshire Council must consider the 6 statements and 10 user witness forms stating the use of the path was with permission and weigh this against the 71 user statements declaring they did not have permission to use the path.

16. Landowner's intention

16.1. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after uninterrupted public use of a route for a period of 20 years or more in a manner that is “as of right”, unless during that period, there can be demonstrated there was no intention on the landowner’s part to dedicate the land as a highway during that period. Intention to dedicate was discussed in the Godmanchester case, R (on the application of Godmanchester Town Council (Appellants) v. Secretary of State for the Environment , Food and Rural Affairs (Respondent) and one other action R (on the application of Drain) (Appellant) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and other action [2007] UKHL 28, which is considered the leading authority in this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956: seen at paragraph 20 of the Godmanchester case:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburn’s words, take steps to disabuse these persons of any belief that there was a public right...”

16.2. In the same case, Lord Neuberger of Abbotsbury went further on this point in paragraph 83 of the case:

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1(1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

Lord Hoffman went on to say at paragraph 32:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what

particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

16.3. On 22nd January 2016 Francis Seymour made a deposit under s.31(6) Highways Act 1980 declaring no public footpaths had been dedicated over the land owned by Mary Seymour (his mother) at that time. A duly made deposit under s.31(6) HA80 is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

16.4. It is noted that as part of the correspondence in relation to making the s.31(6) deposit the solicitor acting on behalf of Francis and Mary Seymour, Venetia Taylor, stated *“The plan attached to the statement shows all the land owned owned by Mrs Seymour edged in red. The area of particular concern is the western part of the property adjacent to the stream, where private footpaths converge around the mouth of the stream. I attach to this letter a hand-drawn sketch provided by Mr Seymour, showing the rough location of the private footpath he is concerned about.”* It appears Ms Taylor was mistaken when stating the ‘western part of the property’ as the path marked by Mrs Seymour is at the eastern end of the property and matches the claimed route of this application. A copy of the map is provided below.



It is evident that by including this additional information Mrs Seymour had some concerns over the status of this path when selling the property and made the s.31(6) deposit and declaration to protect against any claims to record this route as public right of way.

- 16.5. The deposit and declaration made on this land only protects its status from the date of the deposit, in this case 22nd January 2016 and as such does not demonstrate the landowners lack of intention to dedicate this route before 22nd January 2016. The 20 year period of use claimed by users from 1996-2016 is not affected by the deposit.
- 16.6. As part of their objections to the application the Seymours provided letters dated 1961 and 1971 which were correspondence between the then West Wilts Water Board and Lady Violet Seymour. Both of these letters are submitted as evidence which demonstrates Lady Violet Seymour had an agreement with the Water Board they may use the path but this was by permission and the path was not a public right of way.
- 16.7. The letter dated 25th April 1961 from West Wilts Water Board to Lady Seymour states *“Thank you for your letter concerning my staff using the footpath to the springs at Luccombe. The board appreciate the fact that both you and your tenant permitted our staff to use this footpath, but we quite understand that it is not a right of way. Yours truly J.A. Young Engineer and Manager”*.
- 16.8. The letter dated 12th January 1971 from West Wilts Water Board to Lady Seymour states *“ I understand that you have complained to the control centre concerning damage to trees, etc. on the route of the Board’s unofficial right of way, which you kindly allow us to use to obtain access on foot to Luccombe Pumping Station. I have made enquiries and I find that in fact this route was trimmed by members of our maintenance staff from the Board’s Southern Area, who were not aware that this was an unofficial right of way. I apologise for this oversight , which was quite unintentional. The trimmings are being removed from the site today and I will make certain there is no recurrence of this matter. The board are appreciative of your allowing them to use this right of way and I am sorry that this action has happened in error. Yours Sincerely J.A. Young Engineer and manager.”*
- 16.9. These letters clearly show that Lady Seymour communicated to the West Wilts Water Board they may use the path (although we do not know the exact path they are referring to, we are assuming it is the path in question) but it was with permission and there was no intention to dedicate it as a public right of way. What these letters do not demonstrate is the lack of intention to dedicate the path as public right of way to any more of a wider audience than the recipients of the letters. Any member of the public or anybody outside of the West Wilts

Water Board using the path would not be aware of these letters and as such they did not demonstrate the owners' lack of intention to dedicate or give permission to anyone other than the Water Board.

17. Width and Route

17.1. The route claimed by the users has been discussed previously in this report and the confusion as to which parts of the route were being or needed to be claimed. I believe all users are claiming the same route as described earlier in the report at 13.6. via the 3 stiles on the route and the now removed bridge.

17.2. The width of the path claimed varies. The widths claimed in the user evidence forms vary from statements such as " 2-3ft" "2-5ft" " 1 metre", "1.5-2m" , " wide enough for 2 people to walk side by side". The path follows a well defined route approximately 2m wide from the beginning of the path through the ground of Luccombe Mill and narrows when reaching the defined walkway over the watercress beds area. When exiting onto land owned by Wessex Water the path again becomes slightly wider again. An approximate width of 2m would be reasonable to assume.

18. Common Law Dedication

18.1. Section 5 of the Planning Inspectorates Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.

Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some point in the past.

A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly, or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to overt public use of the way. It also relies upon the public showing their acceptance of the route by using the way. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at

common law at some time in the past, it is recognised that in practice evidence of such dedication is difficult to obtain and it is then more usual to apply Section 31 of the Highways Act 1980.

18.2. Relatively few highways can be shown to have been expressly dedicated. In this case the act of installing stiles on the route and making it available from a public highway, i.e. Imber Road, could be seen as an act of dedication. However it could be argued that these stiles were put in for the purpose of the Water Board accessing the path and the stiles were for their use and not dedicating the way to the public. There is a case for dedication at common law which could be explored further but it will not be relied upon for the decision of this application at this time.

19. Conclusion

19.1. This application to add a footpath to the definitive map and statement at Imber Road, Bratton has attracted a lot of local interest and national interest, with closure of the used route featuring in a number of different newspapers. 81 users submitted evidence via user forms claiming to have used the path, others have emailed in support of the application. The landowner Mr Pelly having bought Luccombe Mill from the Seymour family in 2016 closed the used path in the knowledge it was not a recorded public right of way on the definitive map, thus prompting the local population to submit an application to Wiltshire Council to record the path as a public footpath.

19.2. The main weight of evidence in support of the application comes in the form of the 81 user forms. Having examined these forms there is a clear and consistent use of the way claimed dating back many decades and a large amount of use claimed in the 20 year period considered under section 31 of the Highways Act. This use would have made it clear to the owners at the time the path was being used by the public in large numbers and a right was being asserted on their land. As it is clear the way has been used for the relevant 20 year period the main themes to examine and which were contested in the evidence was whether the use was 'as of right' and mainly in the themes of signs erected on the path which would have proved the landowners non-intention to dedicate the way as public and whether the use of the path was with permission or not. The landowners at the time, the Seymour family, have submitted evidence to say this use was by permission and they erected notices informing the users this was a private path and not a public right of way. This in large is

denied by the users of the path. In numeric terms 7 people have indicated there were or may have been signs erected stating the way was private, in contrast there are 80 users stating they saw no signs at any time saying the way was private. I have asked for any physical evidence to support the claim signs were erected, none was available. If the way was used 'as of right' the path must be used without permission. All objectors to this application state use was by permission and also some users have stated they did have permission to use the path. Again in numeric terms 16 people have stated use was by permission while 71 have stated they did not have permission. It is accepted that some users stated they did and some stated they did not have permission but it is clear that the landowners' intention to grant permission was not brought to the relevant audience.

