

Agenda item:

Regulatory Committee

9

Dorset County Council



Date of Meeting	7 December 2017
<u>Local Member(s):</u> Cllr Bill Pipe - Member for Lytchett Minster & Upton <u>Lead Officer</u> Anne Brown, Definitive Map Technical Officer, Regulation Team	
Subject of Report	Application for a definitive map and statement modification order to add a footpath from Poole Road to Bridleway 6, Lytchett Minster & Upton along the route of the old railway.
Applicant	Peter Rusling, Upton
Executive Summary	In response to an application to add a footpath to the definitive map and statement, this report considers the evidence relating to the status of the route. In addition, the status of a tarmac surfaced route forming part of the application route and connecting routes are considered as they are recorded as footpaths on the List of Streets.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence:</p> <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 March / April 2016, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application.</p>

	<p>The County Councillor for Lytchett Minster and Upton at the time, Fred Drane, was also consulted. In addition notices explaining the application were erected on site.</p> <p>24 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>Physical Activity: The addition of a route to the definitive map and statement would fulfil an aim of the Rights of Way Improvement Plan to seek opportunities to develop networks of paths and public outdoor space consisting of attractive, safe off-road routes enabling people of all ages, needs and abilities to walk/ride safely in and around their village/town, out to neighbouring settlements and into and about the wider countryside.</p>
Recommendations	<p>That:</p> <p>(a) The application be refused.</p> <p>(b) The route as shown X – A1 – A2 – B – C – Y – Z on Drawing 14/25/3 be added to the definitive map and statement as a public footpath.</p>
Reasons for Recommendations	<p>(a) The available evidence does not, on balance, show that claimed right of way subsists nor can be reasonably alleged to subsist.</p> <p>(b) The route as shown between points X – A1 – A2 – B – C – Y – Z on Drawing 14/25/3 is part of the adopted highway, with a right for the public to use it on foot. All public paths recorded on the List of Streets should be recorded on the definitive map and statement.</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 supports the Corporate Plan 2017-18 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset's economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while 'keeping Dorset moving', enabling people and goods to move about the county safely and efficiently
Appendices	<ol style="list-style-type: none"> 1 - Drawing 14/25/3 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from: <ul style="list-style-type: none"> ▪ Agreement dated March 1971 between Rotheroe Developments and Dorset County Council ▪ Agreement Plan ▪ Agreement Cross Sectional Diagrams ▪ Extract from the minutes of the Roads General Purposes Sub-Committee 13 September 1973 ▪ Dorset County Council Memorandum for Adoption of Roads (1974) ▪ Dorset County Council Surveyor's Letter (1975) (addressing Lytchett Minster Parish Council's concerns about the Definitive Map Special Review 1973 and 1974 Revised Draft Map) ▪ Aerial photographs (1947 – 2014) 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
Background Papers	The file of the Service Director, Highways and Emergency Planning (ref. RW/T506).

	<p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T506, which will be available to view at County Hall during office hours.</p>
Officer Contact	<p>Name: Anne Brown Definitive Map Technical Officer (DMMO) Regulation Team, Dorset Highways Tel: (01305) 221565 Email: Anne.K.Brown@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to add a footpath as shown A – A1 – A2 – B – C – C1 – C2 – C3 – C4 – D – E on Drawing 14/25/3 (Appendix 1) was made by Peter Rusling on 21 February 2011.
- 1.2 During the course of this investigation, documentary evidence was discovered, which suggested that the route as shown X – A1 – A2 – B – C – Y – Z on Drawing 14/25/3 should be considered for addition to the definitive map and statement.
- 1.3 The route claimed commences from Poole Road, Upton (where there are two adjacent paths, A – A1 and X – A1) and proceeds in a northerly direction towards the A35 Upton Bypass, to join Bridleway 6, Lytchett Minster & Upton following the route of the former railway line. There are numerous access routes from the adjoining Heights Road / Heights Approach and Dacombe Drive / Briarswood Road estates.
- 1.4 There are two tarmac paths leading from the footway of Poole Road, X – A1 and A – A1. There are plastic bollards across the entrance to the application route from Poole Road, the gap between bollards varies between 2 metres and 2.3 metres.
- 1.5 The two tarmac paths converge at A1 as one single tarmac path approximately 2 metres wide, which continues to cross the end of Briarswood Road at point B and resumes as a tarmac path to point C. There is mown grass to the west of the tarmac path. The total width between boundary fences from A towards A2 is approximately 5.6 metres. At A2 the total width of the application route widens to approximately 10 metres and comprises mostly mown grass and mature trees, with the tarmac path located on the eastern side. North of B the western side of the route remains on a level, while the tarmac path to the east rises slightly on a bank.
- 1.6 At C: The claimed route departs from the tarmac path and descends a bank to run between gorse bushes, which confine it to approximately 0.8 metres. The surface of the application route from here through to point E comprises bare soil, showing evidence of use on foot and bicycle (as shown by prints in the surface). On approaching point C1 the application route becomes more overhung with trees. From C the tarmac path continues north to point Y and then curves around eastwards to meet Dacombe Drive at point Z.
- 1.7 At C1: There is a wooden 5-bar gate and fence across part of the width of the route which, in February 2016, was found to be closed, but not locked, and overgrown with brambles. The width of the gate is 3.7 metres. There is an open gap of approximately 1.5 metres in width around the western side of the gate. The gate displays an Environmental Protection Notice by Lytchett Minster Town Council, warning about the consequences of dumping rubbish. There are no other notices.

- 1.8 Between C1 and E: The route utilises the original track-bed of the former railway line, this being approximately 9 to 10 metres wide as defined by the adjacent fences. It is extensively overgrown and, in some places, includes steep banks effectively reducing the 'useable width' to between approximately 0.5 metres and 4 metres. Several houses on either side have gates leading onto the application route and at points C2, C3, C4 and D there is access onto the application route from garages.
- 1.9 At E: The path splits into two (not shown on plan), a 3 metre wide path turning west to join Bridleway 6 and a 1.5 metre wide path turning east to join the same bridleway. Located between the two branches (but not on the application route) is a wooden barrier, possibly a former motor cycle trap on the bridleway, but this is not currently used due to paths around the sides.
- 1.10 That section of the application route from point A to points A1, A2, B, and C (west of the tarmac path) is registered as two parcels with separate owners; D B Fincham and Brooks Builders. That section of the application route including the tarmac path (and any land to the east of the tarmac path) from A1 – A2 – B – C and also the alternative route X – A1, is registered to S Matthey and the Alan Matthey Foundation.
- 1.11 That section of the application route from point C to points C1, C2, C3, C4, D and E has no registered owner.

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/T506)

- 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/T506)

- 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/T506)

- 5.1 The applicant and two other users made further submissions in support of the application.

Name	Comments
David Underhill (resident) (18/03/2016)	Reported (in a telephone call) that he had used the path for 29 years and had seen others using it on foot and sometimes on cycles, sometimes by unruly teenagers who cause damage. He did not return an evidence form.

Name	Comments
E Fionda (user) 24/08/2010,15/03/2016 & 25/04/2016	She believes the application route is part of the Castleman Trailway and that she is in favour of the route for walkers and cyclists. She states that she had previously contacted Upton Council to have the route opened up, probably around 1999 – 2201[sic]. A councillor visited the site but later the matter was dropped because of difficulty establishing ownership of the land. (Documents not retained by E Fionda or Lytchett Minster & Upton Town Council.)
Peter Rusling (applicant) 31/03/2016)	The application route has been regularly used by a University of the 3 rd Age walking group since 2007 and by another walking group more recently. Numbers of people attending walks along the application route range from 2 – 25 at a time.

6 **Evidence opposing the application** (copies available in the case file RW/T506)

6.1 No submissions provided any evidence opposing the application for analysis.

7 **Other submissions received** (copies available in the case file RW/T506)

7.1 A further 29 submissions were received, which provided no evidence either to support or to oppose the application.

Name	Comments
Ms K (resident) 18/11/2010	(Copy of Email sent to applicant.) She has used the path for 32 years. Expresses horror at the thought of a path due to vandalism, antisocial behaviour and security.
Resident of Meadowbank, Upton (name withheld) 21/01/2011	(Copy of letter sent to 'Upton Council Offices'.) Expresses opposition to the application due to effect on value of house, privacy, and security.
Cllr Fred Drane, on behalf of Keep Upton Tidy Group 06/01/2012 25/07/2012 05/08/2012 13/08/2012	Requests advice on how to have the application route recorded as a bridleway and for local people to take care of it. He was recommended to gather evidence of public use to support the application.
Peter Rusling (applicant) 26/02/2016	Reports (by telephone) that at a recent meeting of the Lytchett Minster & Upton Town Council, Dorset Wildlife Trust expressed an interest in the route being registered to provide access to Upton Heath.

