



Report to Service Director – Highways and Technical Services

Date: 15 May 2023

Title: Investigation into the status of the route connecting Public Footpath 81 with North Mill Road, Parish of Bledlow-cum-Saunderton

Relevant councillor(s): Cllr Shade Adoh, Cllr Robert Carington and Cllr Carl Etholen

Author and/or contact officer: Helen Francis, Senior Definitive Map Officer

Ward(s) affected: Ridgeway West

Recommendations: That a definitive map modification order be made pursuant to section 53(2)(b) and (3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by showing the route between A-B (Appendix 1) as a Public Footpath on the grounds that evidence has been discovered which (when considered with all other available relevant evidence) shows that a public right of way on foot subsists or is reasonably alleged to subsist over the route.

Reason for decision: There is sufficient evidence to show that a public right of way on foot subsists or is reasonably alleged to subsist over the route by virtue of Section 31 Highways Act 1980 or common law dedication.

1.0 Executive summary

1.1 The purpose of this report is to consider whether a public right of way exists between Public Footpath No. 81 and North Mill Road, Parish of Bledlow-cum-Saunderton and a definitive map modification order should be made accordingly. The route is shown between points A-B on the plan [Appendix 1]. It passes between two parcels of land together known as Lydebrook and registered at the Land Registry under Title No. BM367372, and was recently itself added into that title. The status of the route is the subject of a dispute between the owners of Lydebrook, who have recently obstructed the route and are denying the existence of any public rights over it, and local people, some of whom claim that it is a public footpath and others that it is a full vehicular highway. This investigation has been undertaken with a view to resolving that dispute and clarifying the status of the route.

2.0 Legal Background

2.1 The Council as the Surveying Authority has a duty under section 53(2)(b) of the Wildlife and Countryside Act 1981 (WCA 81) to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of events described in section 53(3).

Section 53(3) events

2.2 The relevant events referred to in section 53(3) which are potentially applicable in the present context are:

“(3)(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway.”

and/or

(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.”

2.3 In relation to section 53(3)(b) the decision maker must consider whether, on the balance of probabilities, enjoyment by the public of the way over a period raises a presumption that the way has been dedicated as a public footpath.

- 2.4 In relation to section 53(3)(c)(i) the decision maker must consider whether the discovered evidence, together with all the other evidence available, show either (a) that a right of way subsists or (b) that it is reasonable to allege that a right of way subsists. These tests were considered in *R v Secretary of State for the Environment ex p. Bagshaw and Norton* (1994) 68 P&CR 402 and *R v Secretary of State for Wales ex p. Emery* [1996] 4 All ER 1 in the context of section 31 of the Highways Act 1980 (HA 80).
- 2.5 On test (a), it is necessary to find on the balance of probabilities that the right subsists. This will be the case where there is clear evidence of 20 years' user uncontroverted by any credible evidence to the contrary and no credible evidence that there was on the part of the landowner no intention during the period to dedicate the way to the public.
- 2.6 On test (b), it is necessary to find that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. The evidence necessary to establish that a right of way is reasonably alleged to subsist over land is less than that which is necessary to establish that a right does subsist. In relation to test (b), whether an allegation is reasonable or not will depend on a number of circumstances. If the evidence from witnesses as to user is conflicting, but reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it is reasonable to allege such a right. Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under section 31, then the allegation that the right of way subsists is reasonable, unless there is documentary evidence which inevitably defeats the claim (for example by showing that the landowner had no intention to dedicate).
- 2.7 Where there is no credible evidence of 20 years' user, or where there is incontrovertible evidence that the landowner had no intention during the period to dedicate the way to the public, then the decision should be that the allegation that a right of way subsists is not reasonable and that no right of way as claimed subsists.

Presumption of dedication

- 2.8 Section 31 HA 80 provides for the presumption of dedication of a public right of way following 20 years' continuous use as of right, without interruption, unless there is sufficient evidence that there was no intention during that period to dedicate it. Sub-section (1) states:-

“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 and 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.”

2.9 The period of twenty years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question: section 31(2) HA 80. Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) clarified that the submission of an application to modify the Definitive Map was sufficient to call the use of the route into question by inserting subsections 7A and 7B into Section 31 HA 80.

2.10 Bringing into question the public's right to use a particular route will require an act by the landowner sufficient to bring home to the public that he is challenging their right to use the way, so they may be apprised of the challenge and have a reasonable opportunity of meeting it, for example putting up a notice that makes it clear to the public that he is challenging their right of way. Such evidence may consist of notices which call into question the rights of the public to use a particular way, the erection of physical barriers such as by locking of the way on one day in the year, and drawing this to the attention of the public, or the deposit of a Statutory Declaration under HA 80 section 31(6) to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit of a map and statement showing admitted rights of way. The relevant question is when did the landowner make it clear to the public that he was challenging their right to use the way: *Fairey v Southampton County Council* [1956] 2 QB 439.

2.11 Once the decision maker has determined the date upon which the public's right to use a particular way was brought into question, the decision maker must consider the evidence of use in the preceding twenty year period and then any evidence that the landowner had no intention to dedicate.

User Evidence

2.12 There is no statutory minimum level of users required to show sufficient use to raise a presumption of dedication, however, use of a way must be use by the public or the community. Use of a way by different persons, each for periods of less than 20 years may be sufficient if taken together they total a continuous period of 20 years. The number of users must be such as might reasonably have been expected if the way had been a public highway: *Mann v Brodie* (1885) 10 App Cas 378. Use "as of right" must be without force or contentiousness, secrecy or permission.

Lack of intention to dedicate

2.13 Once use is established as of right and without interruption, the presumption of dedication arises. Consideration must then be given to evidence that there was no intention to dedicate on the part of the landowner. "Intention to dedicate" was considered in *R(Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs* [2008] 1 AC 221, which is the authoritative case dealing with the proviso to HA 80 section 31(1). In his leading judgment, Lord Hoffmann approved the obiter dicta of Denning LJ in *Fairey v Southampton County Council* who held "in order for there to be 'sufficient evidence that 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 people who used the path....that he had no intention to dedicate”.

2.14 It is clear from *Godmanchester* that actions satisfying the proviso will, usually, also bring the public’s right to use the way into question. It nevertheless remains the case that not every act which brings the rights of the public into question will necessarily satisfy the proviso.

2.15 Lord Hoffmann held 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 nor 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.”*

2.16 For a landowner to benefit from the proviso to section 31(1) there must be ‘sufficient evidence’ that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way. Although subsections 31 (3), (5) and (6) specify actions which will be regarded as “sufficient evidence”, they are not exhaustive; section 31(2) speaks of the right being brought into question by notice “or otherwise”. Section 31(3) specifies:-

“(3) Where the owner of the land over which any such way as aforesaid passes-

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway”.