- 19.3. Having considered all this evidence officers conclude that it can be reasonably alleged that a right for the public on foot subsists over the land in question and that there is no incontrovertible evidence that such a right does not exist.

20. Overview and Scrutiny Engagement

Not required.

21. Safeguarding Considerations

Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

22. Public Health Implications

Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

23. Environmental Impact of the Proposal

Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

24. Equalities Impact of the Proposal

Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

25. Risk Assessment

Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

26. Financial Implications

26.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, is a statutory duty for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

26.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are minimal.

26.3. Where a definitive map modification order is made and objections received which are not withdrawn, the order falls to be determined by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA). An Independent Inspector appointed on behalf of the SoSEFRA will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry

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could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant). Any decision taken by SoSEFRA is liable to challenge in the High Court, the council would bear no financial burden at this stage as the decision has been made by the SoSEFRA.

27. Legal Considerations

Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the SoSEFRA, who will consider the evidence and may direct the Council to make an order.

If an order is made and objections are received, the procedure is as detailed above in paragraph 25.3.

28. Options Considered

To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, or
- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, the only option available to the authority is to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

28.1. Section 53(3)(b) requires that on the balance of probability a presumption is raised that the public have enjoyed a public right of way over the land for a set period of time.

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.

This section allows for the consideration of common law and the inclusion of historical evidence and is the more commonly used section.

28.2 In considering the evidence under section 53(3)(c)(i) there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA [2004] EWHC 1450 (Admin)*. Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence.

29. **Reasons for Proposal**

It is considered that there is sufficient evidence to meet test B as described in the above paragraph 28.2 that a public right on foot exists over the land in the parish of Bratton on Imber Road subject of this application. The user evidence supplied demonstrates 20 years of uninterrupted use of the route in the relevant period. The issues of permission and signage are disputed by the previous owners of the land, with the weight of evidence in favour of the users on these subjects the council can only conclude it can be reasonably alleged that rights exist over this land, if the landowner objects to this decision using the evidence already considered or any other reasons this case would then have to be brought to a public inquiry where an inspector would have the opportunity to cross examine the evidence submitted by all parties. At this stage officers believe test B has been met as there is no incontrovertible evidence.

30. Recommendation

That Wiltshire Council makes a definitive map modification order to record a public footpath over the land at Imber Road in the parish of Bratton subject to this application.

Craig Harlow
Rights of Way Officer
24 May 2017

Appendix A

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**PARKER
BULLEN**
SOLICITORS

Mr C Harlow
Rights of Way Warden
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Our ref: JO/js/54876-001-1

Your ref:

Date: 24 November 2016

By post and email: craig.harlow@wiltshire.gov.uk

Dear Mr Harlow,

Section 53 Wildlife and Countryside Act 1981
Application re footpath at Luccombe Mill, Bratton

I enclose statements in opposition to the above application by the following persons:

1. Francis Seymour;
2. James Seymour;
3. Sarah Seymour;
4. Julian Seymour;
5. Gladys Drewett;
6. Tim Goode.

You will see that Julian Seymour's statement is unsigned. It is approved by him and he tells me that he has signed and posted it to me. I will forward a copy of the signed version to you when it arrives.

Yours sincerely

Jason Oliver
Partner
For and on behalf of Parker Bullen LLP
jason.oliver@parkerbullen.com

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The word "partner" is used to refer to a member of Parker Bullen LLP, or an employee or consultant with equivalent standing and qualifications. A list of members is open to inspection at our registered office.

Witness: F B Seymour
First Statement
Exhibit: BS1
Date: 22 November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF FRANCIS BENEDICT SEYMOUR

I, FRANCIS BENEDICT SEYMOUR, of 61 Boltons Lane, Woking, Surrey, Gu22 8TN WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from a combination of my own knowledge, information received from various family members and various relevant documents. The facts stated are true to the best of my knowledge, information and belief.
2. A paginated bundle of documents is exhibited to this statement marked 'FBS1'. References to documents in that bundle are in the format **FBS1/[page no[s]]**.
3. The path in question begins at the entrance to the paddock field off Imber Road. Perhaps due to the generosity of my family in habitually giving permission for access when this was sought, people have formed the mistaken impression that the path is a public right of way. Indeed, some appear to have formed the view that all of the land on that side of the lake is public. This is certainly not the case.
4. My family's involvement with Luccombe Mill goes back over 90 years. My grandparents, Horace and Violet Seymour, bought Luccombe Mill in 1935. At that time, I

am told the house, garden and grounds had been neglected and were all in need of a little attention. In following years, order was brought to the chaos. The watercress beds were no longer being tended and so were left to nature to reclaim them.

5. During the Second World War, I understand that the local water board compulsorily purchased an area at the end of the watercress beds where the springs which feed the lake are found, in order to secure water provision for the area and Keevil Aerodrome. Until that point the whole area of land was in single private ownership and there was no reason for any third parties (let alone the public) to have access from the road to the small area of land purchased by the water board.
6. Once the water board owned the land, the springs were capped with brick built structures and a small pumping station was built close to the end of the watercress beds. In order to maintain the pumping station, the water board also built an un-marked track back to the Imber Road, which emerged at the brow of the hill.
7. Luccombe Mill house was used for various purposes (leasing out - to lay and military tenants) over the years, with a succession of tenants but there was never any general right of access over the route now claimed or any other route over the land. However, when permission was sought from my grandparents it would normally be given.
8. In about 1961 the water board approached my grandmother and sought permission for their maintenance teams to gain foot access to the pumping station along the seldom-used path to the watercress beds. I am not completely sure why they preferred to do this rather than use their own track, but it may have been something to do with the track being difficult to use in wet weather. As use of the path was not expected to be a frequent event, consent was given. As part of this informal agreement, the water board would maintain and on occasion improve the path in order to enable their employees to safely access the pumping station. This included building a metal bridge to replace the rather rudimentary timber one that was in place previously and 2 stiles: one near the road and the other at the waterboard boundary.