Name	Comments
Ms K (resident) 01/03/2016	(Telephone call) She declares that she had used the application route daily from 1978 to 2015, she had seen other walkers, cyclists, motor cyclists and fire engines using the route (the gate was never locked). It was also used by youths behaving anti-socially. She supports the application provided the path is not surfaced or lit and will enjoy using it, if it is maintained.
Claire Pinder, DCC Senior Archaeologist 14/03/2016	No archaeological constraints affecting application route.
Anton Burns, Wayleave Officer, SSE 15/03/2016	11kV cable under part of application route would need consideration if signs or fences were to be erected. Map provided.
Steve Davies, Greenspace Team, DCC 17/03/2016	The Greenspace team has aspirations to create a trailway link along the application route.
Gill Varley (resident) 17/03/2016	She is against the path due to safety and security issues and cost.
Mrs Stewart (resident) 17/03/2016	(Telephone call) She is concerned that motorcycles are using the application route to access Upton Heath. The owners park on private drive / garage areas in adjacent Heights Road. If the route is added to the definitive map this use will increase. Requests that the application route be fenced to prevent this access.
Tina & Paul Stanfield (residents) 22/03/2016	Express confusion about what effect the path would have. Would not want trees and undergrowth to be removed as this may affect security.
Bethany Gough, Highways England 22/03/2016	No objections.
D B Fincham, (landowner) 08/04/2016	No objection, provided the application route follows existing tarmac path behind 22a Heights Approach. Mr Fincham was advised that the application route runs to the west of the tarmac path across his land. He did not respond.
Brian Panton, Ramblers 11/04/2016	No direct evidence, but information regarding the application was passed to members who have used the route.
Mr S (user) 25/04/2016	(Telephone call) Reports that the route is regularly used by a group of 30 – 40 runners on Wed evenings. Members of the group were offered evidence forms but did not complete them. Reports seeing large groups of cyclists too. Has cleared some of the undergrowth from application route himself, including the gate at C1. He wedged the gate with a rock to discourage motorbike access.

Name	Comments
Highways Team, Dorset County Council (office discussion) 26/04/2016	Bollards were installed at the junction of the application route with Poole Road in Summer 2015 when Toucan Crossing was installed. They were intended to prevent cars accessing the application route from the dropped kerb of the Toucan crossing. Combined cycle/footway signs were erected on the application route, approaching Poole Road to warn of the shared-way adjacent Poole Road
David Underhill (Email forwarded by Purbeck District Council) 05/05/2017	Asks for it to be placed on record that blackberry bushes act as security deterrent. Disturbance would disturb the natural balance of natural inhabitants. Destruction of growth would be vigorously challenged as it would damage the stability of the land.
Lesley Holt (resident) 18/03/2016 22/03/2016 11/05/2016	She has no objection to the path, but she intends to fence part of the railway line to extend her garden.
Bill Rogers, Sustrans Ranger 13/05/2016	Believes that at least part of the application route is used by bicycles and is ' <i>meant for cycle use</i> '. Considers that, ideally, the complete path would be tarmac and be dual use for cyclists and walkers. Provides no documentary evidence
Kevin Humphreys, Transport Planner, DCC 16/05/2016	Opposes the application to " <i>turn this into a footpath</i> " as this would legally exclude cyclists. He asks if there is scope to enter into an agreement with the landowner for it to be dedicated as a footpath which allows people to cycle on it.
Robert Davies, Historic Railways Estate, Department of Transport 12/05/2016 17/05/2016	"Records indicate that this section of former railway was sold by the British Railways Board to D.G. Harrocks on 8th January 1972." Copy of the Conveyance for the land enclosed.
Coles Miller Solicitors on behalf of Brooks Builders Ltd, (landowner) 06/04/2016 & 01/06/2016	No objection to application provided the footpath follows the existing tarmac path. Coles Miller Solicitors were advised that the application route may not be limited to the tarmac path. No response was received.

7.2 Other submissions contained no evidence for consideration.

8 Analysis of documentary evidence

Inclosure Award

8.1 The **1829 Lytchet Matravers & Lytchet Minster Inclosure Award Plan** encompasses the area of the application route. It does not depict a path or road in the location of the application route.

Tithe Map

- 8.2 The **1838 Lytchet Minster Tithe Map and Apportionment** encompasses the area of the application route. The map does not depict a path or road in the location of the application route.

Finance Act

- 8.3 The **1910 Finance Act Map** for Upton (National Archives Valuation map reference IR 125/2/459) depicts the application route as a railway line (London & South Western Railway – Southampton and Dorsetshire), and the accompanying **Field Book, Canford Magna Hereditament 153(3)** describes this as “*railway line*”.

Railway Documents

- 8.3 The **1844 London & South Western Railway - Southampton and Dorsetshire Railway Plan** shows the proposed railway line corresponding to the location of the claimed route and, at that time, no existing route, track or path is shown in the locality.
- 8.4 The **London & South Western Railway, Southampton and Dorsetshire branch** closed in 1966 (‘Castleman’s Corkscrew’ – B L Jackson, Vol II, 2007, legend to photographs) and the track was lifted between 1966 and 1970 (East Dorset Railways History (online resource)).

Turnpike Roads

- 8.5 The **1835 Poole and Hamworthy Turnpike Trust Plan** includes the area of the application route. It does not depict a path or road in the location of the application route.
- 8.6 None of these documents provide any support to the application.

Other Documents

Development of Dacombe Heath Estate, Upton

Dorset County Council Roads and Bridges Department

- 8.7 **An agreement** was signed in March 1971 between Rotheroe Developments and Dorset County Council **to adopt roads** on the Dacombe Heath Estate Upton. This included the southern end of the application route as shown between points A1 – A2 – B – C.
- 8.8 The Dorset County Council memorandum for the adoption of roads 1974 states “***this adoption includes 0.4 miles of footpaths – see plan...***”.

8.9 Measurement of the length of all the 2 metre and 3 metre wide un-named 'roads', shown narrower than the estate roads on the agreement plan between Rotheroe Developments and Dorset County Council, comes to approximately 0.4 miles. This suggests that, although the agreement states that they were to be laid out in exactly the same way as estate roads, on completion they were to be adopted as footpaths. There is one mention of "footpaths" in the agreement (a reference to street lighting) and the adoption plans also refer to 'footpaths' and 'pedestrian ways'.

- This evidence confirms that these footpaths, which include that part of the application route as shown from point A1 to C, should have been added to both the List of Streets and the definitive map and statement. Although they were subsequently added to the List of Streets between 1974 and 1976, the paths were not added to the definitive map and statement at the time, which was an error on the part of Dorset County Council.
- Several other such routes, including those as shown X – A1 and C – Y – Z, should also have been added to the definitive map and statement.

Dorset County Council Roads General Purposes Sub-Committee

8.10 The **Minutes of 13 September 1973** record:

"Lytchett Minster – Upton Railway Line

187. The County Surveyor reported the request of the Planning Reference and General Purposes Sub-Committee that the line of the old Upton railway be used for footpath purposes. This would serve residential properties in the area and serve as a break between those properties and an industrial site. The Poole Borough Council were agreeable to the eastern end of the line, within their area, being created as a footpath.

Resolved

188. That the line of the old Upton railway be used for footpath purposes and that appropriate action be taken to dedicate it as a highway."

- The extent or precise location of the proposed footpath is unclear from the description provided. However, the "*break between (residential) properties and an industrial site*" would seem likely to refer to the line south of Poole Road, Upton, (because this splits an Industrial Estate from a residential area). This was dedicated as Bridleway 26, Lytchett Minster in 1985. The section of old railway north of the A35 was also dedicated as Bridleway 43, Corfe Mullen in 2007. The current application is for the 'missing' section between these two recorded bridleways.

