

Agenda item:

Regulatory Committee

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Dorset County Council



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| Date of Meeting | 17 August 2017 |
| <u>Local Member(s):</u> Cllr Clare Sutton - Member for Rodwell <u>Lead Officer(s)</u> Phil Hobson, Senior Definitive Map Officer, Regulation Team | |
| Subject of Report | Application for a definitive map and statement modification order to record a footpath from Footpath 125, Weymouth to Castle Cove Beach; and Proposed definitive map and statement modification order to correct the recorded route of part of Footpath 125, Weymouth |
| Applicant | Mr Tony Dobbs, Friends of Castle Cove |
| Executive Summary | In response to an application to add a footpath linking the (closed) Footpath 125 to Castle Cove Beach, this report considers the evidence relating to the status of the route. In addition, as it has been identified that the western end of Footpath 125 may be shown offline on the definitive map, this report also considers a proposal to correct the route to that currently used. |
| Impact Assessment: | Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application. |
| | Use of Evidence: The applicant submitted documentary evidence in support of his application. |

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| | <p>Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.</p> <p>A full consultation exercise was carried out in August 2016, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillor for Rodwell, Clare Sutton, was also consulted. In addition notices explaining the application were erected on site.</p> <p>77 user evidence forms from users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.</p> <p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications:</p> <p>None</p> |
| <p>Recommendations</p> | <p>That:</p> <p>(a) The application to add a footpath as shown C – E on Drawing 16/13/1 (Appendix 1) be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to:</p> <p style="padding-left: 40px;">(i) Delete part of Footpath 125, Weymouth as shown A – B; and</p> <p style="padding-left: 40px;">(ii) Add part of Footpath 125, Weymouth as shown D – B</p> <p style="padding-left: 40px;">on Drawing 16/13/1 (Appendix 1); and</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p> |

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| <p>Reasons for Recommendations</p> | <p>(a) In respect of the application to add a new footpath, the available evidence shows, on balance, that the claimed right of way does not subsist nor can be reasonably alleged to subsist;</p> <p>(b) In respect of the proposal to correct the recorded route of part of Footpath 125 the available evidence shows, on balance that:</p> <p>(i) There is no public right of way over land as shown A – B as a highway of any description; and</p> <p>(ii) A right of way, a public footpath, subsists or is reasonably alleged to subsist over land as shown D – B; and</p> <p>(c) The evidence shows, on balance, that the route of part of Footpath 125 requires modification as proposed. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Work in partnership to ensure the good management of our natural and historic environment • Work with partners and communities to maintain cycle paths, rights of way and disabled access • Encourage tourism to our unique county • Support community transport schemes <p>Promoting Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Actively promote physical activity and sport • Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that is conducive to cycling and walking • Improve the provision of, and access to, green, open spaces close to where people live |
| <p>Appendices</p> | <p>1 - Drawing 16/13/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ Ordnance Survey maps <ul style="list-style-type: none"> - 1868 scale 1:10560 (enlarged) - 1938 scale 1:2500 |

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| | <ul style="list-style-type: none"> ▪ County Council Mapping <ul style="list-style-type: none"> - Borough Survey 1951 - Draft map 1954 - Provisional map 1964 - First definitive map 1966 - Revised draft map 1974 - Current definitive map 1989 ▪ Agreements <ul style="list-style-type: none"> - 1936 - 2009 - 2012 <p>4 - User evidence</p> <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use |
| Background Papers | <p>The file of the Service Director, Highways and Emergency Planning (ref. RW/T535).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T535, which will be available to view at County Hall during office hours.</p> |
| Report Originator and Contact | <p>Name: Phil Hobson Senior Definitive Map Officer Regulation Team, Dorset Highways Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p> |

1 Background

- 1.1 An application to add a footpath as shown between points C and E on Drawing 16/13/1 (Appendix 1) was made by Mr A Dobbs on behalf of the Friends of Castle Cove on 29 October 2014.
- 1.2. This application had been prioritised but following a request by the applicant to the Secretary of State for Environment, Food and Rural Affairs in November 2015, the Secretary of State directed that the application should be determined without further delay, setting a date of 17 July 2017 for such determination to have been concluded. Unfortunately, due to officer illness this date was missed but the Planning Inspectorate advised that, as long as progress was being made, they would not be chasing the County Council.

Footpath 125, Weymouth

- 1.3 During the course of the investigation it was also discovered that there was a drafting error on the definitive map, which had resulted in the route of Footpath 125, Weymouth being recorded incorrectly. It is currently shown to follow a route as shown between points A and B on Drawing 16/13/1, commencing from point A on Old Castle Road continuing east then north-east to point B. Officers consider that the correct route of Footpath 125 is as shown between points D and B.
- 1.4 Accordingly it is considered that Footpath 125 commences at point D, leading east down a flight of 5 concrete steps with metal hand rails and railings to both sides, the surface is concrete (steps) and tarmac. There is a second flight of 8 steps located at point D1 that lead to a timber constructed footbridge at point D2. The surface is tarmac. The width from points D to D1 is approximately 1.3 metres, the width from D1 to B is approximately 1.4 metres.

Application Route

- 1.5 The claimed route commences at point C, as shown on Drawing 16/13/1, leading down the steep face of the coastal slope towards Castle Cove beach at point E. The surface comprises loosely bound clay with roughly cut steps, it is steep and uneven with ropes to the western side to assist users in climbing or descending. It is approximately 1 metre in width and heavily eroded.
- 1.6 According to the records of the Land Registry the land affected by both the correction of the error in the recorded route of Footpath 125 on the Definitive Map and by the application to add a footpath to the definitive map is owned by Commodore's Row Management Limited of 2 Commodore's Row, 62 Old Castle Road, Rodwell, Weymouth, Dorset DT4 8QE.

Temporary Traffic Regulation Orders

1.7 Parts of Footpath 125 as shown between points D2 – B – C have been subject to a series of Temporary Traffic Regulation Orders (TTROs) and one is currently in force (November 2016). The effect of these Orders is to close parts of the route to pedestrian traffic for health and safety reasons due to damage to the footpath and instability. In addition a substantial length of Footpath 125 continuing east of point C has been the subject of a permanent closure since 2001, due to unstable ground.

2 Law

2.1 A summary of the law is contained in Appendix 2.

3 Documentary evidence (Appendix 3) (copies available in the case file RW/T535)

3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

4 User evidence (Appendix 4) (copies available in the case file RW/T535)

4.1 A table of user evidence summarised from witness evidence forms together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 Additional evidence in support of the application (copies available in the case file RW/T535)

5.1 Additional evidence has been submitted in support of this application and is summarised in the table below.

| Name | Comments |
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| A Dobbs (Friends of Castle Cove) 31/10/2014 | Copy of a licence and plan made between Commodore’s Row Management and Weymouth & Portland BC, date redacted, in respect of access via steps to Castle Cove beach. |
| A Dobbs (Friends of Castle Cove Beach) Letter of Support from the Castle Cove Beach Sailing Club 05/10/2016 | Letter from Mr D Abbott, Trustee, Caste Cove Beach Sailing Club providing details of the history of the club, use of the routes by the public and the Club’s attitude to such use, full details within the body of the report. (See paragraph 10.16.) |

6 Evidence opposing the application (copies available in the case file RW/T535)

6.1 Two letters were received as a result of the consultation:

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| Name | Comments |
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| Commodore's Row Management Ltd (CRML) 19/08/2016 | CRML object to the application. They refer to licence agreement with Weymouth & Portland BC since 1936, suggest the character of the route could not lead to any presumption of dedication. Route has been used permissively. Access to route was via FP 125, which has been closed (TTRO) since 2012. Suggest access is through 'force', ignoring barriers, notices. Letter included photographs and copies of licences 1936 & 2012. (See paragraphs 11.1 – 11.11.) |
| Mr R Tinsley on behalf of Commodore's Row Management Ltd (CRML) 19/09/2016 | Email providing details as to present and previous ownership of the land and a record of a licence issued by CRML in 2009 and correspondence with local school from 2004. Identifies previous owners, Cornhill Estates and Castle Cove Beach Sailing Club. Suggests that similar licences may have been issued by previous landowners but no evidence provided. More detailed analysis in main body of report (see paragraph 11.12). |

7 **Other submissions received** (copies available in the case file RW/T535)

7.1 Another five submissions were received:

| Name | Comments |
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| C Pinder Senior Archaeologist DCC 5/08/2016 | No recorded archaeological finds or features in vicinity. No evidence for consideration. |
| A Corton, Dorset Wildlife Trust 8/08/2016 | No comments, no evidence for consideration. |
| S & S Alexander 20/08/2016 | Used route from 1970 and aware of frequent use of route by many people until closed by Weymouth & Portland Borough Council. Welcomes possible reinstatement of route. No evidence form completed, no plan submitted. |
| Cllr C Sutton 28/08/2016 | Founder member of Friends of Castle Cove, refers to residents' representations as to the use of route for 40 years or more. States that to her knowledge the steps were never signed as private or permissive, supports the application. |
| K Gocher, Ramblers, 30/08/2016 | Lived in area since 1973, used application route on foot up to 1983 and also the 'correct' route of FP 125, and welcomes the application. |

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8 Analysis of documentary evidence

Inclosure Award Plan

8.1 A rather poor quality photocopy of the **Wyke Regis Inclosure Award Plan 1798**, which has been kept in the custody of the Dorset History Centre was available for examination. However, it does not appear to provide any evidence in support of or against the application to add a footpath. Nor does it provide any evidence in respect of the proposed correction to the route of Footpath 125.

Tithe Apportionment and Plan

8.2 The **Wyke Regis Tithe Apportionment Plan 1841**, which has also been kept in the custody of the Dorset History Centre, was also examined and was found to provide no evidence to assist in the determination of either the application or proposed modification of Footpath 125.

Other documents

Parish of Weymouth Surface Water Drainage Plan

8.3 A plan entitled **Parish of Weymouth Surface Water Drainage**, dated **December 1904**, which has also been in the custody of the Dorset History Centre, uses an Ordnance Survey County Series Map at a scale of 25 inches to one mile (1:2500), surveyed in 1863 and revised in 1902. The area around Castle Cove is clearly depicted, including the property called Glenthorne, which now comprises numbers 15, 15a and b and The Garden Cottage, Old Castle Road. It also shows the plot of land to the north of Footpath 125, which is now occupied by numbers 19 and 21 Old Castle Road.

8.4 What is now recorded as Footpath 125, Weymouth is also depicted clearly. It is shown to follow the 'correct' route and not that route presently recorded on the definitive map. It is shown to take a generally north easterly direction and has been shaded in orange. At what would be approximately point B on Drawing 16/13/1 a flight of steps, in all probability private, is shown leading from the southern corner of Glenthorne down onto the beach. There is no similar structure or feature depicted at the equivalent of point C, the commencement point of the application route.

- This document provides evidence in support of the proposed modification of the recorded route of Footpath 125, Weymouth.
- With respect to the application, it indicates that, at the time of the survey, no steps were recorded in the location that would correspond to that of the application route.

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Weymouth Official Guides

- 8.5 Two editions of the Official Guide to Weymouth, from the years 1935 and 1937 and published by the **Publicity Committee of the Weymouth Corporation**, have been examined. They both contain references to various walks within the area, the 1937 edition appearing to be a re-print of the earlier edition.
- 8.6 Under the heading Some Good Walks, To Sandsfoot Castle and the Chesil Beach, there is a reference to Castle Cove, the text of the passage is as follows, ***“The path goes on by Underbarn – a tangled mass of bush and bramble, gay with flowers, where rare birds are often seen – to Castle Cove, a small yacht anchorage with quiet sands for children to revel in, and ridges of rock where they may find lots of marine treasures at low water. It is generally practicable to descend by the steps and continue along the shore to Sandsfoot Castle.”***
- 8.7 Reference to the Ordnance Survey maps of this period (1926-1938) shows that in the area of Castle Cove there were shown three possible means of access onto the beach. All or some of these may or may not have been considered to be private means of access. However, whilst the text within the Weymouth Guides may suggest that the steps referred to were public, or may have enjoyed that reputation, it nevertheless does not define clearly to which of the three potential means of access it was referring.
- Without any further evidence to the contrary, the Weymouth Guides on their own provide no supporting evidence to the application other than to suggest that there was a means of access to the beach and that it may have been considered to be public access.

Dorset County Council Records/Files

- 8.8 A number of documents from Dorset County Council’s records covering a period from 1993 to 2009 and which relate to Footpath 125, Weymouth and the area around Castle Cove Beach have been examined.
- 8.9 Several of these documents relate to wayleaves in respect of parts of Footpath 125 located to the east of point C that were lost to subsidence and have no bearing on this application. These wayleaves are discussed at paragraphs 8.38 below.
- 8.10 However, a memorandum dated 4 September 1996 from the Chief Executive of the Borough Council to the Borough Engineer entitled “STEPS FROM PUBLIC FOOTPATH NO.125 TO CASTLE COVE, WEYMOUTH” reveals that in response to the Engineer’s memorandum of 5 July 1996 and subsequent discussions it was confirmed that no record of any agreement relating to the steps leading down from the footpath could be found.

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8.11 There is also a copy of a letter dated 5 May 1999 to Councillor Wilcox from Mr Gallivan, Engineering and Harbour Services Manager of the Borough Council in respect of various matters within the Weymouth East Ward. Paragraph 5 of the letter relates to Castle Cove and confirms to Councillor Wilcox that, having checked the Borough Council's records, the Borough Council did not own or have any responsibility for land in this area. It did acknowledge that from time to time the Borough Council had undertaken repairs, but was under no obligation to do so, the responsibility for such work being that of the landowner.

8.12 A further memorandum dated 11 March 1999 from the Senior Highway Engineer, Mr Muncaster, to the Borough Council's Legal Services refers to the closure of Footpath 125 from 22 March 1999 in order to undertake essential maintenance works to sections located between Old Castle Road and the Sandsfoot Beach Steps. These works involved the installation of steps, handrails, resurfacing and re-decking of the footbridge with guard-railing and would have taken between 7 and 10 days to complete.

- With respect to the proposed modification of the route of Footpath 125 it should be noted that all of the proposed works were undertaken on what is believed to be the 'correct' route as shown D – B and not the recorded route as shown A – B.

8.13 A further letter dated 23 September 2003 from Jim Knight MP to Mr Burgess, the Corporate Director of Environmental Services at the Borough Council, relates to a concern raised by a constituent, Mr Austin, in respect of access to Sandsfoot Beach. The concern was in respect of the condition of the steps, which Mr Austin considered to be dangerous. Mr Knight requested clarification as to whether the steps to which Mr Austin referred were private or public property.

8.14 There is a copy of a report and a response to Mr Knight, both of which are dated 28 October 2003. The report was made by Mr Fletcher, the Borough Engineer and sent to Mr Gallivan. Mr Fletcher stated that he had spoken to Mr George, who had informed him that the land upon which the steps were located was under licence to the Borough Council. He continued, stating that the Council had a duty to maintain the steps, which were in poor condition, although some repairs having been undertaken they were now considered acceptable. He also made reference to the Castle Cove Sailing Club steps, which he reported were private, being the property of Cornhill Estates and no public access was available over them.

8.15 The letter of 28 October 2003 to Mr Knight was sent by Mr Gallivan and stated that the foreshore and beach at Sandsfoot was privately owned but that the Council had a long-standing arrangement with the landowner to provide access to the beach and maintain the steps.

- There are references within these documents to both Sandsfoot Beach and Castle Cove Beach, it appears that on occasions these may refer to separate agreements and separate steps.

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- This evidence indicates that from 1996 to 2003 the Borough Council, despite a search of their records, were not aware of the existence of a licence or agreement in respect of the steps to Castle Cove Beach until the intervention of Mr George.
 - Following the provision of this information to Mr Fletcher it appears that the Borough Council then acknowledged that it did have a longstanding arrangement with the landowner.
- 8.16 A letter dated 1 April 2004 from Mr Warde, Secretary, Commodore's Row Management Limited to Mr Webb, Senior Countryside Access Officer, Dorset County Council, refers to a right of way (Footpath 125) leading to a flight of steps down to Castle Cove Beach. Mr Warde was anxious to establish the status of the right of way and any responsibility the landowners may have in respect of it. Mr Warde requested confirmation of its status, it being signed as a public bridleway and part of the Hardy Way recreational trail. He also asked for assurance that no public liability or responsibility for maintenance fell to the landowners.
- 8.17 Mr Webb responded on the 5 April 2004, advising Mr Warde that the right of way was a footpath, Footpath 125, and that the Hardy Way was no longer promoted. He further advised that the surface of the path was the responsibility of the Borough Council, which had an agency agreement to maintain public rights of way, and suggested that the landowners ought to inform their insurers as to the existence of the right of way on their land. With respect to liability Mr Webb declined to advise that the landowners had no liability as they did have responsibility for the maintenance of any hedges, fences and vegetation and to prevent their encroachment onto the path.
- 8.18 A further memorandum dated 30 November 2004 from Mr Mustoe, Solicitor, Weymouth and Portland Borough Council to Mr Fletcher, the Borough Engineer refers to advice previously provided by Mr Fletcher in respect of Castle Cove beach. Mr Mustoe enclosed a copy of a letter received from the Commodore's Row Management Ltd and requested Mr Fletcher's assistance in responding and negotiating less onerous terms for the Council's licence to provide public access to the beach.
- 8.19 There is no copy of the response made by Mr Mustoe although a letter to Mr Mustoe from Mr Warde, Commodore's Row Management Ltd, dated 16 March 2005, refers to Mr Mustoe's letter of 7 February. Mr Warde states that his views on beach cleaning were strongly influenced by paragraph 2 of item 4 of Mr Mustoe's letter of 11 November (no copy available) and wished to include both cleaning and maintenance of the steps within the licence to the Council. Mr Warde provided Mr Mustoe with details as to what the members of the Company had determined, namely:
- (a) An increase in the licence fee from £1 per year to £1 per week.
 - (b) To incorporate within any new licence the enclosed revised plan, which excluded a small area for boat storage.