9. In 1971 the water board apologized for cutting the trees on the path to the watercress beds and accepted that it was an 'unofficial right of way'. On both occasions, the water board confirmed that the path was not public and that access was only by permission. True copies of letters from West Wilts Water Board to my grandmother dated 25 April 1961 and 12 January 1971 are at **FBS1/1-2**.
10. In 1973 Luccombe Mill passed to my father, Hugh Seymour, and the family moved there from Guildford to take up permanent residence. Following my father's death after a long illness from cancer, Luccombe Mill passed to my mother, Mary Seymour, and was sold in 2016 to Henry Pelly. I lived there from about 1974 to early 2015.
11. It should be noted that at no point were any private or public rights of way granted to anyone. My family agreed to allow various people or organisations (for example, the village school and the local cub scout pack) to use the path from time to time. Anyone who used the path lawfully was doing so with permission. Anyone who did not have permission was trespassing on private land.
12. In 2000/2001 there was an outbreak of 'Foot and Mouth' disease and all the farming land around Bratton was quarantined. My father was happy for people to use the path so that they were able to continue walking during this period. Allowing the path to be used meant that people could do a loop rather than just using the water board track to and from what is known locally as the watercress beds close to the now disused pumping station. His generosity should not be interpreted as implying that he intended to dedicate the path as a public right of way. My father was a very community-minded person and was very active in village life. He was a keen supporter of the local cricket club and regularly mowed the graveyard at the village church. However, there was a limit to his generosity and I am sure that nobody would consider it to be unreasonable for him to want to protect his privacy. He did not mind children cycling on the path but drew the line at adults using mountain bikes on it due to the damage that would be caused. He even put up a sign to this effect. I recall that he was upset when people picked the daffodils in what was

essentially our back garden, and when our family cat was killed there, by the uncontrolled dogs of people walking on the path.

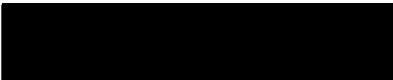
13. In normal circumstances, if my father discovered anybody on the land without permission he would approach them and inform them that the land was private. At various times signs were placed on the gate at the start of the path stating that it was private land or not to pick the flowers, but these were often vandalised and taken down. A fence that was erected to block the path was removed. However, nobody who was familiar with the area would be in any doubt that it was private land and that the path was not a public right of way. [

14. When Luccombe Mill was sold I made (in my capacity as my mother's attorney) a statement under section 31(6) Highways Act 1980 that there had been no dedication of any route over the land as a public right of way. A true copy of the statement is at FBS1/3-6.

15. I find it slightly galling that the applicants seek to interpret my father's community spirit and his generous easy going nature approach to use of the path by others as an indication that he intended to dedicate the path as a public right of way. This was never his intention for the reasons stated above there is no basis for presumed dedication when the use was with his permission.

Statement of truth

I believe that the facts stated in this witness statement are true.


Francis Benedict Seymour

22 November 2016

Witness: Hugh James Seymour
First Statement
Date: 22nd November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF JAMES SEYMOUR

I, JAMES SEYMOUR, of 67 Eaton Terrace London, SW1W 8TN WILL SAY AS FOLLOWS:


1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from my own knowledge and are true to the best of my knowledge, information and belief.
2. Luccombe Mill was owned by my grandmother and passed to my father in the 1970s. I have known it all my life as even before we lived there full time, we regularly visited my grandparents. It was my family home and my base for working abroad from 1973 until it was sold to Henry Pelly. I have spent a great deal of time there with my family and latterly with my ageing parents.
3. It has always been a special place for my family, and so when we moved there it was the realisation of a much longed-for desire for us all. My father considered that the house sat in the middle of a large garden which he tended and treasured in equal measure. The woods behind the house circle around and meet at the watercress beds. My father was so keen on trees that not only did he manage the woods on both sides of the lake but also planted many, many trees throughout the estate, including trees planted on the path to the watercress beds. We all had trees planted in our names; mine is the beech tree located some 50 yards down the disputed path, on the right. He considered the garden as a whole and treasured it as he had also known it since his parents bought it when he was a boy. The family has always

considered the path as within our garden, he planted the trees, shrubs and bulbs for spring. It was never his intention that the path be a public footpath and from time to time signs were put up to remind people that it was private land.

4. My family have been a part of the village ever since they arrived. My grandparents gave the grounds of Bratton House for the village fete to use, my father supported the local cricket team when it was established and was a regular supporter of the local village band. He also took his mowers to the church where he helped with the maintenance of the churchyard. So, it is not that the family did not want to be a part of the village or to keep people away, it was just that the garden was my father's passion and joy.
5. He was a generous spirited man, but it should be noted that when he didn't actively stop every person going down the other side of the garden on the path when he took ownership in the 1970s the village had a much smaller population. According to the census, the population in 1971 was 759 and by 2014 had increased to 1,200 people. This will only grow as more houses are built in the village. The occasional person walking was tolerated, but in later years it did distress him that there was so little respect for his treasured garden, with damage caused by cyclists using mountain bikes and fences being taken down.
6. I feel that as the village is surrounded by some huge open spaces, footpaths by Salisbury Plain, and a plethora of places to walk that the new owner should be allowed to enjoy his garden in peace.

Statement of truth

I believe that the facts stated in this witness statement are true.


James Seymour

22nd November 2016

Witness: S Seymour
First Statement
Date: 22 November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF SARAH SEYMOUR

I, SARAH SEYMOUR, of West Bungalow, Dungeness, Kent, TN29 9NB WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from my own knowledge and are true to the best of my knowledge, information and belief.
2. Luccombe Mill was owned by my grandmother and passed to my father in the 1970s. I have known it all my life as even before we lived there full time, we regularly visited my grandparents. It was my family home and my base for working abroad from 1973 until it was sold to Henry Pelly. I have spent a great deal of time there with my family and latterly with my ageing parents.
3. It has always been a special place for my family, and so when we moved there it was the realisation of a much longed-for desire for us all. My father considered that the house sat in the middle of a large garden which he tended and treasured in equal measure. The woods behind the house circle around and meet at the watercress beds. My father was so keen on trees that not only did he manage the woods on both sides of the lake but also planted many, many trees throughout the estate, including trees planted on the path to the watercress beds. We all had trees planted in our names; mine is the Tulip tree at the end of the orchard. He considered the garden as a whole and treasured it as he had also known

path as within our garden, he planted the trees, shrubs and bulbs for spring. It was never his intention that the path be a public footpath and from time to time signs were put up to remind people that it was private land.

4. My family have been a part of the village ever since they arrived. My grandparents gave the grounds of Bratton House for the village fete to use, my father supported the local cricket team when it was established, he was a regular supporter of the local village band. He also took his mowers to the church where he helped with the maintenance of the churchyard. So, it is not that the family did not want to be a part of the village or to keep people away, it was just that the garden was my father's passion and joy.
5. He was a generous spirited man, but it should be noted that when he didn't actively stop every person going down the other side of the garden on the path when he took ownership in the 1970s the village had a much smaller population. According to the census, the population in 1971 was 759 and by 2014 had increased to 1,200 people. This will only grow as more houses are built in the village. The occasional person walking was tolerated, but in later years it did distress him that there was so little respect for his treasured garden, with damage caused by cyclists using mountain bikes and fences being taken down.
6. I feel that as the village is surrounded by some huge open spaces, footpaths by Salisbury Plain, and a plethora of places to walk that the new owner should be allowed to enjoy his garden in peace.

Statement of truth

I believe that the facts stated in this witness statement are true.


