

Regulatory Committee

Dorset County Council



Date of Meeting	21 March 2019
<p><u>Local Member(s)</u>: Cllr Rebecca Knox, Member for Beaminster</p> <p><u>Lead Officer(s)</u>: Matthew Piles, Service Director, Environment, Infrastructure and Economy</p>	
Subject of Report	Application for a definitive map and statement modification order to upgrade Bridleway 14, Beaminster, to a Byway open to all Traffic.
Executive Summary	Following an application made in 2004 to upgrade Bridleway 14, Beaminster, to a Byway open to All Traffic, this report considers the evidence relating to the status of the route.
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>The applicant has submitted documentary evidence in support of this application.</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 2009. A further consultation took place in 2018. These consultations involved landowners, user groups, local councils, other affected parties and those who had already contacted Dorset County Council regarding this application. In addition, notices explaining the application were erected on site.</p> <p>The County Councillor for Beaminster, Councillor Knox, and the Chairman and vice-Chairman of the Regulatory Committee, Councillor Jones and Councillor Phipps, were also consulted. Notices describing the application were also displayed on site.</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> <hr/> <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> <hr/> <p>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application be refused.</p>
<p>Reason for Recommendations</p>	<p>(a) On the balance of probabilities there is insufficient evidence to prove a higher status than already shown on the definitive map.</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 2017-19 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> <p>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</p>

<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 18/12 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ Beaminster Inclosure Award Plan of 1809 ▪ Tithe Map of 1843 ▪ 1910 Finance Act plan ▪ Ordnance Survey maps <ul style="list-style-type: none"> - 1811 scale 1 inch: 1 mile - 1886 scale 25 inch: 1 mile - 1888 scale 6 inch: 1 mile - 1904 scale 6 inch: 1 mile - Greenwoods map, 1826 - Map of Beaminster Roads, C.1800
<p>Background Papers</p>	<p>The file of the Service Director, Environment, Infrastructure and Economy (ref.RW/T353).</p> <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, which will be available to view at County Hall during office hours.</p>
<p>Report Originators and Contact</p>	<p>Name: Vanessa Penny, Definitive Map Team Manager, Planning and Regulation Team</p> <p>Tel: (01305) 224719 Email: v.penny@dorsetcc.gov.uk</p>

1 Background

- 1.1. An application to upgrade Bridleway 14, Beaminster, to a byway open to all traffic as shown between points A, B, C, D and E on Drawing 18/12 (Appendix 1) was made by Mr J Stuart on behalf of Friends of Dorset Rights of Way (FoDRoW) on 21 December 2004.
- 1.2. The application was accompanied by a map showing the length of path that is the subject of the application.
- 1.3. The following evidence was submitted with the application form in support of the application for the modification order. A note accompanying the application explains that a compact disc of November 2004, supplied by the applicant, contains the following items:
 - Isaac Taylor Map 1796
 - OS 25 inch Map Meerhay Lane North
 - OS 25 inch map Meerhay Lane South
 - Isaac Taylor map 1765
 - OS Old Series 1"map
 - OS 6 inch map Meerhay Lane South.
 - Beaminster Tithe 1 1843
 - Beaminster Tithe 2 1843
 - Greenwood's map 1826 1
 - Greenwood's map 1826 2
 - Plan of roads in neighbourhood of Beaminster c.1800.
 - Beaminster Inclosure Map
 - Beaminster Inclosure Award
 - Beaminster Parish Council
 - OS 1 inch 1811. (Muggeridge map)
- 1.4. Accompanying the application is a note from FoDRoW giving an analysis of the documentary evidence they have submitted in support of the application. The items contained on this CD are available for inspection at the Council's offices. This evidence is considered in section 8 below. No user evidence has been submitted.
- 1.5. In investigating this application it is the Council's duty to assess the validity of this and other available evidence, and to determine whether or not it should make a modification order. On 7 October 2010 Dorset County Council rejected this application on the ground that the map that had accompanied the application had been by computer generated enlargements of Ordnance Survey (OS) maps drawn to a scale of 1:50,000 and not by maps drawn to a scale of not less than 1:25,000. The Trail Riders Fellowship (TRF) judicially reviewed this decision and ultimately the Supreme Court held, agreeing with the TRF, that the maps accompanying the application were in accordance with the legislation.

Description of Claimed Byway

- 1.6. The claimed route begins at point A on the county road, C102. It runs in a south-south westerly direction on a steep lane with a stone surface for around 300 metres to point B, its junction with bridleway 19 at Higher Meerhay Farm. The claimed byway continues south westwards for approximately 700 metres on a lane with a surface partly of tarmac and partly of concrete to its junction with Byway 89 at point E.

- 1.7. At its northern end the path is signposted as a bridleway. There is a notice attached to a gate near the northern end of the path which says: 'Bridlepath Only. Unsafe for vehicles.'

Land Ownership

- 1.8. A land registry search indicates that part of the claimed byway is owned by Mr and Mrs Clunes and by Mrs Langton. At its southern end the land in which the lane runs is unregistered.

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/T353)

- 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 Additional evidence in support of the application (copies available in the case file RW/T353)

- 4.1 One submission was received supporting the application, in 2010. This response is summarised in the table below.

Name	Comments
R Legg, Open Spaces Society	Mr Legg wrote on 1 October 2010 to support modification order because of the historic status of the way.

5 Evidence opposing the application (copies available in the case file RW/T353)

- 5.1 The following submissions have been received opposing the application. These responses are summarized in the table below and considered in detail in section 11 of this report.

Name	Comments
Mr G Plumbe	Mr Plumbe of the Green Lanes Protection Group wrote on 29 December 2009, 5 November 2005 and 6 August 2018 to object to the application for a modification order. He submits that the application map did not comply with the legislation, a point now resolved by the Supreme Court. He also submits that the applicant failed to provide copies of the evidence it relied on and that the application was submitted after 20 January 2005. The result he says is that the route cannot be recorded as a byway open to all traffic due to the provisions of the Natural Environment and Rural Communities Act 2006.
	Mr J Cheal, acting for the owners of Meerhay Manor and Higher Meerhay Farm, has made various representations to the Council including a detailed submission inviting the Council to 'dismiss the claim and make no order'. This submission contains documentary evidence and other information regarding the status and use of the path in question, and an analysis of the evidence that has been submitted in support of the application. Mr Cheal challenges the

	evidence that has been submitted by FoDRoW, and maintains that this and other evidence does not show that public vehicular rights exist over the way in question.
	Mr Cheal raises issues with regard to the capacity of the owners of the land to dedicate a highway, and also refers to the case of <i>Bakewell</i> (2004), which held that use of a way by motor vehicles without lawful authority could count towards the period of use in which public vehicular rights may become established. Mr Cheal draws attention to two conditions in respect of this decision, which relate to the capacity of the owner of the land to dedicate the way, and to the issue of public nuisance. This is discussed below.
	Mr Cheal emailed on 28 April 2009. He stated that the application cannot have been accompanied by all evidence relied on by the applicant as required by legislation. That is because the applicant included wording with the application suggesting that further evidence was available but not supplied. He also makes various points about the legal tests to be applied to the application.
Claire Pinder, Dorset County Council's Senior Archaeologist,	In an email of 1 August 2018, Ms Pinder has explained that the route would appear to be at least medieval in origin. Any adjacent banks surviving as earthworks and any historic surface/metalling should be regarded as sensitive. Ms Pinder is concerned that any change in status might lead to more frequent use by heavier traffic and consequent deterioration of the historic feature.
Major R Hanbury, for Council for the Protection of Rural England.	Has sent an email on 4 August 2018 explaining that motorised vehicular use of the way would spoil its condition and the safe use of the route by horseriders and walkers.
Mr Roberts	Has written on 5 January 2010 expressing concerns for the way being used by motor vehicles.
Dr and Mrs Clarke	Have explained in telephone conversations on 6 August 2018 and 30 August 2018 that they do not believe the route in question carries public vehicular rights. A letter has been received by email and post from Dr and Mrs Clarke, dated 23 September 2018, in which the private status of the way is stressed. Dr and Mrs Clarke also wrote on 1 February 2010 explaining that the way was maintained by themselves and was not used by the public with vehicles.
Mr Edey	Has written a letter explaining that he is opposed to 'any alterations' to the route subject to this application. Mr Edey also wrote on 19 April 2005 expressing concerns about the recording of the route as a byway open to all traffic but did not supply any information that assists in determining the status of the path.
Mr Clunes	Has written on 19 September 2018 and refers to the submission from Thring Townsend, which sets out 'all the legal reasons why BR14 cannot possibly be upgraded to a BOAT.' The submission from Mr Cheal has been noted above. In a letter and email of 11 January 2010 Mr Clunes explains that Bridleway 14 is used by pedestrians