- (c) To serve warning of intent to revoke the licence if the problems of closing the access from dusk to dawn could not be resolved.
- Unfortunately, there is no record of any further correspondence in response to this.
 - However, this evidence dates from the period immediately after which the property was acquired by the Commodore's Row Management Ltd and although no evidence of a licence for this period has been submitted the terms of the proposed licence and the language used by both parties does suggest that a licence was being renegotiated and, therefore, that one did exist.

8.20 There is also a record of a meeting that took place at the Barracks, Dorchester on 21 November 2006 in respect of Footpath 125. Amongst those present were Mr Fletcher and Mr Webb. The meeting was primarily to discuss the ongoing problems of stability along the coast and the continued closure of Footpath 125. Mr Fletcher did state that a substantial length of the path was available for use, albeit one way. For those more adventurous a route down a slight slope and a walk along the foreshore was available, which gave continuity to the steps and access to Old Castle Road.

8.21 An email in respect of Castle Cove Beach from Mr Good, Operations Officer, Weymouth & Portland, to members of the Council, dated 28 November 2008, advised the members that the Borough Council had been granted a licence by the Commodore's Row Management Committee, which allowed for the installation of steps and retention of public access to the beach. Mr Good noted that the step access had been in place since the 1960s. Mr Good stated that the existing licence fee was £1 per annum but that Commodore's Row Management Ltd wished to increase the rent to £500 per annum.

- Mr Good's initial comments, in all probability, relate to the licence of 26 March 2009, that commenced in June 2008, which refers to the retention of public access to the beach, something he states had been in place since the 1960s and which would support the contention that earlier licences existed, although no evidence of them has been provided.

8.22 Mr Good provided members with a brief history of the site, stating that Castle Cove had been available for community use for many generations and that he felt it was important that this access be retained. He advised them that he had negotiated an incremental increase to the rent over 4 years to meet the £500 figure by 2012/13 and that a draft licence was almost ready for agreement by all parties. Mr Good also made the following observations:

- (a) The Council had taken the licence in order to provide insurance to maintain community access.
- (b) The area in question had been a traditional place for members of the local community to enjoy their environment and access safe bathing waters.

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- (c) Beach ownership was split between several different landowners although the Commodore's Row Residents owned the section containing the steps.
- (d) Commodore's Row could serve notice and would expect the Council to remove the steps, make good the ground and seal the area to the public.
- (e) Regardless of public outcry the landowners would make it clear they were forced to take such action as a result of increased taxes and Local Government being unwilling to pay more than £1 per year to secure public access.
- (f) Occasions in the past, when landowners had attempted to close the area due to public order problems, had been met with vociferous objections.
- (g) The Council had a similar licence at Sandsfoot Beach, which was not being questioned, but if the landowners, the Castle Cove Sailing Club, were to become aware that an increased rent had been agreed elsewhere they may feel obliged to request the same.

8.23 A further email from Mr Good dated 9 January 2009 refers to a meeting held on 12 December regarding the renewal of the licence for steps and access to the foreshore at Castle Cove. Mr Good states that, as instructed, he had been in communication with the Commodore's Row Management Committee to verify points from the meeting, primarily the fixed 5 year term and a rent review procedure. He stated that he had secured the new licence to be a rolling 5 year licence (automatic renewal rights after 5 years) with a rent review based on the fifth year's retail price index. The 6 month termination clause for both parties was to be retained and once the newly drafted licence was sent through he would circulate it to all before instructing Mr Mustoe to complete.

- This appears to relate to the licence of 2008/09 in respect of the steps to Castle Cove Beach. The fact that Mr Good refers to the renewal of a licence suggests that a licence requiring renewal already existed.

Ordnance Survey maps

1 Inch Series (1:63360)

8.24 The small scale Ordnance Survey maps such as the original **Ordnance Survey drawings** (2 inches:1 mile) and the **1811 First Edition Ordnance Survey** map (1 inch:1 mile) do not depict the area in great detail, the features of interest to this application either did not exist at that time or were considered too small or of insufficient interest to be shown. However, the **Revised One Inch Ordnance Survey Map 1898** does depict a route by means of a dark single broken line that would generally correspond with that which is believed to be the correct definitive route of Footpath 125, as shown from point D to point B.

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8.25 Both the **1948 Ordnance Survey New Popular Edition Map** and the **1960 Seventh Series Ordnance Survey Map**, both at a scale of 1 inch:1 mile do not show the claimed route but do depict a route by means of a dark single broken line that would generally correspond to that of Footpath 125 and following the course as shown from D to B on Drawing 16/13/1, rather than the route A to B.

2½ Inch Series (1:25,000)

8.26 The **1958 Edition of the Ordnance Survey Map** at a scale of 1:25000 does not show the claimed route but does show the route of Footpath 125, it being clearly defined by two solid lines from point D to beyond point C on Drawing 16/13/1 and then continuing as a single broken line.

6 Inch Series (1:10,560)

8.27 The **First Edition Ordnance Survey Map**, surveyed in 1864 and published in **1868** at a scale of 6 inches:1 mile (1:10560) does not show the claimed route. It does depict a path or track that would generally correspond with the position of Footpath 125 leading east along the cliff top commencing from what would approximate to point B on Drawing 16/13/1. This track, the route of Footpath 125, is defined by two parallel broken lines but is not annotated as either 'F.P.' or 'B.R.'. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).

8.28 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) does not show the claimed route. It does show that by this time the property known as "Glenthorn" had been constructed and the track that was shown commencing from point B on the first edition map has been extended to its present junction with Old Castle Road at point D. A flight of steps leading down on to the beach in the vicinity of point B is also shown. There are no features or structures shown in the vicinity of point C. The route of Footpath 125 is not annotated as either 'F.P.' or 'B.R.'.

8.29 The **1930 Edition Ordnance Survey Map Revised 1926/27** at a scale of 6 inches:1 mile (1:10560) does not show the claimed route. It does show that by this time an additional access track had been constructed adjacent the south eastern side of the section of what is now Footpath 125 shown between points D and B on Drawing 16/13/1. Other minor changes are shown to the route of Footpath 125 further to the east and the development of the general area has expanded. There are no features or structures shown in the vicinity of point C. The route of Footpath 125 is not annotated as either 'F.P.' or 'B.R.'.

8.30 The **1948 Edition Ordnance Survey Map Revised 1938** at a scale of 6 inches:1 mile (1:10560) does not show the claimed route. It depicts generally the same scene as the earlier 1930 edition, the only major changes being the continued development of the area. There are no features or structures shown in the vicinity of point C. The route of Footpath 125 is not annotated as either 'F.P.' or 'B.R.'.

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25 Inch Series (1:2500)

8.31 The **1902 Second Edition Ordnance Survey Map Revised 1901**, at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and does not depict the claimed route, although it does depict the correct route of Footpath 125. It generally shows the same features as the corresponding 6 inch Ordnance Survey Map 1903. There are no features or structures shown in the vicinity of point C. The route of Footpath 125 is not annotated as either 'F.P.' or 'B.R.'

8.32 The **1929 Edition Ordnance Survey Map Revised 1926/27**, at a scale of 1:2500 (25 inches: 1 mile) does not appear to show the claimed route, although it does show the correct route of Footpath 125. The general features depicted are comparable to the corresponding 6 inch map of 1930. However, an additional flight of steps shown a little distance to the north east of point C are shown. There are no features or structures shown in the vicinity of point C. The route of Footpath 125 is not annotated as either 'F.P.' or 'B.R.' but is named on the map as the "Underbarn Walk".

8.33 The **Ordnance Survey Map Revised 1937 and published 1938**, at a scale of 1:2500 (25 inches: 1 mile) does appear to show the claimed route by way of the depiction of a flight of steps leading down to the beach at or in the vicinity of point C. It also shows the correct route of Footpath 125. Neither the route of Footpath 125 nor the claimed route is annotated as either 'F.P.' or 'B.R.' but Footpath 125 is named on the map as the "Underbarn Walk".

- With respect to the proposed correction to the route of Footpath 125, the evidence derived from the **Ordnance Survey Maps** provides good support towards the conclusion that the current definitive line of Footpath 125, as recorded on the definitive map, is shown incorrectly.
- With respect to the application route the majority of the **Ordnance Survey Maps** examined provide no supporting evidence as to its existence. The only exception to this conclusion relates to the depiction of a flight of steps at or in close proximity to point C that was first recorded on the 1938 edition of the 25 inch map, which had been revised in 1937. As they were not recorded on the 1929 edition, revised during 1926/27, this suggests that the steps may have been installed at sometime between 1928 and 1937.
- Although **Ordnance Survey Maps** may provide evidence in support of an application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

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Commercial maps

8.34 Samples from the large number of small scale maps of Dorset, including Bartholomew's Maps, available for analysis have been examined. Due to their small scale and the relatively small size of the features of interest shown upon them, it is considered that they provide no evidence in support of or against the application or the proposed correction to the route of Weymouth Footpath 125.

National Parks and Access to the Countryside Act 1949

Borough Survey

8.35 The **Borough of Weymouth and Melcombe Regis Survey** of rights of way was completed and returned to the County Planning Officer in **1951**. Neither Footpath 125 nor the application route had been the subject of any claim to have held any public rights over them.

Draft Map

8.36 The **Draft Map** for the South area, including **Weymouth and Melcombe Regis**, published in **1954**, demonstrates that at this time neither Footpath 125 nor the application route had been the subject of any claim.

8.37 The omission of Footpath 125 from the draft map was the subject of objections from the **Weymouth Civic Society** and the **Ramblers' Association**, they believed that it ought to have been included as a footpath. The case was initially heard by the **Town Planning Committee** of the **Borough of Weymouth and Melcombe Regis** on 20 March 1956 and ratified by the **Weymouth and Portland Council** on 29 March 1956. Their decision was that the inclusion of the footpath in the draft map should be left for decision at the "Public Inquiry".

8.38 It is assumed that the Town Planning Committee may have been referring to the **National Parks and Access to the Countryside Sub Committee** of Dorset County Council, which did conclude that the path should be added to the draft map. An objection was made to this decision that "a PORTION of this path cannot be legally a Public Right of Way". This was on the grounds that as sections of the original path had been lost, by falling into the sea, and made good through the provision of short replacement sections by the relevant landowners by means of an annual licence, these parts could not be regarded as public paths. This objection was also upheld and the Sub Committee determined that those parts that had been the subject of a covenant with adjacent landowners be deleted from the draft map, the unaffected parts to remain. The addition of the path to the draft map was advertised in the London Gazette on 30 August 1957.

Provisional map

- 8.39 There were larger scale editions of the **provisional map** of public rights of way produced for Weymouth and Portland in **1964** at a scale of 1:10560 (6 inches:1 mile), which records the footpath along the Underbarn Walk as Footpath 125 for the first time. The path is shown with two gaps, as deleted by the Sub Committee in 1957.

First definitive / revised draft / current definitive maps

- 8.40 The first definitive map was sealed in 1966, the revised draft map 1974 and the current definitive map in 1989.
- 8.41 All of the rights of way mapping from the provisional map of 1964 up to and including the revised draft map of 1974 record the route of Footpath 125 as that shown between points D and B.
- 8.42 The current definitive map, sealed in 1989, shows the western end of Footpath 125 as terminating at point A.
- The recording of Footpath 125 on the provisional map is well documented, it having been omitted from both the Borough Survey and the draft map, its route at the western end being that shown between points D and B.
 - For the route to have changed in the intervening period there would be evidence of a legal event such as a diversion or modification. Without such evidence the route should be the same as that recorded on the provisional map.
 - No evidence of any legal event has been discovered and it is therefore considered that the alteration of the termination point of Footpath 125, as shown on the current definitive map, is the result of a drafting error.

Traffic Regulation Orders

- 8.43 Those parts of Footpath 125 as shown between points D2 – B – C have been subject to a series of Temporary Traffic Regulation Orders required for health and safety reasons due to damage to the footpath and instability and one is currently in force (from November 2016). The effect of these Orders is to close the route to pedestrian traffic. In addition, a substantial length of Footpath 125 continuing east of point C has been the subject of a permanent closure since 2001, due to the unstable ground.
- The use of Footpath 125 in order to gain access to the application route was prohibited during this period and any person so doing would have been liable to a fine not exceeding £1000.
 - However, available records indicate that the application route was not subject to any of the traffic regulation orders that have been in force or remain in force and consequently its use during this period was not prohibited.

Coastal Access

- 8.44 Following Government policy, under Natural England's remit for improving public access to the coast, the first stretch of the England Coast Path from Rufus Castle, Portland to Lulworth Cove was approved by the Secretary of State on 26 January 2012.
- 8.45 Coastal access rights came into force along this length of the Coast Path on the 29 June 2012 (see Law, Appendix 2 Paragraph 3), these rights extend within a 'margin' of the coastline or foreshore and the designated Coastal Margin between Sandsfoot Castle and Newton's Cove includes the application route.
- 8.46 The rights associated with Coastal Access are the same as those of 'Open Access' as detailed under the Countryside and Rights of Way Act 2000, the same rights and restrictions applying.
- Existing public rights of way that may fall within the Coastal Margin are not affected by Coastal Access and are not subject to any of the restrictions associated with it.
 - As access to land within the Coastal Margin was permitted by statute from 29 June 2012, subject to any lawful restrictions, any public use of a way not already recorded as a public right of way would not qualify as use 'as of right' from that date forward but would be 'by right'.
 - Consequently, any use of a way located within the Coastal Margin after this date cannot be used in calculating the 20-year period of use required under Section 31 of the Highways Act 1980 in respect of any claim to add a public right of way to the definitive map.

9 Analysis of user evidence supporting the application

- 9.1 A total of 77 user forms of evidence have been submitted in support of the application. A summary of these forms of evidence follows, for full details reference should be made to the file of the Service Director, Highways and Emergency Planning, Ref. RW/T535.
- 9.2 A total of five user forms of evidence have been rejected for some or all of the following reasons:
- No accompanying map.
 - Used a different route to that of the application.
 - Accompanying plan unsigned or the route used was not defined upon it.
- 9.3 All of the witnesses state that they used the route on foot and for pleasure, two stating they also used it for work or business. Several witnesses state that they observed another user on a bicycle.

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- 9.4 The majority of witnesses appear to have used the route on an individual basis or with family or friends, although the vast majority of them state that they saw many other people using the route.
- 9.5 The majority of the witnesses do not refer to the presence of any gates or other 'obstructions' that would have restricted or prevented their use of the route, nor do they recall ever being challenged or otherwise prevented from using the route. However, several do refer to the presence of a barrier or fence: one witness stated that the barrier was in place in 2013 and they "just moved it to one side"; another stated that they "avoided this section by walking along the beach".
- 9.6 Many of the witnesses were aware of temporary closures due to landslips or repairs to the steps. Many were also aware of notices, which in the main related to safety, water quality and littering. However, one witness was aware of the "lease" between the owner and the Weymouth and Portland Borough Council in respect of access to the beach. Another witness suggests that there was a "no entry" sign from approximately the mid-1990s following a land-slip, several others thought that the path was closed as a result of the land-slip. One witness stated that "it was common knowledge that access was at least permitted".
- 9.7 Those witnesses that refer to a width suggest that it was between one and two metres wide. Many of the witnesses state that they believed that the owner or occupier must have been aware of public use due to: the numbers using it; the public being encouraged to use it; no attempt being made to prevent such use; it was signposted; its location at the bottom of their garden.
- 9.8 Two witnesses therefore state that they were aware of an agreement between the Landowner and the Borough Council, both of these witnesses stating that the Commodore's Row Management Ltd was the owner of the land.
- 9.9 The earliest year of use was 1938 and the latest year 2014, encompassing a period of 76 years. Their frequency of use varied from daily to six times a year. Use also varied according to the season with more extensive use during the summer period. Over a period of a year, regular use would have occurred on at least a weekly basis.

10 **Analysis of evidence in support of the application**

Friends of Castle Cove (The Applicant)

- 10.1 In addition to the user evidence supplied, the applicant, Mr Dobbs on behalf of the Friends of Castle Cove (FCC), provided a statement and supporting documentary evidence with the application in October 2014. There follows a summary and analysis of this evidence, for full details reference should be made to the file of Service Director, Highways and Emergency Planning, Ref. RW/T535.

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10.2 It is Mr Dobbs' contention that 'the path' leading from Footpath 125 to the beach has been provided with steps for more than a century. Throughout this time Mr Dobbs states that it has been used freely by a large number of people without "let or hindrance", save for those times when the path was closed for maintenance. Mr Dobbs states that the FCC was formed following the display of a temporary closure notice in 2013 and the subsequent removal of the steps. He further states that it is not the contention of the FCC that steps should be provided only that the route be recognised as a public right of way.

- The documentary evidence in the form of the Ordnance Survey maps suggest that, although the steps have not been in place at this location for more than a century as suggested by Mr Dobbs, they may have been in place since around the 1930s.