Saran Seymour

22nd November 2016

Witness: J F Seymour
First Statement
Exhibit: JFS1
Date: 22nd November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF JULIAN FRANCIS SEYMOUR

I, JULIAN FRANCIS SEYMOUR, of 71 Vespan Road London , W12 9QG WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from a combination of my own knowledge, information received from various family members and various relevant documents. The facts stated are true to the best of my knowledge, information and belief.
2. A paginated bundle of documents is exhibited to this statement marked 'JFS1'. References to documents in that bundle are in the format JFS1/[page no[s]].
3. The path in question begins at the entrance to the paddock field off Imber Road. Perhaps due to the generosity of my family in habitually giving permission for access when this was sought, people have formed the mistaken impression that the path is a public right of way. Indeed, some appear to have formed the view that all of the land on that side of the lake is public. This is certainly not the case.
4. My family's involvement with Luccombe Mill goes back over 90 years. My grandparents, Horace and Violet Seymour, bought Luccombe Mill in 1935. At that time, I

am told the house, garden and grounds had been neglected and were all in need of a little attention. In following years, order was brought to the chaos. The watercress beds were no longer being tended and so were left to nature to reclaim them.

5. During the Second World War, I understand that the local water board compulsorily purchased an area at the end of the watercress beds where the springs which feed the lake are found, in order to secure water provision for the area and Keevil Aerodrome. Until that point the whole area of land was in single private ownership and there was no reason for any third parties (let alone the public) to have access from the road to the small area of land purchased by the water board.
6. Once the water board owned the land, the springs were capped with brick built structures and a small pumping station was built close to the end of the watercress beds. In order to maintain the pumping station, the water board also built an un-marked track back to the Imber Road, which emerged at the brow of the hill.
7. Luccombe Mill house was used for various purposes (leasing out - to lay and military tenants) over the years, with a succession of tenants but there was never any general right of access over the route now claimed or any other route over the land. However, when permission was sought from my grandparents it would normally be given.
8. In about 1961 the water board approached my grandmother and sought permission for their maintenance teams to gain foot access to the pumping station along the seldom-used path to the watercress beds. I am not completely sure why they preferred to do this rather than use their own track, but it may have been something to do with the track being difficult to use in wet weather. As use of the path was not expected to be a frequent event, consent was given. As part of this informal agreement, the water board would maintain and on occasion improve the path in order to enable their employees to safely access the pumping station. This included building a metal bridge to replace the rather rudimentary timber one that was in place previously and 2 stiles: one near the road and the other at the waterboard boundary.

9. In 1971 the water board apologized for cutting the trees on the path to the watercress beds and accepted that it was an 'unofficial right of way'. On both occasions, the water board confirmed that the path was not public and that access was only by permission. True copies of letters from West Wilts Water Board to my grandmother dated 25 April 1961 and 12 January 1971 are at **JFS1/1-2**.
10. In 1973 Luccombe Mill passed to my father, Hugh Seymour, and the family moved there from Guildford to take up permanent residence. Following my father's death after a long illness from cancer, Luccombe Mill passed to my mother, Mary Seymour, and was sold in 2016 to Henry Pelly. I lived there from about 1974 to early 2015.
11. It should be noted that at no point were any private or public rights of way granted to anyone. My family agreed to allow various people or organisations (for example, the village school and the local cub scout pack) to use the path from time to time. Anyone who used the path lawfully was doing so with permission. Anyone who did not have permission was trespassing on private land.
12. In 2000/2001 there was an outbreak of 'Foot and Mouth' disease and all the farming land around Bratton was quarantined. My father was happy for people to use the path so that they were able to continue walking during this period. Allowing the path to be used meant that people could do a loop rather than just using the water board track to and from what is known locally as the watercress beds close to the now disused pumping station. His generosity should not be interpreted as implying that he intended to dedicate the path as a public right of way. My father was a very community-minded person and was very active in village life. He was a keen supporter of the local cricket club and regularly mowed the graveyard at the village church. However, there was a limit to his generosity and I am sure that nobody would consider it to be unreasonable for him to want to protect his privacy. He did not mind children cycling on the path but drew the line at adults using mountain bikes on it due to the damage that would be caused. He even put up a sign to this effect. I recall that he was upset when people picked the daffodils in what was

essentially our back garden, and when our family cat was killed there, by the uncontrolled dogs of people walking on the path.

13. In normal circumstances, if my father discovered anybody on the land without permission he would approach them and inform them that the land was private. At various times signs were placed on the gate at the start of the path stating that it was private land or not to pick the flowers, but these were often vandalised and taken down. A fence that was erected to block the path was removed. However, nobody who was familiar with the area would be in any doubt that it was private land and that the path was not a public right of way.

14. I find it slightly galling that the applicants seek to interpret my father's community spirit and his generous easy going approach to use of the path by others as an indication that he intended to dedicate the path as a public right of way. This was never his intention for the reasons stated above there is no basis for presumed dedication when the use was with his permission.

Statement of truth

I believe that the facts stated in this witness statement are true.

.....
Julian Francis Seymour

22 November 2016

Witness: G Drewett
First Statement
Date: 23 November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF GLADYS DREWETT

I, GLADYS DREWETT, of 17 Lower Road, Bratton, Westbury BA13 4RG, WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from my own knowledge and are true to the best of my knowledge, information and belief.
2. I have lived in Bratton since 1974 and was on the parish council for over 25 years until I retired in April 2015. My husband, John, is local and has lived in the area all his life. He was born in Coulston and lived in Edington before we moved here. We are now both in our mid-seventies.
3. The path in question begins at the entrance to the paddock field off Imber Road. Perhaps due to the generosity of the Seymour family in habitually giving permission for access when this was sought, people have formed the mistaken impression that the path is a public right of way. Indeed, some appear to have formed the view that all of the land on that side of the lake is public. This is certainly not the case.
4. The path came into being due to the watercress beds. These were still in use when my husband was a teenager and he used to help out with the harvest. Before the path was

there, the watercress had to be carried or wheeled in barrows across the pasture where cattle grazed. The cattle were quite fond of the watercress and would help themselves to it from the baskets, with the result that only about half of it would survive the journey to the road. The solution was to take it along a route on the other side of the hedge, and it is this route that became the path. It was never a route that the general public would have any reason to take.

5. I am aware that the water board sought permission from the Seymours for their maintenance teams to gain foot access to the pumping station along the path to the watercress beds. As part of this informal agreement, the water board would maintain and on occasion improve the path in order to enable their employees to safely access the pumping station. This included building a metal bridge to replace the rather rudimentary timber one that was in place previously. I think that some people interpreted the improvements to the path as somehow creating a public right of way, but this was not the case.
6. Although the Seymours were quite relaxed about letting people use the path, they were clear that the use was with their permission rather than as of right. Over the years I saw various signs that were put up by the Seymours informing people that the land was private and that the path was not a public right of way. These signs were always taken down by others, which is typical of what happens in the village. During my time on the parish council, we would on occasion put up various signs. Sometimes the signs would simply inform people of local events. Others may have asked them refrain from a particular activity, for example to avoid dog fouling or to avoid blocking pushchair access to other footpaths by parking vehicles inconsiderately. Regardless of the nature of the signs, they would always be defaced or removed very quickly. I recall on one occasion my husband put up some notices at about 5 pm one evening and they were gone by 9 am the following morning.
7. I also recall Liz Seymour informing walkers on numerous occasions that the land was private and that the path was not a public right of way. I recall that she replaced a metal

fence with a ^{K20} ~~solid~~ ^{BOARDED} wooden one in an attempt to block access. This was unsuccessful as somebody used pieces of timber to make a stile to enable people intent on using the path to climb over the fence.