	and horse riders daily, but the only motor vehicles to use them are farm vehicles.
Mrs Herring	Has sent an email on 11 August 2018 enclosing photographs of the Inspectors Decision on 12 February 2001 regarding the confirmation of a modification order to add Byway 89, Beaminster, to the definitive map.
Mrs Jones	Has sent an email on 31 August 2018 explaining that 'at no time in the last 23 years has it ever been used for vehicular traffic other than by landowner.'
Mr Burton	Has written in a letter of 7 September 2018 to say that he does not wish to see the claimed route made available for use by motor vehicles. Mr Burton also wrote to the Council on 22 February 2005 and 2 April 2005 but did not supply any information with the letters that assists in determining the status of the claimed byway.
Mr and Mrs Block	Have sent a copy of a letter to Beaminster Town Council, dated 29 August 2018 expressing concerns with regard to the use of the way by motor vehicles.
Mr Hudspith of Beaminster Ramblers	Has written on 22 August 2018 to 'register an objection.....on the grounds of amenity, safety and potential traffic congestion.'
Mrs Cook, Chair of Beaminster Ramblers	Has sent a copy of a letter of 14 August 2018 to Beaminster Town Council. Mrs Cook explaining that 'we do not consider their use to be compatible with off road vehicles.'
Beaminster Town Council	Has sent a letter dated 19 September 2018 to say that their position has not differed from that previously submitted in 2010 in that the Town Council 'would not support a change from the current status of bridleway.' The Town Council does not hold any relevant information that would be of assistance in this matter.' The Town Council has sent further letters on 25 May 2005 and 3 December 2010, but has not provided any evidence of the status of the path beyond pointing out that it is a 'private access road.. to the properties (it) serves'.
Miss Izard	Has written on 8 February 2005, 12 February 2005 and March 2010, expressing concerns in the event that the route was to be used by motor vehicles.
Mr and Mrs Payne	Have written on 28 February 2005 expressing concerns about the recording of the way in question as a BOAT.
The Beaminster Society	Have written on 10 April 2005, 16 March 2006, 23 May 2006 and 18 January 2010. The Society has expressed concerns in the event that the path was to be recorded as a BOAT. The Society maintains that there is no established existence of public rights.

6 Other submissions received (copies available in the case file RW/T353)

6.1. Seven additional submissions have been received and are summarized in the table below.

Name	Comments
Mr Aley	Has supplied information regarding the seeking of permission for the use of Bridleway 14 for events held by the Motor Cycle Club.
Mrs Heath, Dorset Highways	Has responded on behalf of Dorset Highways on 1 August 2018 to say that she has no objections to the application for the modification order.
Mr Little, Team Leader of Community Highways.	Has responded in an email on 9 August 2018 to say that he has no objections to a modification order.
Mr Elliott of the Green Lanes Association	Has sent an email on 4 August 2018 to say that he has asked members of the Association to provide evidence of historical use of the way.
Mrs Shoopman, Secretary of the Dorset Group of the British Horse Society.	Has explained in a phone call and in an email on 8 January 2010 that the BHS does not have any information that assists with determining the status of the claimed path.
Natural England	Wrote on 14 January 2005 to say that they have no comment to make.
Ramblers Association	Wrote on 18 January 2005 with observations from the 1890, 1904 and 1901 Ordnance Survey maps, and from the nature of the network of highways and public paths in the area.

7 Analysis of documentary Evidence

7.1. The documentary evidence which was submitted with the application is considered in paragraphs 7.2 to 7.12 below.

Ordnance Survey Maps

7.2. The One Inch Ordnance Survey 1st Series map of 1811.

The 1811 map shows the claimed byway in the form of a lane or road.

7.3. The 25 inch Ordnance Survey map of 1886. The 25 inch map shows the southern part of the path, between points E and C, in the form of a lane or road. The way continues as a track, and then as a lane to Higher Meerhay Farm. To the north of Higher Meerhay, the path is shown as a dashed line, in the form of a track, and it appears to be unfenced on its western side. At a point to the north of Higher Meerhay Farm, the label 'BR' is written next to the path. This does not confirm its status as a bridleway.

7.4. Beaminster Parish Council Letter, 1973. A letter from Beaminster Parish Council to Dorset County Council, dated 22 May 1973, has been supplied and referred to by the applicant. This letter is from the clerk of Beaminster Parish Council to the County Surveyor, in which the Parish Clerk asks the County Council to adopt the route in question as a (presumably) publicly maintainable highway. The letter refers to the Parish Council experiencing 'difficulty with regard to obtaining the evidence required'. It is assumed that this refers to evidence to show that the way carries such rights that would be required in order for the County Council to adopt the route as a maintainable highway. The letter makes reference to the recent adoption of Sittford Lane and the highway to the south of Bridleway 14, which is now recorded as Byway 89, and concludes by stating that 'These roadways are greatly used and it would indeed assist local people, tradesmen and others who now have considerably extra mileage to cover in order to serve and obtain access to the various properties.'

7.5. Officer Comments: This letter indicates that the way in question was subject to use by vehicles, but implies that this was for the purposes of gaining access to properties. If use of the way by vehicles was confined to this purpose, such use would be of a private, rather than a public, nature, and would not be considered as the exercising of a public right.

Tithe map of 1843

7.6. The Tithe map shows the greater part of the claimed byway as land that was excluded from tithe. This suggests that the land in which the way runs may have been considered to have been 'public' land. Highways were often excluded from tithe in this way. Part of the route, to the north-east of point C, is shown as a track, running within enclosure no. 844. This unfenced length of the path corresponds, more or less, with that part of the way shown as being unfenced on the 25 inch OS map, noted above. The tithe apportionment describes enclosure 844 as 'Meerhay Orchard.' The whole length of the route is shown shaded in sienna on the tithe plan. It is noted that other routes carrying public rights are shaded sienna in this way, although this does not confirm its status as a public road. The purpose of tithe maps was to record land for the purpose of tithe payments, and the showing of highways and ways carrying public rights was not a necessary part of their compilation. Nonetheless, this record is useful in indicating that part of the way in question may have been exempt from tithe because of its use as a public way of some kind.

Greenwood's map of 1826.

7.7. Greenwood's map of 1826 shows the claimed byway in the form of a lane or road. It is noted that other routes on Greenwood's map which form part of today's established highways network are shown in the same way. The map does not tell us whether use of the way was by the public or for private purposes, but it suggests a route that was in existence on the ground in the form of a road. The road is uncoloured on Greenwood's map, and is described in the key as a 'cross road'. This definition gives no clear indication as to the rights carried by the way.

Taylor's map of 1765

7.8. Taylor's map of 1765 shows a lane or road running north-eastwards from Beaminster, which may correspond with Bridleway 14.

Taylor's map of 1796

7.9. Taylor's map of 1796 shows a lane or road running north-eastwards from Beaminster, although it is not entirely clear that this is the line of what is today Bridleway 14.

- 7.10. These maps are of a small scale, and caution should be exercised in drawing conclusions from them.

Plan of Roads in the Neighbourhood of Beaminster, Circa 1800

- 7.11. The applicant has supplied a sketch map of roads in the vicinity of Beaminster, produced around 1800. The drawing shows two roads leading northwards from Beaminster. The labels on these roads indicate that Buckham Lane and Stinford lane are shown, but the route of what is today Bridleway 14 does not appear to be drawn on the map. This does not prove that the way containing Bridleway 14 did not exist at that time, but poses the question as to why it may have been omitted from a map showing roads in the area. Caution should be made in drawing any conclusions from this drawing.