Common Law

2.17 A right of way can come into existence under common law. When the public have used a way *“for so long and in such a manner that the [landowner]...must have been aware that the public were acting under the belief that the way had been dedicated and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the fact may find that there was a dedication by the owner whoever he was.”* (*Mann v Brodie* per Lord Blackburn). No minimum period of use is required. The greater the evidence of use (which is acceptance by the public at large of a public right of way) the greater the implication of dedication. The dedication is taken to have occurred at the outset of public use: *Turner v Walsh* (1881) 6 App Cas 636.

Role of decision maker in determining an application

2.18 In determining a rights of way application, the decision maker must act in accordance with the following overriding principles set out in *R v Isle of Wight County Council, ex p O'Keefe* [1989] JPL 934.

- a. The decision maker must make a careful and properly informed decision as to whether all the evidence shows that a right of way subsists or is reasonably alleged to subsist.
- b. The decision maker must determine the application with a proper appreciation and weighing of the available evidence and any legal principle which might have to be applied.
- c. The decision maker must arrive at their own conclusion on the evidence and whilst the decision maker may have regard to the recommendation of the relevant Officer they must determine the application for themselves and not simply adopt the view of the relevant Officer without analysing the evidence.
- d. The decision maker must actually make a decision on the application in light of the relevant evidence and legal principles and must not rely upon the possibility of an appeal or an inquiry at a later date.

A similar approach should be taken where (as here) there has been no third party application for a definitive map modification order under section 53(5) WCA 81, but the surveying authority is considering whether to make an order on its own initiative.

2.19 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

3.0 User Evidence

3.1 Twelve user evidence forms were submitted to the Council along with three supporting statements. Witnesses claimed use of the route from 1961 – 2021. A graph identifying the periods of use is attached to this report at Appendix 2. In addition, officers carried out interviews with eight of the witnesses [Background Papers; pages 2 - 179].

3.2 Twelve of the witnesses provided details of the frequency with which they used the route, with most using the route frequently. One of the witnesses (4) had a private right of access to the field beyond point A which enabled him to take his farm vehicles along the route.

3.3 Witnesses refer to the route being wide enough for a car and being 2-4 metres wide. Most witnesses refer to there being gates at either end of the route, with the white gates at point B being installed more recently. Witness 11 referred to raising a Public Rights of Way issue in 2014 which concerned the gates being installed at point B. However, from the witness statements they were not locked to prevent access to the public until 2019.

3.4 Witnesses state the route had a grass / concrete surface which was broken in places and there was a Council Public Rights of Way finger post indicating there was a public footpath along the route (at point B). There are photographs of the finger post in the background papers [Background Papers; pages 51, 53].

- 3.5 Different notices and obstructions have been stated in the user evidence forms and witness interviews. Witnesses 7 and 12 recall a 'no entry sign' at point B in approximately 2010 and 2014 respectively. These seem to be the earliest mention of notices with others referring to notices within more recent years to deter public access completely.
- 3.6 Witness 9 referred to being stopped and informed the land was private in 2013 and 2014. Other witnesses state that they were not stopped until recently.
- 3.7 Witnesses accessed the path mostly on foot. Witness 4 also referred to using the route weekly from 1961-2000 by farm vehicle. This witness has a private right of access to use the route with a farm vehicle, so this use is not considered to be referable to a public right.

4.0 Documentary Sources

- 4.1 Documentary sources have been researched. The findings are below:-

Inclosure Award

- 4.2 Between 1545 and 1880 the system of strip farming was replaced by a system of 'inclosed' fields. The process of inclosure was at first carried out by agreement between landowners and later by local inclosure acts. These local acts were Private Acts of Parliament and varied in terms of the procedures to be followed and the powers given to the Inclosure Commissioners. In 1801, a general Inclosure Act was passed. This contained a large number of standard clauses that were incorporated into subsequent local Acts unless expressly excluded or varied.
- 4.3 In addition to setting out and allotting fields, Inclosure Commissioners were empowered to also set out public and private carriage roads, bridleways and footpaths. Sections VIII – XI of the 1801 Act contained provisions to that effect.
- 4.4 The Bledlow Inclosure Award and Plan is dated 1812 and was made under the provisions of the 1801 Act and the Local Act entitled "An Act for Inclosing Lands in the Parish of Bledlow, in the County of Buckingham [1809]" [Background Papers; pages 180 - 204]. The Local Act incorporated without amendment the powers conferred by sections VIII and X of the 1801 Act to set out public carriage roads (VIII), private carriage roads (X) and public and private bridleways and footpaths (X).
- 4.5 The following may be noted from the extracts; the plan shows North Mill Road with fields marked and numbered on either side of it. North Mill Road itself is annotated with 'XI' shown at 2 specific points. The route A-B has a separate annotation of 'XII' [Background Papers; page 204].
- 4.6 The Inclosure Award [Background Papers; pages 200 - 202] in respect of each of these sections states the following:
- XI *"One publick Bridle Road, publick Foot Way and private Carriage and Drift Road being of various breadths as the same is now set out and fenced off leading from the publick*

road numbered V on the south side of the Upper North field and extending in a north westwards direction into the North Mill Lane and along the said lane to North Mill and to Allotments to James Stevens and the Provost and College of Eton respectively in the West Meadow which said Road shall be and remain to be used as a private Carriage and Drift Road by the several Owners of Allotments and Inclosures adjoining and lying contiguous to the said Road.. ”

- XII *“One Private Carriage and Drift Road leading from the last described Road at or near North Mill and extending in a northward direction to Allotments in North field to Henry Williams and James Stevens respectively which said Road shall be and remain to be used as a Private Carriage and Drift Road for the use of the said Henry Williams and James Stevens for and in respect of their said allotments and by their and each of their Agents Tenants Workfolk and Servants for the time being..”*

Officer Comment: *The Inclosure Award appears not only to record public bridleways and footpaths but also public roads (e.g the road numbered V). In addition, whilst both these sections include references to being private carriage and drift roads, it clearly records the route A-B in a different way to North Mill Road.*

There would have been no point in the Commissioners’ defining the persons entitled to use XII if it had been intended for use of the wider public (the same is true for the other private carriage and drift roads). The additional references to public bridleways and footways in the descriptions of other private carriage and drift roads – including XI – would have been superfluous if they had been intended for public vehicular use.

- 4.7 As well as setting out public and private roads and ways, Inclosure Commissioners also detailed in the Awards how routes would be repaired. The Bledlow Inclosure Award states [Background Papers; pages 197 - 199]:

“And we do hereby direct that all the said Publick Carriage Roads and the said Publick Bridle Ways and Publick Foot Paths hereinbefore set out shall from the time the said Publick Carriage Roads are formed completed and repaired be for ever thereafter maintained and kept in repair in the same manner and by the same persons as the other Publick Highways within the said Parish of Bledlow are by Law to be amended and kept in repair and that the said Private Carriage and Drift Roads and Paths hereinbefore set out (except the said Private Carriage Roads numbered XXIII, XXIV, XXV XXVIII, XXXIV and XXXIX and except the second private foot path) shall be made and at all times for ever thereafter be supported and kept in repair by and at the expense of the Owners and Proprietors for the time being of the several Lands Tenements and Hereditaments within the said Parish of Bledlow in and by the said recited Act of the forty ninth year of His Present Majesty’s Reign directed to be divided and inclosed in the same shares and proportions as the Publick Carriage Roads hereinbefore set out are directed to be repaired.”