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- Although this may be seen as providing some evidence of an intention to ensure that the route of the old railway line was dedicated/created as a public right of way, it should be borne in mind that there is no evidence to suggest that an actual dedication/creation took place in respect of the application route, or whether the intention to dedicate such a route included the section of the former railway line, which is the subject of this application.

8.11 The **1970 Roads and Bridges Committee Approved Plan** for the Upton Bypass shows a proposed route for the diversion of Footpath 7, Lytchett Minster, now Bridleway 6, Lytchett Minster & Upton, to run along part of the application route south of the Upton Bypass, before crossing the pedestrian and accommodation bridge to the west of point E.

- Although this indicates an intention to dedicate part of the application route as a footpath, this proposal was not adopted and provides no support for the application.

Ordnance Survey maps

Drawings

8.12 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch: 1 mile scale map, are drawn at a scale of 2 inches: 1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Lytchett Minster parish was completed in **1805** and does not depict the application route.

One Inch Series

8.13 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch: 1 mile does not depict the application route.

8.14 The Ordnance Survey 7th series 1 inch: 1 mile published **1960** shows the claimed route as a railway line.

Six Inch Series

8.15 The **1887 First Edition Ordnance Survey map** at a scale of 6 inches: 1 mile (1:10560) shows the claimed route as a railway line (date of survey 1887).

8.16 **The Ordnance Survey 1925 and 1946 maps** at a scale of 1: 10,560 (6 inches: 1 mile) show the claimed route as a railway line.

25 Inch Series (1:2500)

8.17 The **1901 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) surveyed in 1886 and revised in 1900, also shows the claimed route as a railway line.

1:10000 plans

- 8.18 The **1975 – 1978 Ordnance Survey map** at a scale of 1:10000 depicts the claimed route without railway tracks and with a solid line on the western side, suggesting that it was unfenced/ hedged on that side.

1:2,500 plans

- 8.19 The **Ordnance Survey Maps** at a scale of 1:2,500 (25 inches: 1 mile) published **1924** and **1934**, show the claimed route as a railway line.
- 8.20 The **1987 – 1990 Ordnance Survey map** at a scale of 1:2,500 depicts the southern part of the route from A – C1 on Drawing 14/25/3 with a solid line on the western side and a pecked line on the eastern side, suggesting the route was now fenced or hedged on the western side and open on the eastern side.

1:1250 plan

- 8.21 The **1978 Ordnance Survey map** at a large scale of 1:1250 shows the route annotated with the words “Dismantled Railway”. There is also hatching along the eastern side of the southern part of the route, indicating a bank or cutting.
- Although **Ordnance Survey Maps** rarely, if ever, provide conclusive evidence as to the status of a route they do provide evidence as to the physical characteristics on the ground at the date of the map.
 - The claimed route is shown as a railway on all available Ordnance Survey maps from 1887 to 1960.
 - The plans from 1975 onwards suggest the claimed route may have been available for use at this time.

Commercial maps

- 8.22 A number of small scale commercial maps dating from 1765 to 1951 have been examined, but none was found to depict the claimed route.
- It is therefore considered that they provide no evidence in support of the application.

National Parks and Access to the Countryside Act 1949

Parish Survey

- 8.23 The **Lytchett Minster Parish Survey** of rights of way was completed in **1950/51**. The application route was not included amongst those claimed by the Parish Council to be public rights of way at that time.

Draft, provisional and first definitive map

- 8.24 Neither the **draft map** for the west area **1955**, **provisional map 1964**, nor the **first definitive map 1967** record any part of the claimed route.

Revised draft and current definitive maps

- 8.25 The route was not considered during the **Special Review** in 1973 and therefore was not recorded on the **1974 revised draft map** nor upon the **current definitive map** (sealed **1989**).
- 8.26 A letter from the **Dorset County Council Surveyor** to Lytchett Minster Parish Council (29 July **1975**) addresses the Special Review 1973 and revised draft map 1974. It states that “***The County Council has entered into agreements under Section 40 of the Highways Act 1959 with the developers of the Shore Road, Upton Heights and Dacombe Estates. The agreements make provision for footpaths (other than footways at the sides of carriageways) and these will be adopted as public rights of way in due course, and in due time they will be included on a rights of way map.***”
- The evidence provided from the various stages leading to the compilation of both the **first** and **current** definitive maps demonstrates that the route has not been the subject of any claim or formal investigation as to whether it may hold public rights.
 - However, the Surveyor’s letter would appear to relate to paths on the Dacombe Estate, including that part of the application route from A1 to C, as discussed in paragraphs 8.7 – 8.9 above, and supports the conclusion that the Section 40 agreement intended to adopt the relevant ways as footpaths.

Highways Act 1980

- 8.27 **Highways Act 1980, Section 31(6)**. There are no deposits of a statement, map and declaration relating to this area.

Land Registry Searches

- 8.28 Land Registry Searches reveal that the part of the claimed route to the east of 22a Heights Approach (just north of point C) is registered as Title DT383870, owned by David B Fincham (Poole), and being subject to “***the rights of the public over the public footpath crossing the property***”. This dates from the 1972 sale of a large part of the former railway line, which had a public footpath across it (north of the current application route).
- 8.29 That part of the route to the south of the above registered land, but excluding the adopted tarmac path in the east, is registered (2005) as Title DT334786, owned by Brooks Builders (Poole) and is also subject to “***the rights of the public over the public footpath crossing the property***”.
- The “public footpath” described in the two registered titles almost certainly does not relate to the application route because such footpath rights could not have accrued by 1972 (the railway track was lifted between 1966 and 1970), and there was no evidence of a dedication of a public right of way.

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8.30 The parcel of land that includes the adopted tarmac path southwards from C is registered (2014) as Title DT13682, owned by S Matthey and The Alan Matthey Corporation Trust, refers to the following, ***“the roads are subject to rights of way and the footpaths are subject to rights of way on foot only”*** and ***“the footpaths at the side and rear of...properties are subject to rights of way on foot and with hand barrows and such like”***.

- The document does not make it clear whether the “rights of way” are public or private rights. However, in light of the Section 40 agreement previously discussed it is suggested that they refer to public rights between points X, C and Z.

8.31 The remainder of the claimed route is not registered. However, in the conveyance provided by R Davies of Historic Railways Estate, dated January 1972, the railway line north of Upton Road, going beyond the A35, and including all of the application route, was sold by British Railway Board to D G Harrocks and others. Those named were registered as directors of Upton Brick Works Ltd, which has now ceased trading. It has not been possible to contact these owners. However, a subsequent director of this company, N R Harrocks, confirmed by telephone that he thought the land was sold to Rothchild Estates in 1998. It has not been possible to confirm this as Rothchild Estates and their agents have not responded to communications.

Aerial Photographs

8.32 The **1947** aerial photograph shows a railway line along the claimed route.

8.33 The **1972** aerial photograph shows some lighter shading along part of the application route, this may be due to the building activity, which is apparent on either side of the dismantled railway.

8.34 Aerial Photographs from **1986 to 2014** give some limited evidence of lighter shading, which may indicate wear marks, from points X – A1 and A – A1 – E on Drawing 14/25/3. However, much of the route is obscured by trees.

- The later photographs may indicate the presence of a ‘path’ at these times, although it does not provide evidence that any path was used by the public.

8.35 **In Summary**, none of the documentary evidence provides support for a public right of way between points A – A1 and C – C1 – C2 – C3 – C4 – D – E on Drawing 14/25/3. However, documentary evidence indicates that a route from point X – A1 – A2 – B – C and also from point C – Y – Z has been adopted as a footpath and should be added to the definitive map.

9 Analysis of user evidence supporting the application

9.1 Eight user evidence forms (dated 2010) were submitted with the application in 2011. A further 16 evidence forms were received following consultation in March – April 2016, giving a total of 24 witnesses. However, three evidence forms were rejected due to being incomplete. Thus evidence was considered from 21 witnesses.

