



Committee report

Committee	APPEALS SUB COMMITTEE
Date	1 JULY 2022
Title	APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER - FOOTPATH/BRIDLEWAY, DISUSED RAILWAY, BEMBRIDGE, ISLE OF WIGHT
Report of	PUBLIC RIGHTS OF WAY SERVICE, DIRECTORATE OF NEIGHBOURHOODS

EXECUTIVE SUMMARY

1. An application has been made to record a public right of way over a route that follows part of the disused railway line at Bembridge, Isle of Wight, and which connects the disused railway line with Embankment Road. The claim is supported by user evidence which the applicant believes demonstrates that the public have acquired rights through long use without challenge.
2. It is considered that the evidence submitted in support of the application is sufficient for it to be inferred that the claimed route should be added to the Definitive Map and Statement as a public bridleway. The application is therefore recommended for acceptance.
3. The outcome of the recommendation will be to make an order to record a public bridleway. Any interested person may object to any order made. If it is subsequently decided that the order should be confirmed, then the application route will become a public bridleway for use by the public on foot, horseback and bicycle.

RECOMMENDATION

Option 2 – It is recommended that an order is made under section 53(2) of WCA81 to modify the Definitive Map and Statement by adding the path described in the application with the status of bridleway. It is recommended that the width or widths specified in the order are determined by Council staff according to the user evidence and physical characteristics on the ground.

BACKGROUND

4. This report sets out evidence to determine an application under schedule 14 of the Wildlife and Countryside Act 1981 (WCA81) for an order to modify the Definitive Map and Statement by adding a footpath or bridleway along the Embankment Road disused railway line at Bembridge, Isle of Wight.
5. The council has a duty under section 53(2)(b) WCA81 to review the Definitive Map and Statement and to make such modification orders as appear requisite in consequence of events set out in s53(3).
6. Schedule 14 of WCA81 places a duty upon the council to investigate the matters stated in the application for a modification order and to decide whether to make the order applied for.
7. The committee is acting in a quasi-judicial role and the decision must be made on the basis of evidence before the committee and law relevant to the fact of dedication of a highway and to Definitive Map and Statements and on no other consideration. Guidance on the committee's judicial role is provided at Appendix 5 – Item 2.
8. The application will be determined under section 53(3)(b) WCA81: the possible addition of a path to the Definitive Map by way of presumption of dedication pursuant to section 31 Highways Act 1980 (HA80) or by common law.
9. An event under section 53(3)(b) WCA81 is the expiration of a period such that the enjoyment by the public of a way during that period raises a presumption that the way has been dedicated to the public.
10. The question to be determined is whether the evidence shows that a highway exists because dedication has occurred at common law or is deemed by operation of section 31 HA80.
11. The committee should decide on the basis of the evidence presented whether a presumption of dedication has been raised or a right of way is at least reasonably alleged to exist. The standard of proof to be applied is the balance of probability. Full legal background information and guidance is provided at Appendix 5 – item 1 (paragraphs 7 to 13), item 3 and item 4.

CORPORATE PRIORTIES AND STRATEGIC CONTEXT

12. The Definitive Map and Statement records the public rights of way network. Delivering statutory duties in respect of it, in conjunction with the Rights of Way Improvement Plan, supports the Isle of Wight Council Corporate Plan 2021-2025, which contains detailed strategies and plans supporting the council's aim to work together openly and with communities to support and sustain the Island's economy, environment and people.
13. Whilst Corporate Plan aims relating to the provision of affordable housing; responding to climate change and enhancing the biosphere; economic recovery and reducing poverty and impact on your people and future generations have all been considered during the preparation of this report, the council is under a legal duty to

consider this application only in accordance with the relevant statutory provisions, common law position and relevant guidance. In its capacity as the surveying authority, the Council has a legal duty to determine applications for Definitive Map Modification Orders (as per paragraphs 5 and 6 above) and the committee is required to determine the matter and evaluate the evidence before it and provide a reasoned and sustainable decision as whether a highway exists under the principles of presumed dedication (paragraphs 7 to 11 above).

APPLICATION AND EVIDENCE CONSIDERED

Reason for Making the Application

14. The application (Appendix 1 – Item 1) dated 27 January 2017 submits supporting user evidence and an extract from a publication. The applicants are Mr Malcolm Wade and Mrs Faith Wade of Four-Acres, Carpenters Road, St Helens, Ryde, Isle of Wight PO33 1YG.
15. On 16 February 2009 the Royal Society for the Protection of Birds (RSPB), as landowner, deposited a statement and plan with the highway authority under section 31(6) of the HA80 (Appendix 8 - Item 2). The plan showed the land owned by the RSPB and any recorded public rights of way that crossed the land; the claimed paths were not shown as public rights of way and sections AB and BD were said to be a permissive footpath for which consent was given to members of the public to walk/ride over.
16. In 2016 the applicants were informed by the Parish Council that the RSPB had made the disused railway track a Permissive Path. The applicants believed that the track had been used as a public footpath/bridleway with no restrictions since the railway line closed and began to collect user evidence forms to support an application to modify the Definitive Map and Statement accordingly. The applicants contacted the Ramblers Association on 6 November 2016 to ask for help or advice, and they subsequently lodged the formal application for a modification order on 27 January 2017. It is therefore considered that the determining factor for the application being made was the RSPB's formal declaration that the claimed path was not a public right of way, and that some sections were permissive paths, by means of the 2009 section 31(6) deposit.

Location, Site Characteristics and General History

17. The application claims use of the path as shown on the application plan. Starting to the east of the River Yar from the south side of Embankment Road (the B3395), the claimed path heads in a general south east direction following the route of the disused railway line. The eastern part of the claimed path gently curves northwards. At its eastern end the claimed path turns left through 90 degrees and heads in a north west direction to rejoin Embankment Road. Use of that part of the access road to Harbour Farm (Home Farm Lane) which lies between the disused railway line and Embankment Road is also claimed.
18. A map and photographs of the claimed path are in Appendix 2. Item 1: Current Ordnance Survey (OS) map with a representation of the path subject to the application (yellow dashed lines AB, BD, DE, and BC). Item 2: Annotated site photographs numbered 1 to 18 taken by the Council to facilitate determination of the application.

