


**From:** Keith Ballard [REDACTED]   
**Subject:** RE: Claimed public right of way, Bembridge - Draft Report for Comment  
**Date:** 4 April 2022 at 10:27  
**To:** Sarah Manchester [REDACTED]  
**Cc:** Clifford Percival [REDACTED]

KB

Dear Sarah.

I have some additional evidence that relates to section of path B to C & B to D.

The lagoon works that are referred to in paragraph 38 were carried out in 2 stages in 2005. Stage 1 was the works where the excavator was parked on path A to B and photographed, it involved installation of an penstock sluice and pipe, requiring considerable excavation works. I can assure you that the site was closed as standard Health and Safety procedure. The second stage involved installation of another pipe with headwalls, which involved digging a 2.5 metre deep continuous trench across path B to C and path B to D, again securely fenced because of the risks with machinery and deep trenches. I had to make alternative access arrangements for the residents of Harbour Farm to access their property via path A to B, which involved removal of one of 2 gates, where the remaining one can still be seen in the hedge. On the ground there is currently post and rail fence at each end of the pipe that was installed and below are some pictures of the location and finished work.

The above works affect the period of use identified in paragraph 52 and mentioned in paragraph 81 of the draft report where section B-C and B-D should have the same statutory period.

### Location of Pipe involving deep trench excavation



### Pictures of completed works







Kind regards, Keith.

**Keith Ballard**  
Site Manager

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**From:** Sarah Manchester [REDACTED]  
**Sent:** 23 March 2022 18:41  
**To:** Clifford Percival [REDACTED]; Malcolm Thorpe  
**Cc:** Keith Ballard [REDACTED]  
**Subject:** Claimed public right of way, Bembridge - Draft Report for Comment

Dear Cliff / Malcolm

Please find attached a copy of the Draft Committee Report about the claimed public right of way along the disused railway line at Bembridge. Please note that the lists in the top (Checklist) and bottom (Appendices) sections of the Report have not yet been completed.

This report is being circulated to the landowners, and the applicants, prior to submission to the Committee for a decision. If you would like to comment on the Report, then your comments will be appended - see paragraph 98 of the Report

appendices - see paragraph 20 of the report.

Please would send your comments to me by **Thursday 7th April 2022**.

I haven't attached the Appendices to this email, due to size considerations. However, if you would like a copy of any of the appendices, please let me know.

Please get back to me if you have any questions.

Kind regards,

Sarah

Sarah Manchester



**From:** Keith Ballard [REDACTED]  
**Subject:** RE: Claimed public right of way, Bembridge - Draft Report - RSPB Response  
**Date:** 11 May 2022 at 10:10:45 BST  
**To:** Sarah Manchester [REDACTED], "Clarke, Darrel"  
[REDACTED]

Dear Sarah & Darrel.