Beaminster Inclosure Award of 1809

- 7.12. The Inclosure Award of 1809 contains a plan showing a route leading north-eastwards from Stinford Lane, which is described as a 'public carriage road and highway 20 feet wide running' in its ancient course and direction to a certain place called Meerhay.' This is labelled as public carriage road H. There is nothing in the Inclosure Award to show that the awarded route H continued north-eastwards over the length of the claimed byway, but it is noted that the words 'To Meerhay' are written at the point where this awarded road terminates at the boundary of the land shown on the Inclosure map. The Inclosure Award does not include the land to the north of Cherry Tree Lane, and no conclusions can be drawn from it with regard to the status of the way that led onwards to Meerhay, nor whether that way continued beyond Meerhay. This source does lend some support to other documentary evidence of the existence of a route of some kind on at least part of the claimed byway.
- 7.13. Officers consider that the above evidence, which was submitted by the applicant in support of the application for the modification, is sufficient to meet a prima facie case for the existence of public vehicular rights. Accordingly, the exemptions contained in section 67 of the Natural Environment and Rural Communities Act 2016 do not apply. Officers have also considered other documentary evidence which was not submitted with the application for the modification order. This is discussed below.

The Definitive Map

- 7.14. The National Parks and Access to the Countryside Act 1949 charged the County Council, in its capacity of "Surveying Authority", with a duty to compile a record of the public rights of way network. As part of this process District and Parish Council carried out surveys and provided the County Council with information for the purposes of recording the existence of public rights of way.
- 7.15. There were various maps produced by the County Council leading up to the current definitive map, which was sealed in 1989. These were the draft map of 1959, provisional map of 1964, first definitive map of 1967 and the revised draft map of 1974. The status of the application route shown at each stage is set out below.

Parish Survey

- 7.16. The parish survey map shows the path as a solid green line, denoting a bridleway. On the parish survey map the path has the number 17. The parish survey form describes the path thus: 'BR17 From Lower Meerhay Farm or Meerhay Manor to top of Minterns Hill. After Meerhay Manor the road has been metalled and is in good condition to Upper Meerhay Farm (FG shortly after passing Meerhay Manor on left). An FG after passing Upper Meerhay and the farm road is then very rough and steep to an FG into road. Gates in good condition and road about 12 feet wide.'

Draft Map 1953

- 7.17. The draft map of 1953 shows the claimed path a solid green line, denoting a bridleway. On the draft map the path has the number 17.

Provisional Map 1964

- 7.18. The provisional map of 1964 shows the path as a bridleway, numbered 14.

First Definitive Map 1966

- 7.19. The First Definitive map, dated 13 June 1966, shows the path as a bridleway. The path has been given the number 14.

Special Review. 1977/1973

- (a) During the course of the special review process, in 1973 Beaminster Parish Council proposed the upgrading of part of Bridleway 14 to a byway open to all traffic. The sections of route referred to are described as 'From Cherry Cottage to Meerhay Manor', 'From Stinsford Lane to Meerhay Cottage.' There is a note on the Council's form for the special review which states that 'The PC offers no evidence of user, but it is understood evidence will be forthcoming from local residents. Shown on definitive map but not classified.' A further form refers to the route 'From Cherry Cottage to Meerhay Manor'. Byway 89, which joins the claimed byway presently under consideration at its south-western end, was the subject of a modification order confirmed by the Secretary of State on 12 February 2001.
- (b) A letter from Beaminster Parish Council to Dorset County Council, dated 22 May 1973, has been supplied and referred to by the applicant. This letter is from the clerk of Beaminster Parish Council to the County Surveyor, and is considered in paragraph 8.3 above,
- (c) In summary, there has been no evidence in the correspondence associated with the process of the drawing up and review of the definitive map to show that Bridleway 14 carries public vehicular rights.

Revised Draft Map 1974

- 7.20. The revised draft map of 1974 shows the path as a bridleway.

Sealed definitive map 1989

- 7.21. The sealed definitive map of 1989 shows the path as a bridleway.

Highways Records

- 7.22. No part of the claimed byway is shown in Dorset County Council current records as a highway maintainable at public expense. The records of preceding highway authorities are not available, and may have been destroyed.

Ordnance Survey Maps

- 7.23. The 1 inch Ordnance Survey 1st Series map of 1811, as noted in 7.16 shows the claimed byway in the form of a lane or road.
- 7.24. The 25 inch Ordnance Survey map of 1886, as noted in 7.17 shows the southern part of the path, between points E and C, in the form of a lane or road. The way continues as a track, and then as a lane to Higher Meerhay Farm. To the north of Higher Meerhay, the path is shown as a dashed line, in the form of a track, and it appears to be unfenced on its western side. At a point to the north of Higher Meerhay Farm, the label 'BR' is written next to the path. This does not confirm its status as a bridleway.
- 7.25. The 1888 6inch Ordnance Survey map shows part of the path in the form of a lane, to the south of Higher Meerhay Farm. To the north of Higher Meerhay Farm, the path is shown as a dashed line, in the form of a track, and it appears to be unfenced on its western side. At a point to the north of Higher Meerhay Farm, the label 'BR' is written next to the path.
- 7.26. The 1904 6 inch Ordnance Survey map shows similar detail to the 1888 map. On the 1904 map, a short length of the path, to the south of Higher Meerhay, is shown to be contained between boundaries in the form of a lane
- 7.27. The 1906 one inch OS map shows the claimed byway, in the form of a lane.
- 7.28. The 1934 quarter inch OS map shows the claimed byway, in the form of a lane.
- 7.29. The 1958 two and a half inch OS map shows the greater part of the route as a lane, A short section to the north of point C appears to be unfenced.
- 7.30. It is important to acknowledge that Ordnance Survey maps do not provide any indication of the status of a route, but they are of use in that they confirm the physical existence of what was on the ground at the time of the survey.

Finance Act 1910 Valuation Map and Field Book

- 7.31. The Ordnance Survey map used as the base map for the Inland Revenue's 1910 survey shows the claimed path, but the greater part of the route is not excluded from the hereditaments through which it passes. The southern end of the claimed byway, between E, D and C on plan 18/12, is shown, in two places, as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of vehicular highway status. Highways were often excluded as land that was not subject to taxation, whereas a deduction from the assessable value of the land could be claimed by landowners where it was crossed by a public footpath or bridleway, The length of path between these two excluded sections runs within hereditament no 430.

- 7.32. The Valuation Map of 1910 shows the land through which the remaining length of claimed byways runs as hereditaments 136 and 430. The accompanying Valuer's Field Book records deduction of £25 for 'Public Right of Way or User' for hereditament 430. It is possible that this deduction was granted because of a highway running within it. However, as hereditament 420 is also crossed by footpaths 21 and 22, we cannot conclude with certainty that it applies to the claimed byway. The Field Book for Hereditament 136 does not contain any deduction for 'public right of way or user'.
- 7.1 Richmond's map of the late 1800's, Bacon's County Cycling map of Dorset, of the early 1900's, and The Geographia New Map, possibly c.1940's/50's show the length of claimed byway as a lane or road.
- 7.2 A number of early published maps have been examined, including Saxton's map of 1575, Kip's map of 1607, Bill's map of 1626, Blaue's map of 1645 and Seale's map of 1732. None of these shows the claimed byway, but the maps are of a small scale only show settlements and significant topographical features.

