PLYMOUTH CITY COUNCIL

Subject:	**Modification Order Application – Lulworth Drive to Tavistock Road, Plymouth**
Committee:	**Planning Committee**
Date:	14 August 2014
Cabinet Member:	Cllr Mark Coker
CMT Member:	**Anthony Payne (Director for Place)**
Author:	**Robin Pearce**
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Ref:	**WCA.006**
Key Decision:	No
Part:	**I**

Purpose of the report:

To determine an application for an Order under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement of public rights of way by the addition of a footpath between Lulworth Drive and Tavistock Road, Southway ward, Plymouth.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

The report is considered in the context of the priorities set out in the Local Transport Plan 2011 – 2026 for addressing the Council's requirement to comply with relevant legislation.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

None

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

None

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

It is recommended that the Committee agree not to make a Modification Order.
The evidence submitted by the Applicant is not robust enough to support the view that public rights subsist or can be reasonably alleged to subsist.

Alternative options considered and rejected:

To make an Order recording a public right of way if the Committee considers the legal tests have been met.

Published work / information:

All papers relevant to this report and as detailed can be found online at www.plymouth.gov.uk/wca006

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7
Appendix 1 – A copy of the application form, plan and certificate of service of notice.	I								
Appendix 2 – Photographs submitted by the applicant in support of their application	I								
Appendices 3 – 26 – Copies of the user evidence relied upon by the applicant	I								
Appendix 27 – Landownership Plan	I								
Appendix 28 – Evidence relied upon by the owners and/or occupiers of land over which the claimed route subsists	I								
Appendix 29 – Plan showing Council landownership and highway extents	I								
Appendix 30 - First edition 1:25,000 Ordnance Survey map	I								

Sign off:

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1.0 Introduction

1.1 This is a report of an application for an Order to be made under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement of public rights of way by the addition of a public footpath. The definitive map and statement is a legal record held and maintained by the City Council in its capacity as surveying authority under the 1981 Act.

1.2 The test that applies to such an application is whether or not the evidence shows that a public right of way exists, or is reasonably alleged to exist: the Committee's role is therefore a quasi-judicial one. Factors such as the desirability of the route being a public footpath or the impact on landowners and occupiers are not relevant to the decision on the application.

1.3 If the Committee decides to make an order, it has to be publicised: if any objections are received, the order and objections have to be referred to the Secretary of State for Environment, Food and Rural Affairs on whose behalf the Planning Inspectorate makes the final decision on the order.

1.4 If the Committee decides not to make an order, the applicant has a right of appeal to the Secretary of State for Environment, Food and Rural Affairs on whose behalf the Planning Inspectorate decides whether or not to allow the appeal. If the appeal is allowed the City Council will be directed to make an order, although it is not then obliged to support such an order if there are objections.

2.0 Background Papers

2.1 Attention is drawn to the accompanying background papers which should be read in conjunction with, and are deemed to form part of, this report. Due to the size of those papers they are available online at www.plymouth.gov.uk/wca006.

3.0 The Application

3.1 An application was received on 09 January 2009 from a member of the public for the making of a Modification Order under section 53 of the Wildlife and Countryside Act 1981 for the addition of a footpath between Lulworth Drive and Tavistock Road in the Southway Ward.

3.2 At the time the application was made the applicant certified that the requirements of paragraph 2 of Schedule 14 of the Wildlife and Countryside Act 1981 had been complied with in that a copy of the statutory notice had been served by the applicant on each and every owner and occupier of land over which the route being claimed subsists, those being: -

a) Widewell Primary School Trust; and

b) George Wimpey UK Ltd

3.3 A copy of the application form and a map showing the route of the alleged footpath is set out in Appendix 1 to this report.

3.4 The route being claimed runs through the grounds of the Widewell Primary Academy School (URN:139289) onto the site of a former petrol station which has since been redeveloped for housing. The applicant relies upon the evidence of photographs provided by a former ward Councillor set out in Appendix 2 to this report and the evidence of 24 users of the alleged route whose evidence is set out in Appendices 3 – 26 of this report. The application has been opposed by both the school and those who now own land and properties on the site of the former petrol station.

4.0 Topography of the route subject to the application

4.1 The alleged route begins at a point on Lulworth Drive where it passes through a gateway into the grounds of the Widewell School. It then runs in a generally easterly direction across the school playing fields through a fence where it then runs across what was formerly the site of a petrol station, now redeveloped as housing, to reach a point on Tavistock Road.