10.3 Mr Dobbs relates to the history of the area up to 1940, referring to the **Ordnance Survey Map of 1899**, an extract from which he provided, it being identified as **Item 1** in his submission document. It should be noted that it has been reproduced at a scale of 1:1250. Mr Dobbs suggests that it provides evidence as to the existence of steps leading down to the beach from the 'Underbarn Path' (Footpath 125) and, although not being shown in the same position as those of the claim, he suggests that it would demonstrate 'general' use of the route in the 19th Century. Mr Dobbs cites further supporting evidence as to the existence of steps in the Weymouth Official Guide of 1927, **Item 2** (pages 49 & 50).

- As Mr Dobbs himself acknowledges, the earlier editions of the Ordnance Survey maps do not show a flight of steps in the location of the claimed path.
- An extract from the Weymouth Official Guide of 1927 was provided by Mr Dobbs. The Guides of 1935 and 1937 appear to be reprints and as such their content is discussed above from paragraph 8.5. Whilst they discuss access to the beach they do not on their own provide any clear evidence as to which steps they are referring.

10.4 Mr Dobbs refers to the Ordnance Survey Map surveyed in 1937 (**Item 3**), suggesting that this map provides clear evidence of the existence of the steps that had, until recently, been located on the application route as well as evidence of two other sets of steps, one of which is probably those as shown on the 1937 map. Mr Dobbs believes that the steps shown on the 1937 map are those that were built following the 1936 agreement between the Weymouth and Melcombe Regis Council and the owners of Glenthorne, on whose land they were erected. He believes these steps to be in the same location as the application route and this is further demonstrated by reference to the Ordnance Survey Maps of 1958 (surveyed 1957) and 1995 (**Items 5 & 6**) and the extract of the definitive map provided by Dorset County Council in respect of the application (**Item 7**) provided.

- The Ordnance Survey maps to which Mr Dobbs refers are summarised and analysed from paragraph 8.24 above.

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- Item 7 is a copy of the GIS mapping representing the working copy of the definitive map printed in 2014. The steps are not shown on the sealed paper copy dated 1989 at a scale of 1:25000.

10.5 Mr Dobbs is of the opinion that this early evidence assists in demonstrating continuity of the route from at least 1937 to the present day. He also notes that it is important to record that the 1936 agreement was not to provide public access but to permit access for the construction of the steps. He further notes that four witnesses refer to their use of the steps in the 1930s.

- Mr Dobbs' observation as to the wording of the licence in respect of permitting access to construct the steps is correct and there is nothing within the 1936 agreement that specifically refers to public access.
- However, it should be noted that, had the route at this time been regarded as a 'public highway', it is difficult to understand why permission to carry out improvements to it would have been necessary and why it would have been subject to an annual licence and its associated fee.

10.6 Mr Dobbs continues by referring to evidence in respect of the period post-1940. In addition to the witness statements, which he believes speak for themselves, he notes that many of the witnesses attest to use of the route back to the 1940s, with one witness clearly recalling their use of the route in 1934, although they could not recall the last time they used the route. He refers to another witness who could recall the barbed wire around Portland Harbour during World War 2, testimony supported by another witness who, due to infirmity, was unable to complete a statement.

10.7 Mr Dobbs acknowledges that since 1940 the Underbarn Path (Footpath 125) has been subject to temporary closures due to landslips but notes that these closures did not apply to the application route nor did they, with the exception of the closure of 1999, apply to that part of Footpath 125 between Old Castle Road, point A, and the application route, point C.

- Mr Dobbs' observations in respect of the Temporary Closure Orders are correct.

10.8 With respect to the closure in 1990, Mr Dobbs refers to a letter from the Weymouth and Portland Borough Council Engineer in which it was stated that "This (footpath) stopping-up will be supplemented by a sign at Old Castle Road, indicating "Footpath to the Beach only"". Mr Dobbs suggests that this is an indication that Council officials recognised the application route, the steps, as a public right or route. Mr Dobbs suggests similar circumstances would apply to the closures of 1994 and 2000/01, during which that part of Footpath 125 west of point B remained open, although he acknowledges that the storms of 2000/01 resulted in landslips that eventually resulted in parts of Footpath 125 being extinguished.

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- As the Weymouth and Portland Borough Council has acknowledged entering into agreements with the owners of the land to provide access to the beach by means of the steps and by a payment of a fee, it is not considered that the reference to a “Footpath to the Beach only” within the Engineer’s letter could be construed as the Borough Council recognising the steps as being a recorded or definitive public right of way.

10.9 Mr Dobbs suggests that the only evidence of closure of the steps between 1940 and 2013 was for a period of 7–10 days in March 1999, and provided a memorandum from Weymouth and Portland Borough Council dated 11 March 1999 (**Item 10**) to that effect.

- The memorandum refers to the closure of that part of Footpath 125 as shown west of point B “between Old Castle Road and the Sandsfoot Beach steps” in order to install a flight of steps, handrails, undertake resurfacing work and the re-decking of a footbridge.
- Although not entirely clear, this closure appears to relate only to that section of Footpath 125 west of point B and not the application route between points C and E. Although it mentions a flight of steps there are additional steps along this section of Footpath 125 and it is considered that it is these steps to which the memorandum refers.

10.10 Mr Dobbs continues by reference to landownership. Prior to 1970 he believes that the land was owned by the Winzar family, evidence for which he provided a copy of the Castle Cove Sailing Club newsletter dated March 2004 (**Item 11**). Within the newsletter there is an article about the Founder of the club, Mr A Hownam-Meek, in which it was suggested that the owner of the beach was Mr Ian Winzar.

10.11 Mr Dobbs states that in the early 1970s the land on which the steps are located was acquired by the Caste Cove Sailing Club which, in 1987, approached Weymouth Council with a proposal to divert Footpath 125 directly onto the beach via the yet-to-be-constructed slipway. Although the diversion was not pursued the slipway was constructed and was initially used by both Club members and the public until the provision of gates, which prevented further public use of the slipway.

10.12 In 2002 the Club sold the land to a development company, Cornhill Estates, which constructed 6 houses known as Commodore’s Row. The owners of Commodore’s Row formed a management company, the members of which are the current owners of the land.

10.13 Mr Dobbs understands that current ownership of the land in the vicinity of the steps can be derived from the Land Registry details, a copy of which he provides as **Item 12** of his submission. He also provides evidence as to the variety of notices that have been in place over time and to which some of the witnesses may have referred in their statements. More specifically he refers to the temporary closure notices, which he states applied to Footpath 125 only and not the application route, an Environment Agency notice in respect of bathing water quality and a notice requesting people do not leave litter on the beach. A photograph of the latter notice is provided as **Item 13**.

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- Mr Dobbs is correct in his belief that none of the closure notices applied to the steps, they all applied to part or parts of Footpath 125.

10.14 Mr Dobbs concludes by reference to the evidence of many witnesses who claim to have used the steps in order to access the beach, some of whom he states mentioned queues. He believes that the copy of a postcard of Sandsfoot Cove he has provided in evidence (**Item 14**), which would predate the postmark of May 1983, demonstrates the widespread use of the beach and that many of these visitors would have accessed the beach by means of the application route: the steps.

- The question as to the status of the application route does not dispute that it has been used extensively by the public. However, whilst the postcard itself depicts many people on the beach it provides no direct evidence that any of them used the steps or if they did in what capacity, public or private.

10.15 On 31 October 2014 Mr Dobbs provided additional evidence which he had obtained. Mr Dobbs suggests that it appears to be a successor to the 1936 agreement he referred to in his initial submission. The additional evidence comprises a copy of a licence agreement, undated, between the Commodore's Row Management Ltd and Weymouth and Portland Borough Council and relating to property at Old Castle Road, Weymouth.

- (a) The licence is accompanied by a plan showing the extent of ownership and relates to an agreement on the part of the 'Licensor', the Commodore's Row Management Ltd, to grant the 'Licensee', Weymouth and Portland Borough Council, permission to retain a set of access steps leading down to the property shown on the plan (the beach) for the use of the public as detailed within the agreement.
- (b) Parts of the agreement, including the date and length of the agreement, have been redacted and it has not been signed, nevertheless it indicated that for a fee the Licensor would grant to the Licensee the right to retain the flight of steps and the right to repair, maintain and renew them throughout the undefined term of the agreement. It also allowed the Licensee to have use of and permit access to the property by the public so that it may be used as a public beach.
- (c) The agreement also allowed the Licensor, after consultation, to make reasonable rules and regulations as to the conduct of the public relating to matters such as the playing of games, lighting of fires and access during the hours of darkness, such rules to be enforced by the Licensee. The Licensee also had to provide public liability insurance, maintain the steps in a safe and secure order and provide a refuse bin.
- (d) The agreement could be terminated by either party by providing six months' notice, after which the Licensee would remove the steps and make good any damage.

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- The copy of the licence provided by Mr Dobbs is in all probability a copy or draft of the 2008/09 or 2012 licences. Mr Dobbs' copy is both undated and unsigned.
- Signed copies of the 2008/09 and 2012 licences have been provided by the landowner, the Commodore's Row Management Ltd, which are summarised and analysed in paragraph 11 below.

Castle Cove Beach Sailing Club

10.16 Mr Dobbs also provided a letter dated 5 September 2016 from Mr Abbott, a Trustee of the Castle Cove Beach Sailing Club, which was sent to Mr Dobbs in response to the modification order application. Mr Abbott states that the Club had operated from various sites on Castle Cove Beach between 1923 and 2002, when they moved to their current site. Throughout this time he states that the Club actively made use of the beach for events and the launching of dinghies.

- (a) Mr Abbott states that in 1969 the Club moved from land that they had rented from Mr Winzar, located to the south of Footpath 125, "to what is now known as the Commodore Row site". In the early 1970s they purchased a parcel of land located to the north of Mr Winzar's land across which ran Footpath 125. To his knowledge throughout this period the public used Footpath 125 along the route as shown from point D to C via point B and then the steps to the beach as shown between points C and E in a free and open manner and that the Club, as landowners, did not attempt to prevent such use or erect any notices to that affect.
- (b) Mr Abbott concludes by stating that the Club was happy to work alongside the public, who used the beach in a friendly and social manner. The Club are of the opinion that the historical route of Footpath 125 commenced at point D and the recorded route as shown from point A is incorrect. They believe their evidence provides support to the definitive map modification order.
 - Mr Abbott's evidence suggests that as the owner of the land, from the early 1970s to 2002, the Castle Cove Sailing Club allowed and encouraged public access to the beach via the steps as shown from points C to E. In doing so they placed no restrictions on such use or erected any notices to that affect.
 - Mr Dobbs makes no reference to any access agreements nor has he provided any evidence of such agreements. It is unclear as to whether the Sailing Club permitted access or dedicated a highway over this route.
 - Although Mr Abbott states that the Club imposed no restrictions on public use, the period to which he refers falls within the period that the Borough Council states it had a longstanding access arrangement with the landowner.

Landowner Evidence

- 10.17 Mrs O Nurrish owns the property known as 15 Old Castle Road, Weymouth and completed a Landowner Evidence form dated 30 October 2014. According to the Land Registry records the property comprising 15 Old Castle Road owns the land over which that part of Footpath 125 passes as shown approximately between points B and C. The property does not include the land on which the application route steps were located. Mrs Nurrish confirms that during her occupancy she had never erected any signs or notices stating that the route was not public nor had she ever obstructed the route.
- 10.18 Mrs Nurrish states that the property has been in her ownership for 18 years (1996), during which time the public had used the application route until the Council closed the path and removed the steps in 2013. Mrs Nurrish states that to the best of her knowledge nobody using the route had ever been told that it was not public. Mrs Nurrish also noted that despite the landslip and the removal of the steps people continued to use the route, causing further erosion to the slope, which was affecting her land.

11 Analysis of evidence opposing the application

Commodore's Row Management Ltd (Landowners)

- 11.1 On 19 August 2016 Mr R Tinsley on behalf of the Commodore's Row Management Ltd (Landowner) submitted a number of documents and photographs in support of their objection to the application. Mr Tinsley described how the Company comprises of six residents, these being the owners of the land affected by the application. The evidence submitted consists of two agreements, one dated 1936 the other 2012, and a photograph of a notice displayed at the entrance to Footpath 125 on Old Castle Road. These are accompanied by a letter explaining their significance.
- 11.2 Mr Tinsley refers to the proposed modification of the recorded route of Footpath 125 as shown A – B – C. Mr Tinsley makes clear that he has no objection to this proposal, noting that the current physical route of the path follows the route of the proposed modification as shown D – B.
- 11.3 Mr Tinsley continues by stating that to the best of the Company's knowledge there has never been a public footpath to the beach, Footpath 125 being the remains of the old cliff path. He further states that the Company, as the owners of the land over which the new right of way is proposed as shown between points C – E, objects to the proposal as there was a clear intention not to dedicate this route as a public right of way.

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11.4 Mr Tinsley refers to the agreements of 1936 and 2012, stating that they provide evidence to the fact that Weymouth and Portland Borough Council had paid for licences to erect and maintain steps onto the beach from Footpath 125. These licences had been between the Borough Council and the owners of the land, the Commodore's Row Management Ltd and their predecessors in title. The licenses were granted on a five year basis, the last licence being terminated by the Borough Council in 2013 when the steps were removed. Mr Tinsley suggests that the continued licensing demonstrates that the landowners never intended to dedicate the access to the beach as a public right of way.

1936 Agreement/Licence

11.5 The agreement of 1936 dated 20 August was made between the landowner Mrs Mildred Clare Grey, Glenthorne, Old Castle Road, Weymouth and The Mayor, Aldermen and Burgesses of the Borough of Weymouth and Melcombe Regis (the Corporation). In brief, the agreement allowed the Corporation to construct a flight of steps from the south east corner of the property leading to the foreshore in accordance with the plan annexed to it (note, the plan was not attached to the agreement). The agreement was for a period of five years and the Corporation would pay the sum of Five Pounds on 12 April each year. The agreement could be terminated by either party on three months' notice, after which the Corporation would remove said steps and make good the land.

2012 Agreement/Licence

11.6 The agreement of 2012 dated 20 July was made between the landowner, the Commodore's Row Management Limited, Anstell House, Donnington Square, Newbury, Berkshire and the Weymouth and Portland Borough Council. This agreement may be the same agreement referred to by Mr Dobbs and discussed from paragraph 10.15 above. Essentially, it is similar to the 1936 agreement, something supported by the fact that it was a licence to 'retain' a set of access steps rather than to construct or install a flight of steps. It had similar terms and conditions, the agreement was for five years with a fee to be paid annually.

- The agreements of 1936 and 2012 to which Mr Tinsley refer do demonstrate that, at the times that the agreements between the landowners and the Borough Council were entered into, the access from Footpath 125 to Castle Cove Beach would be provided under 'licence'.
- In effect the landowner, in consideration of an annual fee, would permit the Borough Council to construct and maintain a flight of steps, thereby providing public access to the beach.
- By its very nature this access could not be construed as access by the public 'as of right'. It is reasonable, without evidence to the contrary, to interpret that, as far as the Landowner(s) and the Borough Council were concerned, any public access to the beach by means of the steps was through the granting of the licence, in other words through the permission of the Landowner.

11.7 Mr Tinsley also suggests that the nature or character of the route is not conducive to any presumption that it could have been dedicated as a right of way, it being an access to a privately owned beach over land in the same ownership. The beach, he states, has been signed as being private for many years, the owners having consented to public use subject to restrictions and that until the provisions of the Countryside and Rights of Way Act 2000 public access to the beach was by permission. It is Mr Tinsley's contention that the use of the beach and its restrictions extend up the bank to Footpath 125 and that consequently the application route is essentially already part of the beach.

- Whilst the beach may be privately owned, this in itself does not create a presumption that a public right of way cannot exist, the majority of public rights of way cross or pass through private land.

Notice(s)/Sign(s) Old Castle Road

11.8 Mr Tinsley provided a photograph of a sign that has been located at point D on Old Castle Road at the junction with the western end of Footpath 125. Mr Tinsley states that the photograph was taken on 17 August 2016. He notes that, although it is still visible, as with most of the signs and barriers relating to access to the beach it has been vandalised.

- It is widely acknowledged that the sign to which Mr Tinsley refers has been in position at point D, the junction between Footpath 125 and Old Castle Road, for some considerable time. However, the 'conditions' of use itemised upon it relate to the use of the beach, which is described as a private beach.
- There is nothing written upon the sign that would suggest to the public that access to the beach from Footpath 125 via the steps was by permission nor does it convey any indication that the landowner had no intention to dedicate such access.

11.9 Mr Tinsley notes that since 2012 a temporary closure order published by Dorset County Council has prevented access along Footpath 125 to the application route C – E, the order being made on safety grounds. The remainder of Footpath 125 beyond point C towards Newton's Cove was subject to a permanent closure order made in 2001, the coastal path being redirected via Belle Vue Road.

- Mr Tinsley's observations are correct, Footpath 125 has been the subject of a closure order. However, this only prohibits use of Footpath 125 and did not affect use of the application route as shown from C to E.

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11.10 Mr Tinsley refers to the applicant's suggestion that it would be expedient to establish a right of way as continued use of the route without steps is causing severe erosion that will make the route more dangerous and the replacement of the steps more difficult. Mr Tinsley does not agree with this argument, stating that there is no material erosion due to access other than through the removal of material from the bank by cutting into it. This he regards as criminal damage but feels there is little that the landowners can do to prevent it. He acknowledges that the bank is unstable and, consisting mainly of clay, is susceptible to erosion through heavy rainfall. Mr Tinsley refers to a study undertaken by Halcrow Ltd on behalf of the Weymouth and Portland Borough Council that concluded that slippage and movement was a result of ongoing coastal erosion.