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

- 8.1 Mr Legg of the Open Spaces Society has written in a letter dated 1 October 2010 in support of the application for a modification order. Mr Legg points out that 'Historically this was the direct route out of Beaminster towards Corscombe and the road across the hills. It was a road rather than a driveway, which declined in use after an easier route-literally through the hill-was provided by the cutting of Thorn Hill Tunnel in 1832. The slope from Higher Meerhay was one of the hills where passengers recalled getting out of the wagonette to help push horse and cart up the hill.' 'Both Lower Meerhay and Higher Meerhay had grown by the early 19th century from farms into hamlets, which is a further indication that there would have been public as well as private traffic. There had been common land at Higher Meerhay, reached from this road, until enclosure and absorption into the farm between 1718 and 1723.' 'In walking it in two decades I have not seen any notices preventing its use.' Officer comments: These observations on the historical purposes of the claimed route are of interest, but must be considered together with documentary evidence relating to the use of and status of the way.
- 8.2 No additional evidence has been submitted in support of the application for the modification order. The evidence submitted by the applicant, and their comments accompanying the application has been considered in this report.

9 **Analysis of evidence opposing the application**

- 9.1 Mr Plumbe of the Green Lanes Protection Group submits that that although dated 21 December 2004, the application was not lodged with the County Council until 6 February 2005. That, he says, means it was too late for the exceptions in the Natural Environment and Rural Communities Act to apply and so the route cannot be recorded as a byway.
- 9.2 Mr Plumbe also submits that the applicant's statement:

'FoDRoW believes that enough evidence is being submitted to justify this claim. Further evidence does exist and may be submitted at a later date. However, having considered the volume of claims likely to be submitted in the coming years this claim is being submitted now to avoid a future flood of claims when they are all fully researched.'

means that not all evidence was submitted that the applicant wished to rely on. So, even if the application was not too late, it would not be submitted to comply with the legislative requirements to record a byway. Mr Plumbe has obtained Counsels' opinion which says that an applicant who deliberately holds back evidence or applies before completing their research will not comply with the legislation. He submits that following Court decisions, the legislative requirements must be met strictly in order to preserve rights for mechanically propelled vehicles.

- 9.3 The County Council has considered these points raised by Mr Plumbe. The application was received by the County Council on 21 December 2004 and so before 20 January 2005. All of the evidence listed on the form was supplied by the applicant prior to the application. The applicant used the same wording for each of those applications they submitted around this time because it was known that there was likely to be a 'cut off' date, but not when that would be. Officers do not consider that the applicant deliberately held back evidence or submitted applications before they had been researched. Officers are therefore satisfied that the application has been submitted in accordance with the requirements of the Wildlife and Countryside Act 1981 so that the exceptions in the Natural Environment and Rural Communities Act are capable of applying.
- 9.4 Mr J Cheal, Thring Townsend Solicitors objects to the application on behalf of the owners of Higher Meerhay Farm and Meerhay Farm. He provided further evidence about the status of the route and made submissions about the evidence submitted by the applicant. He submits that there is no documentary or user evidence to show that public vehicular rights exist on the balance of probability. The documentary evidence he says shows that there are no public vehicular rights.
- 9.5 Mr Cheal submits that the surveying authority must be satisfied that the evidence shows on the balance of probabilities that the claimed vehicular rights exist, not that they have been reasonably alleged to subsist. Mr Cheal refers to *Todd and Bradley v DEFRA (2004)*, as authority for the higher test to apply. Officers consider that this is correct.
- 9.6 Mr Cheal states that at some point before 1909, the land was let to Mr H. F. Dunning. The claimed route was repaired by Mr Dunning at his own expense, and He has supplied a copy of an estimate 'to repair road from gate at lower end of orchard to Hill Farm.' Mr Cheal also refers to an Agricultural Holdings Act tenancy agreement of 1966, in which the farm was let to Mr J. W. Spicer. This tenancy agreement made 'a reservation for the landlord of the right of access with or without vehicles for purposes connected with the farm.' The tenancy agreement also imposed an obligation on the tenant 'To do his best to prevent trespass over any part of the said farm to give notice to the landlord of any continued acts of trespass and not allow any footpaths to be created. To permit the landlord to take proceedings against trespassers or poachers in the tenant's name. To lay information and to give evidence and sign if required notices to trespassers and others to keep off said farm.' Mr Cheal's view is that this is 'a clear indication of the Landlord's lack of intention to dedicate the further public rights of way on the Farm.' and relies on the case of *Godmanchester Town Council and Drain v DERFA, (2004)*, in support of this view.
- 9.7 The High Court's decision in the *Godmanchester Town Council* case that Mr Cheal refers to was later overturned by the House of Lords. It was held that the owner's lack of intention to dedicate had to be communicated to the public. A lack of intention to dedicate contained in a lease and known only to the owner and the tenant is not evidence of a lack of intention to dedicate.

- 9.8 Mr Cheal refers to two local searches, made in 1992 and 1994, which suggest that at those times the local authority believed that Meerhay Lane was not a public road.
- 9.9 Officer Comments: A local search result is based on the County Council's records at the time. The absence of the claimed route from the search result reflects the fact that they are not recorded on the definitive map and should not be taken as evidence that the right do not exist.
- 9.10 Two statutory declarations, made in 1992 by two former occupants of Higher Meerhay Farm, declare that the deponent always enjoyed vehicular access to the farm along a route that includes Meerhay Lane. Mr Cheal's view is that the existence of these declarations shows that it was not thought at the time that the public had any vehicular access along the routes. In 1992 there was an express grant of a private right along Black Lane and Meerhay Lane, which Mr Cheal maintains would not have been necessary had there been public rights for motor vehicles over these ways.
- 9.11 Officer Comments: It is indeed possible that, had the way in question carried public vehicular rights, there may have been no requirement for a conveyance providing for such private use. Nonetheless, routes carrying public rights of all kinds commonly pass over private land, and a landowner may grant private rights of way or obtain statutory declarations to achieve certainty for the private rights.
- 9.12 The statutory declarations suggest that the occupants of Higher Meerhay Farm, one of whom had lived there from 1958 to 1968, and the other from 1983 to 1992, did not believe the claimed byway carried public vehicular rights. This does not necessarily mean that such public rights did not exist, but perhaps implies that the way was not used by the public with motor vehicles during their occupancies.
- 9.13 Mr Cheal has given details of the private maintenance of the claimed path, and has provided copies of letters of 1908 and 1910 which refer to the maintenance of the way being paid for by the tenant. Mr Cheal is of the view that this 'demonstrates beyond doubt that (the ways) were not publicly maintainable'. Mr Cheal also provides information on the private maintenance of the approach roads south of the farm. In 2000 or 2001 the owner of Higher Meerhay approached Dorset County Council and asked whether the Council would be prepared to contribute to the cost of maintaining Black Lane and Meerhay Lane, and notes that the Council 'refused to pay anything on the ground that neither Black Lane and Meerhay Lane nor the claimed route were publicly maintainable and thus it was not their responsibility.'
- 9.14 This is noted. However, whilst the Council may have refused to contribute towards the cost of the maintenance of the ways, that does not in itself confirm that the route in question does not carry public rights. The claimed path is not recorded as a publicly maintainable highway in the County Council's present records, and whilst the 'handover' records of preceding highway authorities are not available, it may be reasonable to assume that the current records of Dorset County Council reflect the arrangements of its preceding highway authorities. As discussed elsewhere, the Council's records of publicly maintainable highways do not confirm the extent of public rights over a way shown. It is entirely possible that the occupiers of the land maintained the way at their own expense. It is far from unusual for landowners and occupiers to maintain public rights of way to a standard suitable for their own use.
- 9.15 Mr Cheal refers to matters relating to the topography of the claimed route. Works have been carried out by the present owner to reduce the gradient of the route in places,

and Mr Cheal draws attention to its present steep gradient. Because of the 'severe' gradient, Mr Cheal believes that use of the lane by public wheeled vehicles has been impractical, and that the public would not have chosen to use it, particularly given the choice of using the alternative of Stinford Lane to the west. Mr Cheal also points to the presence of five or six gates across the claimed byway, and suggests that 'it is not reasonably arguable that a public carriageway would have had as many gates as this (if any) on such a short route.'