- 9.2 A summary of these forms of evidence is set out below and in Appendix 4, but reference should be made to the actual forms contained within the file of the Director of Environment Ref. RW/T506 for all the information.
- 9.3 All of the 21 witnesses state that they used some, or all of the route, either individually or with other users, as shown between points A – A1 – A2 – B – C – C1 – C2 – C3 – C4 – D – E on Drawing 14/25/3. This use was on foot, by pedal cycle, and in one case by horse. Some users travelled by more than one mode. Most users described using the A – A1 alternative at the south end, but one said they also used the X – A1 branch.
- 9.4 Of the users on foot, 11 used the whole route claimed as shown between points A – E on Drawing 14/25/3. 10 cycle users used the whole length of the application route A – E.
- 9.5 Of the 21 users, 17 used it sometimes or always on **foot**. Use on foot increased from one user in 1967, to 8 in 1986, 15 in 2010 and 9 users in 2011 (application forms submitted with the application were dated 2010). Of the 21 users, 10 used it occasionally or always by **cycle** (pedal cycle), First reported cycle use was one person in 1975, rising to three in 1990 and increasing to 10 in the period 2010 – 2016. **Overall**, use ranged from one user in 1967, to 21 users in 2010 and 15 in 2011. This encompasses a period of 44 years of continuous use leading up to the date of application in 2011.
- 9.6 Frequency of use on **foot**, per user, varied from once a year to five hundred times a year. On average, each witness used the route twice a week. Frequency of **cycle** use, per user, ranged from six times per year to one hundred times per year. On average, each witness used the route 3 times a month. **Overall**, six witnesses used the route at least three times a week, a further three used it weekly, a further 10 used it at least monthly and the remaining 2 witnesses used it less frequently.
- 9.7 20 people claimed use for '*Pleasure*' and one for '*Necessary purpose*'. 20 witnesses had seen others using the route. Six had seen others only on foot, 13 had seen others on foot and cycle and one had seen others on foot and horseback.
- 9.8 Six witnesses reported seeing a gate but only three said it was locked. Mr P Geer said there was a gate "***locked, but now bypassed***" and "***people dodged the gate by removing and treading down nearby bushes etc***". He began using the route in 1981. The other two users confirmed that the locked gate was bypassed when they used it in 1987 and 1988.
- This would suggest that the **locked gate was an obstruction in 1981**, when Mr Geer began using the route.
- 9.9 Four users reported that encroaching undergrowth was an obstruction, six users estimated the useable width to be 12 – 18 inches (30 – 45 centimetres). All contactable witnesses who had not specified the width were questioned by the case officer and asked how wide the route used to be. Several witnesses said it used to be wider (details with individual forms). One witness said that it was used by a fire engine to access garden fence fires many years ago.

9.10 One user, Mr P Geer, reported being challenged in approximately 1995 (and at another unspecified date) and said that others were also challenged. None of the other witnesses had been challenged or knew of any users being challenged and no users had obtained permission or used the route in the course of working for the landowner. 14 users thought the owner was aware of use, six of these because the path was so well used and one because there were no barriers. The others did not give reasons. Three users thought the owner was not aware of public use.

- Use on foot ranged from nine to 15 users in the twenty years leading up to the application in 2011, and the route was used on average between 4 and 6 times a day.
- Bicycle use ranged from three to 11 users over the same period. (Of the three initial users on cycles between 1991 and 1994, one used it 100 times per year, one 20 – 30 times per year and the other 14 times per year).
- Between points X – A1 and A – A1 – A2 – B – C most users, when asked, described using the tarmac path(s) but there is some evidence on the ground of current use on foot and bicycle on the grass to the west of the tarmac path and also older use, as judged by the parallel indented tracks, possibly caused by vehicle use on the grass.
- The majority of users were using route A – A1 rather than X – A1.

9.11 **In Summary**, considering the 20 years leading up to the application, the user evidence is of sufficient quality and quantity to establish rights on foot for a deemed dedication under Section 31 of the Highways Act 1980. The evidence of use by bicycle over the same period is considered to be insufficient to establish higher rights. However, it is necessary to consider any interruptions due to challenges, or use being brought into question, as discussed in paragraph 13 below.

10 **Analysis of other evidence supporting the application**

10.1. Peter Rusling (applicant) provided evidence of simultaneous use of the application route by 2 – 25 members of a walking group since 2007.

- Members of this group were offered evidence forms but declined to complete them, so this evidence carries less weight than that of documented users.

10.2. David Underhill (resident) reported in a telephone call that he had used the application route for 29 years prior to 2016. He had seen others using it, mostly on foot and sometimes by bicycle. He also reported unruly teenagers using the route and causing damage.

- As the evidence was not submitted in writing with an accompanying plan, this evidence carries less weight.

10.3. Mrs Fionda believed the route was part of the Castleman Trailway and had applied to Upton Council to have it recognised. However, the matter had not progressed because the landowner could not be established.

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- No records have been retained from this proposal and consequently no evidence has been submitted.

10.4. **In summary**, this additional evidence adds little weight to the application.

11 **Analysis of evidence opposing the application**

11.1 No submissions provided any evidence opposing the application for analysis.

12 **Analysis of other submissions**

12.1 Mr S (user) provided verbal evidence of 30 – 40 members of a running group using the route on a weekly basis.

- Members of this group were offered evidence forms but declined to complete them, so this evidence carries little weight.

12.2 Peter Rusling reported that the Dorset Wildlife Trust had expressed an interest in the route being registered (at a meeting of Lytchett Minster and Upton Town Council). However, no such expression of interest was received from Dorset Wildlife Trust when they were consulted.

12.3 Steve Davies (Green Space Management Team, Dorset County Council), Bill Rogers (Sustrans Ranger) and County Councillor Fred Drane (initially on behalf of the Keep Upton Tidy Group) support the application. However, they provide no evidence that can be taken into account.

12.4 Two landowners, D B Fincham and Brooks Builders Ltd (through agents Coles Miller), both stated that they had no objection to the application, provided the route follows the existing tarmac path from X – A1 and A – A1 – A2 – B – C on Drawing 14/25/3. Both these landowners are aware of, and accept, current use.

- Both were advised that the application route, and currently used route, may not be confined to the tarmac path.

12.5 Residents G Varley and the un-named resident of 3 Meadowbank objected to the application based on concerns of security, vandalism, loss of wildlife habitat and cost.

12.6 T & P Stanfield expressed that they did not want to see any of the vegetation pulled out (along the application route) as it keeps intruders out.

12.7 Mr Underhill asked it to be placed on record that natural blackberry bushes act as a security deterrent, that there are various natural inhabitants and that disturbance would disrupt the natural balance. He said destruction of growth would damage stability of the bank.

- Matters of security, desirability, habitat and cost cannot be taken into consideration when determining the application.

12.8 Kevin Humphreys (Dorset County Council Transport Planner) objected to the application because he believes it has higher public rights than as a footpath, as it is used by cycles.

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- Evidence of any higher public rights submitted or discovered during the course of the investigation will be taken into consideration.

12.9 Resident Mrs Stewart objected to motor cycles accessing part of the application route from private land.

- Use of private land to access the application route cannot be taken into consideration.

12.10 Resident L Holt said that she had maintained part of the proposed route behind her house and tried to find out who owned it. She says: "***we have had to be responsible to keep this area clear of dumped rubbish..***" She continues "***Whilst I have no objection for a pathway to be implemented I have made arrangements for a fence to be erected extending my back garden (to incorporate some 15 foot of waste land)...I had arranged for the boundary to still allow enough space for a footpath or vehicle***".

12.11 Resident Ms K stated in 2010 that she had used the proposed route herself for 32 years but at the time expressed "horror at the thought of a pathway behind her house", based on vandalism, noise, antisocial behaviour and security risk. However, in 2016 she supported the application, provided it was not going to be surfaced or lit.

- Conditions on the maintenance of the proposed route cannot be imposed.

12.12 **In Summary**, none of the other submissions contain any evidence that can be taken into consideration when determining the application.

13 **Date public use was 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 brought into question.

13.2 Possible dates for consideration:

(a) The locked gate (at point C1 on Drawing 14/25/3) was identified in Mr Geer's evidence form as an obstruction in 1981, when Mr Geer began using the route.

- Although it has not been possible to contact Mr Geer to clarify his statement he clearly states on a signed form that there was a gate on the way '***locked and now bypassed***' and showed the location of the gate on a plan accompanying his evidence form.

(b) The reported challenge to user Mr P Geer in approximately 1995.