Officer Comment: *This indicates that XII (A-B) was maintained in the same proportions as*

the Public Carriage Roads but does not indicate it was a public highway.

The Sixth Edition of Highway Law (Sauvain, 2022, p. 97, 2-114) details that “the fact that a way was to be repaired in the same way as other highways “are by law” to be maintained is likely to be indicative that the way itself was intended to be a public highway. However, the simple statement that a way was to be maintained by the village, hamlet or parish without that qualification might be consistent with the status of roads which were not public in nature.”

The Bledlow Inclosure Commissioners carefully distinguished between the routes they had set out as public highways (to be maintained in accordance with the law applicable to other highways in the parish, i.e. by the parish), and those set out as private roads and paths (to be maintained not by the parish, but by the local landowners, albeit in proportions reflecting their respective contributions to the parish’s expenditure on highway repairs).

When looking at how clearly the award defines the persons entitled to use XII and that the provision for maintenance of the route is consistent with it being a private liability it seems likely that the route A-B was not considered or intended to have public rights at the time of inclosure.

Bryant’s Map 1825

4.8 Bryant published county maps between 1822 and 1835. He drew his maps at a scale large enough to show some detail, but this can be sporadic. Bryant’s map of Buckinghamshire was published in 1825 [Background Papers; page 205] and shows a route on a similar alignment to North Mill Road which bends to the south west before it reaches the section between A to B. North Mill Road is recorded as a “*good crofs or driving road*”.

4.9 Bryant’s Map was considered by the Judge in the case of *Norfolk County Council v Mason* [2004]. He concluded it was not plain that Bryant was directly concerned with status of the roads, or if he was, that he consistently got it right. It is not actually known how Bryant’s surveyors worked, what instructions they were given, or whether they were concerned if a road was public or private, or simply with its surface quality. The Judge concluded that, by itself, Bryant’s map is anything but a firm indicator and not too much reliance should be placed on it.

Officer Comment: *The Norfolk case highlights the extent that weight can be applied to a route’s inclusion on Bryant’s Map but it does suggest that a route physically existed some 200 years ago. In this case the map indicates the extent of North Mill Road, it would appear to curve to the west at the northern end of North Mill Road.*

Finance Act 1910

4.10 The Finance Act 1910 provided for the levying of a tax upon the incremental value of the land. Between 1910 and 1920, when the Act was repealed, the whole country was

surveyed for information for tax purposes to ascertain the site value of all land in the United Kingdom on 30 April 1909. The Board of Inland Revenue set up the Local Valuation offices for this purpose.

4.11 Several records have resulted from the valuation. Initially Valuation Books were compiled using the Parish Rate Books. They list each unit of occupation known as a 'hereditament' with a number allocated to each hereditament and give information on owner, occupier, usage, and extent.

4.12 The concern of the valuers with rights of way was in order to assess tax relief. Private land was shown coloured, with boundaries and hereditament numbers. Any public land, or other land outside the scope of the taxation was left uncoloured and with no hereditament number. Public roads were not included as part of the parcels of private land. They were left uncoloured with no hereditament numbers and were untaxed. Tax deductions could have been claimed for other public rights of way, such as footpaths and bridleways.

4.13 There was no public consultation so that the public had no way of challenging where rights of way were not acknowledged by the landowners. There was consultation between the valuers and the landowners so that objections could be made by the landowners to the omission of a right of way to claim a deduction. The value of these records is, therefore, that where a route was left uncoloured with no hereditament number, this is evidence suggesting that it was considered to be highway land and no tax could be raised from it. The omission of a route from the valuation does not however indicate what kind of highway it was considered to be, and there may have been an alternative explanation for the omission.

4.14 In this case the route A-B was left uncoloured and passes between two parcels of land with a hereditament number 52 [Background Papers; page 206].

Officer Comment: *The route has been left uncoloured which is evidence suggesting that it was outside the scope of taxation and was regarded as having public rights of some kind, but not conclusive evidence that it was a highway (let alone a vehicular highway).*

Highways Committee Minutes; Wycombe District Council

4.15 26 November 1923; [Background Papers; pages 207 - 208] The minutes refer to Bledlow Parish Council writing to the District Council (which had by that time become responsible for the repair of publicly maintainable highways in its area) requesting that North Mill Road, Bledlow be repaired. It was decided at the meeting that the Parish Council would need to provide proof that the road was previously repaired by the old Parish Surveyor of Highways.

4.16 31 December 1923; [Background Papers; pages 209 - 211] The minutes detail that Mr. Austin produced extracts from the old Vestry books showing that North Mill Road was repaired by the old Parish Surveyor.

Officer Comment: *The minutes refer to North Mill Road but there is nothing to indicate that this included the route A-B.*

County Roads and List of Streets

- 4.17 Historically the County Council as highway authority and its predecessors kept – and still do – registers of the highways or lists of streets. They were generally regarded as being the list of roads that the Council was liable to maintain. Early registers gave routes road numbers, described them and indicated lengths that were metalled and unmetalled.
- 4.18 The Unclassified County Road Register (UCRR) was compiled by the County Council following the Local Government Act 1929, which transferred the responsibility to the County Council for all highways in rural districts for which the District Council had been the highway authority. The powers which the County Council exercised were the same as had previously applied on main roads. A “county road” was a highway for which the County Council was the highway authority. In rural areas this amounted to all highways that were maintained by the public.
- 4.19 The charting of these roads on maps was an internal procedure undertaken by county councils to provide a record of the roads for which they were responsible. These maps were typically updated when new information came to light. However, these were internal documents, and while they may have been made available to the public there was no requirement that they should be.
- 4.20 The legal definition of county roads was broad enough to include footpaths and bridleways, although, in practice, county councils usually only included roads which they took to carry vehicular rights. Accordingly, these maps may provide evidence of the existence of vehicular rights as they represent the County Council’s view at the date of compilation as to the status of the route.
- 4.21 The term ‘county road’ was rendered obsolete by Section 187 of the Local Government Act 1972 and responsibilities for road maintenance are now rationalised through the present regime of highway authorities established under the Highways Act 1980.
- 4.22 As a result of this, in terms of status, the UCRR is of historical and evidential interest only. Whilst it may provide evidence of the status of the routes contained therein by expressing the County Council’s view on a route’s status at various times, it is in no way definitive of a route’s status and cannot confer the expressed status on any given route.
- 4.23 As stated above the Register was compiled as a result of the Local Government Act 1929 and listed the roads for which the County Council had a maintenance responsibility. Along with the register there is a diagrammatic plan showing routes of the UCRs entitled The County Roads Plan.
- 4.24 North Mill Road is labelled on the County Roads Plan as ‘629’ [Background Papers; page 212], the detail of the plan is not sufficient to conclude that the route A-B was considered

to be part of North Mill Road. The UCRR has an entry for 629 [Background Papers; pages 213 - 214] which states the following:

“PITCH GREEN - BLEDLow STATION - NORTH MILL - from B.4009 at Pitch Green, via Bledlow Station to North Mill and Bledlow Paper Mills, and cul-de-sac at Pitch Green, known as Mop Row

Metalled [and] Total Mileage 1.48”

Officer Comment: *When the above description is traced based on a plan [Background Papers; page 215] it measures approximately 1.53 miles exclusive of the route A-B. Neither the measurement nor the wording supports the inclusion of the route A-B.*

4.25 Under the HA 80 Section 36(6) the Council is under a duty to hold a ‘List of Streets’. In Section 329(1) of the HA 80 a street is defined as *“any highway and any road, lane, footpath, square, court, alley or passage whether a thoroughfare or not and includes any part of a street”*; but the Section 36(6) duty is confined to *“the streets within their area which are highways maintainable at the public expense”*. The statute does not prescribe any particular format for a list of streets. Nor does it provide that the inclusion of a particular route in the list is conclusive evidence that it is a highway, in contrast to the inclusion of a route in a definitive map and statement (which is conclusive evidence of the existence of public rights, according to WCA 81 section 56).

4.26 The Section 36 List of Streets dated March 1995 [Background Papers; pages 216 - 217] only includes road numbers and names. There is an entry for North Mill Road, Bledlow U629. This corresponds with the entry in the UCRR in paragraph 4.24 above. There is no reference to the A-B route.

4.27 In more recent years more detail has been added to the List of Streets. At some point between 1995 and 2016 grid references and whether a route was publicly or privately maintained has been added.

4.28 It is believed this extra detail was added as part of the set up for the National Street Gazetteer, which would have required a start, mid and end point of all streets as well as a unique street reference number. A line would have been digitised along all streets which would then have generated the required grid references.

Officer Comment: *The digitising of a line to generate grid references is likely to have been a desk-based exercise and based on the Ordnance Survey based mapping. The grid references can therefore not be relied upon as accurate and are amended if new evidence comes to light to suggest they need to be changed.*

4.29 The Section 36 List of Streets dated December 2016 [Background Papers; pages 218 – 219a] contained a disclaimer stating that *“..the list of streets is regularly updated and amended in light of new road adoptions. Whilst all effort is made to ensure the accuracy of the list, it cannot be guaranteed. The information is correct to the best of our*

knowledge on the date of publication.”

4.30 The 2016 list records the following for North Mill Road:

North Mill Road USRN: 45500707, Status: PUB

Start point: 476839.25, 204449.86, End point: 477629, 204017

4.31 The Section 36 List of Streets dated April 2022 contained a similar disclaimer to the 2016 statement *“The information contained herein is constantly being updated and is correct to the best of our knowledge on the date of publication.”*

4.32 The key for the April 2022 list [Background Papers; pages 220 - 221] states the following:

PUB Publicly Maintainable: A highway maintained by the Highway Authority at public expense. Some indication as to the extent of the publicly maintainable highway may be included, but for more definitive extent information (Highway Extent Plan) please contact The Land Charges on 01296 382772 or email highwaysearches@buckinghamshire.gov.uk

MANY: Where a highway is partially maintained by the Highway Authority at public expense. For more definitive extent information (Highway Extent Plan) please contact The Land Charges on 01296 382772 or email highwaysearches@buckinghamshire.gov.uk

4.33 The 2022 list records the following for North Mill Road:

North Mill Road USRN: 45500707, Status: MANY

Start point: 476839, 204450, End point: 477883, 204088

4.34 The end point for North Mill Road has been altered since the 2016 list to include a section to the east of Sandpit Lane. The status of North Mill Road has also changed, and it now appears as a highway which is partially maintained by the Highway Authority.

Officer Comment: *As detailed in the key (2022) an indication of the highway extent is given. However, this is not supported by the historical evidence. It’s likely that the start point for North Mill Road needs to be amended so that it doesn’t include the route A-B.*

Highway Extents

4.35 The Council, like its predecessors, keep a highway extents GIS dataset. The dataset is an internal resource used as a visual aid to assist Transport for Bucks in knowing where their maintenance responsibilities exist for metalled (tarmac) highways; the layer is maintained by the Definitive Map and Highway Searches team and is also used to provide a commercial service to customers. The dataset can be amended following a decision by the Head of Highways if evidence comes to light to suggest it needs changing. The Head of Highways is the decision maker as they need to agree to what is or is not maintained

out of the allocated budget. The dataset is a useful tool for officers but does not determine the status on any given route and carries no legal weight.

4.36 In December 2016, officers carried out research to ascertain whether the route A-B should be included on the highway extents dataset; this included checking road files and the Inclosure Award and Map.

4.37 As a result of investigations carried out by officers the Head of Highways determined to remove the route A-B from the highway extents dataset as it was considered the route should not be maintained as a metalled highway. This did not remove any public rights that might have existed – it was a correction of the Council’s internal maintenance record only. An extract of the highway extent layer can be found in the background papers at page 248.

Road Files

4.38 The Council holds historical road files with various correspondence dating back to the 1960s, some of this correspondence is useful in understanding the Council’s and landowners’ views of the status of the route in the past.

4.39 5 August 1969; [Background Papers; pages 237 - 238] In a letter to the Divisional Road Surveyor requesting repairs to potholes at the end of North Mill Road, a previous owner of Lydebrook (Mr Wrightman) referred to the route (A-B) as unadopted and *“beyond the end of the road”* and made up by Mr Wrightman himself in concrete.

4.40 16 March 1973; [Background Papers; pages 239 - 240] The Bucks Water Board wrote to the Divisional Road Surveyor and included an Ordnance Survey plan with the route A-B shaded blue. Bucks Water Board were trying to ascertain whether *“your Council has any responsibilities for the length of concrete road shown in blue colour on the plan.”*

4.41 22 March 1973; [Background Papers; page 241] The Divisional Surveyor responded to the Bucks Water Board letter of 16 March 1973 and stated that *“the concrete road is not under the jurisdiction of this Department.....the concrete was constructed, I believe, by the developer of the new bungalow.”*

4.42 23 June 1988; [Background Papers; page 242] The Section Head of Local Land Charges (A. M. Atkins) wrote to the Divisional Surveyor and asked how much of North Mill Road was maintained at public expense.

4.43 14 July 1988; [Background Papers; pages 243 - 244] The Divisional Surveyor responded by letter to Mr A.M. Atkins and returned the plan which had previously been sent, marked up and showing the route from A-B as not maintained by the Council.

Production of the Definitive Map and Statement

4.44 The first Definitive Map was compiled following an initial survey between 1950 and 1951, which in this case in Bledlow-cum-Saunderton Parish was coordinated by F.D. Mead,

acting for the Parish Council, who had been sent a copy of the 6-inch Ordnance Survey map for the areas and asked to mark on the rights of way that were considered to be public. Parish meetings were then held to consider the information that was provided.