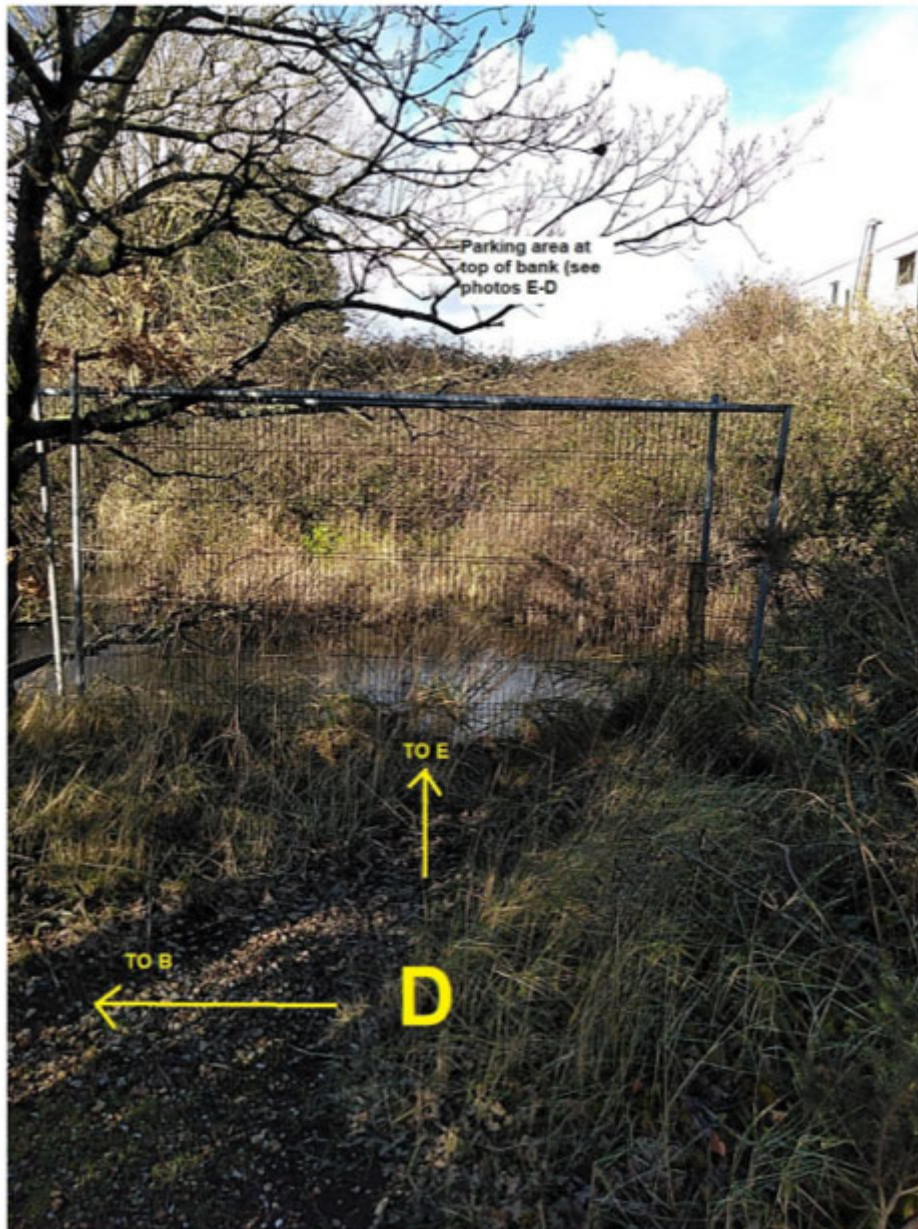
Herewith is a list of inaccuracies within the draft committee report sent to us for comment, with some critique over the evidence gathered. We will send a statement of truth when we have further legal advice .

**It is the RSPB's opinion that the evidence for D-E and bridleway use of B-D is not credible. The evidence of Bridleway usage for B-D and claimed existence of D-E appears weak.**

**Inaccuracies within the draft report**

**Location, Site Characteristics and General History**

- Para. 19. The report states -"Section DE: The claimed path passes through an area of scrubby vegetation". Appendix 2, Item 2, Photograph 9 shows that there is open water too, which is the designated SAC lagoon. The fence is there as required to protect the species with statutory protection within the Habitats Directive (Special Protection Area and Special Area of Conservation) and the Wildlife and Countryside Act (Site of Special Scientific Interest).



Photograph 9: Point D (2)

### User Evidence

- **Para. 21 to 27**  
The below image is a sign put up in St Helens by the claimant to collect user evidence in 2016. The sign refers to the old railway track, section D-E is not part of the old railway track.



The user evidence forms provided by the claimant had a pre-marked route drawn on them, identifying the only section of the railway route between St Helens & Bembridge that can still be walked and owned by RSPB, with the Harbour Farm entrance track B to C and claimed route D-E included.

The route does not appear to have been verified on the ground with any of the users to check their recollection is as shown on the pre-drawn maps they were given.

It is our opinion that the user evidence projects the after 2015 use of the paths onto a period before 2015 and as far back as the 1950's. The telephone interview notes discuss the more recent period between 2005 and 2020 without much exploration of the claimed usage period prior to 2005 which the claim relies on. We know the events relating to the land since acquisition in 2004 and find that the user evidence beyond 2004 is inaccurate, which brings into question the reliability of the statements relating to usage prior to 2004.

The terrain of claimed route D-E would not have tolerated the amount of claimed passes by Horse, bicycle and motorbike by the few that have claimed to have ridden it.

One of the telephone interviewees, Mr Newell, stated - "The boatyard crossed by DE is owned by Mr Norris - there is a for sale board up". In fact, Mr Norris's boatyard is further North East than the mapped location of D-E on RSPB property.

Several of the claimed users that were interviewed claimed the RSPB would not have extracted timber via section A-B, the fact is we extracted all of the timber from the east side of the river via that route.