- Although it has not been possible to contact Mr Geer to clarify his statement he clearly states on a signed form that he was told by an owner / tenant of the land crossed by the way that it was not public.

- (c) The date of the application by Mr P Rusling, 21 February 2011.
- This was advertised widely and brought to users' attention.

13.3 It is considered that all of these dates are dates when use of the route was brought into question.

13.4 The earliest evidence of a date of a challenge to public use of the claimed route as shown between points **A – A1 – A2 – B – C – C1 – C2 – C3 – C4 – D – E** on Drawing 14/25/3 is **1981**, as a result of there being a locked gate. There is no period of twenty years after 1981 without use of the route being brought into question. The user evidence supporting the application begins in 1967 and so there is no evidence of 20 years' use as of right prior to 1981.

13.5 The section of the route from **A – A1** on Drawing 14/25/3 cannot be considered separately from the claimed route as a whole. The locked gate reported at point **C1** in 1981 is considered to be an effective challenge to the entire application route.

13.6 Considering the evidence of a dedication at common law, there is no prescribed period or amount of use. The longest period of continuous unchallenged use is between 1996 and 2011; this represents 15 years of continuous use, during which there were 12 – 15 users on foot use on foot and 6 – 11 users on bicycle. Use of the route on foot was on average between 4 and 6 times per day in total, and use by bicycle was less than once per day. Given the urban locality, it is considered there is insufficient evidence to infer dedication under common law.

14 **Conclusions**

14.1 As the claimed route is not currently recorded on the definitive map and statement of public rights of way, it is necessary for members to decide whether the claimed footpath **A – A1 – A2 – B – C – C1 – C2 – C3 – C4 – D – E** as shown on Drawing 14/25/3, subsists or can be reasonably alleged to subsist.

14.2 There is no documentary evidence supporting the existence of public rights along those parts of the claimed route from point **A – A1** and point **C – C1 – C2 – C3 – C4 – D – E**. Therefore, the documentary evidence is considered insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist.

14.3 If members are satisfied that the documentary evidence does not show, on balance, that a public right on foot exists in respect of the application route, they should also consider whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

14.4 The 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 20 years or more prior to the date the right to use the route was first brought into question. Here, the route was first brought into question in 1981 and so the 20 year period is between 1961 and 1981.

- 14.5 However, the evidence of use under consideration dates from 1967. This does not therefore satisfy the requirement for an uninterrupted period of use for 20 years and is also considered to be insufficient.
- 14.6 There are no subsequent uninterrupted periods of 20 or more years of use.
- 14.7 Therefore, evidence of use of the application route, together with the historical documentary evidence, is considered, on balance, insufficient to raise an inference of dedication under Section 31 of the Highways Act 1980. Furthermore there is insufficient evidence to infer dedication under common law.
- 14.8 However, with respect to the route **X – A1 – A2 – B – C – Y – Z** there is conclusive documentary evidence to demonstrate it was adopted under Section 40 of the Highways Act 1959, as evidenced by the **Agreement Plan** and the **Memorandum of Adoption** and is **recorded on the List of Streets as a publicly maintainable highway**. Therefore, it should have been recorded on the definitive map and statement as a footpath, along with several other routes shown as such on the road adoption plans.
- 14.9 Therefore, it is recommended that the application to add a footpath as shown **A – A1 – A2 – C – C1 – C2 – C3 – C4 – D – E** on Drawing 14/25/3 be refused but that the route **X – A1 – A2 – B – C – Y – Z** be recorded on the definitive map as a public footpath.

Andrew Martin
Service Director Highways & Emergency Planning

November 2017

LAW

General

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 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 add a right of way to the definitive map and statement if the balance of evidence shows either:
- (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 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.

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- (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 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.

3 Human Rights Act 1998

- 3.1 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.
- 3.2 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

4 National Parks and Access to the Countryside Act 1949

- 4.1 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
1765	Isaac Taylor's Map of Dorset	Unclear whether any routes existed in the area of the application route.
1773	Map of Dorset by J Bayly	Unclear whether any routes existed in the area of the application route.
1787	J Cary Map of Dorset	Does not show the application route.
1795	Blätter, Dorsetshire 3	Does not show the application route.
1796	Isaac Taylor's Map of Dorset	Does not show the application route.
1801	C Smith New Map of Dorset	Does not show the application route.
1805	Map of Dorset by J Stockdale	Does not show the application route.
1805	Ordnance Survey Drawings	Does not show the application route.
1811	Ordnance Survey First Edition map scale 1 inch: 1 mile	Does not show the application route.
1815	Arrowsmith Map of Dorset	Does not show the application route.
1826	Greenwood Map of Dorset	Does not show the application route.
1829	Lytchet Matravers & Lytchet Minster Inclosure Award Plan and Award	Includes the area of the application but claimed route not shown.
1835	Poole & Hamworthy Turnpike Trust Plan	Includes the area of the application but claimed route is not shown.
1838	Lytchet Minster Tithe Map	Includes the area of the application but claimed route is not shown.
1839	Lytchet Minster Tithe Apportionment	Includes the area of the application but claimed route is not shown.
1844	Southampton and Dorsetshire Railway Plan	Depicts the application route as a railway line.
1846	Gazetteer Dorset	Depicts the application route as a railway line although roads are depicted differently from other maps of the time.
c1846	Pigot & Son Map of Dorset The date of this map is estimated as 1846 by 'Antique Maps on line', but it does not depict the Southampton and Dorchester Railway which opened in 1847. It is presumably taken from an earlier survey.	No route directly relating to the application route.
1863	Crutchley's Railway Map of Dorset	Shows the railway line on the application route.

Date	Document	Comment
1887	Ordnance Survey First Edition map scale 6 inches: 1 mile	Application route shown as railway line.
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.	
1901	Ordnance Survey Second Edition map scale 25 inches: 1 mile (1:2500)	Application route shown as railway line.
1910	Finance Act plans (Ref. IR125/2/459) Canford Magna Hereditament 153(3) (Ref. IR58/67720)	Application route shown as railway line. Described as “Railway Line”.
Early 1900s	Map of Dorset by George Richmond	Application route shown as railway line.
1900s	W & A K Johnston Map of England scale 3 miles: 1 inch	Application route shown as railway line.
1900s	Bacon’s New Revised Map of Dorsetshire	Application route shown as railway line.
1900s	Bacon’s Geographical Map of Dorsetshire	Application route shown as railway line.
1900s	G Philip & Son Geological Map of Dorset	Application route shown as railway line.
1900s	G Philip & Son Botanical Map of Dorset	Application route shown as railway line.
1900s	Weller Despatch Atlas	Application route shown as railway line.
1911	Bartholomew Tourists & Cyclists map scale 2 miles: 1 inch	Application route shown as railway line.
1920	Bartholomew Tourists & Cyclists Map scale 2 miles: 1 inch	Application route shown as railway line.
1923	Ordnance Survey Ministry of Transport road map scale ½ inch: 1 mile	Application route shown as railway line.
1924	Ordnance Survey map scale 1:2500	Application route shown as railway line.
1925	Ordnance Survey map scale 1:10560	Application route shown as railway line.
1920s	Bacon’s Motoring and Cycling Road map	Application route shown as railway line.

Date	Document	Comment
1934	Ordnance Survey map scale 1:2500	Application route shown as railway line.
1936	W & A K Johnston Motoring & Touring map of England scale 3 miles: 1 inch	Application route shown as railway line.
1940s	Geographia Large Scale Road Map of Dorsetshire	Application route shown as railway line.
1944	Bartholomew's Revised Half Inch Contoured map	Application route shown as railway line.
1945	Ordnance Survey 1 inch: 1 mile New popular edition sheet 178	Application route shown as railway line.
1946	Ordnance Survey map scale 1:10560	Application route shown as railway line.
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.	
1950/51	Lytchett Minster Parish Survey	Application route not claimed at the time.
1951	Bartholomew's Revised Half Inch Contoured map	Application route shown as railway line.
1955	Draft definitive map for the South East area	Application route shown as a railway but not shown coloured as a public right of way.
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 7 th Series map scale 1 inch: 1 mile	Application route shown as railway line.
1964	Provisional definitive map	Application route shown as a railway but not shown coloured as a public right of way.
1966/7	First definitive map	Application route shown as a railway but not shown coloured as a public right of way.
1970	Upton Bypass Approved Plan – Roads and Bridges Committee	Shows proposed diversion of FP 7, Lytchett Minster and Upton (now BR 6) to utilise part of the application route.