19. Sections AB and BD: The claimed path follows the route of the disused railway line. These sections lie on land owned by the RSPB. The last train on this line ran on 21 September 1953.
20. Section DE: The claimed path passes through an area of scrubby vegetation and then crosses land that is mostly used for the parking of vehicles before joining Embankment Road. The southern part of this section lies on land owned by the RSPB; the northern section lies on land owned by Bembridge Investments Ltd.
21. Section BC: This section of the claimed path lies on Home Farm Lane and connects the disused railway line with Embankment Road. This section lies on land owned by the RSPB. A small area of this land adjacent to Embankment Road was unregistered when the Land Registry information was obtained, but it is understood that all involved parties have since agreed that the land is owned by the RSPB.

User Evidence

22. The application was lodged with 146 user evidence forms. The forms provide evidence in support of the presumed dedication of the claimed path. The forms included a map, the majority of which had been marked with the route or routes used. The applicant and a representative sample of approximately 10 per cent of the witnesses were interviewed by telephone, due to Covid-19 restrictions, between 29 May and 23 June 2021. Those interviewed provided their best recollection of the routes they used along with the frequency and period of each means of use (i.e. foot, cycle, horseback), and whether they had ever been prevented from using any part of a route for any reason.
23. Documentation relating to user evidence is at Appendix 6. Item 1: Copies of the 146 user evidence forms. Item 2: User witness interview notes. Item 3: Tables summarising the evidence contained in user evidence forms and the evidence of use of each section during the relevant 20 year period.
24. Use of the claimed path has generally been for leisure purposes including dog walking, watching wildlife and photography, or for utility travel between St Helens and Bembridge including for shopping, medical appointments, and going to the Yacht Club. All except two of the witnesses had used the claimed path on foot, and 28 witnesses had ridden the claimed path on a bicycle and/or horse.
25. The evidence form asked for the width of the way. The response varied greatly with many witnesses saying that the width was variable. The narrowest width mentioned was less than a foot, and the widest was 10 metres. Several people referred to the path being the width of the railway.
26. Twenty nine witnesses indicated that they would not wish to attend a public inquiry. A further fifty seven did not give an indication of whether or not they would be prepared to attend. Mr Vokins' form was incomplete. Mr Henley indicated that he was acquainted with previous landowners (Thorney Croft, 1960 and Mr Hicks, 1990), and Ms Noyes knew the landowner from 1982 to 2016. Ms Mitchell kept her horse at Harbour Farm in the 1970's and 1980's.
27. The application claims a route along the disused railway line, sections AB and BD, and two routes that connect the railway line with Embankment Road, sections BC and DE. All the witnesses refer to using the disused railway line, with some of them

indicating that it used to continue eastwards beyond Point D until that part of the railway line was closed off, probably in the 1970's. Most of the witnesses refer to using both BC and DE to connect with Embankment Road, a few refer to using just one or other of BC and DE.

28. A summary of the user evidence is set out in the User Tables (Appendix 6, Items 3a-f).

Landowner Evidence

29. Evidence provided by the landowners is at Appendix 7, items 1 to 2 and Appendix 8, item 7.
30. The landowners affected by the application are listed at paragraph 99 below.
31. The large part of the freehold is held by the RSPB, with Bembridge Investments Ltd being the freeholder of the northwest part of section DE. Council officers engaged with representatives of both freeholders between November 2016, when the Council became aware that an application was likely to be made, and July 2019. The option of dedicating a footpath was explored, but a solution agreeable to all parties could not be reached.
32. The RSPB does not dispute that the claimed routes have been used by the public. However, the RSPB contends that use of the claimed path is permissive, and that other criteria for deemed dedication are not met, specifically through: the incompatibility of the character of section DE; the path being closed to the public for a period or periods of time; and incompatible signage. The RSPB submitted a summary of the claimant's evidence along with its own counter evidence on 24 July 2019 (Appendix 7, Item 1).
33. The RSPB responded to a number of follow up questions during 2021 (Appendix 7, Item 2) and provided supporting documentary evidence. The photographs and documents supplied by the RSPB are included in Documentary Evidence below. The site manager, who has known the site since starting work there in 2005, also supplied a detailed narrative about section DE, in support of the RSPB's view that the public use of section DE was unlikely due to the ground conditions (Appendix 8, Item 7).
34. Also in 2021, Bembridge Investments Ltd confirmed that it has owned part of DE since December 2011; prior to that the land was owned by Maritime and Leisure Investments Ltd. Until very recently a very small part at the northern end of BC was registered to Bembridge Investments Ltd, but following the discovery of a mistake the Land Registry has now registered that small area in the RSPB's name. The company believes it is for the betterment of the area that the public are allowed to use the application route, and their visitors are encouraged to use the route due to the lack of pavement along the southern side of Embankment Road.
35. When asked whether any part of DE was ever under water or otherwise inaccessible, Bembridge Investments Ltd said that DE has never been under water and that when the Harbour was purchased in 2011 a lagoon had already been formed.

Documentary Evidence

36. Documentary evidence includes photographs and maps provided by the applicants, user witnesses and the landowner together with documents held by or obtained by the council. The documentation is at Appendix 8.
37. Item 1: Statutory Declarations of Mr Hicks, dated 2001, with map. The RSPB submitted this declaration as evidence that the status of the route along the old railway track, specifically sections AB (paragraph 6) and BC (paragraph 4), was permissive prior to the RSPB's first acquisition at Brading Marshes in 2001. The Declaration refers to private rights of access to the Property being sold at the time; it is silent as to any (statutory or permissive) public rights of access. Private rights and public rights may coexist along the same highway, so the existence or otherwise of private rights, with or without explicit consent, does not constitute evidence of the public status of highway e.g. permissive or otherwise. Therefore it is not considered that the Declaration provides evidence of the claimed route having permissive status.
38. Item 2: A Section 31(6) deposit registered with the council in 2009, with accompanying plans. The declaration is a publicly available document. Public footpaths are marked on the plan in purple - no part of the claimed path is marked as a public footpath. Permissive paths are marked blue, consent is given for the public to walk/ride over permissive paths - sections AB and BD are marked blue. Sections BC and DE are not marked on the plans. A section 31(6) deposit is regarded as sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway. The deposit is considered to be strong evidence that from 16 February 2009 onwards, the RSPB did not intend to dedicate a public right of way on any section of the claimed path.
39. Item 3: Photograph of the lagoon showing an excavator parked on section AB of the claimed path in 2005 and photograph of timber extraction in 2012. The RSPB submitted these photographs as evidence that the path was closed for two weeks in February 2005 to carry out saline lagoon engineering works where the site was secured by Heras fencing and closure signage, and that the path was closed by way of signage for three days in each of 2007 and 2012 for the extraction of felled timber from the marsh. The first photograph shows the excavator on the claimed path and the Heras fencing appears to be positioned along the edge of the claimed path, with post and rail fencing visible along the opposite side of the path. The second photograph shows timber being transported by tractor and trailer. There are no signs visible in either photograph. Whilst the photographs are evidence of the works taking place in 2005 and 2012, they do not show that the path was closed to the public at either time.
40. Item 4: Photographs of historic signs, submitted by the RSPB as evidence of permissive use or private land. It is not possible to ascertain the location of the signs in relation to the claimed path. The first, third and fifth photographs appear to be located within fields and not within the old railway track boundary as claimed (Appendix 7, Item 1) - in the absence of the juxtaposition of the claimed path, no conclusion can be drawn as to whether the signs refer to there being no rights of way over the claimed path, or no rights of way over nearby land; the second photograph appears to be of a sign situated on a nearby access track (i.e. not on the claimed path) - a similar photograph was taken by a council officer (Appendix 2, Item 2, Numbers 15 & 16); the location of the fourth photograph is understood to be