4.45 At the same time as the Survey Maps were prepared a Record Sheet for each right of way was compiled, giving details of the starting and termination points, a name if there was one and descriptions of the route, including details of gates or stiles and of any problems they found. The detail in these sheets varies considerably. The Record Sheets and Survey Maps were compiled following the detailed procedures set out in the *Memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers' Association; recommended by the County Council Association and approved by the Minister of Town and Country Planning.*

4.46 Following consultation with the District Councils, the routes were then drawn on a Draft Definitive Map and were advertised giving a date for the receipt of objections/representations from the public. This was followed by the production of a Provisional Definitive Map, open to objections/representations from landowners only and finally by the publication of the Definitive Map.

4.47 The route A-B is not shown on the parish survey map or any of the previously published Definitive Maps [Background Papers; pages 223 - 227]. On the parish survey map there are some lines connected to what is now Public Footpath No. 81 with text stating *"160 yds farm maintained section to FP 1"*. Public Footpath No. 81 was added to the second Definitive Map with a relevant date of 1960. Officers have not been able to locate any documentation as to how or why this route was created. However, witness 4 referred to dedicating the route, as landowner, in the early/mid-1960s and said that he had assumed the section between Public Footpath No.81 and North Mill Road was also going to be dedicated [Background Papers; page 21].

4.48 The extension of Public Footpath No.9 from the junction with Public Footpath No.3 was added as part of the second review of the Definitive Map. In a letter dated 11 December 1965 [Background Papers; page 230] the Clerk of the Parish Council wrote to the County Surveyor at Buckinghamshire County Council and stated that *"Path No. 9, joins No.3, at the Ford and then continues over the footbridge to connect with No 81, and it is at this junction where the obstruction [described as a heap of scrap iron] exists. This small section was unfortunately omitted in the first instance, and I should be glad if you would kindly arrange for this to be included in the next review"*.

4.49 The exact alignment of Public Footpath No.9 was later confirmed by the Parish Council in a letter with a plan attached dated 15 January 1966 [Background Papers; pages 232 - 233]. The plan shows an obstruction by point B. The County Surveyor responded in a letter dated 18 January 1966 [Background Papers; page 234] stating:- *"The inclusion of the footpath to which you refer has been noted for the forthcoming second review of the Definitive Map"*.

Officer Comment: *The 11 December 1965 letter from the Clerk of the Parish Council to the County Surveyor appears to be based on the premise that the proposed extension would connect directly with Public Footpath No. 81 and does not refer to a junction with the county road. This indicates that there was an assumption at the time that Public Footpath No. 81 continued further south to the County Road than is currently shown.*

Bledlow-cum-Saunderton Parish Council Minutes

4.50 A Parish Council Minute Book dated July 1954 to March 1967; Pg 128 [Background Papers; pages 245 - 247] states *“With regard to path No. 2 at North Mill this should be shown as continuation along the County road to join path No.1 at a point near a footbridge.”*

4.51 A further extract of the minutes detailed *“Footpaths Bledlow Gt Wood North Mill”* and stated that *“the clerk repeated that following the additional details submitted to the County Surveyor, both these paths will be included at the Draft Review Stage”.*

4.52 A Parish Council note dated 30 January 1966 [Background Papers; pages 235 - 236], regarding routes to be added to the Definitive Map refers to three different paths within Bledlow-cum-Saunderton. Two of the paths on the list; *“Footpath near North Mill”* and *“Footpath at Saunderton”* have a tick and are marked as *“suspected”*. The route referenced as *“Footpath near North Mill, Bledlow”* references *“18.01.66”*, this is the date of the letter referred to in paragraph 4.49 regarding the extension of Public Footpath No.9.

Officer Comment: *It’s not clear from the minutes detailed in 4.50 - 4.51 which paths are being referred to. However, when considering the different Parish Council minutes and notes regarding the draft review at the time it is considered that the routes referred to in the Parish Council minutes (paragraph 4.51) are the two routes marked as *“suspected”* on the note dated 30 January 1966 (paragraph 4.52). Officers therefore are not persuaded that the Parish Council Minute Book is referring to the route marked A-B.*

Ordnance Survey

4.53 The Ordnance Survey 1st Series 25 inch (1876 - 1885), the second edition (1900), the 6-inch (1919-1927), the 6-inch provisional (1955-1962) and the 10K Edition (1972-1990) all show the route continuing from North Mill Road [Background Papers; pages 249 - 251].

4.54 The Ordnance Survey 1st Series 25 inch (1876 - 1885) records North Mill Road together with route A-B on the plan as No. 120. The Ordnance Survey book of reference details No.120 as *“Road”*.

Officer Comment: *Ordnance Survey maps do not provide any indication of the status of a route but only show what was on the ground at the time of the survey.*

Aerial Photos

4.55 Aerial photos taken in 1999, 2003, 2006 and 2020 [Background Papers; pages 252 - 253] show the route following the alignment on the plan [Appendix 1]. The route is along a hard standing surface.

Officer Comment: *Aerial photos do not provide any indication of the status of a route but only show what was on the ground at the time of the photo.*

Street View

4.56 The Google Street View image dated 2008 [Background Papers; page 254] shows a Public Rights of Way arrow pointing down the route; it's not possible to see what the status is. There is an unused gate in the hedge and a round red sign with a white line through the middle. It's not possible to read the sign because it's on the route and obscured by overgrowth.

4.57 The Google Street View image dated 2010 [Background Papers; page 254] is similar to the 2008 image but the round red sign is less obscured. The sign is set further back in both images than its current position on the gate.

Officer Comment: *The round red sign is believed to be the sign mentioned by witnesses 7 and 12 as detailed in paragraph 3.5.*

The Highway Code describes this type of sign as a prohibitive traffic sign giving the message of "No entry for vehicular traffic" [Background Papers; page 349].

Land Registry

4.58 Buckinghamshire County Council were sent a B16-1 notice dated 24 February 2017 [Background Papers; pages 255 - 259]. The notice stated that an application had been received to register the freehold interest in the land tinted yellow on the enclosed plan (the route A-B)_on the basis of an ad medium filum application. This is the legal presumption that the boundary of land abutting a highway, private right of way, river or stream extends to the middle of the highway etc. The application would have the effect of creating one big parcel of land rather than two parcels separated by the route A-B.

4.59 The notice stated that the tinted yellow land would be subject to rights of way.

4.60 A further revised B16-1 notice dated 31 March 2017 [Background Papers; pages 260 - 263] was sent to Buckinghamshire County Council. This notice stated that the tinted yellow land would not be recorded as subject to rights of way in the Charges Register.

Officer Comment: *The Council were not able to insist that public rights of way were recorded on the Charges Register because the access was not recorded on the Definitive Map as a public right of way. (Public rights of way are however overriding interests which are not prejudiced by non-registration.) A letter dated 9 March 2016 from Mrs C Hudson*

(Definitive Map and Highway Searches Team Leader) to Mr and Mrs Wilder (the current owners of Lydebrook) stated that there might be public highway rights along the route which are not recorded, because the public are likely to have exercised a right to use the route to connect Public Footpath No. 81 with North Mill Road – a possibility which would be investigated in due course [Background Papers; pages 357 - 358].