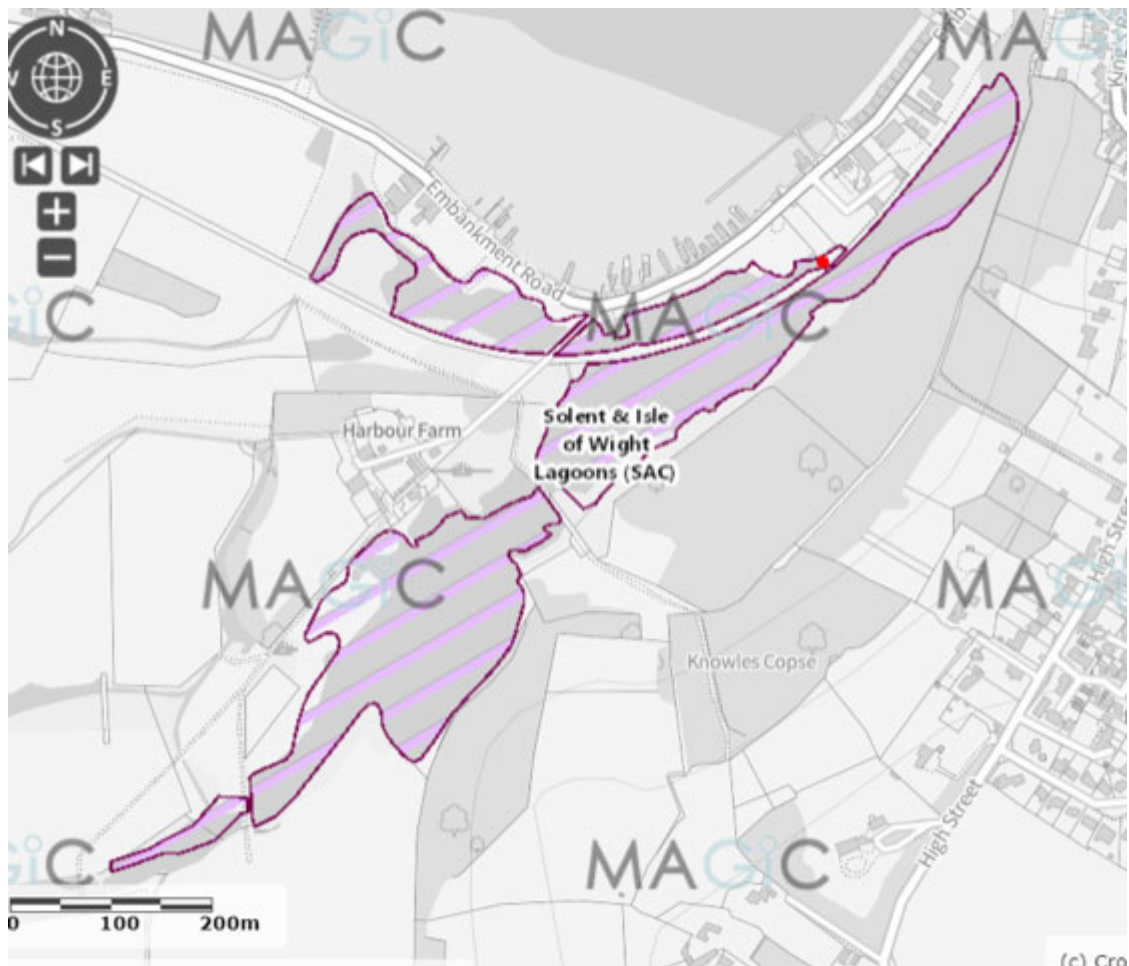
Several telephone interview notes state that the lagoon was not water before RSPB and that the RSPB made it wetter, which is incorrect. The Atkins study shows that the lagoon was water as far back as 2002 and the SAC notification for the lagoon area dates back to 1996. That lagoon level is perched above the rest of the marsh at +0.3m above ordnance datum and is isolated from all other water bodies.

### Landowner Evidence

- **Para. 31.** “The RSPB does not dispute that the claimed routes have been used by the public”. This is incorrect – The RSPB do dispute the period of use of D-E, D-E horse and cycle use, and horse use of B-D.

### Documentary Evidence

- **Para. 34 & 56.** Is incorrect about the extent of the lagoon it has been water prior to 2002 (Atkins report 2002 & SAC designation from 1996)



Extract from DEFRA Magic website showing the definitive area of the SAC lagoon – RSPB boundary and D-E marked with a red dot.