4.2 The application was prompted by the erection of a fence at the time the school converted to academy status. Subsequently further fencing has been erected around the school site and the petrol station site has been redeveloped for housing. It is now not possible to walk the application route.

4.3 As the alleged route runs across unenclosed land there was no defined route and therefore no identifiable width visible to officers. The only limitation that would appear to be required from the evidence is the right of the school to erect and maintain a gate on Lulworth Drive.

4.4 The total length of the route is approximately 421 metres.

4.5 Solicitors acting for the Widewell Primary Academy have questioned the accuracy of the depiction of the claimed route on the plan attached to the application form, arguing that the point on Lulworth Drive should be further north and the point where the route crosses the fence at the eastern end of the route should be further south. These representations are considered to be accurate in that it is understood that the gate at the Lulworth Road end has always been in the same location, which is slightly to the north of the point marked by the applicant on the application plan. Where people crossed the boundary between the school site and the petrol station site is considered further below.

5.0 Summary of the evidence relied upon by the applicant

5.1 Twenty-four user evidence forms (UEFs) were submitted with the application. The range of use covers, in some cases, a period of 42 years of use. Twelve of those who completed UEFs were residents in either Widewell Road or Little Fancy Close, to the south of the playing fields. Their evidence was that they accessed the playing fields from gates at the bottom of their gardens. In some cases they then made use of part of the route, either to go to the petrol station or Tavistock Road or to Lulworth Drive, but they did not use the route as a whole.

5.2 Some UEFs showed on their plan a route passing through a gate nearer to the school than that marked by the applicant, and others referred to going to the petrol station rather than to Tavistock Road thus also not using the entire route.

5.3 It is noted the applicant has not used the route being claimed. However on the application form he added a note saying that users had walked '*around pitches whilst in use, it not being reasonable to claim rite of passage*. As this statement did not appear on the UEFs, users were asked subsequently whether this had applied to them, and some confirmed that it did. It is not possible for officers to identify any particular date or time when the pitches where in use but users walking around the pitches is indicative of an acknowledgement that the claimed route was not a public right of way.

5.4 Photographs submitted by a former ward Councillor showed a wooden fence on the boundary between the school and the petrol station site with a gap made in it. Users were asked about this, and if they could recall when it had been erected. Responses were varied: several considered that it had been erected around 2000, but that "*within a matter of days panels had been removed (by persons unknown) to enable the footpath to remain open and be used*".

6.0 Summary of the landowners views and any evidence they provided

6.1 Responses were received, either directly or through legal representations from the school, Taylor Wimpey, Sovereign Housing Association and from several of those now owning properties on the former petrol station site.

6.2 A submission by Vivian Chapman QC on behalf of Taylor Wimpey, developer of the site and residual owners of the former petrol station site, argued that the application should be rejected for three reasons:

(a) because no gate had been provided in the fence between the Taylor Wimpey land and the school playing field, and any access had been as a result of vandalism: "*a path is not used as of right if use involves breaking down a fence or passing through obviously vandalised holes in a fence*";

(b) the landowner had always tried to block use over its site; and

(c) on consideration of the user evidence the application failed for lack of a defined route across the land.

6.3 The submission also argued that the application should be considered under subsection (3)(b) of section 53 of the 1981 Act, as the relevant event was the expiration of a period of use such that dedication could be presumed. If that submission were to be accepted, the test would be whether or not the evidence showed that a right of way had come into being: the "reasonably alleged" test in subsection (3)(c)(i) does not apply.

6.4 A submission by Winckworth Sherwood, solicitors for Widewell Primary Academy, argued that the use of the playing fields had been by permission; that there had always been signs at the Lulworth Drive entrance indicating that the land was private property; and that steps had been taken to demonstrate an intention not to dedicate a right of way.

6.5 Individual owners of properties also objected, arguing that a public footpath through their properties would be an unreasonable intrusion.

7.0 Summary and outline of any documentary evidence discovered not submitted by interested parties

7.1 Historical Ordnance Survey mapping has been examined. Maps published in the 1940s show that at the time there was no development in the area: there is no indication on historical mapping of a route on the ground. The conclusion is that there is no relevant documentary evidence.