Date	Document	Comment
1971	Agreement between Rotheroe Developments and DCC for the laying out of Dacombe Heath Estate, (Dorset History Centre ref. Deed Packet RA3/6)	Southern end of application route depicted in exactly the same way as estate roads.
1971	London Gazette notice	Advertises the winding up of Upton Brick Works Ltd.
1972	Conveyance of railway land	Conveyance of the land, including the application route.
1973 13 Sept	Minutes of DCC Roads General Purposes Sub-committee (paragraphs 187 & 188)	Refers to the proposed dedication of the former Railway Line as a public right of way.
1974	Revised draft map	Application route shown as dismantled railway but not coloured as a right of way.
1974 30 April	Dorset County Council Memorandum for Adoption of Roads	Refers to the 'adoption of footpaths'
1975	Letter from DCC County Surveyor to Lytchett Minster Parish Council (29/07/1975)	Relates to the adoption of public rights of way on Dacombe Estate
1975-8	Ordnance Survey map scale 1:10000	Shows the application route and, at the southern end, that it is unfenced on the western side.
No date but estimated dates ~1976 ~1997	Dorset County Council List of Streets (two copies from different dates, dates estimated from most recent adopted road date included.)	No part of the application route is listed however, the more recent one has a hand written added note " & Footways " next to the entries for Dacombe Drive, Dacombe Close and Briarswood Road.
1978	Ordnance Survey map scale 1:1250	Shows the application route annotated as 'Dismantled Railway'.
1987-1990	Ordnance Survey map scale 1:10000	Shows the application route and, at the southern end, that it is unfenced on the eastern side.
1989	Current definitive map	Application route shown as a railway but not shown coloured as a public right of way. The former railway line to the north and south of the application route are bridleways.
2001	Letter from Dorset Wildlife Trust relating to DMMO T275 (north of bypass)	Quotes John Edge as recalling proposal to make old railway line in Upton a trailway and record as a right of way.
2001	Signed letter from John Edge detailing his recollections	States that the old railway, including the current application route, was owned by the Upton Brick Co. in 1981.

Date	Document	Comment
2016	Dorset County Council Digital representation Map of List of Streets	That part of the route between points X - A1 - A2 - B - C - Y - Z is shown as 'footway maintainable at public expense'.
Copyright 2017	Current Ordnance Survey map scale 1:10,000	Application route shown as an undesignated track.
1947	Aerial photo	Application route is shown as a railway line.
1972	Aerial photo	Application route is shown to exist. Building activity in the area.
1986	Aerial photo	Application route is shown to exist but route is partly obscured by trees.
1997	Aerial photo	
2002	Aerial photo	
2005	Aerial photo	
2009	Aerial photo	
2014	Aerial photo	

Extracts from key documents

(See the Director for Environment's file RW/T506 for copies of other documents mentioned)

Agreement dated March 1971 between Rotheroe Developments and Dorset County Council

AN AGREEMENT made the Twelfth day of March 1971

One thousand nine hundred and seventy-one BETWEEN ROTHEROE DEVELOPMENTS LIMITED whose registered office is at 12 Lombard Street West Bromwich Staffordshire

(hereinafter called "the Owners") of the one part and THE COUNTY COUNCIL OF THE ADMINISTRATIVE COUNTY OF DORSET (hereinafter called "the Council") of the other part

WHEREAS

(1) The Owners are seized in fee simple in possession of land situate ~~in the~~ Parish of at Upton in the Rural District of Warcham and Purbeck in the said County being the site of certain private roads shown on the plan annexed hereto coloured (pink) and intended to be called or known as

and are desirous of making up the said roads so that such roads shall become highways maintainable at public expense and the Owners have agreed to carry out or cause to be carried out the works hereinafter appearing

(2) The Owners have requested the Council upon being satisfied that the said works have been executed and carried out in accordance with the Specification attached hereto to take over the said roads as highways maintainable at public expense which the Council have agreed to do for the consideration hereinafter mentioned

Extract from minutes of the Dorset County Council Roads General Purposes Sub-Committee 13 September 1973

RIGHTS OF WAY

Broadstone - Land at Ashington Cutting

185. The Poole Borough Council had requested that the County Council be prepared to take over and maintain a small section of proposed footpath in Corfe Mullen to link with some public open space within the Borough which was being negotiated for acquisition by the Poole Borough Council. It would also be necessary for the path to be gravelled and fenced and a footbridge provided at the Parish and Borough boundary in order to take pedestrians across a stream, and it had been suggested that the County Council bear 50% of the cost of the provision and erection of this bridge and of the gravelling and fencing of the length within the parish.

Resolved

186. (a) That the County Council take over and maintain the proposed length of footpath in the Parish of Corfe Mullen, shown A-B on Drawing No. 4394/9, when appropriate action is taken to dedicate it as highway.
(b) That the County Council contribute 50% of the cost of the provision and erection of a footbridge over the stream at the Parish/Borough boundary and of the gravelling and fencing of the length of path within the Parish.

Lytchett Minster - Upton Railway Line

187. The County Surveyor reported the request of the Planning Reference and General Purposes Sub-Committee that the line of the old Upton railway be used for footpath purposes. This would serve residential properties in the area and serve as a break between those properties and an industrial site. The Poole Borough Council were agreeable to the eastern end of the line, within their area, being created as a footpath.

Resolved

188. That the line of the old Upton railway be used for footpath purposes and that appropriate action be taken to dedicate it as highway.

Dorset County Council Memorandum for the Adoption of Roads (1974)

DORSET COUNTY COUNCIL			
MEMORANDUM			
<p><i>From</i> THE COUNTY SURVEYOR COUNTY HALL, DORCHESTER</p>	<p><i>To</i> THE DIVISIONAL SURVEYOR, No. 5 DIVISION Files H.6/7 L.25/84</p>		
MY REF. M.11/5 CJS/MEH	YOUR REF.	DATE 30 April 1974	
SUBJECT			
<u>Adoption of Roads</u>			
<p>In accordance with the powers delegated to me by the County Council on the 25th July, 1969, in pursuance with the recommendation of the Roads and Bridges Committee on the 10th June, 1969 (Minute 86, Part I Section 6) I hereby certify that the under-mentioned road(s), having been constructed in accordance with the County Council's specification and maintained in a satisfactory condition for 12 months, is/are adopted as highway(s) maintainable at public expense:</p>			
<u>Road No.</u>	<u>Description</u>	<u>Map Reference</u>	<u>Mileage</u>
D.16(59)	Dacombe Drive, Upton	983932 - 983934	0.19
D.16(60)	Dacombe Close, Upton	983932 - 984933	0.11
D.16(61)	Briarswood Road, Upton	982932 - 983932	0.04
			TOTAL 0.34 miles
3426/E/77			
<p>The adoption date is ... 30 April 1974 and this mileage has been added to the road mileage schedule as indicated.</p>			
<p><i>Done</i></p> <div style="text-align: right; margin-right: 100px;">  County Surveyor </div>			
<p>Copy to: The Clerk of the County Council (2) - Please cancel the bond. Cost Section Traffic Section Rights of Way Section P.S.W. or Estates Planning Liaison County Planning Officer (2)(1) County Valuer Mr. K. W. Dolding</p>			
<p style="text-align: center;">This adoption also includes 0.40 miles of footpaths - please see plan with P. Baker.</p>			

Dorset County Council Surveyor's Letter 1975
(addressing Lytchett Minster Parish Council concerns about the Definitive Map Special Review 1973 and 1974 Revised Draft Map)

10. The County Council has entered into agreements under Section 40 of the Highways Act 1959 with the developers of the Shore Road, Upton Heights and Daconbes Estates. The agreements make provision for footpaths (other than footways at the sides of carriageways) and these will be adopted as public rights of way in due course, and in due time they will be included on a rights of way map.