The lagoons were notified as a candidate Special Area of Conservation (cSAC) in 1996 before their adoption as a Natura 2000 Site. The designation is specific to the lagoons (water) and it can be seen that when identified the lagoon in the vicinity of claimed route D to E extended further east than the RSPB land boundary marked with a red dot.



The lagoons' designation relates to the Wildlife and Countryside Act schedule 5 and 8 protected species present within the water and mud, namely Starlet Sea Anemone, Bembridge Water Beetle and Foxtail Stonewort. The notification and designation of the lagoons does bring the legitimate use as a path on foot, horse or bicycle into question without committing a criminal offence of harming protected species and habitat from the point of notification as a cSAC in 1996 and SSSI in the 1970s, if indeed there is evidence of a route being used by the public in general at that point in time.

As previously stated, the RSPB is certain that the public at large were not using route section D to E through the SAC lagoon prior to 2015. The damage caused to the lagoons forced us to protect the area using fencing in 2019 to protect the lagoon habitat and species. A route cannot be used if it damages the SAC habitat or harms schedule 5 and 8 species which are protected under the Wildlife and Countryside Act.

- **Para 36 & 41.** Discussion about the land filling. It is reasonable to expect users of the old railway line to have witnessed the infill occurring and should recall how they negotiated it, particularly along claimed section D-E where significant infilling occurred.

### Evaluation of Evidence

- **Para. 38 & 52.** The report states - "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"

We dispute that the period for B-C and B-D can be 1989 to 2009 because the lagoon works in 2005 involved digging a 3 meter deep trench across B-C & B-D as well as security fencing to protect that work. This trench was dug to install a pipe and headwalls, there are short lengths of post and rail fence installed that identify each end of the pipe that now lies under B-C&B-D. The works on B-D&B-C followed the works where the digger is photographed on A-B and we had to create alternative access along A-B for the residents of Harbour Farm whilst works were carried out. To enable their ease of access we removed One of 2 rusty gates at point B, the other gate still exists in the hedge.

The statutory periods for B-C & B-D would therefore be the same as A-B. **Evidence submitted by K.B on 4/4/2022 for this.**

- **Para. 43.** Refers to a book where a later edition has those paragraphs removed, the book makes no reference to D-E.
- **Para. 52.** D-E usage was after 2015 and stopped up with fences in 2019, never used by public at large.
- **Para. 55.** It is possible that D-E could have been much further East
- **Para. 56.** See Para. 34 above
- **Para 57.** Considering the change in ground elevation created by the infill and the volume of material require to achieve that elevation It is difficult to comprehend how the claimed users were not obstructed by the infill operations, and why the claimed users have no recollection of the infill operations. There could have been significant variation of the route.
- **Para 59.** The use of the claimed D-E alignment post the point of the SSSI,SPA & SAC conservation designations is damaging and therefore illegal.
- **Para 70.** The public at large have not use section D-E, potential use by stealth.

- **Para 72.** Further evidence submitted that shows B-D & B-C was closed for lagoon works in 2005, so period is incorrect. There was no apparent use of D-E prior to 2015.

### **Conclusion**

- **Para. 80,** The evidence for D-E and bridleway use of B-D is not credible. The evidence of Bridleway usage for B-D and claimed existence of D-E appears weak.
- **Para. 85,** D-E was not being used over the claimed period.
- **Para. 87.** We challenge that D-E existed, so could not have been closed by Yarland properties.

### **Status**

- **Para. 92.** States “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”  
It can be disputed that Ms Edwards evidence is strong because alignment D-E did not exist as a path prior to us noticing damage to the lagoon in 2015, and we securely fenced off any access in 2019 making use of D-E impossible. It is highly unlikely that a horse could have ever been ridden through the lagoon. We are not aware of any use on horseback of B to D over the last 17 years, B-D would have been difficult to navigate on horseback due to the path being narrow with low overhanging tree limbs. Because her claimed use from 2005 to 2020 is not plausible, it brings into question Ms Edwards claim of use prior to 2005.

### **Legal Implications**

The management and use of the claimed sections does have legal implications connected with the Habitats Regulations and Wildlife and Countryside Act.

### **Property Implications**

Creation of the route as a throughfare to include disputed section D-E will have an impact on the RSPB’s use of its land as a nature reserve.

Kind regards, Keith.