- 9.16 It is difficult to draw any conclusions as to the status and use of the way from these observations. It is noted that the claimed byway may not have been particularly easy or convenient to use by the public with wheeled vehicles, but that does not mean that it was not so used. Gates across minor highways carrying public vehicular rights are not uncommon.
- 9.17 Mr Cheal has commented in detail on the evidence that has been submitted by FoDRoW in support of the application for the modification order. The points made by Mr Cheal are summarised below where they differ from officer's analysis of that evidence.
- 9.18 The Tithe map has been discussed above. Mr Cheal emphasises that 'tithe maps were not intended to determine the status of ways, and nor did they'.
- 9.19 The Beaminster Inclosure Award has been considered above. Mr Cheal believes that the Inclosure Award suggests that 'what is now Cherry Tree Lane only went as far as the hamlet of Meerhay and no further'. As set out in 7.9, officers consider that in the absence of any inclosure award for the area of Meerhay itself, no conclusions can be drawn with confidence from the Inclosure Award.
- 9.20 Mr Cheal has referred to other documentary evidence, which has not been submitted by the applicant, as follows.
- 9.21 Finance Act 1910 maps. The Finance Act (1910) survey is considered in section 8. Mr Cheal has drawn attention to the sum of £25 which was deducted for 'pubic right of way or user in respect of hereditament no 430, and points out that it is not clear from this which right of way is being referred to. Mr Cheal also refers to the map providing 'strong evidence against (public vehicular) rights, because the colour wash (that is, the red boundary of the hereditaments containing the claimed byway) is unbroken at both ends of the claimed route, and also at the north end of the orchard.' He also states that the whole of the route through Higher Meerhay Farm was included in the hereditament. The limitations of the Finance Act map and Field Book in determining the status of the claimed byway are noted by officers in section 8 above.
- 9.22 Mr Cheal refers to handover maps and the County Council's records relating to highway maintenance, and that he has been informed that the handover records for West Dorset were destroyed some years ago. These records would have shown what the rural district council would have believed were highways for the maintenance of which they were responsible. As has been noted elsewhere in this report, records of maintainable highways held by highway authorities refer to the authority's responsibility for the maintenance of the ways shown therein, but are not records of their legal status.

- 9.23 Ordnance Survey Object Names Book. Mr Cheal notes that the object Names Book entry for shows an entry for Stinford Lane, but not for the claimed route byway. The object names book was to record the names of physical features to be shown on Ordnance Survey maps, and had no role in recording the legal status of any ways described.
- 9.24 Parish Claim and Review of Definitive Map. Mr Cheal notes that there has been no suggestion in the process of the drawing up and review of the definitive map that Bridleway 14 carried public vehicular rights.
- 9.25 Referring to spot heights and bench marks shown on Ordnance Survey maps, Mr Cheal rightly points out that these have no bearing on the status of a way. Included with Mr Cheal's appendix is a copy of a letter from the Ordnance Survey dated 6 April 2005 in which this is made clear.
- 9.26 Mr Cheal has noted that no user evidence has been submitted in support of the application for the modification order, and points out that his client can state that there has never been any attempt by the public to enjoy vehicular access along the claimed route; Mr Cheal further asserts that the occasional request for permission motor bike access, in that it 'needed to be sought, and was granted,' was 'further evidence of the lack of public vehicular rights'. This is evidence that the owner did not intend to dedicate public vehicular rights at that time, but the seeking of permission to use a route, and the granting of that permission, would not affect any public vehicular rights that may have already existed.
- 9.27 Mr Cheal refers to the case of *Bakewell etc. (2004)*, which removed the element of criminality of use of a way by motor vehicles without lawful authority and thus such use could count towards the period of use in which public vehicular rights may become established. Mr Cheal draws attention to two conditions in respect of this decision, which relate to the capacity of the owner of the land to dedicate the way, and to the issue of public nuisance. Officer Comments: As this claim is not supported by user evidence, officers do not consider that this case is relevant to the application.
- 9.28 Mr Cheal submits that, and relying on the *Winchester* judgement, the obligation on the applicant is to provide copies of all the documents with the application which the applicant wishes to adduce in support of his application, save for any which it is impossible for him to obtain. Mr Cheal's says that the wording used by FoDRoW in submitting the application makes it clear that further evidence does exist, and that FoDRoW reserve the right to submit this at a later date. In Mr Cheal's view, 'this cannot satisfy the burden upon the applicant as exemplified in *Winchester*.' This point has been addressed in section 11.4.
- 9.29 Major R Hanbury, for the Council for the Protection of Rural England (CPRE). Major Hanbury has sent an email on 4 August 2018 explaining that he has 'ridden along both bridleways and no one has tried to prevent me using these Bridleways. They are good / useful Bridleways and to allow motorised vehicles to use them would spoil the condition and the safe use of these by Horses and people on their feet. Therefore there is no need for DCC to modify their status and turn them into BOATs.' Officer Comments: However, no further information has been supplied by the CPRE that alludes to the status of the claimed byway.

- 9.30 Claire Pinder, Dorset County Council's Senior Archaeologist, has responded to explain that the route would appear to be at least medieval in origin. Any adjacent banks surviving as earthworks and any historic surface/metalling should be regarded as sensitive. Ms Pinder would be concerned that any change in status might lead to more frequent use by heavier traffic and consequent deterioration of the historic feature.
- 9.31 Officer comments: This is noted, but issues of archaeological concern cannot be taken into account by the Council in deciding whether to make a modification order.
- 9.32 Mr Roberts has written on 5 January 2010 expressing concerns for the way being used by motor vehicles, but does not supply any information with regard to its status.
- 9.33 Dr and Mrs Clarke have explained in telephone conversations on 6 August 2018 and 30 August 2018 that they do not believe the route in question carries public vehicular rights. A letter has been received by email and post from Dr. and Mrs Clarke, dated 23 September 2018, making the following points:
1. Dr and Mrs Clarke have lived at Meerhay Manor for 40 years and 'Bridleway 14 has always been considered a private road leading to Higher Meerhay Farm therefore those people using it have always had business at this property. We have never had any assistance with the upkeep of this road from the Council as it has always been private access.'
 2. 'No action has been taken to prevent anyone from using the route.'
 3. All documentation relating to this matter are already in your possession.'
- Officer Comments: These observations are helpful in describing the use of the claimed byway for access to Higher Meerhay.
- 9.34 Dr and Mrs Clarke wrote on 1 February 2010 explaining that they have always considered the route to be a private one, and which has been privately maintained for access to properties. Dr. and Mrs Clarke also note the 'irregularities in the application' referred to by the Green Lanes Protection Group.
- 9.35 Officer Comments: The issue of the private maintenance of the way has been considered above.
- 9.36 Mr Edey has written a letter explaining that he is opposed to 'any alterations' to the route subject to this application, but does not supply any information that is of assistance in determining the status of the way. Mr Edey also wrote on 19 April 2005 expressing concerns about the recording of the route as a BOAT, but did not supply any information that assists in determining the status of the path.
- 9.37 Mr Clunes has written on 19 September 2018 and refers to the submission from Thring Townsend [Mr Cheal], which sets out 'all the legal reasons why BR14 cannot possibly be upgraded to a BOAT.' The submission from Mr Cheal has been discussed above.
- 9.38 Mr Clunes has also explained that 'in the 11 years we have lived at the property we have paid for the upkeep of the private road from Black Lane, Meerhay Lane and our private drive which forms BR14.' 'As far as we can determine West Dorset District Council have never maintained any part of this route and it has never been used by all

traffic.' In a letter and email of 11 January 2010 Mr Clunes explains that Bridleway 14 is used by pedestrians and horse riders daily, but the only motor vehicles to use them are farm vehicles, occasionally. Mr Clunes has never attempted to prevent the public from using the way, 'but no one has ever attempted to use them for motor vehicle access as they are obviously too dangerous and inappropriate for such use'.