5.0 Other options considered

5.1 The pros and cons should not be considered when determining the status of the route based on the evidence.

6.0 Legal and financial implications

6.1 Financial implications should not be considered when determining the status of the route as the Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it. Officer time is involved in investigating the route and dealing with a public inquiry if an Order is made and there are objections to it.

7.0 Corporate implications

7.1 Corporate implications should not be considered when determining the status of the route for the same reasons as detailed in 6.1.

8.0 Consultation and communication

8.1 Consultation was carried out with the Local Members for the Ridgeway West Division, Bledlow-cum-Saunderton Parish Council and the list of prescribed organisations and statutory undertakers for the area.

8.2 The Local Members for the Ridgeway West Division; Cllr Shade Adoh, Cllr Robert Carington and Cllr Carl Etholen have been actively involved in trying to get the issue of access between North Mill Road and Public Footpath No. 81 resolved. However, they have no direct knowledge of how the route has been used historically.

8.3 In an email dated 13 July 2021 Mr N Jeffery responded. Mr Jeffery has been in contact with the Council prior to the consultation in relation to the route A-B [Background Papers; pages 264 - 288]. Mr Jeffery is of the view that the historical documents indicate the route A-B should be recorded as a public road and part of North Mill Road.

8.4 Mr Jeffery relies on the following documentary evidence:

1) Highway Authority records recorded the route A-B as a publicly maintainable public road until it was deleted.

Officer Comment: *As detailed in paragraphs 4.35 and 4.37 the route was recorded on an internal resource used as a visual aid to assist Transport for Bucks. The dataset has no legal weight regarding the existence of public rights. North Mill Road is recorded on the*

Section 36 List of Streets, the grid references which were added in more recent years include the section A-B. However, this is not supported by the historical evidence. It's likely that the start point for North Mill Road needs to be amended so that it doesn't include the route A-B. No routes have been deleted off the Section 36 List of Streets. Entries on a List of Streets have no statutory effect, and can be amended if an error is found without following any prescribed statutory procedure. If a route is a vehicular highway, it remains so whether or not shown on a List of Streets, and showing a route which is not a vehicular highway on a List of Streets does not make it one.

2) The Ordnance Survey first edition indicates the route is part of North Mill Road and should have the same status as a public road.

Officer Comment: *Ordnance Survey maps do not provide any indication of the status of a route but only show what was on the ground at the time of the survey. The route is not named in the OS documents. Roads XI and XII had been set out by the Bledlow Inclosure Commissioners as a physical continuum (albeit with different legal rights) as detailed in paragraphs 4.5 – 4.6 [Background Papers; pages 200 – 204], and will have presented that appearance to the OS surveyors.*

3) The complete minor road network to the north of the B4009 with the exception of Sandpit Lane is described as private in the Inclosure Award but the Award details them to be maintained as public roads.

Officer Comment: *As detailed in the comments under paragraph 4.7, when looking at how clearly the award defines the persons entitled to use XII and that the provision for maintenance of the route is consistent with it being a private liability, it seems likely that the route A-B was not considered or intended to have public rights at the time of inclosure. This is supported by Sauvain in the Sixth Edition of Highway Law (Sauvain, 2022). The differentiation between the roads set out and appointed as public and private carriage roads respectively was clearly deliberate and meaningful.*

4) The Finance Act 1909/10 plan shows the complete length of North Mill Road as uncoloured and a non-taxable feature.

Officer Comment: *The Finance Act plan does not provide conclusive evidence regarding the status of the route. It is only one piece in the overall evidential jigsaw and in the absence of any other evidence of public vehicular highway status, is not by itself sufficient proof.*

5) Public Footpath No. 81 was dedicated by the landowner to the use of the public and Parish Council minutes confirm that it was added to the Definitive Map from the County Road.

Officer Comment: *As detailed in paragraph 4.52 it is not clear which routes the Parish Council minutes were referring to; Officers do not agree that the Parish Council minutes confirm that Public Footpath No. 81 was added to the Definitive Map from the County*

Road. Witness 4 states that there was no public right of way north of point B before 1961 and that Public Footpath No. 81 as dedicated by his company did not join up with the County Road: paragraph 4.47 [Background Papers; page 21].

6) Dispute about maintenance responsibility between the Parish Council and District Council was resolved by vestry minutes being produced and showing the parish was responsible.

Officer Comment: *The minutes refer to North Mill Road but there is nothing to indicate that this term included the route A-B.*

7) Enquiries by the District Valuer about the status of the route elicited the response that the route was part of Unclassified Road U629.

Officer Comment: *The District Valuer correspondence (dated April-May 1961 and relating to planning applications affecting “site at North Mill Bledlow”) is included in the background papers [Background Papers; pages 228 - 229]. The inquiry is regarding “Mill Lane” which would imply the road to the site and does not clearly identify the route A-B as being part of the lane. Neither does the response (“Mill Lane is a County unclassified metalled highway (Road no 629)”).*

8) Historical photos from Buckinghamshire Archives and Historic England show an unobstructed highway leading to where Lydebrook was built.

Officer Comment: *The historical photos [Background Papers; page 284] do not provide evidence of the status of the route.*

9) Statutory Declarations sworn by past and present owners of Lydebrook refer to a public right of way on foot and a right of way for farm vehicles.

Officer Comment: *The current landowners and previous landowners have indeed acknowledged the existence of a public footpath over route A-B in statutory declarations. There are copies of the relevant statutory declarations in the Background Papers. In a Statutory Declaration dated 5 February 1990 dealing with other issues [Background Papers; pages 58 – 60], Mr Wrightman (who owned Lydebrook from April 1967 to March 1976) included a hand-drawn plan on which he had annotated route A-B with the words “Private Road/FP”. His successors in title Mr and Mrs Stokes unequivocally declared in paragraph 6 of a joint Statutory Declaration dated 2 November 1983 [Background Papers; pages 305 – 307] “There is undoubtedly a Public Footpath running along the length of the track” (referring to the route coloured yellow on the attached plan, i.e. A-B). They also referred to a farmer’s right of way along it. Evidently that was the understanding on which Mr and Mrs Wilder completed their purchase of Lydebrook 2 days later. They themselves repeated the statement in paragraph 6 of a joint Statutory Declaration dated 8 October 2014 [Background Papers; pages 308 – 311], although they have since sought to retract it (see paragraph 9.2 below). Officers consider that any vehicular right of way for the benefit of the adjoining farm is a private right and not public as detailed in paragraph 3.7*

above and the evidence of Witness 4 [Background Papers; pages 21, 159]. (The private carriage and drift road rights over road XII created by the Bledlow Inclosure Award apply to that land.)