8. I do not consider that the Seymours' generosity in allowing people to use the path should be interpreted as implying that they intended to dedicate the path as a public right of way.

Statement of truth

I believe that the facts stated in this witness statement are true.


Gladys Drewett

28 November 2016

Witness: T Goode
First Statement
Date: 23 November 2016

In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill, Bratton

WITNESS STATEMENT OF TIM GOODE

I, TIM GOODE, of 7 Melbourne Street, Bratton, Westbury BA13 4RN, WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from my own knowledge and are true to the best of my knowledge, information and belief.
2. I have worked as a gardener at Luccombe Mill since February 2010, initially for Mr & Mrs Seymour. Mr Seymour died about six months after I started working there and I carried on working for Mrs Seymour after his death. As she was elderly I did more than just gardening as she needed help with other tasks. I would do gardening two days a week (on Wednesdays and Saturdays) and other jobs as and when required, so I was there quite often. I continue to look after the grounds for the new owner, Henry Pelly.
3. Although Mrs Seymour was quite relaxed about letting people use the path, she was clear that the use was with her permission rather than as of right. On her instructions I put up several signs informing people that the land was private and that the path was not a public right of way, and others asking them not to allow their dogs to disturb nesting birds. The signs were always taken down very quickly - I assume by people who did not accept that the path was not a public right of way.

4. I would often challenge people who walked on the path and informed them that it was private land. I spoke to several individual walkers, various people on mountain bikes and on one occasion a group of 30 or so ramblers. There should not have been any doubt in the mind of anyone who knew the area that the path was not a public right of way.
5. I do not consider that the Seymours' generosity in allowing people to use the path should be interpreted as implying that they intended to dedicate the path as a public right of way.

Statement of truth

I believe that the facts stated in this witness statement are true.


Tim Good

23 November 2016

WEST WILTS WATER BOARD

J. A. YOUNG, A.M.I.C.E., A.M.I.Man.E.,
A.M.I.Struct.E., A.M.I.W.E.
Engineer and Manager

Telephone: Warminster 3066

Our Ref. JAY/SP/NI.

Your Ref.

25th April, 1961.

55, Boreham Road,
WARMINSTER,
Wiltshire.

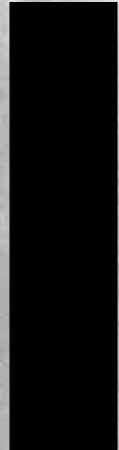
Dear Lady Seymour,

Lucombe Springs.

Thank you for your letter concerning my staff using the footpath to the Springs at Lucombe.

The Board appreciate the fact that both you and your tenant permitted our staff to use this footpath, but we quite understand that it is not a right of way.

Yours truly,



J. A. YOUNG.
Engineer and Manager.

Lady Violet Seymour,
Bratton House,
Westbury, Wiltshire.

WEST WILTS WATER BOARD

J. A. YOUNG, C. ENG., M.I.C.E., F.I.W.E.,
M.I. STRUCT. E., M.B.I.M.,
ENGINEER AND MANAGER.

51, BOREHAM ROAD, WARMINSTER, WILTS.
TELEPHONE, WARMINSTER 3628 (EXTENSION 31)

YOUR REF.

IN REPLY PLEASE QUOTE

JAY/SJC/WI

DATE

12th January 1971

Dear Lady Seymour,

I understand that you have complained to the Control Centre concerning damage to trees, etc. on the route of the Board's unofficial right of way, which you kindly allow us to use to obtain access on foot to Lucecombe Pumping Station.

I have made enquiries and I find that in fact this route was trimmed by members of our maintenance staff from the Board's Southern Area, who were not aware that this was an unofficial right of way. I apologise for this oversight, which was quite unintentional. The trimmings are being removed from the site today and I will make certain there is no recurrence of this matter.

The Board are appreciative of your allowing them to use this right of way and I am sorry that this action has happened in error.

Yours sincerely,

[Redacted Signature]

J. A. Young
Engineer and Manager

Lady Violet Seymour,
Bratton House,
Bratton,
Westbury,
Wiltshire.

WILDLIFE AND COUNTRYSIDE ACT 1981

THE DEFINITIVE MAP AND STATEMENT FOR THE WARMINSTER AND WESTBURY RURAL DISTRICT COUNCIL AREA DATED 1953

THE WILTSHIRE COUNCIL (PARISH OF BRATTON) PATH NO.42 AND THE (PARISH OF EDINGTON) PATH NO.36 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017

This Order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Warminster and Westbury Rural District Council Area definitive map and statement dated 1953 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

1. For the purposes of this order the relevant date is 4th July 2017.
2. The Warminster and Westbury Rural District Council Area definitive map and statement dated 1953 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council (Parish of Bratton) Path no.42 and the (Parish of Edington) Path no.36 Definitive Map and Statement Modification Order 2017.

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
4th of July 2017 }
in the presence of:

[Redacted signature]

Senior Solicitor



84466

SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

That length of footpath as shown by a broken black line with short intervals on the attached plan, leading from point A at OS Grid Reference ST 9205-5204, at its junction with Imber Road, in an east-north-easterly direction for approximately 165 metres where the path crosses onto a raised walkway over the watercourse to the Edington/Bratton parish boundary at OS Grid Reference ST 9223-5205. At the end of the raised walkway the path then turns in a southerly direction following a well-defined track crossing back over the Edington/Bratton parish boundary at OS Grid Reference ST 9230-5200. Continuing in a broadly southerly direction to OS Grid Reference ST 9229-5179 where the path turns in a broadly north westerly direction uphill for approximately 94 metres to its junction with Imber Road, at point B, at OS Grid Reference ST 9222-5184.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53(3) as specified</u>
Bratton	42	From OS Grid Reference ST 9205-5204 at its junction with Imber Road, Bratton leading in an east-north-easterly direction for approximately 165 metres where the path crosses onto a raised walkway across the waterbed to the Edington parish boundary at ST 9225-5204. At ST 9230-5200 the path re-enters the parish of Bratton continuing in a southerly direction on a well-defined track to ST 9229-5179 where the path turns in a north westerly direction uphill to Imber Road at ST 9222-5184. Approximate length – 503 Metres	53(3)(c)(i)

Width- 1.5 metres for length of path except the section over the raised walkway leading to the Edington Parish boundary which has a width of 1 metre.

Edington	36	At OS Grid Reference ST 9225-5204 the path continues across the raised walkway at ST 9230-5202 the path turns in a broadly southerly direction to the Bratton Parish boundary at ST 9230-5200.	53(3)(c)(i)
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Approximate length – 108 metres

Width – 1 metre over raised walkway, 1.5 metres otherwise.