11.11 Mr Tinsley concludes by stating that any access currently being gained is across a closed right of way and by ignoring or damaging safety warnings, barriers and closure signs. He refutes the applicant's suggestion that the application route is used by hundreds of people as it is the only access to the beach, suggesting this is not relevant or factually correct as the beach can be accessed from both the foreshore and Sandsfoot Beach.

- As previously discussed, the application route C – E has never been the subject of a closure Order, whilst users may have been committing an offence in their use of part or parts of Footpath 125 they were not committing any offence in respect of the application route.
- No evidence has been put forward by the landowner(s) nor has any witness made reference to the provision of a sign or other information on the site, the content of which would have suggested to users that their use of the application route was illegal or by permission only.
- Although the beach has alternative means of access, the witness statements suggest that the application route has been and remains extensively used by the public.

11.12 Mr Tinsley made a further submission dated 19 September 2016 with which he included copies of correspondence in respect of access to the beach and a further copy of a licence for the steps. Mr Tinsley confirmed that the Commodore's Row Management Ltd has owned the land since 2003, not 2002 as previously indicated. The accompanying licence or agreement dates from 2009 and Mr Tinsley believes that any earlier licences would have been granted by the Cornhill Estates and prior to that by the Castle Cove Sailing Club.

11.13 The original copy of the 2009 licence was not signed. Mr Tinsley later addressed this omission providing a signed copy of the licence.

2009 Agreement/Licence

11.14 The 2009 Licence was an agreement made between the Licensor, the Commodore's Row Management Limited and the Licensee, the Weymouth and Portland Borough Council and is dated 29 March 2009.

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- 11.15 The licence granted to the Licensee the right to retain a set of access steps [the application route] leading down to the property [Castle Cove Beach] for use by the public throughout the licence term of four years commencing on 6 June 2008, up to and including 5 June 2012, as shown on the annexed plan.
- 11.16 The annexed plan identifies the land that formed part of the agreement, the property, this includes the application route, the steps, as shown from points C to E.
- 11.17 As part of the agreement and in consideration of the payment received in respect of the licence, the Licensee was to have a right of access to repair and maintain the steps and to have ***“use of and to permit access to the property by members of the public so that the property may be used as though it were a public beach”***.
- 11.18 In addition to the annual payments that commenced on 6 June 2008 and fell due on 6 June each year up to 6 June 2011, the Licensee was to provide public liability insurance to cover all members of the public using the property for ***‘permitted purposes’***.
- 11.19 If the Licensee wished to renew the licence, the new licence would be on the same terms, save for it being for a term of five years commencing on 6 June 2012 and the fee would be calculated in accordance with the schedule.
- 11.20 The licence is signed by representatives of both parties, being witnessed by A Hester on behalf of the Commodore’s Row Management Ltd and A Barnett, Trainee Solicitor, on the part of the Borough Council.
- The copies of the licences provided by Mr Tinsley cover a period from 6 June 2008 up to and including 5 June 2017. They demonstrate that throughout this period any public use of the application route, the steps, as shown from points C to E, was granted under the terms of the licence and was by permission, not ‘as of right’.
 - No licences have been provided prior to this period other than that dated 1936. However, Mr Tinsley believes that prior to June 2008 the Borough Council was under licence to previous owners, this the Borough Council acknowledges although they have been unable to provide copies of any of these documents they may hold.
- 11.21 With respect to the matter of public awareness, Mr Tinsley states that public access to the steps by means of Footpath 125 was closed for safety reasons by Dorset County Council in 2012 and he believes that any relevant signage would have been removed at that time. However, he notes that the sign located at point D remains and to the best of his knowledge has been there since at least 2006. Mr Tinsley states that this sign relates to the steps and beach rather than to Footpath 125. He further suggests that more recent signage relating to safety and the closure of Footpath 125 has been the subject of vandalism.
- The effect of the Traffic Regulation Orders is discussed at paragraph 8.43 above. The signage that has been displayed is discussed at paragraph 11.8 above.

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12 Analysis of other submissions

- 12.1 The submissions from C Pinder, Senior Archaeologist and A Corton, Dorset Wildlife Trust do not contain any evidence to be considered.
- 12.2 Mr & Mrs Alexander's evidence supports the claimed footpath.
- 12.3 Councillor Clare Sutton is a member of the Friends of Castle Cove. Councillor Sutton submitted a letter in support of the application stating that she had received representations from many residents who had used the route without challenge for 40 years or more. To her own knowledge she believes there has never been any signage to suggest that the use of the steps was by permission or was private. Councillor Sutton concluded stating that she firmly believed that the route was public and the definitive map be adjusted accordingly.
- 12.4 The Ramblers' representative gives evidence that supports both the route claimed and the proposed modification.

13 Conclusions

Date public use was first brought into question

- 13.1 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was first brought into question.
- (a) The date of the application, 29 October 2014, is evidence of bringing the use of the route into question.
 - (b) The removal of the steps and attempts to close the route in January 2013, is evidence of bringing the use of the route into question.
 - (c) The date that Coastal Access rights were confirmed, 29 June 2012, is evidence of bringing the use of the route into question.
- 13.2 It is considered that the earliest evidence of a challenge that would have brought into question the public right to use the route is the date that Coastal Access rights were confirmed, namely 29 June 2012. As discussed within the report any use after this date is regarded as permitted use and cannot be taken into account in determining the application.
- 13.3 As the route claimed is not recorded as having any public rights it is necessary for members to determine whether a right of way not shown on the definitive map and statement subsists or can be reasonably alleged to subsist.

Documentary Evidence

Proposed Modification of Recorded Route of Weymouth Footpath 125

- 13.4 Neither the **Wyke Regis Inclosure Award Plan 1798** nor the **Tithe Apportionment Plan 1841** provides any evidence that would assist in determining the correct route of Footpath 125, Weymouth.
- 13.5 The Ordnance Survey maps, at various scales, published since 1868, including that used in respect of the **Parish of Weymouth Surface Water Drainage, December 1904**, demonstrate that a route that would correspond to that of the proposed correction to the route of Footpath 125, Weymouth, as shown between points D and B has existed since that time.
- 13.6 The evidence provided from the County Council's records in respect of **The National Parks and Access to the Countryside Act 1949**, through which the **first definitive map** was created, shows that Footpath 125 was not claimed by the Borough Council. As a consequence of this it was not recorded on the **draft map**, something that led to an objection as to its omission from the Weymouth Civic Society and the Ramblers' Association.
- 13.7 As a result of a public inquiry Footpath 125, excluding those parts that had been lost to landslips, was added to the **provisional map**, the route being shown to follow that route between points D and B as shown on Drawing 16/13/1.
- 13.8 Having been recorded correctly on the **provisional map** the route remained unaltered until the publication of the **current definitive map** and, there being no record of any formal legal diversion, it is considered, on balance, that the current route is shown as a result of a drafting error and ought to be corrected.

Application Route

- 13.9 With respect to the application route, the earliest documents to provide any evidence as to its existence is the **1938 25 inch edition ordnance survey map** that was revised in 1937. This depicts a structure, in all probability a flight of steps, which were not depicted on the 1929 edition, revised in 1926/27, suggesting they were constructed sometime between 1928 and 1937.
- 13.10 It is considered that the Agreement for the construction of these steps in 1936 supports this conclusion and that in all probability they were constructed between 1936 and 1937.
- 13.11 Whilst the Ordnance Survey maps do provide evidence of the physical existence of the route they cannot provide evidence of its status, public or private. However, the terms of the agreement would suggest that at this time, as they were constructed under licence and with the permission of the landowner, the route was not considered to be a public route.

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- 13.12 Several documents refer to the steps at Castle Cove, the application route, being under licence or subject to longstanding agreements. The Borough Council is on record as acknowledging that it had a longstanding agreement with the landowners dating back to the 1960s, but it must be noted that no other licences or agreements prior to those of 2008/09 and 2012 have been discovered or submitted.
- 13.13 The licences of 2008 and 2012 demonstrate that the application route, the steps, were held under licence to the Borough Council. The terms of the licences permitted the Borough Council to provide, maintain and replace the steps in order to permit public access to the beach.
- 13.14 The fact that the Borough Council, acting as Agent for the County Council as the Highway Authority at the time, entered into agreements with the landowner(s) that involved the payment of an annual fee, demonstrates that the Borough Council did not regard the route as having any public rights, indeed it would demonstrate the opposite, that use of the route by the public was with the permission of the Borough Council under the terms of its licence.
- 13.15 It is considered that the documentary evidence on its own demonstrates that the claimed public rights do not subsist nor can they be reasonably alleged to subsist.

User Evidence

Proposed Modification of Recorded route of Weymouth Footpath 125

- 13.16 Weymouth Footpath 125, from Old Castle Road as shown from point D to point B and beyond has been extensively used over many years. Initially it was used throughout its length towards Weymouth. However, 'through' use was eventually prevented by extensive landslips. In addition to this use it was also the main route used by the public in order to access the application route as shown from point C to E and in reverse.
- 13.17 This use, some of which dates back to the 1930s, demonstrates continuous and extensive use of the route as shown from point D to B, no witness has recorded using the currently recorded route of Footpath 125 as shown from point A to B.
- 13.18 The available user evidence supports the conclusions reached from the analysis of the documentary evidence, namely that the recorded route of Weymouth Footpath 125 as shown from points A to B is incorrect and requires modification to the route as shown from points D to B.

Application Route

- 13.19 If members are satisfied that the documentary evidence does not show, on balance, that public rights exist they should consider whether it in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

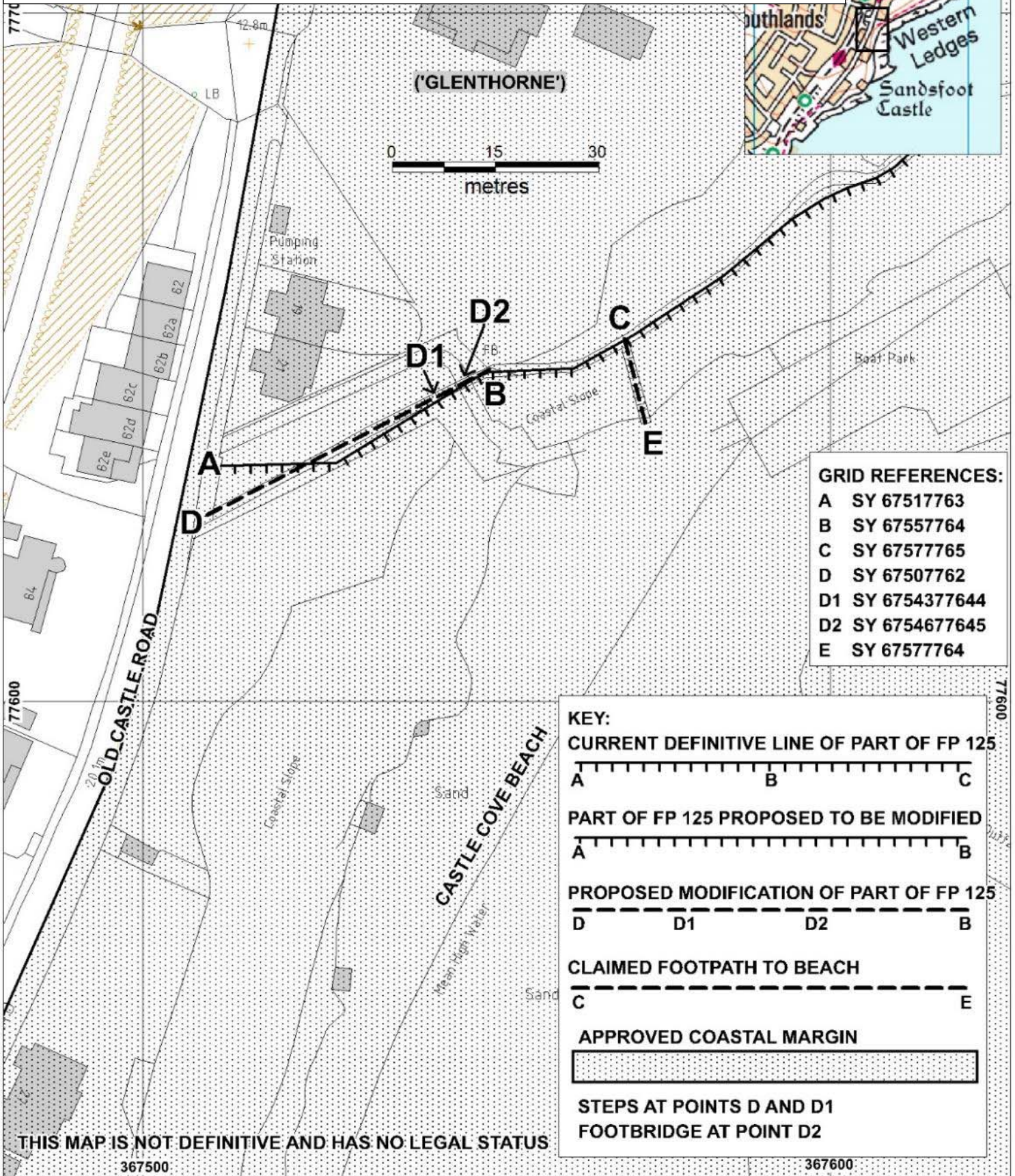
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- 13.20 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date that use of the route was first brought into question on the 29 June 2012.
- 13.21 There is evidence of extensive public use of the route throughout the 20 year period from 1992 to 2012. However, to satisfy the requirement of use as of right such use must have been without force, secrecy or permission.
- 13.22 The documentary evidence in the form of the licences granted to the Borough Council to permit public use from 2008 demonstrates that use by the public during the latter part of the qualifying period, 2008 to 2012, was with permission and not as of right.
- 13.23 There is no evidence to suggest a dedication can be inferred under common law.
- 13.24 In light of all of the available evidence the following recommendations are made:
- That the proposed modification to correct the recorded route of Footpath 125 to that as shown between points D and B as shown on Drawing 16/13/1 be accepted.
 - That the application to add a footpath to the definitive map as shown between points C and E on Drawing 16/13/1 be refused.
- 13.25 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Andrew Martin

Service Director, Highways and Emergency Planning

August 2017



WILDLIFE AND COUNTRYSIDE ACT 1981
PROPOSED DEFINITIVE MAP MODIFICATION ORDER-
FP 125, WEYMOUTH
OLD CASTLE ROAD TO CASTLE COVE BEACH

Ref: 16/13
Date: 18/07/2016
Scale 1:750
Drawn By: EB
Cent X: 367553
Cent Y: 77624

GEOGRAPHICAL INFORMATION SYSTEMS



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LAW

General

- 1 Wildlife and Countryside Act 1981
- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keeps the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which show that:
 - (a) There is no public right of way over land shown in the map and statement as a highway of any description;
 - (b) That a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.
 - (c) That any other particulars contained in the definitive map and statement require modification
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to:
 - (a) Add a right of way to the definitive map and statement if the balance of evidence shows either:
 - (i) That a right of way subsists or
 - (ii) That it is reasonably alleged to subsist.The evidence necessary to satisfy (ii) is less than that necessary to satisfy (i).
 - (b) Delete a right of way from the definitive map and statement if evidence of some substance van outweigh the initial presumption that the way has been correctly recorded.
- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route should be modified or added/deleted as described.

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1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.

(a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

(b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

(c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.

2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

2.4 Section 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.

2.5 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

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3 Countryside And Rights of Way Act 2000 / Marine and Coastal Access Act 2009

3.1 The Marine and Coastal Access Act 2009 extended the definition of access land (under the Countryside and Rights of Way Act 2000) to include designated coastal margin. Coastal margin between Rufus Castle, Portland and Lulworth Cove was the subject of a report from Natural England to the Secretary of State in 2011 and this coastal margin became access land on 29 June 2012 by regulations (the Access to the Countryside (Coastal Margin)(Weymouth Bay) Order 2012). This means that any public access on land within the designated coastal margin on or after 29 June 2012 has been by right and not as of right.

4 Human Rights Act 1998

4.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.