- 8.5 This report goes through various pieces of documentary evidence (paragraphs 4.1 to 4.60), some of which is relied upon in Mr Jeffery's submissions. However, the Officers come to different conclusions to Mr Jeffery when considering this evidence.
- 8.6 In a letter dated 3 August 2021 [Background Papers; pages 289 – 294] Ms J Ion, the Principal Development Management Officer, responded to the consultation on behalf of the planning service. Ms Ion stated that in late 2013 they received a complaint regarding the erection of gate posts and installation of paving at the entrance to Lydebrook. The complainant at the time suggested that the land on either side of the track at Lydebrook was in the same ownership but this did not include the track.
- 8.7 In 1994 a planning application relating to the south west of the track was made. The report states "The workshop is located to the south east of an un-made track opposite Lydebrook, the house owned by the applicant".
- 8.8 Ms Ion referred to a considerable amount of planning history relating to the property known as Lydebrook, which was granted permission in the 1960s. There is also a lot of planning history for the land to the south west of the track.
- 8.9 In an email dated 29 July 2021 [Background Papers; page 296] Ms K Ashbrook from the Open Spaces Society responded. Ms Ashbrook queried the need for an investigation into the status of the route as she understood the route to be a publicly maintainable highway recorded on the list of streets.
- 8.10 In a second email dated 6 August 2021 [Background Papers; pages 297 - 298] Ms Ashbrook stated Mr N Jeffery had asked her to forward some information to the Council. The information has already been covered in this report under Mr Jeffery's submission (paragraph 8.4).
- 8.11 In a letter dated 6 August 2021 [Background Papers; pages 299 - 311] Ms T Martin, parish clerk responded on behalf of Bledlow-cum-Saunderton Parish Council. Ms Martin stated that it was clear there was an intention for a pedestrian right of way between points A and B. This was based on:
- 1) A green footpath sign, presumably placed by Buckinghamshire County Council.
 - 2) Documented frequent use of the route.
 - 3) Statutory declarations acknowledging the existence of a public footpath by the owners of Lydebrook.
 - 4) The length of concrete between A-B having always been a road as evidenced by Mr N Jeffery.

8.12 Ms Martin also detailed concerns that due process had not been followed with regard to the closure of the route, and asked for the pedestrian right of way to be reopened as soon as possible. She described its loss as “major”, saying that the alternative route via BCS/30/3 and BCS/1/1 became impassable at times when the bridges over the River Lyde were submerged due to heavy rainfall.

8.13 Ms Martin also attached some photos and the statutory declarations which were referred to in her letter.

8.14 In an email dated 9 August 2021 [Background Papers; pages 312 - 313] Mr C Hurworth responded on behalf of the Trail Riders Federation. Mr Hurworth queried the need to seek evidence for a Definitive Map Modification Order because the Finance Act plan and Section 36 List of Streets show the route as a publicly maintainable road. Mr Hurworth said it would be illogical to have a gap between North Mill Road and the public footpath.

9.0 Representations from landowners

9.1 Mr J Cheal, a solicitor of Mogens Drewett LLP, who is acting on behalf of the owners of Lydebrook, responded by email dated 30 July 2021 [Background Papers; pages 314 - 318].

9.2 Mr Cheal makes the following points:

1) There is no historical documentary evidence which suggests the route is a public right of way.

Officer Comment: *That appears to be an overstatement, given that:*

- i. The route has been left uncoloured in the Finance Act 1910 plan which is evidence suggesting that it was outside the scope of taxation and was regarded as having public rights (paragraph 4.14).*
- ii. Parish Council correspondence would indicate they considered the route of Public Footpath No.81 joined Public Footpath No.9 at the junction with North Mill Road (paragraphs 4.48 – 4.49).*
- iii. Landowner statutory declarations acknowledge the existence of a public footpath (paragraph 8.4).*

2) The dedication of the route now recorded as Public Footpath No.81 did not have any bearing on the status of the track, which was never dedicated by its owners.

Officer Comment: *The public are likely to have used the route to connect Public Footpath No. 81 with North Mill Road, giving rise to a deemed/implied dedication. The user evidence bears that out, as do the Parish Council correspondence and the landowner statutory declarations referred to above.*

3) The Council’s Counsel concluded against recording the track as a public carriageway because the totality of the evidence suggested against higher rights than on foot.

4) It's clear from the Inclosure Award that the route X11 (sic) was a private carriage and drift road for the benefit of the land owned by Messrs Williams and Stevens only.

5) References to caselaw regarding the meaning of 'private carriage road' in inclosure awards.

6) Finance Act 1910 evidence can at most be corroborative of public status, on its own it's not enough.

7) The letters from the road files referred to at paragraphs 4.41 and 4.43 above [Background Papers; pages 239 - 244] clearly indicate the track was not publicly maintained highway.

8) The second review documents do not refer to the track but do make reference to the public footpath now recorded as BCS/9/1.

9) Mr Wrightman made no mention of public access or need for consent to install the concrete driveway in his statutory declaration [Background Papers; pages 58 – 60].

10) Mr Stokes stated in his statutory declaration dated 2 November 1983 [Background Papers; pages 305 - 307] that as soon as he moved into the property in 1976, he put in the white gates and a sign saying "No entry Except for Access". Mr Cheal states that for some inexplicable reason he described the driveway as being "undoubtedly a public footpath" and that he may have meant to type "private" and not "public".

Officer Comment: *Officers think it is unlikely that Mr Stokes would have made such a typing error in a statutory declaration.*

11) A second statutory declaration by Mr Stokes dated 1990 refers to an obstruction on the path, this was Public Footpath No. 9 not the track.

12) Mr and Mrs Wilder have owned Lydebrook from 1983 to date. In their statutory declaration from 2014 they confirmed the gate and sign were still there and that nobody had ever objected to it.

13) Mr Cheal states they largely followed the wording of Mr Stokes' statutory declaration regarding the footpath, and in a letter to the Land Registry dated 26 August 2016 retracted their previous reference to the footpath, stating "Contrary to our Stat Dec of 8th October 2014 we can now confirm that to the best of our knowledge the land tinted yellow has never been a maintained footpath or public right of way".

Officer Comment: *No explanation has been given as to why the track was acknowledged by Mr and Mrs Wilder as a public footpath in 2014 and then in 2016 Mr and Mrs Wilder claimed it had never been a maintained footpath or public right of way.*

14) Any public use on foot of the track could not be as of right because of the existence of the no entry sign on the gate and challenges made by Mr and Mrs Wilder to anybody

seeking access without their permission.

Officer Comment: *Officers do not think the notice on the gate has always been in its current position and it used to be located further back along the drive, see paragraph 4.57. The notice is a red circular sign with a white line and some additional wording stating "Except for Access". As detailed by the Highway Code Traffic Signs this type of sign would be used to indicate to members of the public that there is "No entry for vehicular traffic". It is therefore considered that pedestrians did not think the sign applied to them, particularly since there was a public footpath sign opposite pointing along the route, and that in the circumstances it would have been reasonable for them to think that it did not apply to them.*

15) The claim period would be 20 years before Mr Stokes put the no entry sign on the gate in 1976. From 1956 to 1963 (approximately) Public Footpath 81 did not exist.