**The Wiltshire Council (Parish of Bratton and Edington)
Path no. 42 (Bratton) and Path no. 36 (Edington)
Definitive Map and Statement Modification Order 2017**

The Wiltshire Council (Parish of Bratton and Edington)
Path no. 42 (Bratton) and Path no. 36 (Edington)
Definitive Map and Statement Modification Order 2017

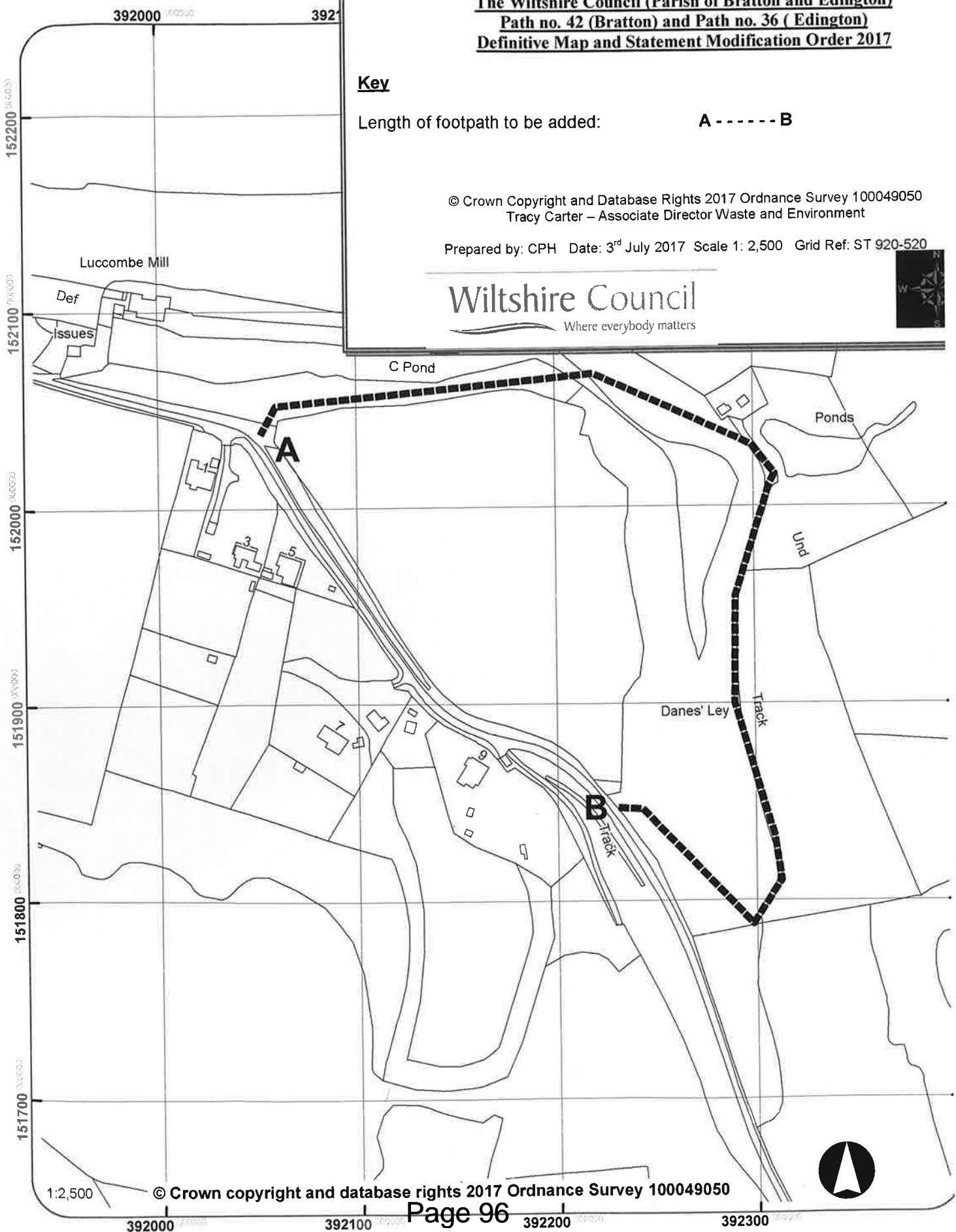
Key

Length of footpath to be added: **A - - - - - B**

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Tracy Carter – Associate Director Waste and Environment

Prepared by: CPH Date: 3rd July 2017 Scale 1: 2,500 Grid Ref: ST 920-520

Wiltshire Council
Where everybody matters



1:2,500

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The Old Rectory
Dark Lane
Diss
Norfolk
IP21 4EY

Rights of Way & Countryside Team
Wiltshire County Council
Unit 9
Ascot Park
White Horse Business Park
Trowbridge
BA14 0XA

8.8.17

Ref CH /2016/08

Dear Mr Harlow

I am writing in relation to the proposed addition of a public footpath in the garden of Luccombe Mill, Bratton.

When my father, Hugh Seymour, was alive and owned the house he allowed people from the village to walk through our garden, through watercress beds to the spring at the bottom. He did this because in those days the village was much smaller and it was a case of everyone knowing everyone else. The village has vastly increased in population over the years and the damage caused by walkers had also increased. The daffodils were picked and trampled, trees that he had planted as a child were ringed, people rode bikes damaging the path. In addition the family's privacy was invaded.

My father's chainsaw, with which he was working in the woods, was stolen when he left it to have a break. It is worth noting that the maintenance of the woods through which the footpath goes needs to be constantly worked on.

People took liberties and there were a couple of occasions when picnics were had directly opposite the house. There were times when people with binoculars watched our family going about our business. When they were asked not to, the response was usually rude. Someone's dog, off its lead, killed our cat when we were children. On one occasion people actually brought boats and rowed on the lake.

There is also a security issue for the house owners. There was a time when the greenhouse at the bottom of the garden was found full of empty alcohol bottles and cans when people had clearly climbed the gate at the end and come into the greenhouse to drink at night.

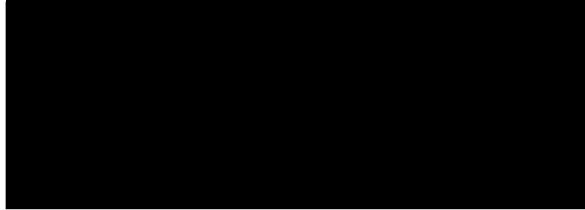
I Understand that there is a plan to build a further 40 houses in Bratton increasing the possible footfall of unknown people through the garden.

Bratton is in an enviable position with many walks and beautiful countryside around. There is absolutely no need for this path to be open to the public. The spring that people like to walk to can easily be reached through the Water Board land further along Imber Rd.

I find it very surprising that it could be considered acceptable to invade people's privacy in this way. The fact that an article appeared in a national newspaper about the current owners just goes to illustrate this. Their privacy has already been invaded and it is unlikely that this will not lead on to further incursions.