4.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

Case specific law

5 National Parks and Access to the Countryside Act 1949

5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as "Surveying Authority" to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

Table of documentary evidence

| Date | Document | Comment |
|----------------|--|--|
| 1798 | Wyke Regis Inclosure Award Plan | Shows neither Footpath 125 nor the application route. |
| 1811 | First Edition Ordnance Survey map 1 inch:1 mile | Shows neither Footpath 125 nor the application route. |
| 1841 | Wyke Regis Tithe Apportionment Plan | Shows neither Footpath 125 nor the application route. |
| 1868 | First Edition Ordnance Survey map 6 inch:1 mile (surveyed 1864) | Route corresponding to Footpath 125 shown from point B eastwards. Application route not shown. |
| 1889 | NOTE: The statement that “the representation on this map of a road, track or footpath is no evidence of a right of way” has appeared on Ordnance Survey maps since 1889. | |
| 1898 | Ordnance Survey Revised 1 inch map | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1899 | Ordnance Survey map 1:1250 | FP 125 shown between points D and B. Shows steps leading to beach but not in position currently claimed. |
| 1902 | Second Edition Ordnance Survey map 25 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1903 | Second Edition Ordnance Survey map 6 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1904 | Parish of Weymouth Surface Water Drainage Plan (Ordnance Survey 25 inch:1mile) | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1927-1935-1937 | Weymouth Guides | Describe ‘Underbarn path’ (Footpath 125) also describe access to Castle Cove beach via steps, 3 possible routes but no accompanying plan to determine route. |
| 1929 | Ordnance Survey Revised map 25 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1930 | Ordnance Survey Revised map 6 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |

| Date | Document | Comment |
|-------------|---|--|
| 1936 | Agreement/Licence 20 August | Licence to permit construction of steps on application route. |
| 1938 | Ordnance Survey Revision of 1937 map 25 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Depicts steps corresponding to those of application route. |
| 1948 | Ordnance Survey Revised map 6 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1948 | Ordnance Survey New Popular Edition map 1 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1949 | National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB. | |
| 1951 | Borough Survey (National Parks and Access to Countryside Act 1949) | Neither Footpath 125 nor application route claimed. |
| 1954 | Draft map for the South Area | Nether Footpath 125 nor application route recorded. |
| 1955 | Objection to draft map. Weymouth Civic Society and the Ramblers' Association object to omission of a footpath from Nothe/Bincleaves to Sandsfoot Castle (now Footpath 125) from Draft Map. | No mention of application route. |

| Date | Document | Comment |
|------|---|--|
| 1956 | National Parks and Access to the Countryside Sub Committee 'Public inquiry' 30 May - Decided "This footpath (Footpath 125) be added to the draft map". Although subsequently an objection to showing parts that were subject to covenants was upheld. | Footpath (now Footpath 125) was added to the draft map but parts that were the subject of covenants were deleted. The path that was added included the part D – B. |
| 1958 | Ordnance Survey 2.5 inch series (1:25000) Map | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1958 | Ordnance Survey 1958 Edition map 1:1250 | Route corresponding to Footpath 125 shown between points D and B. Shows steps in the position as currently claimed. |
| 1958 | NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.) | |
| 1960 | Ordnance Survey Seventh Edition Map 1 inch:1 mile | Route corresponding to Footpath 125 shown between points D and B. Application route not shown. |
| 1964 | Provisional Map | Footpath 125 is shown to follow route D to B. Application route not recorded. |
| 1974 | Revised Draft Map | Footpath 125 recorded as following route D to B. Application route not recorded. |
| 1989 | Current Definitive Map | Footpath 125 recorded as following route A to B. Application route not recorded. |
| 1995 | Ordnance Survey map 1:2500 | Route corresponding to Footpath 125 shown between points D and B. Shows steps in the position as currently claimed. |
| 1996 | Memorandum from Weymouth & Portland Borough Council | Refers to steps to Castle Cove beach from Footpath 125 - unable to find record of any agreement. |

| Date | Document | Comment |
|----------------|--|--|
| 1999 | Letter from Weymouth & Portland Borough Council | Acknowledges that Borough Council had undertaken repairs to steps but did not own or have responsibility for them. |
| 1999 | Memorandum from Weymouth & Portland Borough Council | From Sen. Engineer in respect of closure of Footpath 125 (D to B) to undertake repairs |
| 2001 | Traffic Regulation Order | Footpath 125 eastwards of point C permanently closed. |
| 2003 | Letter from local MP to Weymouth & Portland Borough Council | Requested clarification on the status of steps, whether public or private. |
| 2003 | Report - Weymouth & Portland Borough Council | Acknowledges that Borough Council held the land on which steps located under licence, had a duty to maintain them. |
| 2003 | Letter response to MP from Weymouth & Portland Borough Council | States that foreshore and beach was private but Council had a longstanding arrangement with the landowner to provide access to the beach and maintain steps. |
| 2004/05 | Correspondence Weymouth & Portland Borough Council | Memos and letters in respect of negotiations with current landowner, Commodore's Row in respect of licence to maintain public access to beach. |
| 2008/09 | Agreement/Licence dated 29 March 2009 | Agreement to permit the retention of steps to permit public access to beach. |
| 2012 | Coastal Access came into force 29 June 2012 | January 2012 Coastal Access status confirmed, Footpath 125 and application route located within the coastal margin. |
| 2012 | Agreement/Licence dated 20 July | Agreement to permit the retention of steps to permit public access to beach. |
| 2013 | Temporary Traffic Regulation Order | Footpath D2 – C approx. covered by order prohibiting pedestrians. Steps C – E removed. |
| 2016 - present | Temporary Traffic Regulation Order | Footpath D2 – C approx. covered by order prohibiting pedestrians. |

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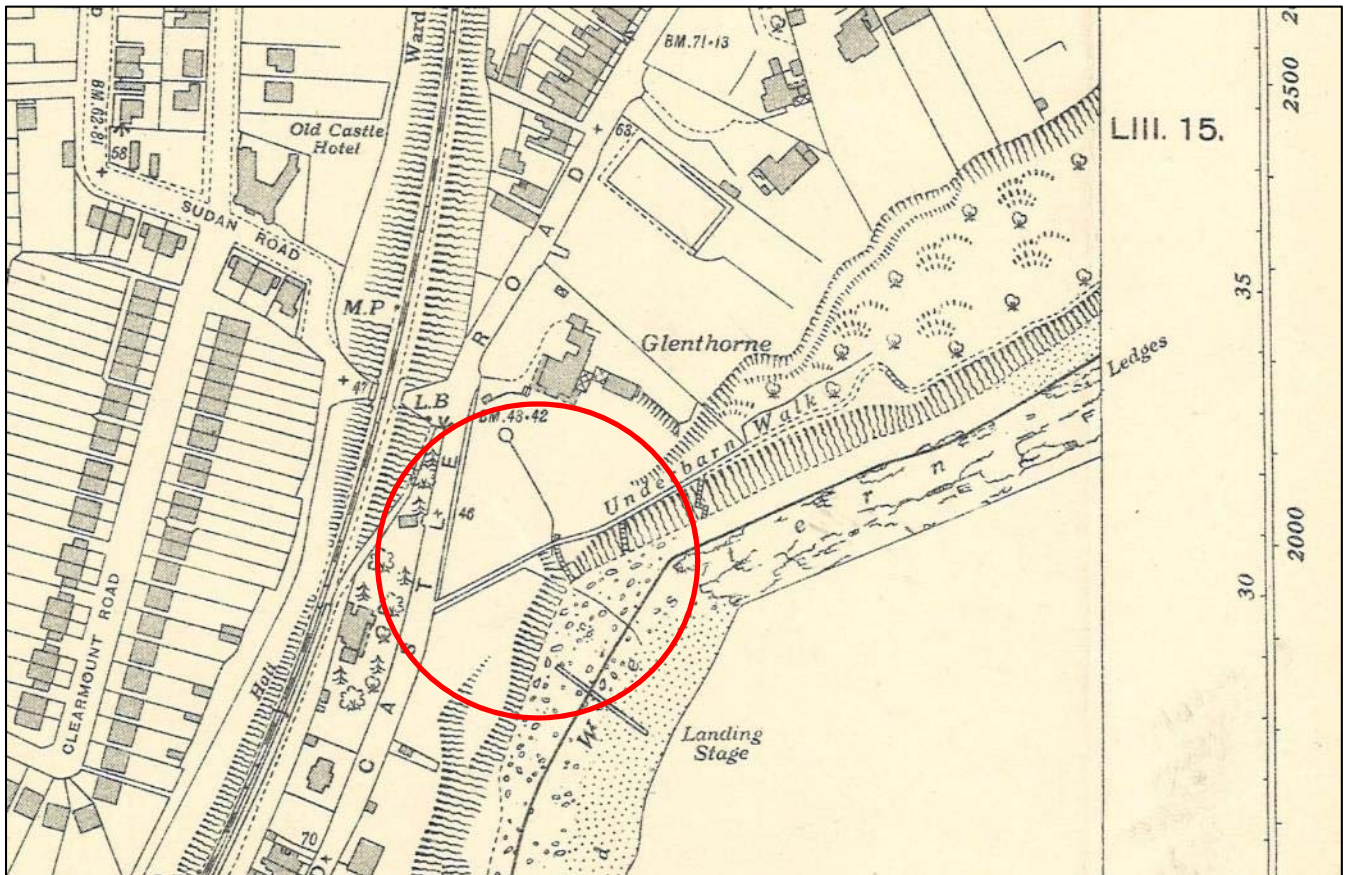
Extracts from key documents

(See the Director for Environment's file RW/T535 for copies of other documents mentioned)

**Ordnance Survey maps
1868 scale 1:10560 (enlarged)**



1938 scale 1:2500



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**Council Council records
Borough Survey 1951 (enlarged)**

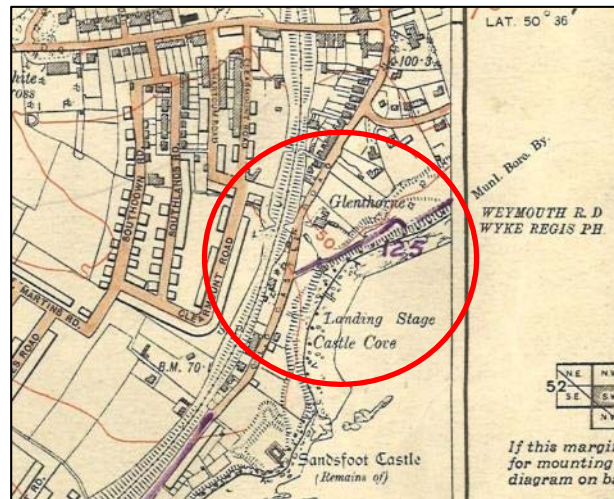


Draft map 1954 scale 1:10560



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Provisional map 1964 scale 1:10560



First definitive map 1966 scale 1:25000



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Revised draft map 1974



Current definitive map sealed 1989



Agreements
1936

ITEM 4

A N A G R E E M E N T made the 20th. day of August One thousand nine hundred and thirty-six BETWEEN MILDRED CLARE GREY of "Glenthorne" Old Castle Road Weymouth in the County of Dorset Widow (hereinafter called "the Licensor" which expression shall include her heirs executors administrators or assigns where the context so requires or admits) of the one part and THE MAYOR ALDERMEN AND BURGESSES OF THE BOROUGH OF WEYMOUTH AND MELCOMBE REGIS (hereinafter called "the Corporation") by the hand of PERCY SMALLMAN Town Clerk of the said Borough of the other part.

WHEREAS the Licensor is seised in fee simple in possession free from incumbrances of the dwellinghouse and premises known as "Glenthorne" Old Castle Road aforesaid on part of which premises the Corporation propose to construct certain steps leading down to the Foreshore in the position and manner shown on the plan attached to these presents.

AND WHEREAS the Licensor has agreed to consent to the said proposal of the Corporation on the terms and conditions hereinafter mentioned.

NOW THEREFORE IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:-

1. IN consideration of the payment hereinafter expressed and subject to the conditions and stipulations hereinafter contained the Licensor hereby grants unto the Corporation FULL and free liberty to enter upon All that piece of land belonging to the Licensor situate on the Cliff outside the Licensor's fence at or near the south-east corner of the grounds belonging to the said dwellinghouse and premises known as "Glenthorne" Old Castle Road Weymouth aforesaid and more particularly delineated and described in the plan attached hereto for the purpose of laying down and constructing upon the said piece of land a flight of steps leading down to the Foreshore in accordance with the said

plan hereto annexed Provided that nothing herein contained shall be deemed to be an authority for the Corporation to drive or place horizontally into the Cliff any timbers in connection with the construction of the said flight of steps.

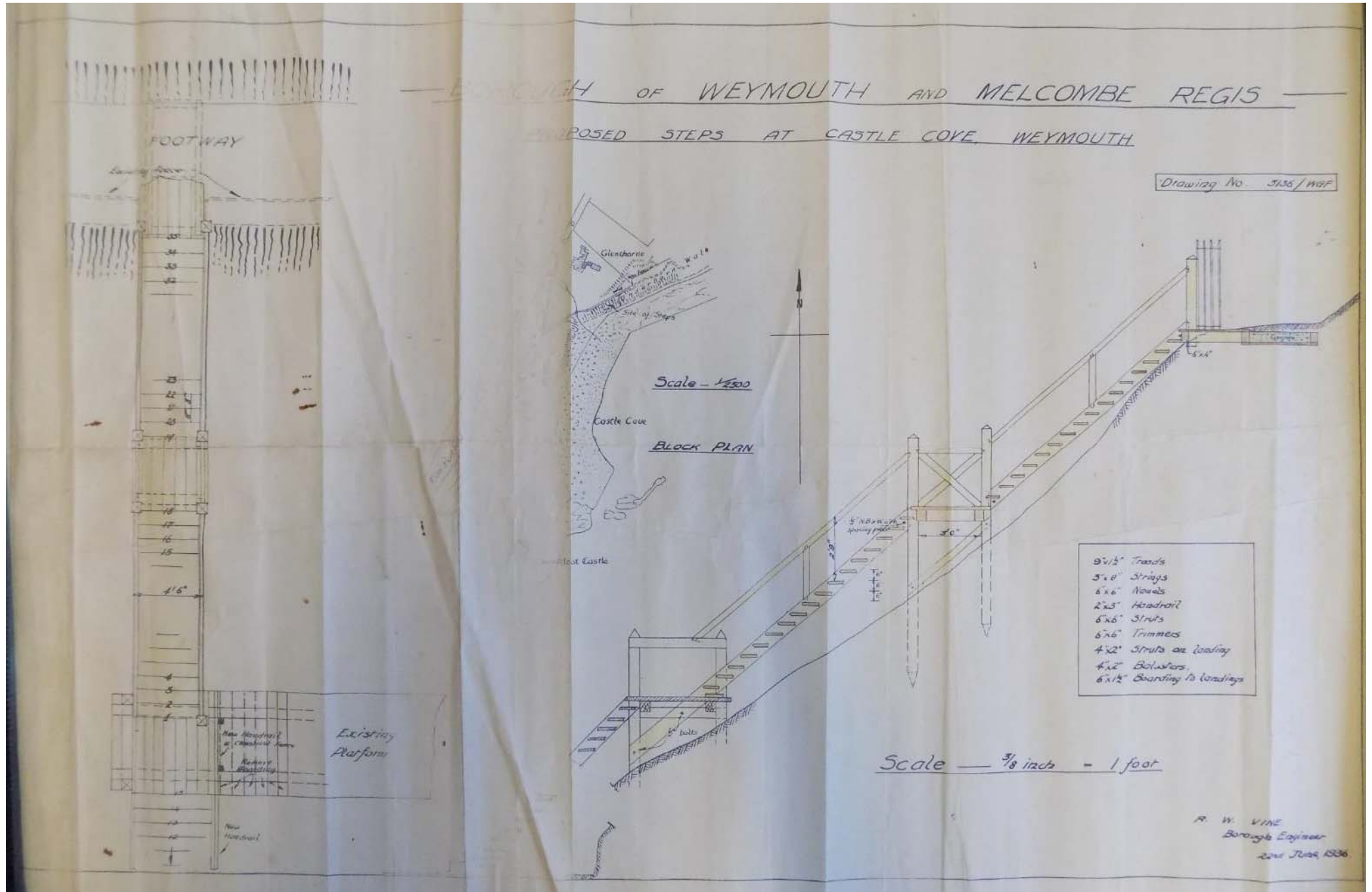
2. THE Corporation will during the continuance of this Agreement pay to the Licensor the sum of Five pounds on the twelfth day of April in each year in respect of the licence hereby granted the first of such payments to be made on the signing hereof but to be deemed to have become due on the twelfth day of April last.
3. THE Corporation will strengthen extend and also maintain the chestnut pale fencing erected by them on the south side of the underbarn Footpath.
4. THIS Agreement may be terminated at any time by either party giving to the other three calendar months' notice in writing and at the expiration of such notice the Corporation will forthwith remove the said steps from the said land Provided that such notice shall not be given within a period of five years from the date hereof. In the event of the said steps being removed from the said land the Corporation agree to make good so far as reasonable the said land to the condition that it was in immediately before the construction of such steps or so near thereto as the conditions then existing shall permit Provided always that nothing in this clause contained shall throw any liability on the Corporation to make good damage arising from subsidence or slipping of the Cliff.
5. IF any question shall arise affecting the liability or alleged liability of the Corporation under Clause 4 hereof which cannot be settled between the parties hereto then such differences shall be forthwith referred to two arbitrators one to be appointed by each party hereto pursuant to the Arbitration Act 1889.

IN WITNESS whereof the said Mildred Clare Grey and

the said Percy Smallman have hereunto set their respective hands the day and year first before written.

SIGNED by the before named Mildred)
Clare Grey in the presence of) MILDRED CLARE GREY.
D.E. Clarke.

SIGNED by the said Percy Smallman)
in the presence of) PERCY SMALLMAN.
Ernest Parr,
Municipal Offices,
Weymouth.
Clerk.