8.0 Summary of the views of those consulted as part of informal consultation

8.1 An objection was also received from Devon and Cornwall Police, submitting crime statistics for the area for 2013-14 and commenting that "*Secure By Design recommends there should be no public footpaths through the school grounds*".

9.0 The date that public rights were brought into question

9.1 If section 31 of the Highways Act 1980 is to be used for the grounds of the application it is necessary to establish a date that public rights were first challenged so that retrospective evidence of 20 or more years use, as of right and without interruption, may be considered to determine whether or not public rights have accrued and become established by presumed dedication.

9.2 In this case there appears to be clear evidence that the erection of fencing and other activities of the school in 2008 brought the right of the public to use the way into question by effectively preventing use. What is less clear is the effect of the earlier fencing along the boundary between the school and petrol station sites, which appears to have been erected in approx. 2000. It seems clear on the evidence that very shortly after that fence near the petrol station was erected a gap was made in it. There has been no evidence presented by the landowners as to who erected the fence and whether or not they took action to repair the breach or otherwise prevent use by the public. On that basis we can only assume no further action was taken as there is no evidence to support any other view. Their actions could therefore be taken as an isolated and unsuccessful attempt to interrupt use, and one not acquiesced to by the public.

9.3 It appears that the gap in the fence was south of the point marked on the application plan: whether all users crossed the boundary at that point before the fence was erected is not clear.

9.4 It is considered, therefore, that the date on which the right of the public to use the way was brought into question was 2008, and the relevant period (which, under section 31 of the Highways Act 1980, has to be counted back from the date of challenge) is 1988 - 2008.

10.0 Officer Interpretation of the evidence in support of the application

10.1 The applicant relies almost exclusively on the evidence of users of the claimed route to support his case. There is no relevant documentary evidence. Therefore the relevant tests for consideration by Members are set out under section 31(1) Highways Act 1980. If an Order were to be made it would be made under section 53(3)(b) Wildlife and Countryside Act 1981.

10.2 The test under section 31(1) Highways Act 1980 is a two part test. Firstly it is necessary for the applicant to provide evidence that the claimed route, which must be 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. If the applicant can meet that test the rebuttal applies which is a matter for the owners and occupiers of the land over which the alleged route subsists to engage. This is a section of the Highways Act which has helpfully been tested by the courts and so we can offer the committee clear guidance on how they should interpret the evidence before them.

10.3 Firstly the applicant must satisfy the committee that the claimed route has been *actually enjoyed*. This simply means that there must have been sufficient use of the claimed route and will vary depending on the circumstances of each case. What might constitute sufficient use in remote Dartmoor might not be considered sufficient use in urban Plymouth. It is noted that the majority of the users did not use the whole of the claimed route. This was either because they accessed the playing fields from somewhere other than the gate entrance on Lulworth Drive, e.g. from a back garden of a property in Widewell Road or from another entrance on Lulworth Drive, or their evidence indicates that they followed a different route than that claimed by the applicant or they did not continue all the way to junction on Tavistock Road. The evidence of those witnesses cannot be considered.

10.4 Secondly use must have been '*by the public'* which is to say the public at large rather than a particular class of the public such as employees of a particular company or customers of a particular shop. It will be clear that a great many of the applicant's witnesses accessed the

claimed route from private gates from their properties. They did so presumably on the basis that they enjoyed, or thought they enjoyed, a private right of access over the land to and from their properties. If so those users were not 'the public' as their use may have been in exercise of a private, not a public, right. We do not have the evidence to support this view to the extent that we would promote it as a reason for refusal and in any case it seems that any private rights of access were obstructed by the school when the fencing was erected but we expect that should this matter be continued and explored further it could well give grounds for a further reason to dismiss the evidence of those users.

10.5 Thirdly use must have been '*as of right*' the meaning of which was helpfully clarified by the House of Lords in *R v Oxfordshire County Council ex parte Sunningwell Parish Council*[1] (Sunningwell). Before Sunningwell it was held that use which was as of right was use which was open, not by force and without permission and in addition users were required to hold an honest belief that they had a right to use the way in question. It was therefore necessary to prove the state of mind of the user. The ratio of Sunningwell is that the state of mind of the user is an irrelevant consideration. This means public rights may now accrue through intentional trespass so long as that trespass occurred without the use of stealth, force or secrecy. It is clear the fence was vandalised to enable use. This is clearly use facilitated at least to some degree by means of force. Again, the evidence is not strong in favour of this argument but we reduce the weight we give to that evidence because it suggests users relied on the use of force to enable access.