Aerial photographs

1947



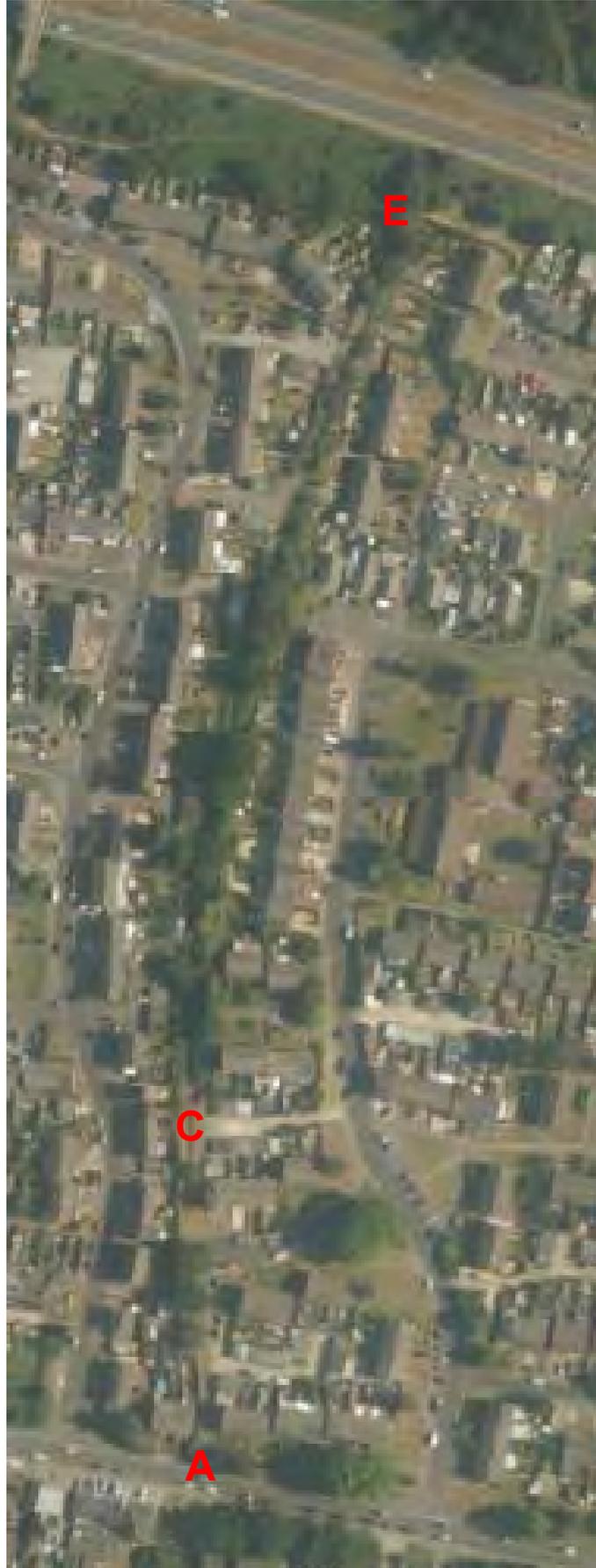
1972



1986



2014



USER EVIDENCE (FROM FORMS COMPLETED IN 2010)

Name	Dates	Frequency of use	Type of use	Details of use / Comments
Mrs E Brown	1976-2010	12-20 times per year	Foot	Used by others on foot and bike. No stiles, gates, notices or other obstructions. Plan submitted later, did not use whole of route. Wider in 1987. Plan dated later. Used B – C2 only.
Mrs W Eaton	1987-2010	Up to twice a week	Foot	Used by others on foot and horseback. Locked gates present. Wooden fence and sleepers to stop motorbikes at junction with Bridleway SE18/7 old railway line. Various width from 2ft to 6/7ft. Was wider in 1987.
Mrs E R Fionda	1981-2010	300 times per year	Foot	Used by others on foot or bicycle. No stiles, gates or notices.
Mr P A Geer	1981-2010	1981-2005 ~500 / year 2005-2010 ~200 / year	Foot	Used by others on foot and pedal cycle, locked gate but by-passed, no notices or stiles. Stopped by someone 2 or 3 times up to approx. 1995. Knows of others who were stopped. Variable width due to vegetation. Only sketch map provided. Used C4 – E only.
Mrs M Griffin	1968-1978 2000-2010	Several times per year	Foot	Used by others on foot. No stiles, gates or notices. Always been a narrow path way.
Mr G M Owen	1967-2010	Occasional	Foot	Used by others on foot. Unlocked gates present. No stiles, notices or other obstructions. 1-2 metres wide.
Mr P Rusling	1976-2010	Between 6 (in 1976) and 20 (in 2010)	Foot	Used by others on foot. Gates at Poole Road end. No stiles, notices or other obstructions. 1 metre wide approx.

USER EVIDENCE (FROM FORMS COMPLETED IN 2016)

Name	Dates	Frequency of use	Type of use	Details of use / comments
Mr M Addiscott	1995-2016	20-30 / year	Bicycle	Others used on foot and cycle, no stiles, gates or notices. Current useable width 12"-18".
Ms J Everall	1988-2016	Approximately 150 / year	Foot	Others used on foot and bike, locked gate but bikes and walkers can go through side gate. Thinks owner aware because well used.
Ms E Fionda (additional evidence from 2010)	2010-2016	300 / year	Foot	Currently only uses C3-E because route is muddy and overgrown.
Mr I Gamlin	2004-2016	20-30 / year	Bicycle	Others used on foot and cycle, no stiles gates or notices. Rideable path width 12"-18".
Mrs J D Griffin	1970-2016	12 / year	Foot / Horse	Others used on foot, only rode on horse once (1968 – 1969). No gates stile or notices but often obstructed with overgrown hedges.
Mr R A Griffin	1970-2016	52 / year (1970-80) "Several" since	Foot	No gates stile or notices but often overgrown. Width originally 2.5-3m. Used only C1-E. Obstructed with overgrown hedges.
Mr G Groombridge	2006-2016	200 / year	Foot / 150 Bike / 50	Others used on foot and bike, no stiles, gates or notices. Width 4m if cleared.
Mr Eamonn MacMillan	1990-2016	20-30 / year	Bicycle 16-25 Foot 4-5	Others used on foot and cycle. No stiles, gates or notices. Width 12"-18" but narrowed by vegetation seasonally.
Mr J McHarry	1995- 2016	30-40 / year	Bicycle	Others used on foot and cycle. No stiles, gates or notices. Width 12"-18" but narrowed by brambles in summer.
Mrs S Newton	1997-2016	90 / year	Foot / Bicycle	Others used on foot and cycle, no stiles gates or notices. Plan not signed. Used only A-D.
Mr P Rusling (additional evidence)	2007-2016	Regularly 12 / year	Foot by between 2-25 people	U3A walking groups, not recorded on evidence form, no plan.
Mrs S Samways	1990-2016	18-20 / year	Foot / 14 Bicycle / 6	Others used on foot and cycle, no stiles gates or notices, some fly-tipping.
Mr R Saunders	From 2010 (assumed to 2016 when form dated)	20-30 / year	Bicycle	Others used on foot and cycle. No stiles, gates or notices. Rideable path width 12"-18".

Name	Dates	Frequency of use	Type of use	Details of use / comments
Mr G W Scott	1975-2016	300 / year	Foot / Bicycle	Others used on foot and cycle (30-40 runners every Wed eve), no stiles, gates, notices. Width approximately 4 metres if cleared.
Mr P Sharman	1996-2016	12 / year	Foot	Others used on foot, no stiles, one gate near S end (not locked), notices re fly-tipping. Width variable.
Mr A Sorton	From 1995 (assumed to 2016 when form dated)	15-20 / year	Bicycle and foot	No stiles, gates or notices. Rideable path 12"-18" but reduces to 6" in summer.