on Section BC, but its intention is to prevent parking on a privately owned road - not to inform walkers, cyclists and horse riders that they have no right of way; the sixth photograph is of a sign that has been removed. None of the photographs is considered to provide strong evidence of non-intention to dedicate a public right of way on any of the claimed sections of path.

41. Item 5: Section 55(1) of the British Transport Commission Act 1949. The RSPB referred to this legislation as evidence that use of the railway line, whilst it was in use as a railway, would have been illegal and therefore could not have been used to establish a right of way. This is accepted. Furthermore, it is considered that use of railway land, even when disused as a railway, cannot be used to establish a right of way whilst the railway land is owned by a railway company.
42. Item 6: Declaration of Mr Hicks, 15 September 2005. The RSPB drew attention to this document describing Mr Hicks' use of the disused railway line on foot or by vehicle as a right given to him by the landowner, and omitting any mention of section DE. This declaration covers matters similar to those in the declaration in Item 1. For the same reasons it is not considered to be evidence of the existence or absence of public rights of access, nor of a non-intention to dedicate public rights. The document also describes the dumping of spoil between the railway line and Embankment Road, which is said to have taken place in the several years prior to 2005. The ground level is said to have been raised by about 15 feet. This is consistent with the OS maps from that time which show the position of a slope moving towards the disused railway line and the land type in the area of DE becoming drier. Mr Hicks' declaration is not considered to be evidence of the existence or otherwise of public rights of access, nor of an intention or non-intention to dedicate such rights. However it is considered to contribute to an understanding of the mechanism by which the ground level in the area of section DE changed during the period 1984 to 2005.
43. Item 7: Narrative evidence from RSPB Site Manager, including photographs and maps/plans, relating to section DE. The Site Manager's recollections date from January 2005. He notes that in September 2005 the raised ground between Embankment Road and the old railway bed was open, but there was no defined path leading from the old railway bed to the road. Since owning the land, the RSPB has always considered that the path came to a dead end at Point D. People were occasionally seen walking onto and around the raised land. Public access in the area of DE was noticed from 2015 onwards, and a path referred to as the trespass route through the lagoon was secured by fencing in April 2019. The saline lagoon was said to extend north-eastwards beyond DE, and it was wet approximately 2 metres beyond the RSPB reserve boundary. Landfill material brought onto the land from 6 September 2005 resulted in part of the saline lagoon being filled in including at the location of DE. Later landfill extended the raised land further southwards overlapping the old railway bed.
44. The Site Manager's opinion is that there would have been a steep fall from Embankment Road to the lagoon prior to the first landfill, whenever that was. Photographs from 6th September 2005 showing the Harbour Farm East Lagoon infill, and a filled slope at a location where a static caravan is now located, do not identify the geographical location of section DE and are not considered to demonstrate that a path or route on the alignment DE was or was not available for use at that time. A plan showing the extent of open water (titled Fig 2) and other

images (titled Fig 4 and Fig 5) show the north-east end of the East Harbour Lagoon is located close to the route of DE, but there is insufficient detail in any of these plans/images to draw any conclusion as to where the exact location of DE is in relation to the lagoon, and whether or not DE would have been covered by lagoon water. The depth of water at the north-east end of the East Harbour Lagoon is shown on Fig 5 as being between 0.01 and 0.2 metres. A map (Fig A) with the RSPB site boundary marked in red, which is undated but believed to be time dated to between 1992 and 2004 is said to show that the water in East Harbour Lagoon extends north-east beyond the RSPB boundary. The map in Fig A is very similar to the 1993 1:2,500 map in the series of OS maps (Appendix 8, Item 9). A difference between the map extracts is that the lagoon area is labelled "Water" in the RSPB/ Fig A map, and "Marsh" in the Item 9 1993 map. However, the Item 9 1993 map clearly shows a linear physical feature, which is also shown on the RSPB/ Fig A map where it is less clear due to being adjacent to the red boundary line, at the north-east end of the feature labelled "Marsh" and "Water" respectively. It is not known exactly what this linear physical feature depicts, but since it may indicate a change in land type it is not considered that the Fig A map can be interpreted as showing whether or not the water in the East Harbour Lagoon extends beyond the RSPB boundary.

45. Item 8: Extract from "The Bembridge Branch Line" 1988. The applicants submitted this extract as evidence that the claimed path was being used as a public footpath when the book was published in 1988. The applicants have highlighted two paragraphs. The first refers to the trackbed becoming a public footpath between the Cement Mills Crossing at the former Brading Quay, and St Helens. The old trackbed here is recorded on the Definitive Map and Statement as a public right of way. The second paragraph refers to claimed sections AB and BD, describing them as "the trackbed has once more become a footpath and can be walked to where the former station was at Bembridge". In contrast with the first highlighted paragraph, this section of the trackbed is not referred to as a "public footpath". Furthermore, whilst the author has written several books about railways, he does not claim to be an authority on public rights of way. The extract provided is considered to provide evidence of the existence of a physical path along sections AB and BD, and indeed extending eastwards beyond Point D, and of the likelihood that these sections were open and available for use by the public on foot in 1988. However, the book does not provide evidence as to whether public access along the trackbed was by permission or by right.
46. Item 9: Series of OS maps of the area, 1862-2014. A recent nearby planning application (Ref. 21/00795) included this series of OS maps, which show physical features and how they have changed over time. The first 10 maps are a 1:2500 sequence from 1862 to 1993. The next 10 maps are a 1:10,560 and 1:10,000 sequence from 1861 to 2014. The maps are centred on the proposed development, the outline of which has been drawn onto the maps. The railway line and the access road to Harbour Farm appear as physical features on maps from 1897-1898 onwards. Claimed section AB lies outside the coverage of the 1:2500 maps. Claimed section DE lies approximately 60 metres to the south west of the proposed development. The line of DE has been drawn onto a 1971 1:2,500 map, and included in Item 7 to indicate the position of DE. The series of maps show that sections AB, BD and BC have existed as physical entities since the railway was first constructed, and provide an indication of the type of ground, e.g. grass, marsh, etc, that section DE lies on.