10.6 Finally it is necessary for the applicant to prove that use of the claimed route occurred over a full period of 20 years without any interruption in that use. An interruption can be nothing more than the closing of the claimed route for a single day but may also include isolated acts of turning users back etc. In this case the weight applied to the evidence of any user who accepted they walked around a playing pitch whilst it was in use for sports must be reduced as those users did not follow the claimed route, even if they were otherwise walking the whole of the rest of the claimed route between the gate on Lulworth Drive and Tavistock Road.

10.7 Taking the above into account we aid committee by offering our assessment of each of the users evidence in turn: -

[1] [1999] UKHL 28; [2000] 1 AC 335

Mr C. Shepherd:	User did not specify the period of his use and stopped at the filling station shop. Did not use the full route.
Mrs. E. Hext:	User access the claimed route from a private access point and did not use the claimed route. Stated she '*frequently walked around the pitches whilst they were in use*'.
Mr. C. Rundle:	User accessed the claimed route from a private gate and did not use the full claimed route.
Ms. P. Gosling:	User appears to have access the claimed route from a private gate and did not use the full route.
Mr. J. Berryman:	Accessed the claimed route from a private gate and so did not use the full claimed route. Also confirmed sometimes walked around pitches and sometimes walked through if it did not interfere with the game.
Mrs. B. Berryman:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Ms. J. Murray:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Mr. A. Pullin:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Mrs. R. Pullin:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Mr. R. Stockman:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Mr. N. Phillips:	Used the whole of the claimed route within the relevant period. Evidence of use is sufficient.
Mrs. L. Phillips:	Used the whole of the claimed route within the relevant period. Evidence of use is sufficient.
Mr. A. Colville:	Only walked as far as the filling station garage and did not use the full route.
Mrs. A. Colville:	Used the whole of the claimed route within the relevant period. Evidence of use is sufficient.
Mr. & Mrs. Corbett:	Did not use any part of the claimed route other than the access gate from Lulworth Drive.
Ms. M. Patten:	Accessed the field from a private gate and did not use any part of the claimed route.
Mrs. S. Hawkes:	Used the whole of the claimed route within the relevant period. Evidence is sufficient.
Mr. P. Harvey:	Used the whole of the claimed route but outside the relevant period. Also stated '*I was never witness to anyone walking*

across the playing surface, we would always walk around the perimeter'.

Mr. W. Nicholson:	Appears to have used the whole of the claimed route at least some of the time however that use was outside the relevant period.
Mrs. M. Nicholson:	Appears to have used the whole of the claimed route at least some of the time however that use was outside the relevant period.
Mr. P. Heath:	Has used whole of the route throughout the relevant period despite some ambiguity over the route taken through the filling station.
Mr. R. Hawkins:	Accessed the claimed route from a private gate and so did not use the full claimed route. Stated '*We could walk across the field, Luthworth Drive to Tavistock Road without hinderance [*sic*], if a football game was in progress one could skirt the pitch that was no problem*.'
Mrs. M. Hawkins:	Accessed the claimed route from a private gate and so did not use the full claimed route.
Ms. C. Brett:	Has possibly used the claimed route but not for the full 20 year relevant period and confirms she walked around pitches in use.

10.8 When we present the user evidence but only show those users who used the whole of the claimed route for the full 20 year period we only have five users. On this basis alone we say the application fails due to the applicant failing to satisfy the requirement to prove the route claimed was 'actually enjoyed' because there is insufficient evidence of use to justify a presumption of dedication. This is a matter for Members to decide of course.

10.9 If Members agree with the officer and can be satisfied that the applicant has failed to provide sufficient evidence of use of the route he is claiming they do not need to go on to consider the question of whether there is sufficient evidence of action on the part of landowners to demonstrate an intention not to dedicate. The issue does not arise. However we go on to deal with it below.