I'm sure you will agree that people should be allowed the choice of being in their own gardens without being stared at, commented on or noticed in any way.

Yours sincerely
Charlotte King (nee Seymour)



West Bungalow
Dungeness ROAD
Dungeness
TN29 9NB

Ref: CH2016/08

4th August 2017

Re: Objection to the designation of a new public footpath in the garden of Luccombe Mill, Bratton.

Dear Mr Harlow

Thank you for your letter informing me that there has been a map modification order on the above land.

It states that the path is approximately 165 meters, plus the section of the watercress beds up until the Water Board land. So approximately 200 meters of path is under discussion for the new owners of Luccombe Mill.

The point I would like to make, is that the proposed path is within the garden of Luccombe Mill, my grandfather and in particular my father, who owned the property up until very recently, put much time into planting and tending the trees, planting spring bulbs and keeping it as he loved it. It is an integral part of the garden; a private garden. My father loved Bratton and supported many of the parts of village life (please refer to my previous statement) but he would never have wanted to make the path a public right of way. Many people asked him for permission to walk there, particularly in times such as the foot & mouth outbreak, when access to much land was restricted, and he would give it. But it was always a part of our garden.

If you look at maps of Bratton and the countryside in which it sits, the people of Bratton have huge swathes of beautiful, open countryside in which to walk. There are many public footpaths in Bratton (please see attached map), and along the side of Salisbury Plain. Bratton is not situated in an urban area where 200 meters of track will make all the difference for people's ability to get out and walk and enjoy the countryside.

The Waterboard has stated that they are neutral on this matter, so they could allow access to the water overflow pond that some have stated is so important to them (from B to the pond on the map that came with your letter)

I have seen a statement from one of the protestors that refers to a "David and Goliath" situation and that by doing this action they have won against great adversaries, I would suggest that this is actually an owner of a garden who would like to enjoy his own garden in peace and quiet.

Best regards

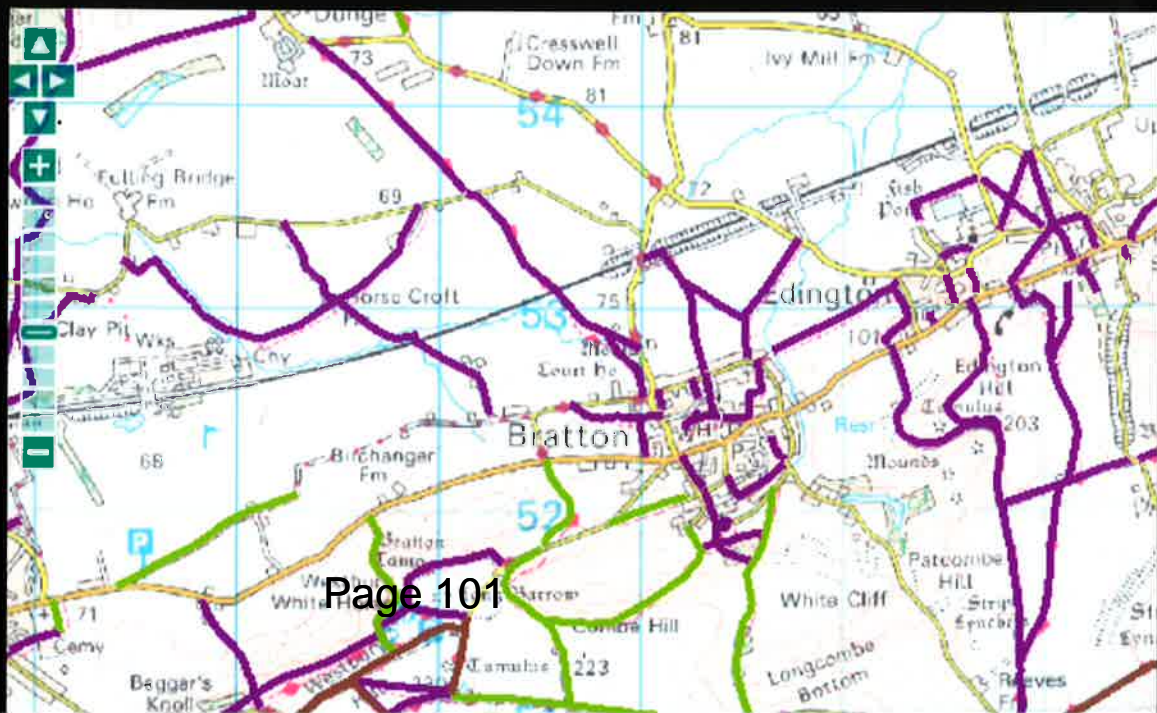

Sarah Seymour

Formerly living at Luccombe Mill, Bratton.

Scale = 1:28K
500 m
2000 ft



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**IN THE MATTER OF
AN ORDER TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT
AT IMBER ROAD, BRATTON, WILTSHIRE**

SUMMARY GROUNDS OF OBJECTION OF MR HENRY PELLY

1. These are the summary grounds of Mr Henry Pelly's objection to an Order adding a footpath to the Definitive Map and Statement, which begins and terminates on Imber Road, Bratton.

A. SUMMARY BACKGROUND

2. An application was made under Section 53 of the Wildlife and Countryside Act 1981 (the "1981 Act") to add a footpath to the Definitive Map and Statement in the Parish of Bratton, leading from Imber Road through the grounds of Luccombe Mill in a generally easterly direction before turning in a southerly direction through Wessex Water owned land and reconnecting to Imber Road (the "Application" and "Order Route").
3. Further to a Decision Report dated 24 May 2017, Wiltshire Council (the "Council") concluded that it could reasonably be alleged that a right for the public on foot subsists over the Land and that there is no incontrovertible evidence that such a right does not exist.
4. The Council made a Definitive Map Modification Order to add a footpath to the Definitive Map and Statement, which was sealed and advertised on 14 July 2017 (the "Order").
5. The 42 day period for representations expires on 25 August 2017, at 5pm.
6. Mr Henry Pelly is the owner of Luccombe Mill, Imber Road, and Bratton, Wiltshire, BA13 4SH (the "Landowner" and "Land" respectively).

7. By email dated 11 August 2017, the Landowner communicated his wish to object to the Order, which was acknowledged by the Council's Rights of Way officer by email of the same date.

B. THE RELEVANT TESTS

8. Four criteria must be satisfied if the Application Route is to be presumed to have been dedicated as a highway under section 31(1) of the 1980 Act:
 - a. There must be a "*way over any land*" which is not of such a character that public use cannot give rise to a common law presumption of dedication;
 - b. It must have been actually enjoyed by the public "*as of right*";
 - c. It must have been used "*without interruption*"; and
 - d. It must have been used "*for 20 years*" counting backwards from a relevant event bringing into question the claimed public right of way.
9. If any of the key characteristics of a highway, or any of the section 31 criteria, are not satisfied in relation to the Application Route then the Application must be dismissed and the Order not confirmed.