Evaluation of Evidence

Statutory dedication pursuant to section 31 Highways Act 1980

47. To come to a conclusion of deemed dedication under section 31 HA80 the following matters need to be considered:
- (a) When was the use brought into question?
 - (b) Whether there is a “way over land” (and whether the “way” is of such a character that use of it by the public could not give rise at common law to any presumption of dedication)?
 - (c) Whether the “public” used the claimed path for a full 20 year period?
 - (d) Whether such use was “as of right”?
 - (e) Whether such use was “uninterrupted”?
 - (f) Whether there is sufficient evidence to show that there was “no intention by landowners to dedicate”?
48. All these steps are matters of fact to be decided according to the evidence. For guidance as to interpretation of section 31, see Consistency Guidelines (CG), Appendix 5 – Item 3.

Bringing into question (a) (CG 5.4 to 6)

49. The means of bringing the claimed right into question must be sufficient to make it likely that at least some users will be made aware the owner has challenged their right to use the path. The statutory period is a full 20 years calculated back from the date of bringing into question.
50. The RSPB’s evidence (Appendix 7) indicates that it closed section AB to the public, thereby challenging the public right, by means of physical barriers for two weeks in February 2005 to carry out engineering works, and then closed section AB again in 2007 and 2012 for the extraction of felled timber. The RSPB submitted a photograph of the 2005 works (Appendix 8, Item 3); this shows Heras fencing along the side of the path and a heavy vehicle on the path. The path itself does not appear to be closed off to public use in this photograph.
51. None of the user evidence forms mention section AB being closed at any time. When questioned during interview several witnesses recalled the RSPB undertaking works or felling trees and said that the path had not been physically closed off at that time. Mr Gaskin thought the path might have been fenced or barriered when trees were being felled, and that the fence/barrier didn’t stay up for long because of the number of complaints. Mr Preston vaguely remembered a barrier that was immediately removed, he thought probably by the public.
52. On balance, it is considered that the evidence presented is insufficient to demonstrate that the right to use the path was brought into question by the RSPB in 2005, 2007 or 2009. However, since that is not conclusive, this report will consider the scenario in which the use of the path is considered to have been challenged in

2005 (i.e. the statutory period is 1985-2005), as well as the scenario in which it wasn't challenged.

53. The landowner's deposition of the statement and plan under section 31(6) of the HA80 in February 2009 (Appendix 8, Item 2) brings into question the right of the public to use the claimed paths that cross land in the RSPB's ownership. Since at least a part of all the claimed sections (i.e. AB, BD, BC and the southern part of DE) is on land owned by the RSPB, and therefore covered by the deposition, the section 31(6) deposition is considered to have brought into question the right of the public to use all the claimed sections.
54. Accordingly, the statutory periods for the purposes of deemed dedication are as follows:

Section AB: 1985 - 2005 or 1989 - 2009
Sections BC, BD and DE: 1989 - 2009

A way over land and its character (b) (CG 5.65 to 67)

55. The claimed paths AB, BD and BC are considered to be ways over land in the sense that there is land in existence and its character would be capable of dedication at common law. No evidence has been submitted to the contrary.
56. Land that is railway land (owned by a railway company and capable of being used as a railway) is generally considered to be incompatible with dedication as a public right of way, so sections AB and BD would not be capable of dedication at common law before 1968 when the land was sold by the British Railways Board.
57. The southern part of section DE passes over land that is claimed by the RSPB to have been a lagoon which was infilled, most likely some time between 1992 and 1999, but before 2005. The RSPB submitted documentary evidence which shows the alignment of section DE close to the north-east end of the East Harbour Lagoon in the late 1990's / early 2000's. It seems unlikely that people would have chosen to follow a route through water if a route on adjacent dry land was available, so it seems most likely that the alignment of section DE at this time would be outside the north-east edge of the lagoon. However, a "way over land" can include land that is covered by water, such as a ford. Since the north-east end of the lagoon is shown as being fairly shallow (0.01-0.2 metres) in 2002, it is considered that section DE would have been capable of dedication whether its alignment was inside or outside the lagoon edge. It is feasible that, prior to the infill, section DE may have been inaccessible and not capable of dedication as claimed by the RSPB, but no strong evidence to that effect has been submitted.
58. None of the user evidence forms mention section DE being under water, or part of a lagoon, at any time. The witness interview evidence is: that section DE had always been used even when the old railway line could be followed all the way to Bembridge Station; that, whilst the fence wasn't put up to the east of Point D until around 2005, the through route to Bembridge was blocked up (by 'extensions' to business plots) some time in the 1970's at which time DE become the easternmost connecting route between the disused railway line and Embankment Road; and that although DE can be muddy and wet after heavy rain it has never been impassable due to being submersed in water, or a part of the lagoon. Some of the users said

that since the RSPB took on ownership sluice gates have been operated in a way that has made the land between BC and DE wetter over time - reference was specifically made to the small building just to the east of BC which is now flooded but which had previously been usable.

59. Given that the land south of Embankment Road in the area of section DE has been subject to infill during the relevant period of 1989-2009, there is a possibility that the precise route followed by the public may have varied slightly if the route needed to be re-established in response to the infill. It seems unlikely that any infill event resulted in an interruption to access since none of the users recalled the route being obstructed or impassable, and the RSPB has not suggested that the infill prevented use of section DE. It is not considered that the potential slight variation of the route would be such as to prevent the dedication of a sufficiently defined route over the open land between points D and E.
60. Appendix 8, Item 9 is a series of OS maps of the area which were submitted in support of a recent planning application. The OS maps range from the 1860's through to the present day. Although section DE isn't marked on the maps, it lies roughly 60m to the south west of the proposed development which is shown in outline on the maps. The series of 1:2,500 maps show that after the railway had been constructed, the land on which section DE lies is never depicted as being under water. The 1897-1898 and 1908 maps show rough grassland, and the 1939 and 1970 maps show marshy land. The 1979 and 1985 maps are incomplete and don't show the land where DE lies. The 1985-1989 map shows a change in the topography and the land on which DE lies is shown as being outside the marshy area. This seems to be the case through to the final 1:10,000 map dated 2014.
61. The submitted evidence therefore indicates that, further to paragraph 55, section DE can also be considered to be a way over land in the sense that there is land in existence and its character would be capable of dedication at common law.