**Keith Ballard**  
Site Manager

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**From:** Sarah Manchester [REDACTED]  
**Sent:** 14 April 2022 15:25  
**To:** Keith Ballard <[REDACTED]>  
**Cc:** Darrel Clarke <[REDACTED]>  
**Subject:** Re: Claimed public right of way, Bembridge - Draft Report - RSPB Response  
**Importance:** High

Dear Keith

Thank you for this update, which I can confirm has been received.

I'll get back to you again if there will be any changes to the procedure previously described for the processing of the application.

Kind regards,

Sarah

Sarah Manchester  
[REDACTED]

On 14 Apr 2022, at 12:30, Keith Ballard <[REDACTED]> wrote:

Dear Darrel and Sarah.

Thank you for providing the draft council committee report and the appendices for our comments. We have been studying it over the two weeks we had been given but have found that it has raised issues. In particular we refute the use of section D to E prior to 2015 and the claimed type of use of B to D. We are taking legal advice and will be issuing a statement of truth to you in the near future, which will include a schedule of inaccuracies that we have found within the report.

Yours Sincerely, Keith.

**Keith Ballard**  
Site Manager

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Isle of Wight Council  
Appeals Sub Committee

30<sup>th</sup> May 2022

### **Response of RSPB to Committee Report to Appeals Sub Committee – Application for Definitive Map Modification Order – Footpath/Bridleway, Disused Railway, Bembridge, Isle of Wight**

This is a summary response to a draft Committee Report provided by Darrel Clarke, Rights of Way Officer. It highlights evidence and points made previously relating to this proposal. There are a number of points of detail in the Report that RSPB contend are either inaccurate or misleading or both – these are addressed below using the same numbering as in the Committee Report.

The RSPB position is that it supports public use of the major part of the claimed route as exemplified by defining the route as a permissive path since 2007, at a time when there was no legal permitted use of the route as it was not a right of way shown on the Definitive Map.

RSPB has sought to work with the Council and others to satisfactorily resolve the issues surrounding the Applicants claim for a Modification Order in January 2017. We have not at any time sought to curtail public use, as suggested by the Applicant on the signage he portrayed at the outset of the application process.

RSPB believes that a solution satisfactory to all is attainable and would not oppose bridleway status to A-B-C and footpath status to B-D, both as claimed by the Applicant. The divergence of view with the Application is solely with the use of claimed route D-E, over which RSPB considers there is insufficient evidence to support a RoW designation and further, that issues would need to be resolved with the designation as a Site of Special Scientific Interest, a Special Protection Area, and a Special Area of Conservation, before any such access route can be considered. Home Farm Lane, where it meets Embankment Road at Point C is 210 metres from approximate point E on the claimed route D-E. If it is considered that a second connecting section of RoW to Embankment Road is required in addition to B-C, then it will be necessary to look beyond RSPB land ownership and the boundary of the SSSI/SPA/SAC to provide such a link. It is of relevance to say that the current situation whereby the public use of the disused railway links to Embankment Road by way of Home Farm Lane (which RSPB has supported via its permissive path) has meant that section B-D of the disused railway is more tranquil and less disturbed in comparison to the more frequently used section A-B. This would be expected on the basis that those walking to D then turn around to return either to A or use Home Farm Lane. The relative undisturbed nature of B-D is valued by those seeking a quieter experience and viewing nature close at hand – this value is mentioned by a number of witnesses. Creating another link to Embankment Road in the vicinity of D-E would produce a circuit which will increase visitor numbers with the risk of greater disturbance to the

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attributes valued by visitors to this part of the Reserve, notwithstanding potential detrimental effects on the designated lagoon site. If a Modification Order is approved for Section D-E along the route claimed, public use and the maintenance of the RoW network by the Council will conflict with the requirements to protect the special interests of the SSSI/SPA/SAC and it is quite likely that access infrastructure needed to facilitate practical access would not be capable of approval under the Habitats Regulations. Thus, formalising the use of D-E along the route claimed is likely to create an intractable problem incapable of satisfactory resolution, hence the proposition to re-visit the requirement and, if justified, to work with other landowners and stakeholders to find a practical and useable link to Embankment Road that will protect these special interests. As the evidence of use of D-E is at best weak, it is suggested that the inclusion of section D-E be removed from any proposed Modification Order.