C. SUMMARY GROUNDS OF OBJECTION

10. The Landowner objects to the Order for the following summary reasons:
 - a. The lack of documentary evidence to support the Order Route's existence as a public right of way. This is not in dispute.
 - b. The route was not "actually used" throughout the 20 year period so as to bring home to the landowners that a right was being asserted against them.

c. Use of the Order Route was not 'as of right' throughout the 20 year period or any part of it.

d. Use of the Order Route was not, throughout the period, "without interruption" as required by section 31(1).

11. Therefore, it is not accepted that the evidence demonstrates that, on the balance of probabilities, a footpath exists. In particular, there is insufficient evidence to demonstrate that the purported right of way has been used by the public 'as of right' and without interruption for a full period of 20 years.

12. The Landowner will therefore submit that the Order ought not to be confirmed as the public right of way in question has not lawfully been shown to exist.

Use of the Order Route not 'as of right'

13. The term 'as of right' requires such use to be without force, without secrecy and without permission.

14. In the present instance, the evidence demonstrates that relevant landowners have at various times taken steps effective to confer permission to use the Order Route.

15. Further to the above, there is evidence that use of the Order Route over the Land was, at various times, contentious or by force and so not as of right for that reason.

D. CONCLUSION

16. For at least the above reasons, which will be explored before the Inspector, the Landowner will in due course invite the Inspector to decline to confirm the Order with respect to the Order Route.

25th August 2017

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In the matter of an application under section 53 Wildlife and Countryside Act 1981 for an Order to add a footpath to the definitive map and statement at Luccombe Mill Bratton

WITNESS STATEMENT OF Wilfred Robert Colston

I Wilfred Robert Colston, of 4 Holme Lane, Bratton, Westbury BA13 4TF, WILL SAY AS FOLLOWS:

1. I understand that an application has been made for an Order to add a public footpath to the definitive map and statement at Luccombe Mill, Bratton. I make this statement in opposition to that application. The facts stated in this statement are made from my own knowledge and are true to the best of my knowledge, information and belief.
2. I worked for Hugh Seymour from 1991 to 1998 as his gardener until ill health forced me to retire.
3. During my time at Luccombe Mill, on numerous occasions I spoke with walkers reminding them they were walking in someone's garden and requesting them not to pick the spring flowers I had planted and to control their dogs from chasing birds by the lake.
4. Over the course of time, with so many notices posted and information given to walkers, both by the owner and myself as gardener, I cannot see how anyone with a sense of responsibility could have interpreted this as making the footpath public.
5. I find it hard to believe that a villager knowing the Seymour family with gratitude and courtesy for walks they have enjoyed would now take this action.

Wilfred Robert Colston

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From: Richard and Rosemarie Gale [REDACTED]
Subject: RE: Luccombe Mill - Footpath
Date: 8 Jun 2017, 15:10:04
To: Henry Pelly [REDACTED]

Witness: R W Gale

First Statement – June 2017

In the matter of an Application Section 53 Wildlife & Countryside Act 1981
for the Order to add a footpath to the definitive map statement on Luccombe Mill Bratton

I Richard William Gale of Reeves Farm Bratton Westbury BA13 4SA will say as follows:

- 1) I understand that an application has been made for an order to add a public footpath to the definitive map and a statement at Luccombe Mill – Bratton . The facts in this statement are made from my own knowledge and belief.
- 2) My parents moved to Bratton in 1942 having gained the tenancy of Reeves Farm. I was born here 1948 and lived here all my life. I returned from school and agricultural college to join the family business.
- 3) My father initially rented the Luccombe Mill Paddock In the late 90s I took over and subsequently to my son Matthew this past year.
- 4) To my knowledge the path in question was established to allow access to the water cress beds
- 5) In the 1940s the then Water Board installed a pumping station at Luccombe Springs to supply water to the nearby Keevil Airfield as part of the War effort.
- 6) I now for a fact the permitted path to the Luccombe Pumping Station was only granted with the goodwill of the Seymour family as an easy access for the Water Board engineers only.

I believe this witness statement is a true record of the Permitted Path leading to the Luccombe Pumping Station and former Water Cress beds.

Richard William Gale
June 2017

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STATEMENT MADE BY FRANK COMPTON

Picquet View Imber Rd Bratton BA13 4SH

Tel; 0 [REDACTED]

Regarding the closure of the footpath known as the Watercress Walk

Reference; DMMO 2016/8 Luccombe Mill

I have known and used the Watercress Walk since April 2000 when we moved into the village. From around 2006 till it was summarily closed I have voluntarily maintained the path with support from the Seymour family. I had tacit support from visiting family whom I met on several occasions on the path whilst maintaining it. I had specific support from Mrs Seymour who expressed her satisfaction that with the path well maintained most people stayed on it and did not wander off it over the plants and shrubs in the bank between the path and lake.

The only time any restriction was placed on the path was when Mrs Seymour asked us to place signs asking people not to ride bikes on the path as it damaged the path for walkers very quickly. Later Tim Goode (Ground maintenance contractor) provided more permanent signs to stop bikes using the path.

During my days maintaining the path I met not only the Seymour family on occasion but also the many regular local users most of whom explained that they and their families had used the path for generations. The elderly mainly used the Watercress Walk to the spring at the far end then returned along the same route as the path continuing over Wessex Water land includes a steep incline leading back up to Imber Road.

Typical comment from a villager; I & FAMILY, HAVE USED IT FOR OVER 50 YEARS SO IT HAS BEEN USED & THE WATER CRESS LADIES BEFORE THAT.

During my time maintaining the route I have also met people who have long since left the village and returned with grandchildren to show them where they spent their youth.

When the Mill House was placed on the market I met an agent on the path preparing map details of the property and its boundaries. I offered some assistance describing the footpaths and eventually the map showing the property boundary and footpath was placed on the styles at each end of the Watercress Walk. There was no response to the map from me or the villagers as it made no reference to any change to the status of the footpath alongside the lake within the property boundary.

I hope this helps clarify the situation regarding long standing unhindered access to the Watercress Walk – clearly for the local villagers and my family a valuable established village asset.

[REDACTED]

Maj (Retd) Frank Compton MBE
12 Oct 2017

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Mulberry House, The Butts, Bratton, BA13 4SW

Craig Harlow,
Rights of Way Case Officer
Rights of Way Team
Ascot Court
White Horse Business Park
Trowbridge
Wiltshire BA14 OXA

13th October 2017

TO WHOM IT MAY CONCERN

Ref DMMO 2016/8 Luccombe Mill

As a resident of the village of Bratton for 35 years, I would like to make a statement in support of the footpath at Luccombe Mill being designated a right of way.

During the time I have lived in the village, I and my family have used this path regularly and there have at no time been any notices or restriction of access until September 2016 after the house was sold. Only once, to my knowledge, have there been any notices and that was one requesting walkers to put their dogs on leads because of ducks sitting on nests.

I know Lady Seymour reasonably well and often met her on my walks. She appeared to welcome the accessibility of the path to the general public and never gave any indication to the contrary.

To my knowledge the path and surrounding woodland has never been abused by those members of the public using it.



Penelope Fairclough

cc Philip Workman

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