Public use for a twenty year period (c) (CG 5.12 to 20)

62. The public means everyone but it is accepted that many rights of way only have local purpose, so user witnesses representing the public may be from the local community only.
63. Actual acts of use for a period of 20 years are required; it is not sufficient for users to be aware that a route was once used, or could be used. Use of a way by different persons, each for periods of less than 20 years, will suffice, if taken together they demonstrate use over a continuous period of twenty years or more. Use should have been by a sufficient number of people to show that it was use by "the public". It must bring home to a landowner that a right is being asserted against him and he had an opportunity of resistance and interruption. Usage which is of such trivial and sporadic nature that it would not be likely to make a landowner aware of the potential claim of a right fails the test.
64. Evidence of use by family, friends, lessees or employees of a landowner should be given less weight, since they can be thought of as having the consent of the landowner, and are not representative of the public at large. In this case none of the witnesses have reported having any connection to the landowner. Mr Henley was acquainted with previous owners, and Ms Mitchell kept a horse at Harbour Farm,

but neither of these relationships would imply that their use of the paths was not representative of the public at large.

65. Where a person has indicated that they are not prepared to attend a public inquiry to confirm their evidence, the evidence is generally assessed to have less weight than a person who is prepared to attend as it is unable to be questioned by an Inspector or the opposing party to probe its accuracy or completeness. In this case, 29 of the 146 witnesses (20%) indicated that they would not be prepared to attend a public inquiry; an asterisk has been used to mark the names of these witnesses in Appendix 6, Item 3, Table 1. During telephone interviews, witnesses were asked why they had indicated that they were not prepared to attend a public inquiry. The reasons given were: ill health (now better and willing to attend); not good at public speaking; and work commitments.
66. With regard to 20 years' use, the user evidence has been summarised in a series of tables (Appendix 6, Item 3). Table 1 (Item 3(a)) summarises all the user evidence forms. Tables 2-6 (Items 3(b)-(f)) are extracts of Table 1 showing those users who claim to have used each of the four sections (AB, BD, BC and DE) for the whole 20 year statutory period (note that two statutory periods are considered for section AB). It can be seen that 74 individuals claim to have used section AB every year between 1985 and 2005; 88 individuals claim to have used section AB every year between 1989 and 2009; the same 88 individuals claim to have used section BD every year between 1989 and 2009; 70 individuals claim to have used section BC every year between 1989 and 2009; and 85 individuals claim to have used section DE every year between 1989 and 2009.
67. Several other users, not included in Tables 2-6, also claim to have used each section during a part of the 20 year statutory period. That use should also be taken into account when demonstrating that there has been use of the path over a continuous period of twenty years. Table 1 can be further examined to show how many individuals claimed to use a particular section during each year of the statutory period. However, given the weight of user evidence in each of Tables 2-6, no additional analysis was considered necessary for the purposes of this report.
68. On all four sections, the frequency of use by the witnesses varies considerably. Some people used a route just a few times a year, others used it several times a week. The majority of use is for leisure e.g. dog walking, bird/wildlife watching, photography, blackberrying. Some people used the routes for utility purposes such as to go to work or the shops.
69. Based on the user evidence, it would appear that there has been continuous use of the claimed routes for a period of at least 20 years before the right to use any particular section was brought into question. For section AB, there has been a period of 20 years use prior to the route being brought into question irrespective of whether the route was barred off, thereby challenging the public right, in 2005, 2007 and/or 2012.

Use as of right (d)

70. Use as of right means use without force, secrecy or permission.
71. In this case use is considered to be generally "as of right". Three witnesses stated that they believed use was by permission (Mr Blenkinsop, Ms Blenkinsop, Ms

Edwards), but of these only one (Ms Edwards) used the claimed path within the relevant statutory period. Mr and Ms Blenkinsop only used the path from 2009 onwards. In interview, Ms Edwards said that the reason she indicated on the form that the path was permissive was because she knew the land was privately owned (she worked for the landowner, Yarland Properties Ltd) and that the owners were happy for the public to use the path. No-one specifically gave her permission to use the path, but she knew that the landowner didn't mind people using it.

72. It is considered that the use of the claimed path has been open and without stealth or secrecy, and there is no evidence to suggest use of any of the routes has ever been as a result of force.

Without interruption (e)

73. In order to constitute an interruption there must be some physical and actual interference which stops the public use for a time. The custom of locking gates to exclude the public on one day a year is a common example. The RSPB claims that public access was prevented on section AB in February 2005 for engineering works, and in 2007 and 2012 for timber extraction, although this is contradicted by the user evidence (Appendix 6, Item 2). Fencing was erected by the RSPB at Point D preventing use of section DE in or about April 2019.
74. There is no evidence of any interruption to public use of sections BD, BC and DE during the statutory period of 1989-2009.
75. There is disputed evidence of interruption to public use of section AB during the period 1989-2009, specifically in 2005 and 2007 when the RSPB states that the route was closed whilst works were undertaken. In the event that it is concluded that this evidence is strong enough to prevent deemed dedication, then consideration must be given to the 20 year period prior to the interruption (because that interruption would effectively call into question the right of the public to use the route). Considering the earliest stated date of interruption, which is in 2005, there is no evidence of any interruption to public use of section AB during the period of 1985-2005.
76. Therefore, irrespective of whether the statutory period public use of AB was interrupted in 2005 or 2007, the evidence shows a clear period of 20 years uninterrupted use on each of the claimed sections AB, BD, BC and DE.

No intention to dedicate (f)

77. Sufficient evidence to negate presumption of dedication requires evidence of overt acts by the landowners during the statutory period directed at users of the way to make known the intention not to dedicate. Actions and wording of notices must be inconsistent with the existence of a public right of way. Section 31(5) HA80 provides for notice to be given to the local authority where notices are torn down, section 31(6) provides a method of negating intention by depositing a plan and statement with the local authority.
78. The RSPB refers to an historic sign near the start of the claimed section AB with the wording "Highway Act 1959 There Are No Public Rights Of Way Over This Land". The RSPB states that it removed this sign in 2005 and replaced it with RSPB signs marking the permissive path. Several of the witness statements describe the Highways Act 1959 sign as having been erected by the neighbouring landowner

(some witnesses refer to her by name as Mrs Stratton) with the purpose of preventing people walking alongside the river and fishing from the river banks. A similar sign is still in existence on Water Board property adjoining the bridge over the River Yar - but that sign is not on land subject to this claim. The RSPB has provided photographs of signage (Appendix 8, Item 4), but none of these photographs depict the Highways Act sign as being located on any of the claimed sections. On balance it is considered that the Highway Act 1959 sign was most likely to have been erected on, and pertaining to, land adjoining the disused railway land and not erected with the intention of not dedicating a right of way on any of the claimed sections.