Page 51 Application for a definitive map and statement modification order to record a footpath from Footpath 125, Weymouth to Castle Cove Beach; and Proposed definitive map and statement modification order to correct the recorded route of part of Footpath 125, Weymouth

2009

DATED 26th MARCH 2009

COMMODORE'S ROW MANAGEMENT COMPANY LIMITED

AND

WEYMOUTH & PORTLAND BOROUGH COUNCIL

LICENCE

relating to
PROPERTY AT OLD CASTLE ROAD
WEMOUTH, DORSET

awb Partnership
3 & 5 Jenner Road
Guildford
Surrey
GU1 3AQ

JLF/COM25-1

LICENCE is made the day of Two thousand and nine
BETWEEN COMMODORES ROW MANAGEMENT COMPANY LIMITED of
Anstell House Donnington Square Newbury Berkshire RG14 1PP ("the Licensor") of the
one part and **WEYMOUTH & PORTLAND BOROUGH COUNCIL** of Council Offices
North Quay Weymouth Dorset ("the Licensee") of the other part

WHEREAS:

- (1) The Licensor is seised of the property at Old Castle Road Weymouth part of which comprises an area of beach the extent of which is shown edged red on the plan annexed ("the Property")
- (2) The Licensor has agreed to grant to the Licensee a licence to retain a set of access steps leading down to the Property shown on the plan and for the use by the public of the steps and the Property as hereinafter set out

IT IS AGREED:-

1. **IN CONSIDERATION** of the payment hereinafter referred to the Licensor hereby grants to the Licensee a term of four years from 6 June 2008 up to and including 5 June 2012 ("the Licence Term")
 - 1.1 licence to retain the flight of steps leading down to the Property with all appropriate rights of access for the purposes of repairing maintaining and renewing the steps
 - 1.2 for the Licensee to have use of and to permit access to the Property by members of the public so that the Property may be used as though it were a public beach
2. **THE LICENCE** hereby granted shall not restrict the rights of the Licensor and its successors in title and the persons authorised by it to use the Property for the purposes of keeping boats and other equipment thereon and as a beach
3. **THE LICENSOR** may after consultation with the Licensee make such reasonable Rules and Regulations with regard to the conduct of members of the public on the Property such Rules and Regulations including matters relating of the playing of games the lighting of fires access to the Property during the hours of darkness but it is agreed that the Licensee shall not be responsible for ensuring the enforcement of any such Rules or Regulations
4. **THE LICENSEE** will:-

Pay to the Licensor the following as a licence fee:

- a. from the start of 6 June 2008 until 5 June 2009 the sum of £160
- b. from 6 June 2009 to 5 June 2010 the sum of £265
- c. from 6 June 2010 to 5 June 2011 the sum of £380
- d. from 6 June 2011 to 5 June 2012 the sum of £500

on 6 June each year

- 4.2 Provide public liability insurance cover for all members of the public using the Property for permitted purposes
- 4.3 Maintain the footpath access and steps to the beach in safe and secure order. A refuse bin to be permanently located in proper repair at the bottom of the steps on the Property provided that the Licensee shall have the option to close the steps on a temporary or permanent basis and deny access to the Beach should the steps not be properly repaired
5. **THIS AGREEMENT** may be terminated at any time by either party giving to the other not less than six months' written notice and on the expiration of such notice the Licensee will remove the said steps and make good the embankment over which the steps run and make good any damage other than that arising from subsidence or slippage of the embankment
- 6.1 **IF THE LICENSEE** wishes to renew this Licence and serves on the Licensor within the last six months of the Licence Term a notice confirming its wish to renew the Licence such notice to be in writing then the Licensor will grant and the Licensee will accept a Licence in the same form as this Licence subject to the provisions of 6.2 below (the "New Licence")
- 6.2 The New Licence will be on the same terms as this Licence save for:
 - 6.2.1. the term of the licence will be five years from and including 6 June 2012
 - 6.2.2. this clause 6 (option to renew) will be deleted
 - 6.2.3. the licence fee payable under the terms of the New Licence will be calculated in accordance with the schedule hereto
- 6.3 Completion of the Licence will take place within 28 days of the Licensee's notice to the Landlord exercising its option to renew the Licence.

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The Licensee will reimburse all reasonable legal costs and disbursements incurred by the Licensor in connection with the New Licence pursuant to the Option to renew set out above

7. ANY QUESTION arising as to the liability of either party hereunder which cannot be settled between them may be referred by either party to an arbitrator to be appointed by either of them under the Arbitration Acts

IN WITNESS whereof the parties hereto have hereunto set their hand the day and year first before written.

SIGNED for and on behalf of
THE LICENSOR

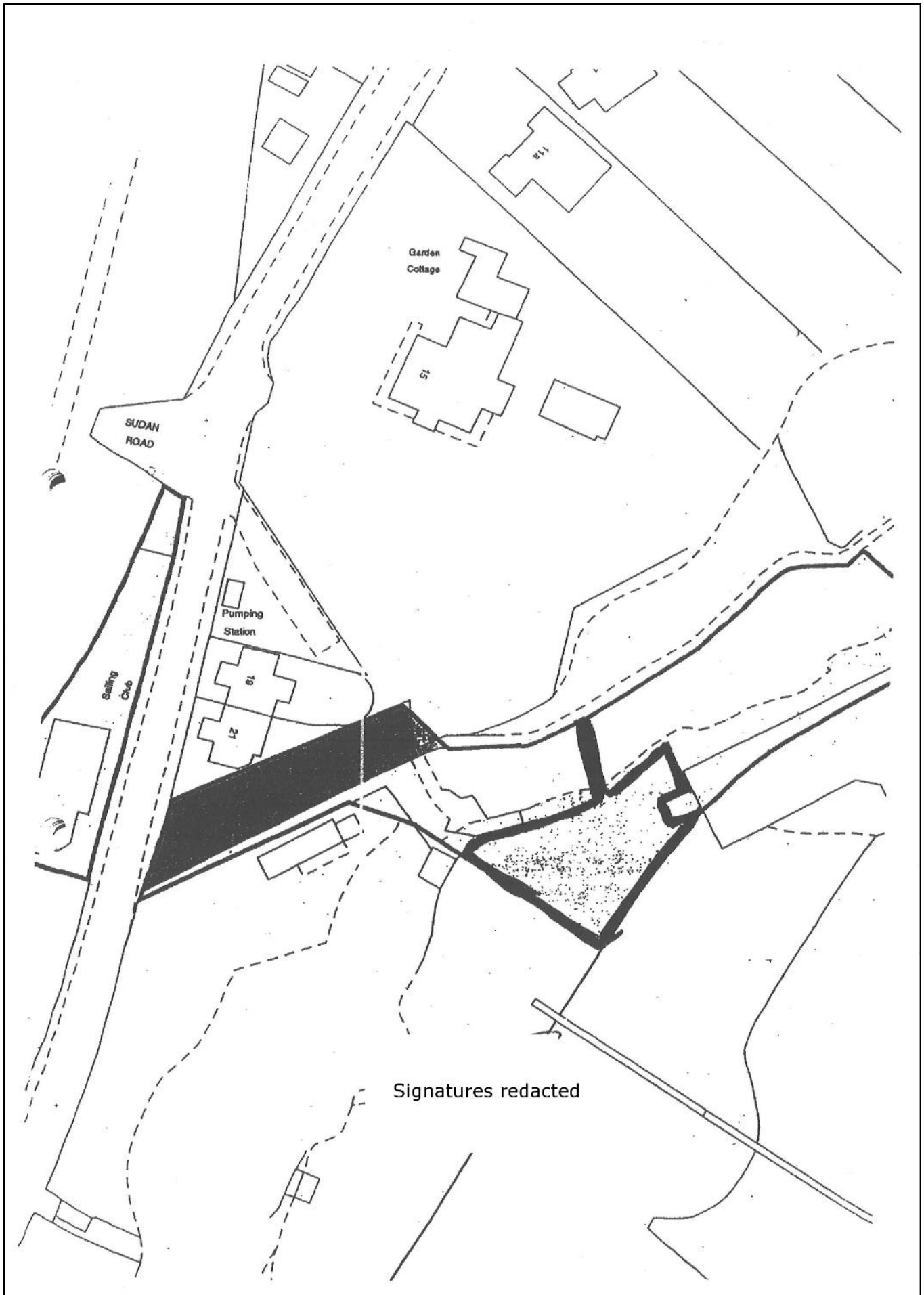
In the presence of:

Witness Signature: Signatures redacted
Name: A. HESTER
Address: 68 PARKWOOD ROAD, ISLEWORTH, MIDDLESEX
Occupation: RETIRED

SIGNED for and on behalf of
THE LICENSEE

In the presence of: ANITA BARNETT

Witness Signature:
Name: Weymouth & Portland Borough Council
Address: Council Offices, North Quay, Weymouth
Occupation: Townee Solicitor



2012

THIS LICENCE is made the 20th July 2012 **BETWEEN**
COMMODORES ROW MANAGEMENT COMPANY LIMITED of Anstell House
Donnington Square Newbury Berkshire RG14 1PP ("the Licensor") of the one part and
WEYMOUTH & PORTLAND BOROUGH COUNCIL of Council Offices North Quay
Weymouth Dorset ("the Licensee") of the other part

WHEREAS:

- (1) The Licensor is seised of the property at Old Castle Road Weymouth part of which comprises an area of beach the extent of which is shown edged red on the plan annexed ("the Property")
- (2) The Licensor has agreed to grant to the Licensee a licence to retain a set of access steps leading down to the Property shown on the plan and for the use by the public of the steps and the Property as hereinafter set out

IT IS AGREED:-

1. **IN CONSIDERATION** of the payment hereinafter referred to the Licensor hereby grants to the Licensee a term of five years from 6 June 2012 up to and including 5 June 2017 ("the Licence Term")
 - 1.1 licence to retain the flight of steps leading down to the Property with all appropriate rights of access for the purposes of repairing maintaining and renewing the steps
 - 1.2 for the Licensee to have use of and to permit access to the Property by members of the public so that the Property may be used as though it were a public beach
2. **THE LICENCE** hereby granted shall not restrict the rights of the Licensor and its successors in title and the persons authorised by it to use the Property for the purposes of keeping boats and other equipment thereon and as a beach
3. **THE LICENSOR** may after consultation with the Licensee make such reasonable Rules and Regulations with regard to the conduct of members of the public on the Property such Rules and Regulations including matters relating of the playing of games the lighting of fires access to the Property during the hours of darkness but it is agreed that the Licensee shall not be responsible for ensuring the enforcement of any such Rules or Regulations
4. **THE LICENSEE** will:-

- 4.1 Pay to the Licensor the following as a licence fee:
from the start of 6 June 2012 until 5 June 2013 the sum of £500. Payment in following years as set out in Schedule attached.
- 4.2 Provide public liability insurance cover for all members of the public using the Property for permitted purposes
- 4.3 Maintain the footpath access and steps to the beach in safe and secure order. A refuse bin to be permanently located in proper repair at the bottom of the steps on the Property provided that the Licensee shall have the option to close the steps on a temporary or permanent basis and deny access to the Beach should the steps not be properly repaired

5. **THIS AGREEMENT** may be terminated at any time by either party giving to the other not less than six months' written notice and on the expiration of such notice the Licensee will remove the said steps and make good the embankment over which the steps run and make good any damage other than that arising from subsidence or slippage of the embankment

- 6.1 **IF THE LICENSEE** wishes to renew this Licence and serves on the Licensor within the last six months of the Licence Term a notice confirming its wish to renew the Licence such notice to be in writing then the Licensor will grant and the Licensee will accept a Licence in the same form as this Licence subject to the provisions of 6.2 below (the "New Licence")
- 6.2 The New Licence will be on the same terms as this Licence save for:
 - 6.2.1. the term of the licence will be five years from and including 6 June 2017
 - 6.2.2. this clause 6 (option to renew) will be deleted
 - 6.2.3. the licence fee payable under the terms of the New Licence will be calculated in accordance with the schedule hereto
- 6.3 Completion of the Licence will take place within 28 days of the Licensee's notice to the Landlord exercising its option to renew the Licence.
- 6.4 The Licensee will reimburse all reasonable legal costs and disbursements incurred by the Licensor in connection with the New Licence pursuant to the Option to renew set out above

7. **ANY QUESTION** arising as to the liability of either party hereunder which cannot be settled between them may be referred by either party to an arbitrator to be appointed by either of them under the Arbitration Acts

IN WITNESS whereof the parties hereto have hereunto set their hand the day and year first before written.

SIGNED for and on behalf of
THE LICENSOR

Signatures redacted

In the presence of:

Witness Signature
Name
Address
Occupation

SUSAN KING
11 SOMERTON GROVE
TRACUAM
BOLTON
RC19 3XE
HANDLESER

SIGNED for and on behalf of
THE LICENSEE

In the presence of:

Witness Signature
Name
Address
Occupation

CLARE DAWSON
COUNCIL OFFICES, NORTH QUAY, WEYMOUTH
SOLICITOR

User Evidence
Table summarising user evidence from forms completed in 2014

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|--------------------|--|----------------------------|-------------|---|
| Ms K Albin | 2010 – 2014 | 20 – 50 times per year | Foot | Used for pleasure. Others also used the route on foot. Not aware of any closures or diversions prior to the one currently in force (in 2014). 'Please keep the beach clean and tidy' sign present. Owner/occupier was aware of public access as they "created a lease to local council for stair access". "Path from Old Castle Road to Castle Cove Beach has been part of the underbarn walk for many years with a separate step access. This metre wide strip of path and wooden constructed bridge lead to a set of one metre wide steps (now removed for reason unknown)". |
| Ms Clare Alexander | 1986 – present (form filled out in 2014) | At least 50 times per year | Foot | Used for pleasure and work. Others also used the route on foot. 'Footpath Closed' sign and barrier on Underbarn Walk after the landslips. Believes owner was aware of public using the route as it has been used to access Castle Cove Beach which was "full of people in the summer". Width of the path varied from approx 1m – 2m depending on the time of year and if vegetation had been cut back. Has used path and steps to access the beach, access the boat park (where own dingy and kayak were kept) and to take groups of school children to the beach (has been a teacher in Weymouth, Bridport and Dorchester for 28 years). |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------|-------------|--------------------------|-------------|---|
| Mrs J Barker | 2009 – 2014 | 20 times approx per year | Foot | Used for pleasure. Others also used route on foot. Litter notice and Council water quality sign seen. Believes owner/occupier was aware of public usage as there was “no attempt to close it off”. Path approx. 1m wide. Vegetation at sides regularly cut back to allow access along a path that now only leads to steps/beach. When part of the SW coast path was closed due to cliff fall the path from the road to the beach remained open with signage, to the beach. |
| Mr M R Barker | 2009 – 2014 | 20 times per year approx | Foot | Used for pleasure Others also used route on foot. Litter notice and Council water quality sign seen. Believes owner/occupier was aware of public usage as there was “no action taken to close/obstruct path”. Path about 1 metre wide. “Local land charges search ref 2009/00383 shows path from Old Castle Road down to Castle Cove Beach as public right of way by being coloured same as roads/footpaths. Confirmed by recent phone call to Weymouth/Portland B.C. Land Charges office”. |
| Mrs S F Bentley | 1953 – 2013 | Frequently | Foot | Used for pleasure. Others also used route on foot. Frequently used the steps to the beach for leisure activities. Since late 1980’s when western end of Underbarn footpath was blocked by landslip, have also used the steps to walk to and from Weymouth along the beach and the eastern end of the Underbarn footpath. |
| Mr P Bickingham | 1998 – 2013 | 18 times per year | Foot | Used for pleasure. “Saw many people using the path and steps”. “The path is approximately 1 metre wide with a concrete/tarmac surface and wooden steps leading to the beach.” |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|----------------|--|--|-------------|--|
| Mr A G Bird | 1974 – 1981 1992 – 2013 | 1974 – 1981 150 per year 1992 – 2013 30 – 50 per year | Foot | Used for to access beach for leisure activities. Others also used route on foot. Path approx. 1.5 metres wide – steps similar width. Great Grandparents and Grandparents lived locally and also used beach, but method of access to beach not specified. |
| Mrs D L Bird | 1966 – 1971 1986 – 2013 | 1966 – 1971 12 – 20 times per year 1986 – 2013 30 – 50 times per year | Foot | Used for pleasure. Others also used route on foot. Approx 1.5 metres wide. The steps were of similar width. Used beach with extended family including Grandparents post 1966 |
| Mr R M Bird | Before the war and 1947 – onwards (form completed in 2014) | Many times a year | Foot | Used for pleasure. Others also used route on foot. Used Sandsfoot Castle Beach for pleasure and swimming before and up to the war years, and after those years continued to go to the cove. Access route not specified but implied via steps on map. |
| S Bird | 1945 onwards (form completed in 2014) | During summer time | Foot | Used for pleasure. Others also used route on foot. In mid 40's would meet friends at the cove to play and swim. During school holidays would be there 2 or 3 times a day. Access route not specified but implied via steps on map. |
| Mrs T C Buckle | 1960 – 2012 | 20 – 30 times per year | Foot | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as a “great number” of people used the beach, which even had a café on it. Has used this path for 52 years; as a child, parent and grand parent. |
| Mrs B Budd | From 1961 (Form completed in 2014) | 20 times per year approx | Foot | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as “many families using beach”. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|------------------|---------------------------------------|-----------------------------|-------------|--|
| Mr J Budd | From 1961 (form completed in 2014) | More than 20 times per year | Foot | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as "there has been a regular flow of users during daylight hours". |
| Mr R Burdett | 1970 onwards (form completed in 2014) | 20 – 30 times per year | Foot | Used for pleasure. Others also used the route on foot. |
| Ms J Burnet | 1986 – 1998 | 80 times per year | Foot | Used for pleasure. Others also used the route on foot. Believes owner/occupier was aware of public usage as "the beach was always busy and this was the only access during all the tides". |
| Mr D Corps | 1965 – 2013 | 10 – 15 times per year | | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as it was used by many people and "would be difficult for owners to miss". 6 feet wide. |
| Mr S Corps | 1970 – not stated | 20 times per year | Foot | Used for pleasure. Others also used route on foot. |
| Mrs C A Cowlshaw | 1997 – 2013 | 100 times per year | Foot | Used for pleasure. Others also used route on foot. "grandchildren came by car". Pick up litter notice seen. Footpath is approx 4-5 feet wide, it varies. Steps were of similar width. Beach has "always been well used & well loved by the public". |
| Mr J R Cowlshaw | 1997 – 2013 | 80 – 120 per year approx | Foot | Used for pleasure. "Many, many" others also used route on foot. Notices present about litter and also general information notices about the beach. Often spoke to owner on beach as they collected litter. Path to steps about 5 feet, steps down about 4 feet. Beach enjoyed by "many families" and "busy in summer". "No signs forbid my presence, in fact a notice told me of the structure and welcomed me". |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------------|---|-------------------------|-------------|---|
| Mrs J Day | 1965 – 2014 | 50 – 150 | Foot | Used for pleasure and sailing etc. Others also used the route on foot. Believes owner/occupier was aware of public usage as “the volume of public could not be unnoticed”. “The foot path about 1.5 metres wide, the steps a similar width”. Grandchildren learned to swim there as “it is a safe beach”. |
| Mr V A J Day | 1938 – 2013 | 50 – 100 times approx | Foot | Used for pleasure and sailing etc. Others also used the route on foot. Believes owner/occupier was aware of public usage as “the volume of people couldn’t be missed”. “The foot path is approx. 1.5 metres wide (about 5ft). The steps a similar width”. |
| Miss L Diment | 2000 – present (form completed in 2014) | 20 – 30 | Foot | Used for pleasure and to access boat park. Others also used route on foot. Other obstructions marked as “yes” but not specified. Route approximately 1 metre wide, “narrower in some places and wider in others”. Used the path and steps to the beach frequently over the past 14 years. “Kept a boat and kayak at the boat park for 2 yrs and we have used the steps to go to the beach for a walk, playing with the children, picnics and sunbathing”. |
| Mr S P B Elsworth | 1991 – 2013 | 50 – 100 times per year | Foot | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as “there were a lot of us”. “This footpath is about 1.5 metres wide (about 5 feet) and the steps are a similar width”. Used route to get to beach for swimming. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|---------------|-------------|------------------------------|-------------|--|
| Mrs C Evans | 1973 – 2011 | 26 times per year | Foot | Used for pleasure. Many used route on foot “especially on summer days”. Steps obstructed during maintenance, and “since closed by council on safety grounds”. Believes owner/occupier was aware of public usage as “this path and steps were used constantly”. “Path and steps approximately 4ft wide”. |
| Mr D Evans | 1973 – 2011 | 30 times per year | Foot | Used for pleasure. Many “up to 100 on Summer days” used the route on foot. Route obstructed occasionally “when steps were in need of repair”, and “recently inaccessible as path closed by W&PBC”. Believes owner/occupier was aware of public usage as “route was in constant use”. Width approx 1.5 metres. |
| Mr D Eyles | 2003 – 2014 | 12 + times per year | Foot | Used for pleasure. Others also used route on foot “nearly every time I used it”. “Temporary barrier since 2013 – just moved it to one side”. Believes owner knew of public using the route as they had an “arrangement with Weymouth and Portland Council”. “The alternative route suggested (recommended) by the council from the other beach across slippery rocks and danger of incoming tides is considerably more dangerous than the path”. |
| Miss J Fodden | 1984 – 2013 | At least daily during summer | Foot | Used for pleasure. Others used the route on foot and also bike. Anything from 1 – 2 people to whole groups used this route. There was a landslip notice from mid 90s; ‘No entry’. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|----------------|-------------|-------------------------------------|-------------|--|
| Mr S Fremantle | 1979 – 2014 | 25 – 50 times per year | Foot | Used for pleasure. “Many” others also used route on foot. Recently Path Closed, No Access signs seen. Believes owner/occupier was aware of public usage as “it is a clearly well used way to the beach”. “This has been an unhindered access path to the beach since 1979, to my knowledge. I have used it since my children were small and with infant grandchildren. The width was between 3 – 4 feet, I estimate”. |
| Mr K Gill | 1949 – 1970 | 20 + times per year | Foot | Used for pleasure. Others used the route on foot and on bicycle. Believes owner/occupier was aware of public usage as it was “obvious, they would see them”. Width approx 2 metres. |
| Mrs M Glover | 1958 – 2012 | Variable from 4 – 40 times per year | Foot | Used for pleasure. Others also used the route on foot. Believes owner/occupier was aware of public usage as “it was an extremely popular beach, used by locals”. Has used the route via the path and wooden steps since the age of 5 in 1958. Son took part in sailing lessons in 1989; “there were so many people on the beach in those days, it was difficult for them to move out of the way” when they had to carry the boat to the water. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------|-------------|--|-------------|---|
| Mr R Glover | 1949 – 2012 | Variable between 4 – 60 times per year | Foot | Used for pleasure and access to sailing. Others used the route on foot. The route of the Underbarn path changed after landslip years ago, but the way down to the beach remained the same. Believes owner/occupier was aware of public usage as “it was at the bottom of their garden!” Regularly used the beach from 1949 and accessed it via the steps. Father ran the tea cabin on the beach when Mr Glover was a teenager. Mr Glover also helped Harold Winzar (land owner at time?). When young reached beach “down the steps like everyone else. Later, after joining the sailing club, “I used the private steps on Harold Winzar’s land”. “There were 2 gates on Harold Winzar’s land with signs on stating they were private, but I was permitted to use these as I was involved with the club and had agreement from the owners”. Beach was very busy in Summer; “all these people gained access to the beach down the path and down the wooden steps”. Photo included showing steps in 1947. |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------|--|--|-------------|--|
| Mr B Grant | 1959 – 1961 1966 to present (from completed in 2014) | Used route at weekends and on Wednesday evenings from May – September (this can be evidenced from the sailing club racing records) | Foot | Used for pleasure. Others used the route on foot. "To the beach" notice seen. Believes owner/occupier was aware of public usage as "the owner lives within a few yards of the path". "The path and steps are approx 3 feet wide. The steps have always been in place over this period until their removal in Jan 2014". Was a member of Castle Cove Sailing Club from 1959, which was sited "within yards of the footpath and steps" until 2002. "Whilst we did have our own private access I frequently used the footpath and steps route as did many other members" "On a good summers day the beach would be crowded such that it would be difficult to manoeuvre the shore based dinghies and boat tenders from their storage into the water. This can be evidenced from family photos dating back to 1970". "Ref sect 4 Who owns the land Prior to 1970 Royal British Legion 1971-2002 Castle Cove Sailing Club 2002 to date [Oct 2014] Commodores Row Trust" |
| Ms V Graves | 2009 – 2013 | 80 – 100 times per year | Foot | Used for pleasure. Others also used the route on foot; "virtually always saw at least one other person". Notices about quality of the water seen. Believes owner/occupier was aware of public usage as "they would have seen the people". Width of route and steps approximately 4 – 5 feet. Used route to get to beach "picnic with other people" etc. etc. and to walk around the next beach past Sandsfoot Castle. |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------|--|--|-------------|--|
| B Harte | 1993 – 2013 | 5 – 20 times per year | Foot | Used for pleasure. Others also used the route on foot. 'Footpath closed due to landslip' sign seen. "Fence present not letting you past the steps going to the beach". |
| S Hilliar | 1970 – 1979 | 20 – 30 times per year approx | Foot | Used for pleasure. Others used the route on foot. Believes owner/occupier was aware of public usage as "it was obvious – a busy path, especially in summer" Never enjoyed a private right; "it was open to all". "This path was used constantly by locals mostly, to gain access to the beach". |
| Mrs E Hirst | 2007 every year after – until steps removal (form completed in 2014) | 20 – 25 times per year | Foot | Used for pleasure. Others also used the path on foot; "on a sunny day dozens of adults & children used the way". "One notice appeared after the beach was sold at auction saying the new owner was happy for the public to continue to enjoy use of the beach". Also believes owner/occupier was aware of public usage as "access to the way is opposite the owners property & they must have seen many people using it over the years". Regularly enjoyed visiting Castle Cove Beach with grandchildren "it is a lovely safe, clean, attractive facility" "especially for local people in summer when the town beach is so crowded" |
| Mrs L James | 1977 – 1998 and 2005 – 2012 | 1977 – 1998 26 times per year and 2005 – 2012 6 times per year | Foot | Used for pleasure. Others also used the route on foot. Believes owner/occupier was aware of public usage as the route "has been used by locals for generations". |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-------------------|--|---|-------------|--|
| Mrs K Jeanes | 1953 – 1964 | Most days during the summer | Foot | Used for pleasure. Others also used route on foot. “Beach regularly crowded with children and families during school holidays”. Believes owner/occupier was aware of public usage as “so many people used the steps & beach they must have known” There was also a shop “& deckchair hire place”. Steps were just “wide enough for two people to pass carrying buckets, spades etc.” |
| Mr T E King | 2002 – 2014 | 104 | Foot | Used for pleasure and work. Others also used the route on foot. ‘Temporarily Closed’ seen. Underbarn path blocked by fallen trees behind ‘Clovelly’. Believes owner/occupier was aware of public usage as “it has been a footpath for as long as I have lived in Weymouth”. “Well defined path from road to steps” |
| Mr M E Lerpiniere | 1953 – 2004 and 2004 – present (form completed in 2014) | 50 times per year | Foot | Used for pleasure. Others also used route on foot. “Route from Old Castle Road to beach in place until steps removed”. ‘No access to beach’ notice seen recently. “Width of access path from Old Castle Road is approx 1.5 metres. Earth movement meant access to top of steps was slightly narrowed but steps were untouched and secure still”. |
| Mrs B M Llewellyn | 1995 – 2010 | Various – most weeks in summer holidays | Foot | Used for pleasure. Others also used route on foot; “the beach was always very busy, with most people using the steps”. Metal barrier present and ‘closure of Underbarn walk’ notice at top of steps. Believes owner/occupier was aware of public usage as “there was a kiosk selling food & drink”. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------|--|--|-------------|--|
| Mr P Long | 1950 – 1960's | Too numerous to count | Foot | Used for pleasure. Others also used the route on foot. "We had free access to the beach via the wooden steps off Old Castle Road". Has photographic evidence of parents and friends on beach from 1937 onwards. |
| Mrs J McCracken | 1966 - 2009 | Many | Foot | Used for pleasure. Others also used route on foot. Public footpath (green sign) present. Used the path to access the beach with own children and throughout childhood. "Approx width of path to steps to the beach is 1.5m". |
| Mr A McKechnie | 2006 - 2013 | 20 times per year approx | Foot | Used for pleasure. Others also used route on foot. Some warnings about dangerous land seen. |
| Mrs P March | 1948 and 1970 – 2012 | 40 times per year approx | Foot | Used for pleasure and access to sailing. Others also used route on foot. No restriction of access until the path was closed and the steps removed. Walking access to the beach is important as "our dinghy is stored on the boat platform, prior to this we kept it on the beach with permission from Andrew Holland". "Large numbers of people used the steps, sometimes had to queue to ascend or descend." Grandchildren used "safe and sheltered beach" "often met friends from Wyke Primary School" |
| Ms H E Martin | 1958 (with parents) – to now (form filled out in 2014) | 12 – 100 times per year (probably much more frequently summers of 1960 – 1980) | Foot | Used for pleasure. Others also used route on foot; "in the summer easily 200 people on the beach". Believes owner/occupier was aware of public usage as "it has always (my memory) been busily used as a public footpath". Parents used footpath regularly before and after 1950. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------------|-------------------------------------|--|-------------|--|
| Mr A Meech | 1950 – 2012 | 10 – 90 times per year | Foot | Used for pleasure. Others also used the route on foot. "Footpath is 1.5m wide with steps to beach (now removed) slightly less – allowing pedestrians access to sea shore in Portland Harbour. People visiting by sea cannot access Old Castle Road" |
| Mrs M E Meech | 1960 – 2013 | At least 100 times per year | Foot | Used for pleasure. Others also used the route on foot. "The path is about 5 feet wide steps of a similar width". |
| Mr K Metcalf | Since 1981 (form completed in 2014) | Multiple | Foot | Used for pleasure. Others also used the route on foot. "Frequently the path / steps were used by many people, particularly during the summer months, so much so that there would be queue of people to get onto the steps at times". |
| Mr & Mrs E J Mitchell | 1939 – 2000 | Frequently | Foot | Used for pleasure. Others also used the route. Notices present about landslides. Path not diverted until landslides. |
| Ms A M Neale | 1998 – 2013 | Approx 400 times per year (there and back) | Foot | Used for pleasure. Others also used route on foot. Believes owner/occupier was aware of public usage as "the route and users were in full view of the owners". Footpath and steps approximately 1 ½ metres wide. "I used the route to access the sea to paddle and to take my grandchildren swimming". |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------|----------------------------------|--|-------------|---|
| Mr M Norrington | 1963 – closure | Numerous but especially 1960/70s and 1990s | Foot | Used for pleasure. Others also used the route on foot. "I have used it [the route] freely but never had to obtain any right to use it". "The path is about 4 feet wide (1.2 – 1.5m), down 4 or 5 long steps to a steeper flight of steps, across a wooden bridge, then up a short stretch of uneven tarmac and right to three flights of wooden steps down to the beach". "I used the path to the beach as a child (1959-1975)" and "after 1980 with my family and their children up until closure" |
| Mr R A Painter | 1965 – closure of path and steps | Between 4 and 40 times per year | Foot | Used for pleasure. Others also used the route on foot. "I was an officer at the sailing club which owned land on the beach but never an employee". "As a member of Castle Cove Sailing Club, the former owner of the land, I was aware that the land is private but had always understood that there was a public right of access". |
| Mr J Palmer | 1967 – not specified | Many | Foot | Used for pleasure. Others also used the route on foot. "We were on the [Sailing] Club committee for a while We kept out dinghy on the park at the bottom of the path". There was a tea kiosk on the beach "a few yards from the bottom of the stairs" "I believe it was owned by Mary Winzar of Old Castle Road". "There is no doubt whatsoever that the path was an ordinary route from beach to road well used by the general public and club members alike. The beach was and presumably still is a safe secure place for families and folk in general". |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|--------------|----------------------|--------------------------------------|-------------|--|
| Mrs C Phelps | 1979 – 2012 | 100 or more | Foot | Used for pleasure and business. Others also used the route on foot. Stile at top of steps at Castle Cove Beach. Notices present due to landslip 'Footpath Closed'. Obstruction of Underbarn path caused by fallen trees. Believes owners to be "various people living in Bell Vue Road". Believes owner/occupier was aware of public usage "because it is a public footpath & signage". Has never enjoyed a private right because "it is a public footpath with designated signs saying so". "A beautiful safe walk through the trees into Weymouth" along a 1.5m width gravel path. |
| Ms H Reed | 1998 – 2013 | 18 times per year | Foot | Used for pleasure. Also used on foot by "dozen of people walking down to the beach – families, swimmers, dog walking etc". Route is "1 metre wide on average until the top of the steps mainly concrete - some dirt sections - wooden bridge over the slipway". |
| Mr K E Reed | 1963 and 1998 – 2013 | 1963 = 6 1998 – 2013 = approx 200 | Foot | Used for pleasure. Others also used the route on foot. Believes owner/occupier was aware of public usage as they "could see the public on the way very clearly". "Width of both the footpath and the steps is approximately 1 ½ metres". Used the route on a visit in 1963 and then from 1998 onwards to access the beach. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|---------------|---|---|-------------|---|
| Ms H A Renson | 1960 – 2013 | Daily in the summer, weekly or less in winter | Foot | Used for pleasure. Others also used the route on foot. Notices warning of subsidence seen. "No person has prevented me from using the steps but in 2013 it was blocked". "The path and steps were wide enough for two people to walk side by side The steps were strong and safe". Used the route to access the beach from 1960. Later own boat moored off the beach. Castle Cove Sailing Club slipway built under the original path's bridge in 1988. Sailing Club put a memorial seat to Ms Renson's mother at the base of the slipway. "were dismayed to find we couldn't get down to the beach" to visit the memorial seat in 2013. |
| Mr M Sammeli | 1989 – present (form completed in 2014) | 10 – 20 times per year | Foot | Used for pleasure. Others also used the route on foot. Obstruction of Underbarn path caused by landslip. "Nothing to suggest" that the owners/occupiers were not aware of the use of the route by the public. |
| Mrs S Shone | 1962 – 1970 1997 – 2002 | Weekly | Foot | Used for pleasure. Others also used the route on foot. "The path leads off/to the steps:- must be the same width as the steps". |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|--------------|---|--------------------|-------------|--|
| Mr D H Smith | 2009 – 2012 | 6 times per year | Foot | Used for pleasure. Others also used the route on foot; “typically there would be about 12 people (and this was <u>NOT</u> mid summer)”. Path was not diverted until “steps washed away in 2013/14 winter”. Underbarn path closed to landslip, but this did not affect route to the beach. Believes owner/occupier was aware of public usage as “wife’s family used the beach for at least 2 generations”. Never granted private right; “it was common knowledge that access was at least permitted”. Used route after walking dog on Rodwell Trail. Steps down to the beach were 4’ wide approx. |
| Dr V J Soule | 1999 – 2013 | 50 times per year | Foot | Used for pleasure. Others also used the route on foot. ‘Take Care’ notices seen. The footpath is approx 1.5 metres wide and wooden steps are a similar width. |
| Mr M Spicer | 1951 -2002 | Most of the summer | Foot | Used for pleasure and to access sailing. Others also used route on foot. Believes land is owned by Weymouth Council and “public steps”. Believes owner/occupier was aware of public usage due to “public access”. Width is 4’6 – 5’6 approx. |
| Mrs R Spicer | Used route since the end of WWII (Form completed in 2014) | Almost daily | Foot | Used for pleasure. Others also used route on foot. Obstruction of the route only when the steps were being repaired. Believes owner/occupier was aware of public usage as “so many people have always used it”. Has used route “since the end of WWII. To get to beach or to walk to Underbarn (sometimes on my trike as a child)”. Route between 4’6 – 5’6 wide. |

| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|----------------|--------------------------|--|--|---|
| Ms C L Sutton | 1972 – 2012 | Approx 4 but more 1979 – 1982 | Foot | Used for pleasure. Others also used the route on foot; “on a sunny summer’s day I have <u>counted</u> over 100 people down there” as “was thinking about reopening café in 2005”. “Access to Underbarn from <u>top</u> of steps was closed some years ago”. Believes steps were closed/removed for some time around 2007. No notices present until 2012. Believes areas of land are owned by Commodore’s Row, Boat Park is owned by Troy Goodfellow, and Glenthorne may also own some land. Believes owner/occupier was aware of public usage as “they could not fail to notice 100s of people using it each year”. “Depending on undergrowth, the path is about a metre wide, as is the little bridge (maybe a bit wider) and the steps. |
| Mr J S J Tawse | During 1960’s and 1990’s | Regularly | Foot | Used for pleasure. Others also used the route on foot. Believes owner/occupier was aware of public usage as “it was used so much”. |
| Ms R Thompson | 1956 – 2013 | Daily in the summer until 1975 then weekly | Foot until 1975 then by car to Old Castle Road | Used for pleasure. Others also used the route on foot. “Often went as a large family group & joined in many a sing along with Elim Church members called ‘Sunshine Corner’ and many locals and holiday makers”. Believes owner/occupier was aware of public usage as “it would have been hard to miss so many people using the path & steps”. Steps were about 3 – 4 feet wide, remembers having to stop quite often to let people pass or helping people down with stuff and small children, it was a very busy and popular beach. |