The recommendation to confirm a Modification Order to bridleway status goes above and beyond the Application submitted – which is not for bridleway status across the entire route. Such a recommendation is without foundation and is not supported by the evidence and would not, in our view, be supported by an Inspector. RSPB’s suggested course of action is to revive dialogue to seek a practical solution to linking to Embankment Road that would meet the requirements of all stakeholders rather than the present course of action which is likely to result in further conflict at a public local inquiry. It will be for the Council to decide how it wishes to progress this issue, RSPB, for its part, would object to a Modification Order that includes claimed route D-E and one that seeks bridleway status for B-D-E – it does not oppose footpath status for B-D. The RSPB view is that Option 3 can be supported by endorsing the Applicant Mr Wade’s proposition with the modification of removing section D-E. Alternatively Option 4 could be adopted and dialogue re-opened on finding a solution, if required, to claimed section D-E.

Detailed comments on the Committee Report, using the Report’s numbering are as set out below:

#### EXECUTIVE SUMMARY

1. To be clear, the application made for a modification order is for a bridleway along part of the disused railway and along BC to Embankment Road and a footpath along the remainder of the disused railway and link (B-D-E).
2. It is not agreed that the evidence submitted is sufficient for it to be inferred that the claimed route should be added to the definitive map as a public bridleway, which, in any event, is over and above what the Applicant has claimed.

#### BACKGROUND

11. It is contended that an Inspector would not take the view that the standard of proof to be applied (i.e., the balance of probability), has been met sufficiently to endorse the Application in full and the recommendation made.

#### STRATEGIC CONTEXT

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12. The applied for route (excepting short section D-E) has been defined by RSPB as a permissive path since 2007. There is against a backdrop when the route has not been included as part of the Definitive Map. The permissive path has been advertised for use on RPSB's trail guides and website since that time and RSPB has no intention of removing that public use. The achievement of the Council's Corporate Plan in celebration of the environment and unique island characteristics is therefore already being delivered and has been for some 15 years. Conversely should the modification order be endorsed as recommended the environment will be damaged and the public's enjoyment of it reduced.

## APPLICATION AND EVIDENCE CONSIDERED

### Reason for Making the Application

14. The 2009 deposited statement defined the route A-B-D as a permissive footpath, this walking route having been shown as such in the RSPB Trail Guide first produced in 2007.

15. It had been known since the publication of the RSPB Trail Guide in 2007 that the route could be used as a permissive path i.e., nine years prior to the Application. The Applicant used wording on a sign that suggested there was a risk of RSPB taking away 'a right to walk the old railway track'. This is not the case and indeed, the opposite view could be taken as RSPB has enabled the public to use the route by way of a permissive path when no other formal rights were included on the Definitive Map.

### Location, Site Characteristics and General History

19. The descriptor of route D-E, as passing through an area of scrubby vegetation, is misleading. Claimed route D-E passes through lagoon area that is designated a Site of Special Scientific Interest (SSSI) and as part of the Solent & Isle of Wight Lagoon Special Area of Conservation (SAC) and a special Protection Area. This area was a candidate SAC as far back as 1996 and designated SAC in 2000. The site is therefore of National and European importance and protected under the Habitats Directive (Special Protection Area and Special Area of Conservation) and the Wildlife & Countryside Act (Site of Special Scientific Interest). The designated area within the RSPB ownership and over which the claimed route D-E passes, is water for much of the year and prior to illegal land fill operations outside the RSPB land ownership, the lagoon area extended further east across the claimed route.

### User Evidence

21. The evidence forms included a map with the claimed route identified on the map. The provision of an already marked-up map may have influenced the recollections of some users and has not proved helpful in evidencing which parts of the route were used by whom and by what means (foot/bicycle/horse). As an example: Appendix 6 3d purports to show that 15 respondents (10% of respondents) have used section B-D on a bike and 8 (5%) have used the section on horseback. When you look at the evidence those respondents submitted on their forms and the notes from the

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telephone interviews (for the 6 that were interviewed) it is quite clear that most of these claimants do not specifically claim to have used B-D by bike or horse and in most cases any inference to be made is that this section was used on foot only. This view would endorse the application by Mr Wade which is for footpath (not bridleway) status for sections B-D-E.

As Mr Wade's application is a bridleway on part (A-B-C) and a footpath on the remainder (B-D-E) one would have expected telephone interviews with claimants to have sought to establish clarity of use in respect of B-D-E – it seems that this was not done. It is acknowledged that by conducting telephone interviews, it would be very difficult to obtain that further clarity, and it is said that Covid restrictions prevented meeting in person. That may be so, however the result is that the Notes from those telephone interviews do not produce clarity of use of section B-D-E with the outcome that, in respect of section B-D-E, the evidence does not support the recommendation of modification to bridleway status. The recommendation is not in accordance with the Applicant's Claim, nor the Notice served on RSPB as landowner.