79. The RSPB states that it put up permissive path signs on section AB in 2005. No photographs of the signs or other evidence was provided. The witness statements make little or no reference to these signs, and it could be argued that the action of erecting these signs was not overt enough to make known to the public that there was no intention to dedicate. In the event that the RSPB's claim to have erected permissive path signs is considered sufficient to demonstrate an intention to not dedicate this section, then the relevant statutory period for this section would be the 20 years prior to the erection of the signs, i.e. 1985-2005. There is no evidence of an intention to not dedicate during this period.
80. The RSPB deposited a statement under section 31(6) HA80 in February 2009 (Appendix 8, Item 2), renewed in 2019, declaring an intention to not dedicate public rights of way on land crossed by sections AB, BD, BC, and the southern part of DE. This is considered to be an overt act directed at users which calls into question the public right of way, and consequently the statutory period for these sections is the 20 years prior to the deposit.
81. There is no evidence that any landowner other than the RSPB did not intend to dedicate a public right of way on any of the claimed routes.

Conclusion

82. It is considered that the requirements of section 31 HA80 have been satisfied for the claimed sections AB, BD, BC and DE and that the public have been using these routes 'as of right' for a full period of 20 years between 1989 and 2009.
83. The RSPB has provided some, albeit limited, evidence showing that use of section AB does not satisfy the requirements due to the erection of barriers in 2005 and/or 2007 and/or the erection of permissive path signs in 2005. As discussed above, it is considered that the balance of evidence shows public use of AB as of right for the statutory period 1989-2009. However, in the event that the RSPB's evidence is considered to have strength, then the statutory period for section AB would revert to 1985 to 2005. It would then be considered that the requirements of section 31 HA80 would be satisfied for the claimed section AB and that the public have been using these routes 'as of right' for a full period of 20 years between 1985 and 2005.

Dedication at common law

84. Dedication at common law can be express or implied. The burden of proof is upon the person claiming the right to show that an owner was aware of, and acquiesced in, the use of the path by the public. It must be shown that the landowner intended to dedicate a public right of way over their land and that there was acceptance by

the public. With express dedication the owner will have done something to make his intention clear, but in the case of implied dedication, intention may be difficult to prove.

85. The onus is on the claimant to prove intention from the evidence and in the case of implied dedication this is usually user evidence, which also serves to prove acceptance of the dedication. There is no minimum period or level of use required. However, use by the public must have gone on openly, uninterrupted, as of right and for so long that dedication can reasonably be inferred; the evidence must show use to have been so notorious that the landowner must have been aware of it, acquiesced in it and therefore intended to dedicate.
86. In this case the user evidence is of a consistently high level of use over a lengthy period, covering several changes of land ownership. The British Railway Board sold land parcel IW57447 to the Bembridge Harbour Investments Company in July 1968. The current owners, the RSPB, purchased IW57447 from Maritime & Leisure Investments Ltd in March 2004. One of the witnesses refers to Yarland Properties Ltd as a landowner; that company would have owned the land between Bembridge Harbour Investments and Maritime & Leisure Investments, and there may also have been other land owners.
87. As previously discussed, whilst in the ownership of the British Railway Board, land comprising a disused railway is generally considered incompatible with the dedication of a public right of way. The RSPB's evidence is that they actively took steps to show that they did not intend to dedicate a public right of way. However, in the years between 1968 and 2004 the user evidence, from both the evidence forms and the telephone interviews, is that all four sections AB, BD, BC and DE were openly and frequently used by the public and there is scant evidence that the public use was challenged or obstructed.
88. In her telephone interview, Ms Edwards stated that when she worked for Yarland Properties Ltd, the landowner took the view that it was fine for people to walk and ride on the railway line path as they understood it was safer than using the road. In Ms Edwards' opinion it was more that Yarland Properties acquiesced in the use rather than they pro-actively gave permission. No-one specifically gave her permission to use the claimed routes, but she knew that the landowner didn't mind people using them. Ms Edwards understands that Yarland Properties initially closed the path one day a year, but stopped doing this in the mid 1970's as they thought it was pointless.
89. It is considered that any reasonable landowner would have been aware of the public use and, other than Ms Edwards' evidence that one of the landowners closed the path once a year until the mid 1970's, there is no evidence to show that the use was challenged. It is considered that the available evidence supports the proposition that a common law dedication of public rights on the claimed sections AB, BD, BC and DE has taken place.

Status

90. The application form calls for the addition of a footpath / bridleway on all sections of the claimed path. The user evidence forms show that most people believed the claimed path to be either a footpath or a bridleway. However it is the actual use of

the path that establishes the status - a footpath is established through use by the public on foot, and a bridleway is established through use by the public on a bicycle and/or horse as well as on foot.