Officer Comment: *Officers do not consider that the sign would have been sufficient evidence there was no intention to dedicate the way as a footpath or called into question the public's right to use the route on foot. In any event a full period of 20 years' use is not necessary for a common law dedication.*

16) Mr Manning, a neighbouring landowner since the 1970s, has verbally confirmed the existence of the sign and that the white gates tend to be closed. Mr Cheal states that Mr Manning has said that the no entry sign on the white gates has been there for as long as he can recall.

9.3 Mrs J Wilder provided a witness statement dated 30 March 2022 [Background Papers; pages 319 - 322] in which she states that on occasions, she has challenged members of the public when they have tried to use the route.

9.4 Mrs Wilder referred to challenging a number of different people; the first challenge she recalls was to a Mrs Waldron who had tried to use the route on horseback in the late 80s/early 90s. Other incidents she mentions are either undated, or dated 2019 or later.

9.5 Mrs Wilder states that the no entry sign at the white gates has been there ever since Mr Stokes put it there.

9.6 Mr Cheal sent a further response dated 27 May 2022 [Background Papers; pages 323 - 348]. In the document he goes through the points raised in his previous email (paragraph 9.2 above) and comments on each individual witness statement which has been received in support of the route having public footpath status.

9.7 Mr Cheal provides a statutory declaration from a Miss Goodchild dated February 1976. [Background Papers; pages 343 – 346]. Miss Goodchild lived and farmed close by and had known the area well for over 40 years.

9.8 Miss Goodchild stated that to her knowledge Mr Wrightman and his predecessors in title

had constantly used the route to access Lydebrook (by foot and by vehicles) without consent. Mr Cheal states that this indicates that there were no public rights because, had they existed, there would have been no point in the statutory declaration.

9.9 Mr Cheal refers to the no entry sign in place at point B and what a reasonable person would take it to mean. He asserts that users would see it as a deterrent and a statement that they should not enter, rendering use not as of right.

9.10 Mr Cheal states that the dedication of Public Footpath No 81 did not and does not make the track a public footpath.

Officer Comment: *The previous sworn statements from Mr and Mrs Stokes and the Wilders would suggest that they considered the route A-B to be a public footpath and are implied confirmation of the fact of open, as of right user as such from 1976 to 2014, and of the absence of any challenge to such use. Officers are of the opinion that the sign stating "Except for Access" was directed at vehicles rather than pedestrians. The wording is not sufficient to demonstrate an intention not to dedicate the route as a public footpath or render pedestrian use contentious and not as of right. Google Street View photos indicate the sign at point B was not always on the white gates and used to be positioned further back [Background Papers; page 254].*

10.0 Comments

10.1 The public's right to use the route was brought into question by the locking of the gate at point B from 2019 onwards. Therefore, the relevant period for section 31 HA 80 purposes is from 1999 to 2019. (For common law dedication purposes, the date of implied dedication would be the commencement of use in the early 1960s.)

10.2 The letter dated 11 December 1965 implies the Clerk to the Parish Council was of the view at that time that the route of Public Footpath No.81 continued down to the bend on North Mill Road at point B. He may have been mistaken about that, but the mistake confirms that in practice, members of the local community were freely using route A-B as a continuation of Public Footpath No. 81 to get to North Mill Road in the belief that they were exercising a public right. The obvious explanation for the statements in the statutory declarations from the previous landowners, Mr and Mrs Stokes (1983) and the Wilders (2014) referring to the route as a public footpath is that it had since continued to be used as one and had the local reputation of being one.

10.3 Officers consider it likely that members of the public would have believed there were public rights along A-B to access Public Footpath No.81 which was dedicated over 50 years ago, and would have used the route for that purpose from then on.

10.4 User evidence suggests members of the public were not actively challenged when using the route until 2019 and Mrs Wilder has not specified any earlier dates (except for Mrs Waldron).

10.5 The circular road sign stating “*Except for Access*” is not considered sufficient to challenge the public’s use of the route on foot and would not have been as visible to walkers if they were approaching from Public Footpath No.81.

11.0 Draft report

11.1 A draft of this report was sent to the landowner’s solicitor, the Parish Council and the relevant Members. Comments received can be found in the background papers [Background Papers; pages 343 – 346]. The comments received do not change the officer recommendation.

11.2 Repeated submissions regarding Ms Hudson making changes to the Highways Act 1980 s36(6) List of Streets are incorrect. Ms Hudson has no responsibility for this document and continued reference to this officer regarding this document is erroneous. The HA80 s36(6) List of Streets has not been changed.

12.0 Conclusion

12.1 The user evidence forms completed by witnesses indicate members of the public have been using the route from Public Footpath No.81 to North Mill Road (A-B), by foot, as of right, for a continuous period well in excess of 20 years (i.e. from the early 1960s up to the locking of the gate in 2019). This is inherently probable in the circumstances and is supported by statutory declarations from Mr and Mrs Stokes (1983) and the Wilders (2014). There is no incontrovertible evidence that this use has been sufficiently challenged prior to 2019 to prevent a public right accruing. On consideration of all the relevant evidence available, it is at the least reasonable to allege that a public right of way on foot subsists over the route A-B.

12.2 A definitive map modification order should be made pursuant to section 53(2)(b) and (3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by showing the route between A-B (Appendix 1) as a Public Footpath on the grounds that evidence has been discovered which (when considered with all other available relevant evidence) shows that a public right of way on foot subsists or is reasonably alleged to subsist over the route.

13.0 Next steps and review

13.1 If the recommendation is accepted an Order to modify the Definitive Map and Statement will be made and open to objections. If objections are received the Order and the objections will be sent to the Planning Inspectorate for determination. If the recommendation is rejected any interested parties can apply for judicial review of the decision.

Appendix 1 – Plan

Appendix 2 – User evidence bar chart Background papers

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255 – 258	Land Registry B16-1 notice [Feb 2017]
259 – 263	Land Registry B16-1 revised [March 2017]
264 – 288	Mr N Jeffery emails [13/09/2020, 13/07/2021 & 15/03/2021]
289 - 294	Ms J Ion (BC Wycombe Planning) letter [03/08/21]
295 - 298	Ms K Ashbrook (Open Spaces Society) email [29/07/21 & 06/08/21]
299 - 311	Bledlow-cum-Saunderton Parish Council letter [06/08/21]
312 - 313	Mr C Hurworth (TRF) email [09/08/21]
314 – 318	Mr J Cheal (Mogers Drewett Solicitors) email [30/07/21]
319 – 322	Mrs J Wilder (landowner) witness statement [30/03/22]
323 – 348	Mogers Drewett response [27/05/22]
349 – 356	The Highway Code Traffic Signs
357 – 358	Letter from C Hudson to Mr & Mrs Wilder [09/03/2016]
359 - 399	Responses to draft report

Your questions and views

For further information please contact Helen Francis

helen.francis@buckinghamshire.gov.uk