- 9.39 Mrs Herring, of Cherry Cottage Farm has sent an email on 11 August 2018 enclosing photographs of the Inspectors Decision on 12 February 2001 regarding the confirmation of a modification order to add Byway 89, Beaminster, to the definitive map. Byway 89 joins the claimed byway at its southern end. Mrs Herring points out that 'It is obvious that the classification was made entirely on the documentary evidence of historical use, rather than on the more practical 'user evidence 'of use at that time.'
- 'With regards to present use of the track (over the 5 years we have lived here), we find that it is extensively used by dog walkers ,horse riders and ramblers - it is virtually impassable for vehicles. No action whatsoever has been taken by anyone to prevent public use.'
- 9.40 Officer Comments: A modification order to add Byway 89 was made by Dorset County Council on 21 July 1999, and confirmed by the Secretary of State on 12 February 2001, following a public inquiry. Any evidence that was considered at that time in respect of the status of Byway 89 which has relevance to the present claim over Bridleway 14 has been considered in this report.
- 9.41 Mrs Elizabeth Jones has sent an email on 31 August 2018 explaining that when she moved to Beaminster 23 years ago 'the track was very rough and it was preferable to go up it rather than go down it' The track has been upgraded, presumably to give access to adjoining land. At no time in the last 23 years has it ever been used for vehicular traffic other than by landowner'. From my knowledge of the 3 BRs over a period of 23 years I do not consider that modification of the BRs into a ... definitive byway (17 & 35) is appropriate or justifiable.'
- 9.42 Mr Burton has written in a letter of 7 September 2018 to say that he does not wish to see the claimed route made available for use by motor vehicles. Mr Burton has explained in a further letter of 11 September 2018 that he 'cannot imagine bridlepath 14 ever being used by a horse and cart as the top 50 metres is very steep.' Mr Burton also wrote to the Council on 22 February 2005 and 2 April 2005, but did not supply any information with the letters that assists in determining the status of the claimed byway.
- 9.43 Mr and Mrs Block have sent a copy of a letter to Beaminster Town Council, dated 29 August 2018. Mr and Mrs Block have explained that 'Historically these bridleways have been used by walkers and horse riders in the safe knowledge that no vehicles have access.' Mr and Mrs Block express concerns with regard to the use of the way by motor vehicles, but have not provided any information that assists in determining its status.
- 9.44 Mr Hudspith of Beaminster Ramblers has written on 22 August 2018 to 'register an objection...on the grounds of amenity, safety and potential traffic congestion.' Mr, Hudspith has described the reasons for these concerns, but has not provided any information that is of assistance in determining whether a modification order should be made.
- 9.45 Mrs Cook, Chair of Beaminster Ramblers, has sent a copy of a letter of 14 August 2018 to Beaminster Town Council. Mrs Cook explains that parts of the claimed byway

are used as part of promoted routes by Beaminster Ramblers, and that 'we do not consider their use to be compatible with off road vehicles.' Officer Comments: These concerns are noted, but there is no information that assists in determining whether a modification order should be made.

- 9.46 Beaminster Town Council has sent a letter dated 19 September 2018 to say that their position has not differed from that previously submitted in 2010 in that the Town Council 'would not support a change from the current status of bridleway.' The Town Council does not hold any relevant information that would be of assistance in this matter.' The Town Council has sent further letters on 25 May 2005 and 3 December 2010, but has not provided any evidence of the status of the path beyond pointing out that it is a 'private access road...to the properties (it) serves'.
- 9.47 Miss Izard has written on 8 February 2005, 12 February 2005 and 1 March 2010, expressing concerns in the event that the route was to be used by motor vehicles, but does not supply any information that assists in determining the status of the claimed byway.
- 9.48 Mr and Mrs Payne have written on 28 February 2005 expressing concerns about the recording of the way in question as a BOAT, but does not supply any information that assists in determining the status of the claimed byway.
- 9.49 The Beaminster Society have written on 10 April 2005, 16 March 2006, 23 May 2006 and 18 January 2010. The Society has expressed concerns in the event that the path was to be recorded as a BOAT. In their letter of 23 May 2006 the Society makes reference to the granting of permission by the owner of Higher Meerhay for the use of the way by motor vehicles, and maintains that this, and the presence of gates on the path, indicates that there is no established existence of public rights.

10 **Analysis of other submissions**

- 10.1 Mr Aley has supplied information regarding the seeking of permission for the use of Bridleway 14 for events held by the Motor Cycle Club.
- 10.2 Officer Comments: This does not provide any information on the status of the route, but confirms that permission has been sought and granted for this event in the past.
- 10.3 Mrs Dawn Heath has responded on behalf of Dorset Highways on 1 August 2018 to say that she has no objections to the application for the modification order.
- 10.4 Mr Little, Team Leader of Community Highways, has responded in an email on 9 August 2018 to say that he has no objections to a modification order.
- 10.5 Mr Rob Elliott of the Green Lanes Association has sent an email on 4 August 2018 to say that he has asked members of the Association to provide evidence of historical use of the way. No further information has been supplied, however.
- 10.6 Mrs Shoopman, Secretary of the Dorset Group of the British Horse Society, has explained in a phone call and in an email on 8 January 2010 that the BHS does not have any information that assists with determining the status of the claimed path.
- 10.7 Natural England wrote on 14 January 2005 to say that they have no comment to make.
- 10.8 The Ramblers Association wrote on 18 January 2005 with observations from the

1890, 1904 and 1901 Ordnance Survey maps, and from the nature of the network of highways and public paths in the area. Ordnance Survey maps have been considered in section 8 above.

11 Conclusions

- 11.1 It is necessary for members to decide whether the way shown on the definitive map ought to be shown as a way of another description. To reach this decision members must consider whether they are satisfied that, on the balance of probabilities and on the basis of the evidence described in this report, the way should be recorded as a way of another description.
- 11.2 In summary, the showing of the way on some early maps suggests that the claimed line of byway open to all traffic may once have been of equal status to other routes which are part of today's established highways network. These maps do not provide evidence of the status of a way, but are of some assistance in placing a route in the context of the wider highways network at the time of their publication.
- 11.3 Ordnance Survey maps published between 1811 and 1958 show all or parts of the path in the manner of a road or lane. This confirms the physical existence of the claimed path throughout that time, but not its status. The evidence of the tithe map is of some substance in supporting the existence of a public highway. The Finance Act map of 1910 shows the southern end of the claimed byway, between E, D and C on plan 18/12, in two places, as a strip of land that was separate from the adjacent hereditaments, and whilst this is suggestive of highway status, the greater part of the route is not excluded from the hereditaments through which it passes. The accompanying Valuer's Field Book records deduction of £25 for 'Public Right of Way or User' for hereditament 430, and it is possible that this deduction was given because of the claimed byway running within it. However, as hereditament 420 is also crossed by footpaths 21 and 22, we cannot conclude with certainty that it applies to the claimed path. The Beaminster Inclosure Award of 1809 does not include the land crossed by the claimed byway, and conclusions cannot be drawn from it.
- 11.4 There is nothing in the process of the drawing-up of the definitive map to suggest that the claimed byway was intended for inclusion at a higher status than that of bridleway, and no evidence was produced during the special review process to back-up Beaminster Parish Council's request that the route be added as a byway.
- 11.5 It is concluded that, on balance, there is insufficient documentary evidence to show that the claimed byway carries public vehicular rights.

Matthew Piles

Service Director, Environment, Infrastructure and Economy

Date 6th March 2019

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 For an application to change the status of an existing right of way, the County Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.

1.5 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.

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 in to 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 land owner 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.
- 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 Finance Act 1910

- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.
- 4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

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.

6 Natural Environment and Rural Communities Act 2006

- 6.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. DEFRA guidance states that where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.
- 6.2 One of the exceptions to section 67 is that an application had been made before 20 January 2005 to record a byway open to all traffic. The Courts have held that for this exception to apply, the application must comply with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. Those requirements are that the application is made on the prescribed form and is accompanied by a) a map to the prescribed scale showing the route and b) copies of the evidence in support. The Courts have further held that any departures from these requirements other than relatively minor ones correctly quickly will prevent the exception from applying.
- 6.3 This application was rejected by the County Council on 7 October on the basis that the application map did not comply with the statutory requirements. The TRF judicially reviewed this decision and ultimately the Supreme Court found that the map did meet the statutory requirements.
- 6.4 The Supreme Court’s Order went further and stated that the applications complied with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. The County Council is applying to the Supreme Court for clarification on this point.