91. The RSPB, when stating that use of the claimed path was permissive (Appendix 7, Item 1), claims that permissive use was only by foot, and the only horse usage of any of the claimed routes that it was aware of was by the owners and occupiers of the Harbour Farm stables who used the routes as part of the farm owners' access rights. However, the RSPB's section 31(6) deposit (Appendix 8, Item 2) states that consent is given for members of the public to walk/ride over sections AB and BD, thus implying an awareness that the public did ride bicycles and/or horses on these sections.
92. The summary of user evidence (Appendix 6, Item 3(a), Table 1) shows that the vast majority of witnesses used the claimed path on foot. Only two people did not walk the path - Ms V Attrill, who rode a horse on all sections between 1975 and 2016, and Mr Bateman who rode a bicycle on sections AB and BC between 1991 and 2016. A total of 28 individuals used two or more sections on a bicycle and/or horse. Mr Brooks used the path (except section BC) on a motorcycle as well as on foot, bicycle and horse. Of all the people who rode horses, only Ms Mitchell mentioned keeping a horse at Harbour Farm. Taken as a whole, the user evidence supports the establishment of at least footpath status. Further analysis of the user evidence is necessary to determine whether it supports the establishment of bridleway status.
93. Appendix 6, Items 3(b)-(f), Tables 2-6 show that around 20 people used each section on a bicycle and/or horse every year during the applicable 20 year statutory period. With the exception of Ms Attrill, all of these individuals also used the claimed path on foot. The user evidence forms only indicate how many times per year an individual used the path in total - the form doesn't require the user to state how many times they used each section on foot, how many times on a bicycle, etc. Therefore it was necessary to question a selection of cyclists and horse riders to establish how frequently they used the routes by a means other than on foot.
94. Of the 14 telephone interviews carried out, 3 interviewees had walked and cycled, 3 had walked and ridden a horse, 2 had walked, cycled and ridden a horse, and 6 had only walked. All except one of those that had cycled and/or ridden a horse had done so on all four sections - Ms Scott didn't use section DE. Of the two options for connecting to Embankment Road at the eastern end, both BC and DE were used by both cyclists and horse riders. DE was generally preferred because it provided a longer off-road route, but BC was sometimes chosen after wet weather when DE became muddy and more difficult to use. Ms Edwards' evidence was particularly strong - she had used the claimed path twice a week on horseback from 1966 to 2020, using BC more often than DE due to DE getting muddy. Mr Preston used the path on both cycle and horseback from 1960, riding horses until about 2000 and cycling until recent years. He used both BC and DE but used DE more frequently as that meant less use of the road. Ms Scott rode a horse on the path once or twice a week until the early 2000's always using BC rather than DE. Mr Squibb used to cycle to school five days a week in the 1980's and 1990's. Since then he has continued cycling the path, but less frequently. He cycles on both BC and DE. Ms Valvona has cycled and ridden a horse on the claimed path from 1978 onwards. Her preference is to use DE because it has better visibility than BC when

exiting onto Embankment Road. None of the horse riders questioned said that they kept their horse at Harbour Farm.

95. There is strong evidence that all four claimed sections AB, BD, BC and DE have been used openly and frequently by the public on bicycle and on horseback, as well as on foot, throughout the statutory period 1989-2009. There is similarly strong evidence of use of Section AB throughout the alternative statutory period 1985-2005. It is therefore considered that the user evidence supports the establishment of a public right of way with the status of bridleway on all four sections.

CONSULTATION

96. Bembridge Parish Council is the only statutory consultee. The Parish Council did not submit a formal response, but three councillors responded individually. All were in favour of the routes being recognised as public rights of way and were aware of public use of the routes. Two had used the routes themselves, one had previously submitted a Witness Form.
97. The present elected members for the area are Councillors Jonathan Bacon (Brading and St Helens) and Joe Robertson (Bembridge), both of whom were consulted. A response was received from Councillor Bacon in support of the proposed route (Appendix 3).
98. Landowners are contacted to explain the application and procedure for determining it, and invited to submit evidence. Their response is given under 'Landowner evidence' above. Property and landownership details, including Land Registry plans and documents, are in Appendix 4.
99. Landowners affected by the application are:

Freehold proprietors of land subject to the claimed path Sections AB, BD, BC and part of Section DE (IW57447): The Royal Society for the Protection of Birds, The Lodge, Potton Road, Sandy, SG19 2DL.

Note that the part of Section BC that lies between IW57447 and Embankment Road is not registered with the Land Registry, but it is understood that the RSPB is the acknowledged freehold proprietor.

Freehold proprietor of land subject to the claimed path part of Section DE (IW24133): Bembridge Investments Ltd, Baie House, Yarmouth, Isle of Wight, PO41 0ND.

100. All reports on modification order applications are submitted to landowners and the applicants for comment before the report is submitted to the committee for decision. Neither the applicants nor a representative of Bembridge Investments Ltd submitted comments on the Committee Report. The RSPB did submit comments and these are copied at Appendix 9, Items 1-3. A brief summary of, and reply to (where considered necessary), the comments follow below in paragraphs 101-103.
101. In Appendix 9, Item 1, the RSPB submits evidence of sections BC and BD being closed by means of fencing in 2005. Appendix 9, Item 2, contains the RSPB's Site Manager's comments on the Draft Committee Report. These comments are further

refined in Appendix 9, Item 3, the RSPB's formal response to the Committee Report. The email accompanying this response indicates that the RSPB would like to speak at the Committee Meeting.

102. The RSPB claims that sections BC and BD were fenced off in 2005, making them inaccessible to the public. This contradicts the user evidence, which is that none of the sections were physically closed thereby preventing use. Paragraphs 49 - 54 of this report discuss a similar scenario for section AB. It is similarly considered that in the event that the public use of section BC and BD was considered to have been challenged in 2005, then the statutory period for these sections would be 1985 - 2005. The conclusions drawn in paragraphs 83 and 89, that there is sufficient public use during this period to raise a presumption of the dedication of a public right of way, also apply to sections BC and BD.
103. The RSPB report refers to a potential conflict between the conservation designation and the existence of a public right of way on section DE, and suggests that since it considers the evidence of use of this section to be weak, then section DE should be removed from any Order. The RSPB also suggests that a solution is available to all parties, by means of negotiation. However, the DMMO process can only consider whether or not the available evidence suggests that a public right of way has been dedicated, either under HA80 by 20 years continuous use or under common law. The desirability or otherwise of the right of way is not a relevant consideration, and the route of the right of way cannot be negotiated within the DMMO process. In the event that a right of way is found to exist across land with a conservation designation, then appropriate management measures can be taken in order to accommodate both the public right and the conservation requirements.
104. If an order is made, there is a statutory advertisement period of six weeks during which anyone may make representations or objections.

FINANCIAL / BUDGET IMPLICATIONS

105. Normal costs incurred in processing this application and resulting from adding the path to the Definitive Map and Statement, should this be the outcome, will be contained within current Rights of Way revenue budgets. The council has a legal duty to process the application.

LEGAL IMPLICATIONS

106. In the event of an order being made and if no objections are received during the six week statutory advertisement period, the council may itself confirm the order as unopposed. If any objection is registered during the statutory period, or if the council considers the order requires any modification, it must be referred to the secretary of state. An independent inspector will be appointed by the Planning Inspectorate to hear the objections and decide whether the order should be confirmed, with or without modification. A public inquiry may be held in modification order cases as there is witness evidence to be heard.
107. The council bears the cost of arranging the inquiry and each side bears their own costs of appearing unless there are exceptional circumstances. An order becomes legally effective only if and when it is confirmed. The decision of the inspector

concludes the modification order process.