Overall, user evidence is not reliably described.

23. Of those 28 witnesses referred to, that have claimed to have used the route on bike or horse, many cases had not used section B-D-E in that way or there is no evidence to make the supposition that B-D-E was used by bike/horse as opposed to on foot. The number of claimed users of D-E is minimal, which is not unexpected bearing in mind the unsuitable ground conditions for bikes and horses – section B-D of the disused railway is very different in nature to section A-B, it is a narrow and twisty path less suitable for the safe passage of horses and bikes and D-E is steep and narrow and at best very wet. This also helps to explain why bike and horse riders in the main kept to A-B-C as there was effectively no through route beyond D for such use. Thus, since 2005, the RSPB Site Manager has only seen horse usage on section A-B-C.

26. The final sentence is misleading – clearly many users will have used one of the connecting routes to Embankment Road (B-C or D-E) or to have gone beyond D on the disused railway before that option was closed off. However, it is also clear that the use of D-E has been minimal in comparison to the use of the Home Farm Lane (B-C). In RSPB's ownership since 2004, usage of D-E has only been observed since 2015 with the laying of planks etc to assist traversing the very wet area. The use of D-E is considered to have been minimal for a combination of reasons:

- B-D has been used almost entirely by those on foot.
- At one time, the disused railway was not closed at D, and users could continue on beyond, not therefore needing D-E. Permanent fencing erected in 2005 prevented access beyond D.
- The difference in levels from Embankment Road down to the lagoon is significant, making the route a steep incline.
- The lagoon area, over which route D-E is claimed, extended further north-east prior to illegal landfill off the RSPB ownership, which would have meant the wet area extended further and would have made access through/across claimed route D-E more difficult still.



- The Applicant and several claimants suggest that RSPB have made this area wetter and mention sluices being put in. The sluices were not put in by RSPB and relate to the river and not to the lagoon area which is a separately hydrological unit and ‘perched’ water body. RSPB management of the Reserve has had no impact on the alleged ‘getting wetter’ of this area.
- The claimed route (D-E) being interrupted, and access prevented by developments at various points in time.
- Uncertainty re the route of D-E e.g., from the telephone interview with Mr Newell, it is noted that ‘the boatyard crossed by D-E is owned by Mr Norris’. Mr Norris’s boatyard is in fact further north-east of the claimed route D-E.

It is the RSPB’s view that there is a high level of uncertainty surrounding the claimed use of section D-E, because of which, an Inspector, applying the test of ‘in all probability’ is unlikely to be able to accept that there is sufficient user evidence to justify RoW status for claimed route D-E.

It is also interesting to note that the Applicant has gone into print on several occasions in the past seemingly accepting the position that the route now being claimed as a RoW was permitted by the landowners at the time.

#### Landowner Evidence

30. A solution is available to all parties – it involves the acceptance of Mr Wade’s application for bridleway status on A-B-C and footpath status on B-D with the only outstanding issue to resolve being to find an alternate link (if perceived to be needed) for section D-E that would protect the SSSI/SAC/SPA, most likely by finding a route on third party land further to the north-east. RSPB would accept this proposition and work with the Council, Natural England and others to bring this to reality. In the interim, it would clarify in its Trail Guide such that A-B-C can be used as a permissive bridleway.

31. To clarify RSPB’s position and in particular ‘its acceptance of public use’ it is as set out in para. 30 (above) and for absolute clarity does not accept the evidence of public use of section D-E nor horse/bike use of B-D.

32. Appendix 8, Item 7 presents various mapping evidence that demonstrates that the claimed route D-E was part of the lagoon prior to unpermitted landfill operations in 1999 that then made the area potentially accessible on foot. Prior to 1999 it is unlikely that the public could use a route depicted D-E on the Application.

34. The assertion by Bembridge Investments has no bearing on this Application as the time period for the claimed use precedes their ownership from 2011 and it is not disputed that the public may conceivably been able to access the area crossed by D-E following illegal landfill in 1999 that infilled part of the lagoon.