Table of documentary evidence

Date	Document	Comment
1765	Taylor's map of Dorsetshire	Shows a lane or road running north-eastwards from Beaminster, which may correspond with Bridleway 14.
1796	Taylor's map	Shows a lane or road running north-eastwards from Beaminster, although it is not entirely clear that this is the line of what is today Bridleway 14.
C.1800	Plan of Roads in the Neighbourhood of Beaminster	Shows two roads leading northwards from Beaminster. The labels on these roads indicate that Buckham Lane and Stinford lane are shown, but the route of what is today Bridleway 14 does not appear to be drawn on the map.
1809	Beaminster Inclosure Award	Shows a route leading north-eastwards from Stinford Lane, which is described as a 'public carriage road and highway 20 feet wide running' in its ancient course and direction to a certain place called Meerhay.' There is nothing in the Inclosure Award to show that the awarded route H continued north-eastwards over the length of the claimed byway, but it is noted that the words 'To Meerhay' are written at the point where this awarded road terminates at the boundary of the land shown on the Inclosure Award Plan.
1826	Greenwood's map	Shows the claimed byway in the form of a lane or road.
1843	Tithe map	Shows the greater part of the claimed byway as land that was that is excluded from tithe.
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.	

1888	Six inch Ordnance Survey map	Shows part of the path in the form of a lane, to the south of Higher Meerhay Farm. To the north of Higher Meerhay Farm, the path is shown as a dashed line, in the form of a track, and it appears to be unfenced on its western side. At a point to the north of Higher Meerhay Farm, the label 'BR' is written next to the path. This does not confirm its status as a bridleway.
Late 1800's	Richmond's map	Shows the claimed byway in the form of a lane.
1903	25 Inch Ordnance Survey map	Shows the southern part of the path, between points E and C, in the form of a lane or road. The way continues as a track, and then as a lane to Higher Meerhay Farm. To the north of Higher Meerhay, the path is shown as a dashed line, in the form of a track, and it appears to be unfenced on its western side. At a point to the north of Higher Meerhay Farm, the label 'BR' is written next to the path.
1904	Six inch Ordnance Survey map	Shows similar detail to the 1888 map. On the 1904 map, a short length of the path, to the south of Higher Meerhay, is shown to be contained between boundaries in the form of a lane
1906	One inch Ordnance Survey map	Shows the claimed byway, in the form of a lane.

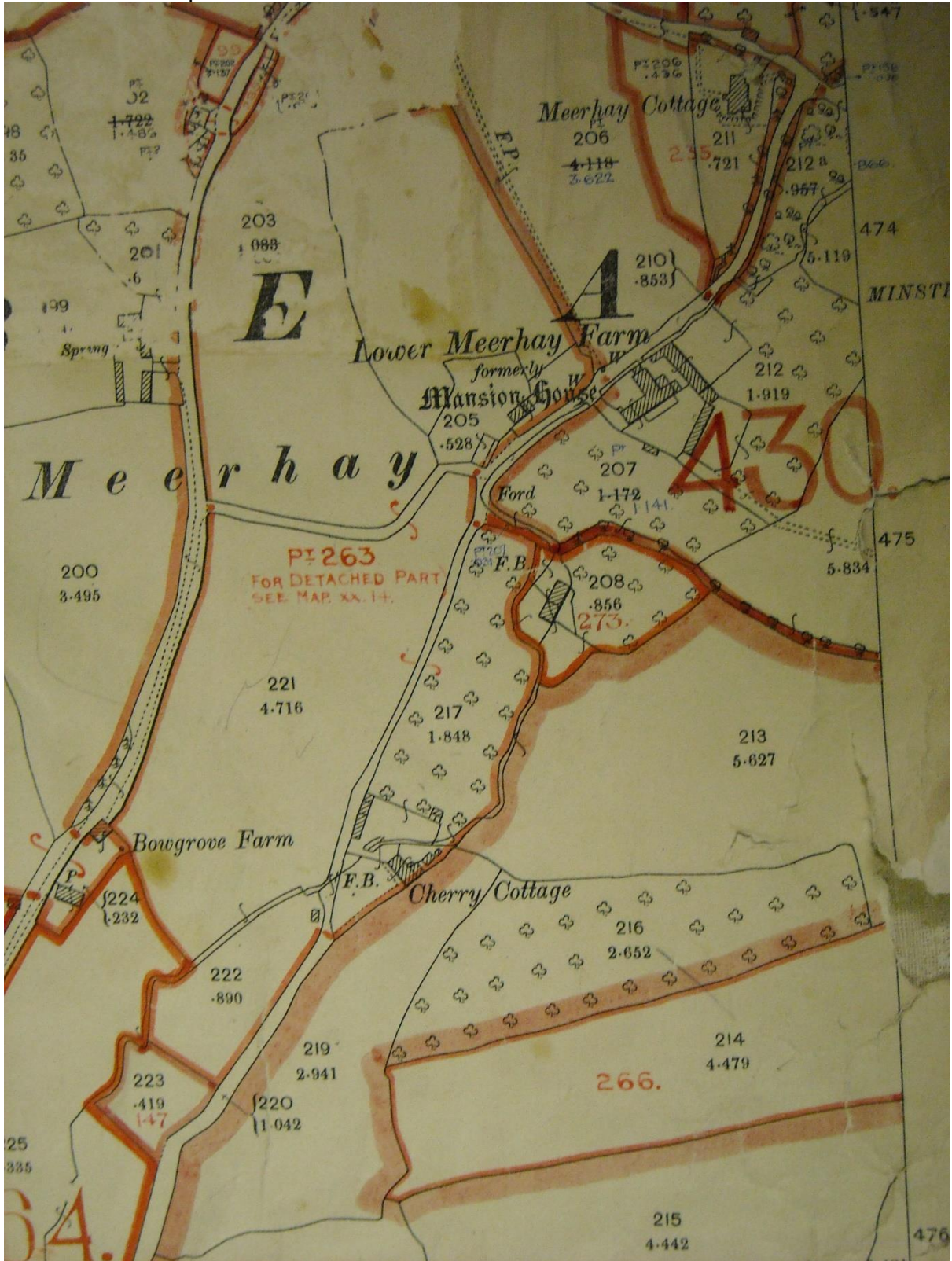
1912	Finance Act records	<p>The Valuation map shows the claimed path, but the greater part of the route is not excluded from the hereditaments through which it passes. The southern end of the claimed byway, between E, D and C on plan 18/12, is shown, in two places, as a strip of land that was separate from the adjacent hereditaments, and this is suggestive of highway status. The length of path between these two excluded sections runs within hereditament no 430.</p> <p>The Valuation Map of 1910 shows the land through which the remaining length of claimed byways runs as hereditaments 136 and 430. The accompanying Valuer's Field Book records deduction of £25 for 'Public Right of Way or User' for hereditament 430. It is possible that this deduction was granted because of a highway running within it. However, as hereditament 420 is also crossed by footpaths 21 and 22, we cannot conclude with certainty that it applies to the claimed byway. The Field Book for Hereditament 136 does not contain any deduction for 'public right of way or user'.</p>
1949	<p>National Parks and Access to the Countryside Act 1949</p> <p>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.</p>	
1951	Beaminster Parish Survey	The parish survey map shows the path as a solid green line, denoting a bridleway.
1958	<p>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.)</p>	