108. In the event of an order not being made, the applicant may appeal to the secretary of state, who may direct the council to advertise an order which then follows the same procedure described above.
109. The validity of a confirmed modification order can be questioned by application to the High Court during a six week period from the date of publication of confirmation. This is a form of judicial review of the procedure only, not an opportunity to further challenge the evidence on which the order is based. Costs of litigation are awarded in the usual way according to the outcome of the application.
110. Public footpaths and bridleways dedicated after 16 December 1949 are not maintainable at public expense unless dedicated as part of a public path order or agreement or other formal adoption procedure under the HA80 or its predecessor.

Implications under the Human Rights Act 1988

111. In respect of Article 6 (right to a fair trial) of the European Convention on Human Rights, it is considered that by submission of the report to the applicant and to landowners for comments and by advertisement of an order with the opportunity of independent determination in the event of objection, the council has met the requirements of this article.
112. In respect of Article 8 (respect for private and family life) and Article 1 of the First Protocol (protection of property), the impacts that the modification order might have on the owners of property affected by any order which may be made and on owners of other property in the area and users of the paths before and after modification have been carefully considered. While there may be some interference with the rights of owners and occupiers if a modification order is confirmed, it is considered proportional to the legitimate aim of the council and in the public interest.

EQUALITY AND DIVERSITY

113. The processing of this application does not contravene any statutory obligations under the Equality Act 2010, and causes no adverse impact on people of any protected characteristic.

PROPERTY IMPLICATIONS

114. There are no property implications. The land that is the subject of the application is privately owned. Any public footpath or bridleway that may be added to the Definitive Map and Statement through this application process will not be maintainable at public expense unless formally adopted under the HA80.

SECTION 17 CRIME AND DISORDER ACT 1988

115. The council has a duty to make an order to modify the Definitive Map and Statement or not according to its conclusions on the evidence relating to the dedication of highways. Should a right of way be confirmed, any powers that may be available to the council with respect to public paths and byways for the purposes of reducing crime and disorder could be considered.

OPTIONS

116. The committee has a statutory duty to determine the application by making a decision. The decision must be based on the evidence available as to whether a presumption of dedication has been raised, or what public rights exist or are reasonably alleged to exist, if any; a conflict of evidence does not prevent an order being made. Depending on its conclusions the committee will decide on one of the following options.
117. If an order is made (Options 1 - 3), it is recommended that the width or widths specified in the order are determined by Council staff according to the user evidence and physical characteristics on the ground.

Option 1

118. Make an order to add the path described in the application to the Definitive Map and Statement with the status of footpath.

Option 2

119. Make an order to add the path described in the application to the Definitive Map and Statement with the status of bridleway.

Option 3

120. Make an order to modify the Definitive Map and Statement in some other way than Options 1 and 2.

Option 4

121. Reject the application by making no order.

RISK MANAGEMENT

122. In the unlikely event of a High Court application costs follow the decision. Such applications normally involve high litigation costs and should the council be found at fault and costs be awarded against it, the council will be liable for those costs. Such liability for costs exists regardless of which decision is taken and whether the committee accept the recommendation or not.
123. In light of the risk of cost to the council as identified in the preceding paragraph and of the legal and financial implications set out in paragraphs 105 to 115, the committee in making its decision, must follow all the legal guidance set out in paragraphs 5 to 11 above and in all parts of Appendix 5. The committee should consider the material evidence and apply the legal tests which are outlined in this report, with the assistance of the council's legal services.
124. The consequences of Options 1 to 4 are set out in paragraphs 105 to 123 above. These consequences are all part of the normal statutory procedures provided by WCA81 for reviewing the Definitive Map and Statement.

EVALUATION

125. As described in paragraphs 82 and 83, 89 and 95 it is concluded that the claimed path is reasonably alleged to exist as a public right of way with bridleway status on the basis of deemed dedication under section 31 HA80 and under common law.
126. Any order to add a path to the Definitive Map and Statement must state the width of the path in the order; the width may vary between sections and within a single section. The descriptions of the path width in the user evidence accompanying this application vary considerably, and the user evidence forms do not prompt the user to describe how the width might vary along the length of the claimed path or the different sections. Therefore, in the event that it is decided that an order should be made, further work will be required to determine the appropriate width or widths. Such work may be undertaken before the order is made by Council staff according to the user evidence and physical characteristics on the ground.

APPENDICES ATTACHED

Appendix 1: Application

Appendix 2: Site Maps and photographs

Item 1. Definitive Map 2000 extract.

Item 2. Site photographs 1 – 18.

Appendix 3: Formal Consultation Response - Councillor Jonathan Bacon email 18 June 2021.

Appendix 4: Land ownership

Item 1a-c. Land Registry official copies IW57447.

Item 2a-b. Land Registry official copies IW24133.

Appendix 5: Legal background

Item 1. Legal background and guidance.

Item 2. Quasi-judicial role of the panel.

Item 3. Planning Inspectorate Definitive Map Consistency Guidelines, Section 5, pages 4 to 16

Item 4. Section 31 Highways Act 1980.

Item 5. Planning Inspectorate Definitive Map Consistency Guidelines, Section 4, pages 7 to 9.

Item 6. DEFRA Circular 1/09, pages 18 to 20.

Appendix 6: User evidence

Item 1. User evidence forms.

Item 2. User witness interview notes.

Item 3. User witness use tables:

3(a) Table 1. Summary of evidence

3(b) Table 2. Use of Section AB 1985-2005

3(c) Table 3. Use of Section AB 1989-2009

3(d) Table 4. Use of Section BD 1989-2009

3(e) Table 5. Section BC 1989-2009

3(f) Table 6. Section DE 1989-2009

Note: The content of Tables 2 and 3 is the same - all users who started using Section AB in or before 1985 continued to use this Section until 2016/17.

Appendix 7: Landowner evidence

- Item 1. RSPB email dated 24 July 2019
- Item 2. RSPB email dated 2 March 2021

Appendix 8: Documentary evidence

- Item 1. Statutory Declaration 2001
- Item 2. Section 31(6) Deposit, 2009
- Item 3. Photograph, section AB
- Item 4. Photographs, signage
- Item 5. Section 55(1) British Transport Commission Act 1949
- Item 6. Declaration 2005
- Item 7. Site Manager's Narrative
- Item 8. Extract from "The Bembridge Branch Line" 1988
- Item 9. O.S. Maps 1862-2014

Appendix 9: Applicant and landowner comments on draft report

Items 1-3. RSPB comments

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