11.0 Officer interpretation of the evidence against the application

11.1 Each owner and/or occupier of land over which the claimed route subsists was invited to submit evidence to support their view. In this case responses were received from: -

a) Winkworth Sherword acting for Widewell School Educational Trust;

b) Vivian Chapman QC instructed by Eversheds acting for Taylor Wimpey UK Ltd

c) Sovereign Housing Association;

d) Mr. & Mrs. Elliot – residents of Boundary Place

d) Mrs Z. Felgate – resident of Boundary Place

e) Mr. A Felgate – resident of Boundary Place

f) Mr. & Mrs. Welsh – residents of Boundary Place

g) Ms. M. Conway – owner of let properties in Boundary Place

h) Ms. C. Morris – resident of Boundary Place

i) Mr. Paul Shepherd, Architectural Liaison Officer, Devon and Cornwall Police.

11.2 Winkworth Sherwood act for the Widewell School Educational Trust. They say the school was operated by Plymouth City Council from 1971 until the school and land was transferred to the Trust on 1 September 2007. They say the Council maintained a chain link fence along Lulworth Drive with a single gate. This fence was replaced with a steel palisade fence in June 2008 which acted as the first challenge to public use. The school say the wooden fence which separates the school playing field and the filling station was erected by the owners of the filling station but do not know when. They understand the fence had historically been vandalised physically and by fire and was repaired but have no evidence or further information about this.

11.3 The school also say they erected signage inconsistent with the dedication of a public right of way. They direct us towards two signs at the locations marked in their representation (see appendix 28) the former, which they say was erected 20 years ago, stating "*Private property, no unauthorised ball games, No horse riding or use of motorcycles Trespassers will be prosecuted*" and the latter, erected on 08 January 2009 stating "*No dogs. No unauthorised access. Do not climb the fence*".

11.4 The school then go on to raise the issue of child protection and their safeguarding responsibilities being incompatible with unrestricted public access to school grounds and suggest the applicant did not serve the statutory notice in the prescribed manner.

11.5 In a later letter dated 25 March 2013 (see appendix 28) the school raise two further issues relating to a discrepancy between the route marked on the plan by the applicant deviating from the route on the ground and clarifying the first sign they refer to was erected by the Council who were landowner at the time.

11.6 The relevant period largely precedes the transfer of the land to the Trust. Therefore the fencing erected by the Trust does not provide evidence for or against the existence of a public right of way. The Council were in control of the land throughout the relevant period and maintained a fence and provided a gate. The applicant's case is that this gate was kept open and provided by the school and council as a point of ingress and egress to the field. That gate may have been locked outside of school hours but if it was the school have provided no evidence to support that view. In the alternative we have clear evidence to say it was openly used by the public throughout that time. We accept there is a discrepancy between the precise location of that gate on the ground and the location marked by the applicant and a good number of his witnesses on their plans. However the school have not suggested that the position of the gate has moved and so long as we can be confident that the applicant and his witnesses intended to identify that gate as their entry and exit point we can make an Order to that effect despite that discrepancy.

11.7 The signs the school direct us to have also been considered. The second sign was erected outside the relevant period and so is irrelevant. The first sign as erected by the Council is not inconstant with a public right of way and would not be sufficient to rebut the claim. We therefore dismiss the argument that the signage we are directed to proves a negative intention to dedicate a public right of way. However, the photographs submitted by the applicant from the former ward Councillor include photographs of two additional signs that we have not been referred to by Winkworth Sherword. The first sign was erected on the actual gate used to access the field. It is in bad condition and appears old presumably erected by the Council (although we have no record of it) but the following wording can still be seen "….on Coun…*Widewell Playing….These grounds ar…..there is no public….to be had across..…*"". We hypothesise that the actual wording of this sign might have been "Devon County Council *Widewell School Playing Field. These grounds are private, there is no public access to be had across them*". This view is supported by the second sign which appears to be located at another entrance to the school site further north along Lulworth Drive. This sign clearly states "*No public right of way through these school grounds".* Both signs are viewable in appendix 2.

11.8 The matter of the schools safeguarding duties towards its pupils and staff is a serious matter. This council is one of only a handful to have been successful in securing a Special Extinguishment Order through a school grounds and so the committee will be familiar with the issues that arise. However this is an evidential process and the committee can take no account of such issues.

11.9 Finally, regarding the procedural issues raised the applicant certified that the notice was served on the proprietor of the school. The school instructed Winkworth Sherwood so presumably they became aware of the issue in at least August 2009 as Winkworth Sherwood submitted evidence against the application at that time. The school became aware of the claim made at least five years prior to the application being decided and it is difficult to see how they might have been prejudiced in such circumstances.