USER EVIDENCE REJECTED

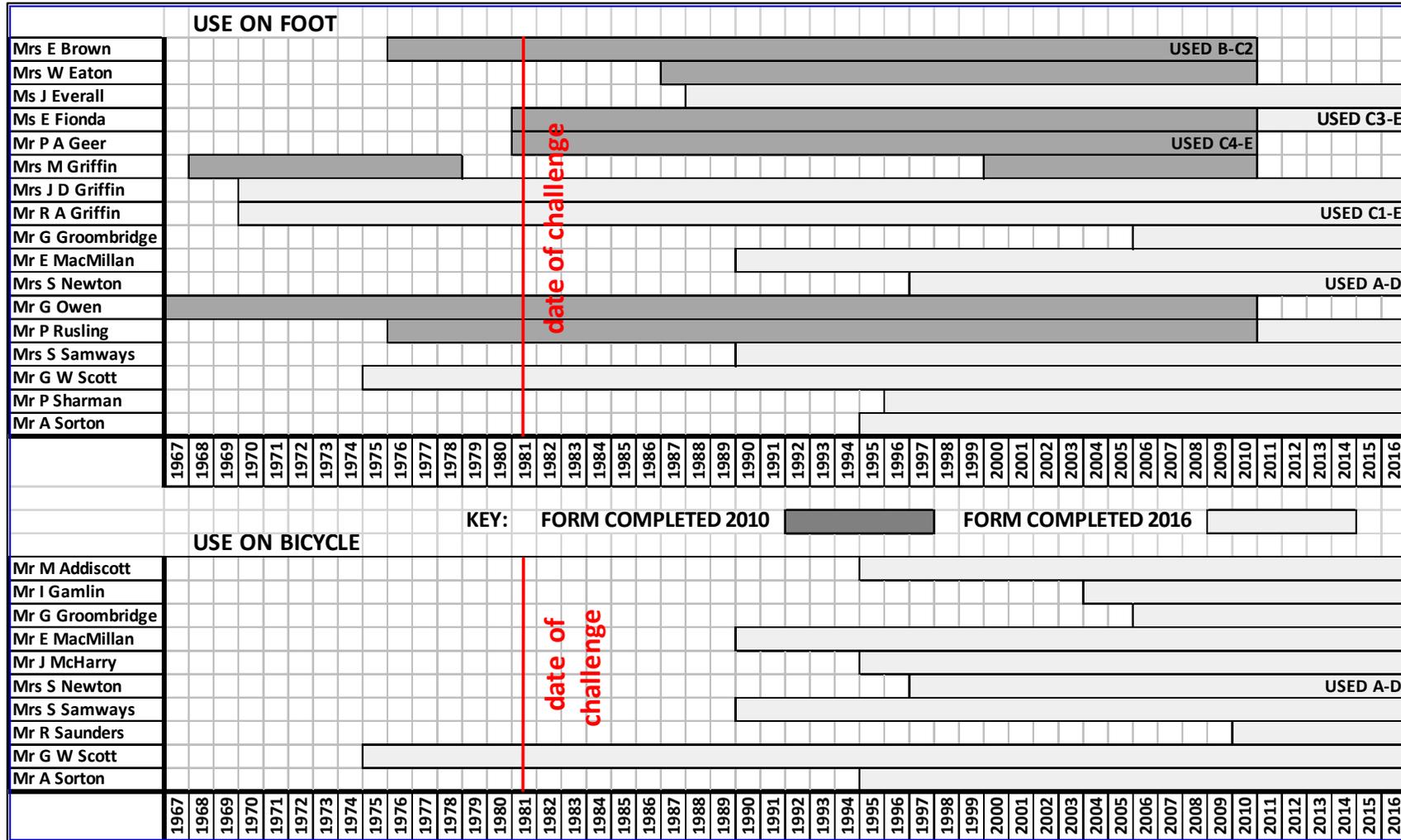
Not clear which route was used:

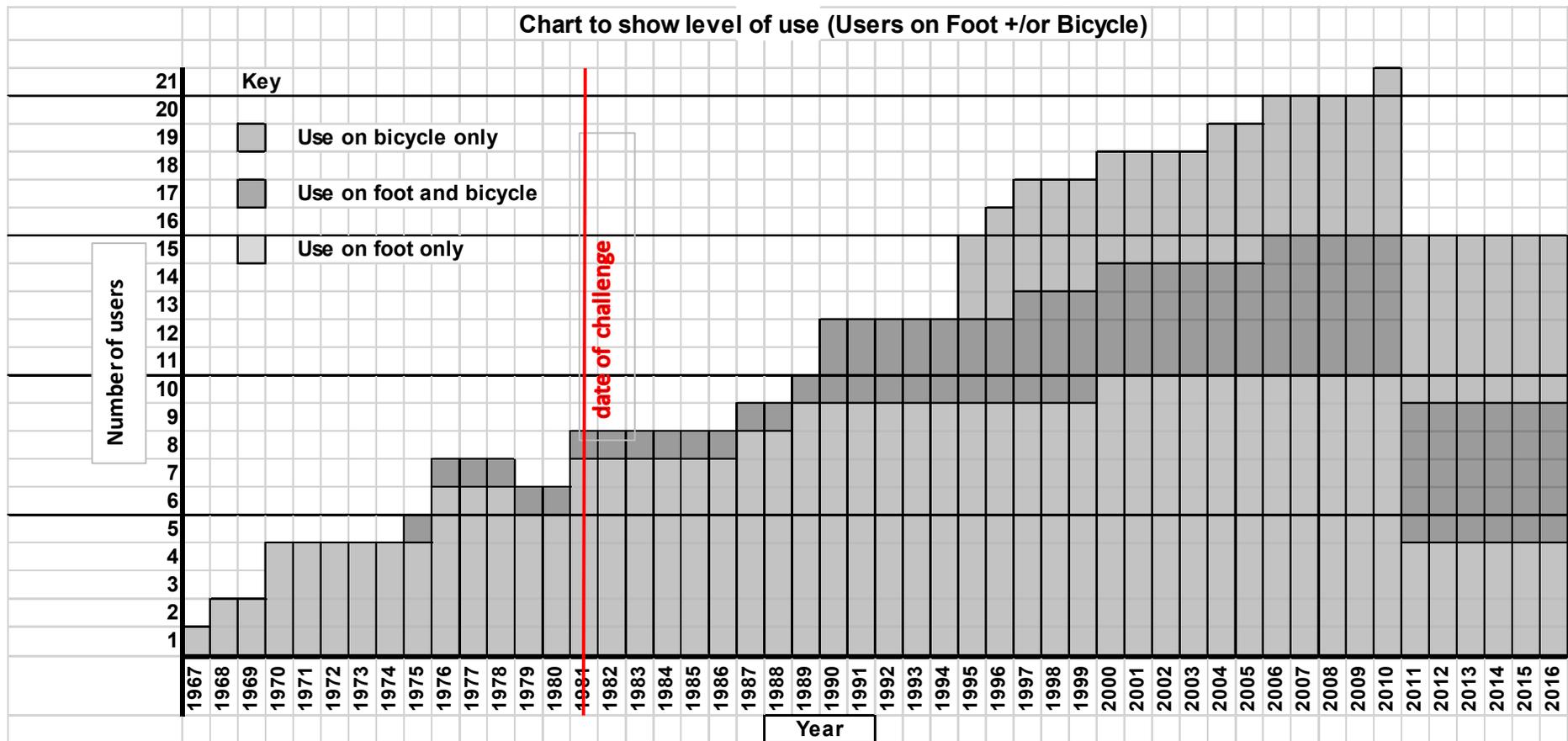
Name	Dates	Frequency of use	Type of use	Details of use / comments
Mrs Hoskins	2001-2016	700 / year	Foot	Others used on foot and bike, stile (no details given), notice (Council's), approx. 3m wide. No plan, no description of route.
Mr R J Marsden	2004	52 times per year	Foot	Used by others on foot. Gates present – not locked. No map, form not dated.
Mr S Sinclair	2009-2016	2-3 / year	Bicycle	Barrier at E to prevent horses / motorbikes. Saw other on foot and cycle. Notices to respect other users. Width 1.5-2.0m. Map not completed, but route described.

OTHER SUBMISSIONS RECEIVED AND REJECTED

Name	Comments
Marcelle King	Reported in email and telephone conversation that she had used the route daily 1978-2015. She had seen others on foot, pedal cycle and motorbike (but not motorbike recently, one gate (never locked). No evidence form or plan – data not included in analysis.
David Underhill	Reported in a telephone conversation the he had seen the route used since 1987, mostly on foot, sometimes cycles. No written evidence provided. (Data not included in analysis)

Chart of user evidence to show periods of use





N.B User evidence forms sent in with the application on 21/02/2011 were dated 2010