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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|-----------------|---|------------------------|-------------|--|
| Mrs M Trevett | 1985- 2013 | 200 | Foot | Used for pleasure. Others also used route on foot. "The footpath is about 1.5metres wide (about five feet). The steps are of similar width. I went to the beach to walk along with dogs & children & also for swimming". |
| Miss K Victoria | 1974 – 1987 | 20 times per year | Foot | Used for pleasure. Others also used the route on foot. Notice seen saying 'Other path closed'. |
| Mrs J L Walker | 2000 – 2011 | Weekly | Foot | Used for pleasure. "Numerous" others also used the route on foot; "the beach was always busy". Notice seen saying 'Other path closed'. Believes owner/occupier was aware of public usage as "it was a public access to the beach". Was disappointed that "following the landslide in 2011-2012 that I could no longer use the route to the beach". |
| Mrs T Watling | 1958 – 1963 1982 – 1990 2008 – 2013 | 6 times yearly approx | Foot | Used for pleasure. Others also used the route on foot. "Always used as a safe beach for children. Path always maintained by cutting back bushes & shrubs & steps maintained too (presumably by Council). 3 – 4 ft width". |
| Mr A C Webb | 1953 – 1967 | 50 -100 times per year | Foot | Used for pleasure. Others also used the route on foot; "often there were many people using the steps to access the beach". Believes owner was aware of public using the route as "he encouraged the public to use his commercial facilities on the beach". "Steps are probably about 4 feet". |

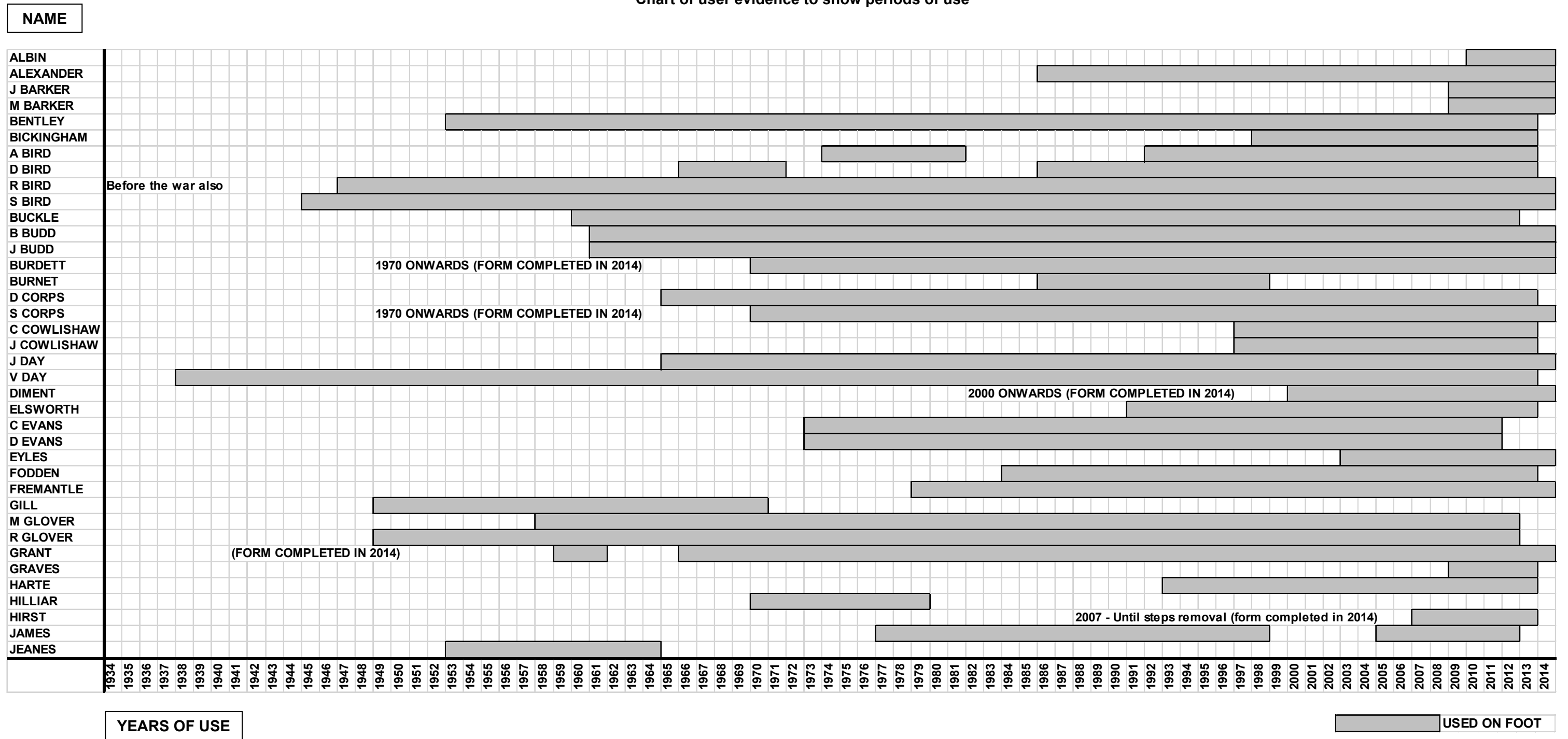
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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|------------------|--|--|-------------|--|
| Mrs K Wheller | 1950 - 2013 | Weekly in early times. 20 times per year from 1998 | Foot | Used for pleasure. Others also used the route on foot. Route diverted when the Underbarn path collapsed – access via main road only. Climbed over landslip in 1960's until cleared. "The footpath was about 5ft wide as were the steps. I used the paths and steps at least once a week from age 5 – 16 years and then at the least once a month until access was closed". |
| Rev A J Whittock | 1989 until recently (form completed in 2014) | Everyday when had dog | Foot | Used for pleasure. Others also used the route on foot. Notices about landslips appeared for health and safety reasons. Believes owner was aware of public using the route as "it was used heavily and signposted". "From Old Castle Road it is 1m wide all the way down to the beach. The Underbarn walk had wider paths and narrower near the end. Landslips have obliterated this beautiful walk". |
| Mr K Whittock | 1989 – 2014 | Almost everyday | Foot | Used for pleasure. "Many others" also used the route on foot. Always ran over same route until Underbarn "was closed (partially) by landslips". Subsequently saw notices warning of landslips. Believes owner was aware of public using the route as it was "used by all – frequently". Path about a metre wide all the way to the beach |

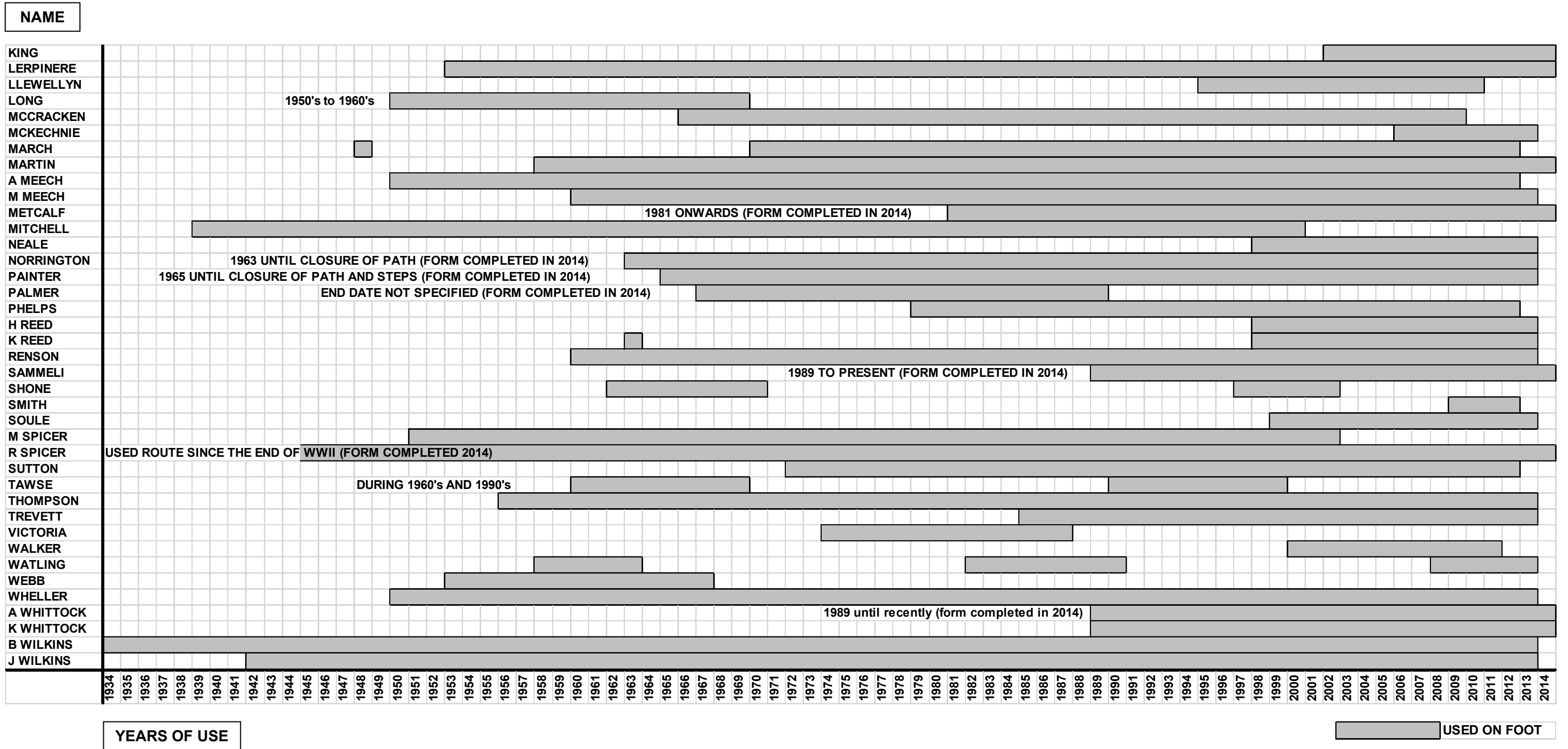
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| NAME | DATES | FREQUENCY OF USE | TYPE OF USE | DETAILS OF USE / COMMENTS |
|----------------|-------------|-------------------------------|-------------|--|
| Mr B N Wilkins | 1934 – 2013 | Some years over 100 times | Foot | Used for pleasure. Others also used the route on foot. "It was diverted for a short time when the Weymouth & Portland Council replaced the bridge". "The footpath is about 5 feet wide & for most part there is an iron fence on each side that has been there since before the war & maintained by Weymouth and Portland Council as were the 3 flights of steps to the beach".. Used the beach from a baby and including the war time when the beach was covered in barbed wire in case of a German invasion. Worked as a deck chair boy for pop Winzar; "he always told me that the beach was public and we could not stop the public from using their own chairs". Mr Wilkins still used the beach over the last two years, but not the steps as the Council considered them dangerous. |
| Mrs J Wilkins | 1942 – 2013 | Almost every other day a year | Foot | Used for pleasure. Others also used the route on foot. "The path and steps were looked after by Weymouth and Portland Council. My parents & grandmother used the beach before 1940". |

Chart of user evidence to show periods of use



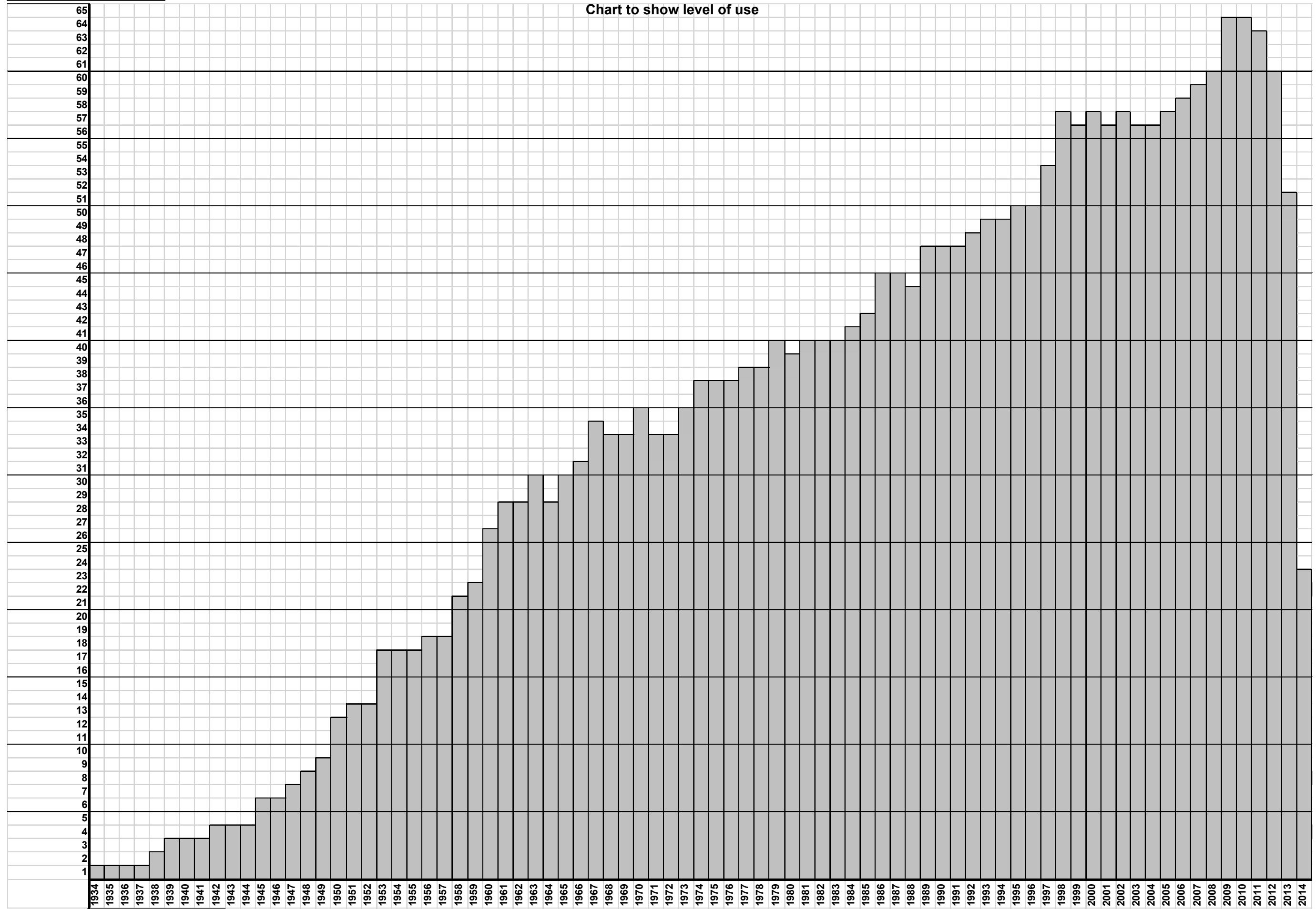
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* Mr Painter's use taken to be until 2013

NUMBER OF USERS

Chart to show level of use



YEARS OF USE