11.10 Eversheds LLP act for Taylor Wimpey UK Ltd who are the residual owners of the former petrol station site. The relevant period of use precedes Taylor Wimpey's ownership of the land. Eversheds instruct Vivian Chapman QC who raises a number of points. It is mentioned that the fence was vandalised to achieve access. Taylor Wimpey says this is evidence that the landowner did not acquiesce to that use. However the evidence before us is that of a single occurrence where the fence was vandalised. Taylor Wimpey provide no evidence of that vandalism being by a user of the path, when it was vandalised, whether it was repaired and if it was how many times. We agree that a case could be made out here but not on this evidence alone. It is at best indicative of the then landowners intentions but could equally point us towards an earlier date of first challenge rather than a full rebuttal of the public rights having accrued.

11.11 We are also referred to problems with the applicant's case, primarily the quality of the user evidence. We have already dealt with this issue and the representation adds nothing new to that.

11.12 Sovereign Housing Association state they object to the route for reasons of home security and the availability of alternative routes. Such objections do not provide evidence for or against the accrual of a public right of way and so must be ignored at this stage.

11.13 A number of residents who occupy private properties in Boundary Place submitted their representations. Clearly this is an issue of great concern to them as the applicant is seeking to record a public highway through their gardens. However the residents of Boundary Place did not have an interest in the land during the relevant period and as such it would be extremely difficult for them to submit evidence against the claim. This difficulty is manifest in their

representations which focus on their reasons for opposing the claim in general rather than providing an evidential basis to oppose the claim.

11.14 Finally, the Architectural Liaison Officer of Devon and Cornwall Police objects to the application on the basis of the policy advice of Secured by Design. As no Order has been made there is nothing to object to and whether or not the claim, if successful, would lead to an increase or decrease in criminal or anti-social behaviour is an irrelevant consideration at this stage.

11.15 In conclusion the evidence provided by the various owners and occupiers of land is generally inconclusive. This is not surprising as each and every one of them only became concerned with the land in question after the relevant period of use had either expired or had all but expired.

11.16 It is not possible to say with certainty that the landowners have successfully rebutted the claim. However the committee do not need to be certain, it need only be satisfied on the balance of probability. We know that signage was erected by both the Council and its successors in title in relation to the school land. That signage is not conclusive but it is indicative of the fact those landowners did not intend to allow a public right of way to be formed. We also know for certain that a fence was erected between the school land and the former filling station and we suggest this occurred at some point around 2000. That act alone also did not succeed in challenging public use and the public did not rise to meet that challenge so it is unlikely to have been overt enough to bring any challenge to the public's attention however it is again indicative of the landowners not believing the public had a right of access between the two areas. Finally there is an assertion that the school appear to have challenged users. Winkworth Sherwood make reference to a particular date (18 June 2006) where this occurred during a police and Navy 'Family Day' and state teachers have consistently challenged the public. Again, there is no other evidence of this, no statements from teachers who have done so and unrestricted public access to the heart of the school has not been raised as a safeguarding issue in any OFSTED inspection report.

11.17 However the assertions made by advocates for the landowner's are supported by some users of the path. Mr Rundle states in his evidence that he and his friend were stopped and turned back by the head teacher on one occasion whilst Mrs Brett states '*the school has put notices in the fields at Lulworth [Drive] denying access to all'* suggesting she at least believed the council and school intended to displace the public from their land. It is also noted that the majority of users were aware that the wooden fence had been erected between the school land and the former petrol station.

11.18 Whilst the totality of the evidence is not conclusive it is indicative and probably strongly indicative that the landowner's did not intend to allow a public right of way to be created.

12.0 Officer Recommendation

12.1 Members must be satisfied that two tests have been met. The first relates to the case made out by the applicant in establishing use, by the public, as of right and without interruption for a full period of 20 years. I conclude that the applicant has failed to meet this part of the test and that on this basis the application fails and no Order should be made.

12.2 If the committee disagrees with 12.1 above I further conclude that the landowners have taken sufficient steps to prevent a public right of way accruing and that the application also fails at the rebuttal.

12.3 The officer recommendation to Committee is that no Order be made and the applicant be advised of his right of appeal to the Secretary of State.