#### Documentary Evidence

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42. It is clear from the history of this site that prior to un-permitted infilling of the lagoon in the vicinity of claimed route D-E, the lagoon extended further NE and as such it will have been very difficult, if not impossible, to traverse the claimed route D-E, prior to that infilling. The drop down in levels from Embankment Road to the Lagoon is significant which would make the claimed route a steep incline. The Committee Report casts doubt on whether the maps submitted support this contention. The RSPB view is that the maps read in their proper context, provide evidence to that effect, and as such would be given weight by an Inspector, alongside the points made in 26 above, in considering the probability (or not) that the claimed use of D-E is supported by the evidence.

### **Evaluation of Evidence**

55. The measure of the evidence is the balance of probability as quoted in the Report to Council para 11. Therefore, while accepting that a right could be over land covered by water, it is contended that it is extremely unlikely that such a route would be used or chosen to be used, under such conditions and in all probability could not be used to any great extent that could constitute acceptable evidence. Indeed, many witnesses refer to the wetness of route D-E and their preferential use of B-C instead.

56. It is misleading to say that the witness interview evidence demonstrates that section D-E has always been used. In fact, an alternative interpretation of the Witness Interview Notes can be made noting in particular:

- A third of the 15 witness interview notes refer to planks being put down to make accessible – which only occurred from 2015 onwards, so is a more recent recollection and not within the claim period to 2009.
- Most refer to being able to use D-E (as opposed to actually using) and choosing to use B-C due to the condition difficulties with D-E.
- One interviewee was living abroad during a major part of the claim period to 2009.
- One interviewee references route D-E to a property further to the north-east i.e., not the claimed D-E route.

The witness interview evidence does not therefore evidence use of section D-E, as alleged in the Report.

It is alleged that since RSPB took ownership of the site, the operation of the sluice gates has made the site wetter. This cannot be so. The sluice gates are not owned nor operated by RSPB and relate to the river, not the separate hydrological unit of the lagoon. Neither RSPB ownership, nor operation of sluices has made this site wetter.

57. The route of claimed section D-E is uncertain (recollection of witness interview) and the various activities that have taken place in this area over time, including partial infilling of the lagoon area and developments affecting the north-western part adjacent to Embankment Road. Based upon the land use as lagoon and the land use changes that have taken place, it is not possible to be certain of the route of claimed section D-E.

58. This is not Appendix 8, Item 7 but probably Appendix 8, Item 9?

59. Whilst that may be so at law, the throwing down of planks etc to facilitate access would be illegal under the Habitats Regulations and proper infrastructure to enable use on foot would need authorisation under these Regulations. It is very unlikely that access infrastructure to enable the route to be used, will be permitted, with the result that, if this Modification Order is endorsed as set out, D-E could only be used in its current condition, which would be an unsatisfactory outcome for all concerned and potentially a management headache for the authority tasked with maintaining the rights of way network. Its use in this way would be damaging and disturbing to the special features of the designated site.

### Conclusion

80. It is not agreed that the evidence of use of D-E meets the requirements of section 31 of the Highways Act and the conclusion drawn that it does is an unreasonable one and based upon the evidence submitted. It is believed that an Inspector would concur with this view.

85. It is a misrepresentation of the evidence and incorrect to say that section D-E was frequently used by the public and the evidence submitted does not support that contention.

87. It is not agreed that the available evidence supports the proposition that a common law dedication of public rights has taken place in respect of section D-E.

89. It is a misinterpretation to suggest that RSPB has given consent to ride over the permissive path – it clearly states that this is a ‘permissive footpath’. The Trail Guide issued by RSPB in 2007 refers only to walking routes. To be clear there is no acknowledgment by RSPB of bike or horse use of route B-D-E nor is there any such evidence of such use during the period of RSPB’s ownership from 2004.

### Status

92. The Applicant, Mr Wade, was interviewed and is not claiming bridleway use or status for B-D-E.

The telephone interview notes in respect of Ms Edwards claimed use does not identify the use of B-D-E on horseback.

The Notes of the 15 telephone interviews conducted, identify a single horse use specific to D-E only and 2 users of D-E by bike, of which one acknowledges B-C was easier to use. One further user has claimed use on foot, bike and horse including the use of D-E, but the Notes do not identify the type of user of D-E.

It is therefore incorrect and misleading to suggest that the Notes of the Telephone Interviews substantiate a public use by horse or bike on section B-D-E.

93. The evidence does not support the establishment of bridleway status on B-D-E, nor does it support the establishment of a right of way on claimed route D-E.

Yours faithfully

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