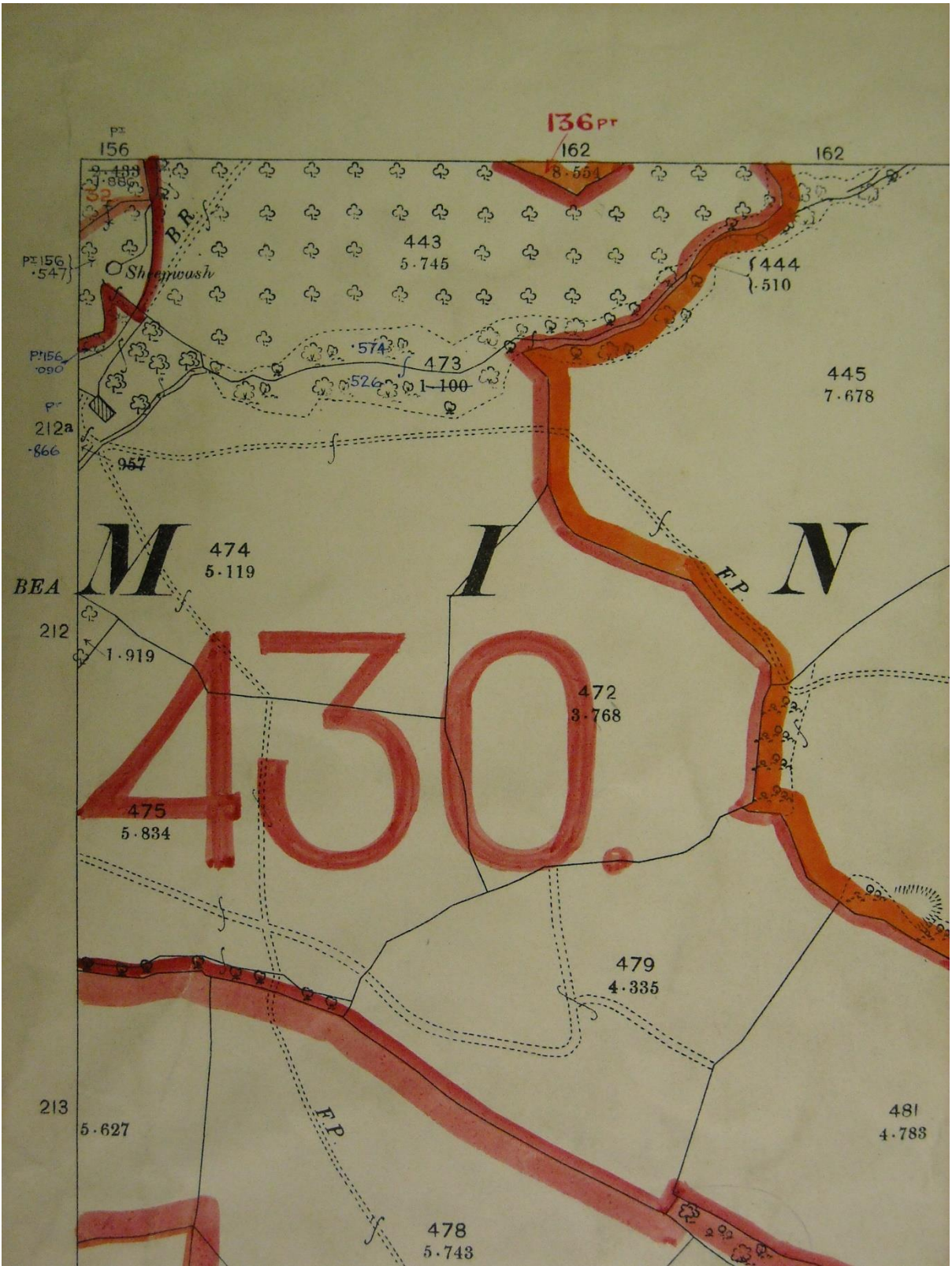
1953	Draft map	The draft map of 1953 shows the claimed path a solid green line, denoting a bridleway.
1940/50's	Geographia New Map	Shows the length of claimed byway as a lane or road.
1958	Ordnance Survey two and a half-inch map	Shows the greater part of the route as a lane, A short section to the north of point C appears to be unfenced.
1964	Provisional map	Shows the path as a bridleway.
1966	First definitive map	Shows the path as a bridleway. The path has been given the number 14.
1973	Letter from Beaminster Parish Council	The Parish Clerk asks the County Council to adopt the route in question as a (presumably) publicly maintainable highway. The letter refers to the Parish Council experiencing 'difficulty with regard to obtaining the evidence required'.
1973	Review – claimed by Parish Council	Claim for designation as byway open to all traffic.
1974	Revised draft map	Shows the path as a bridleway.

Tithe Map of 1843



1910 Finance Act plans



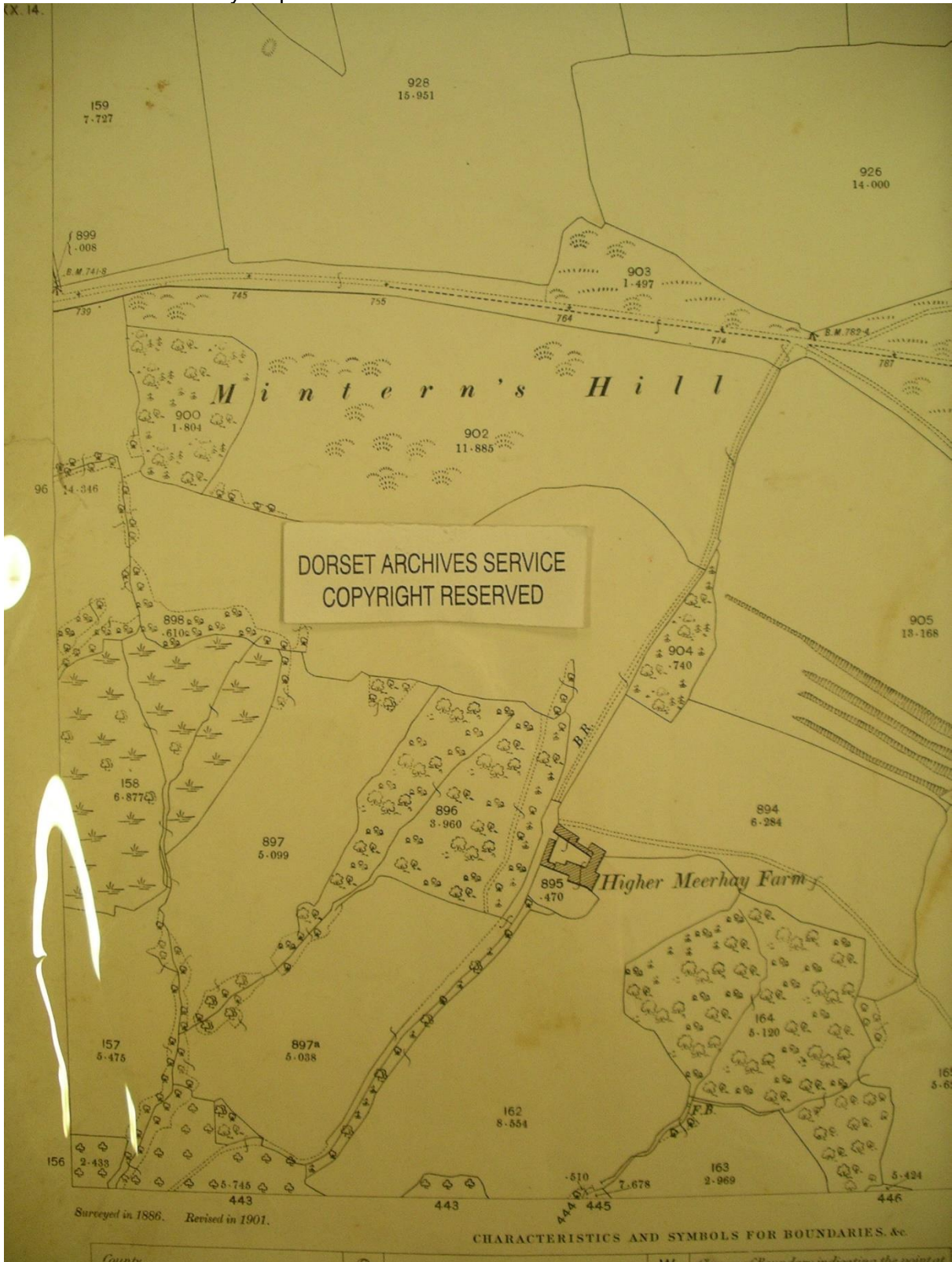


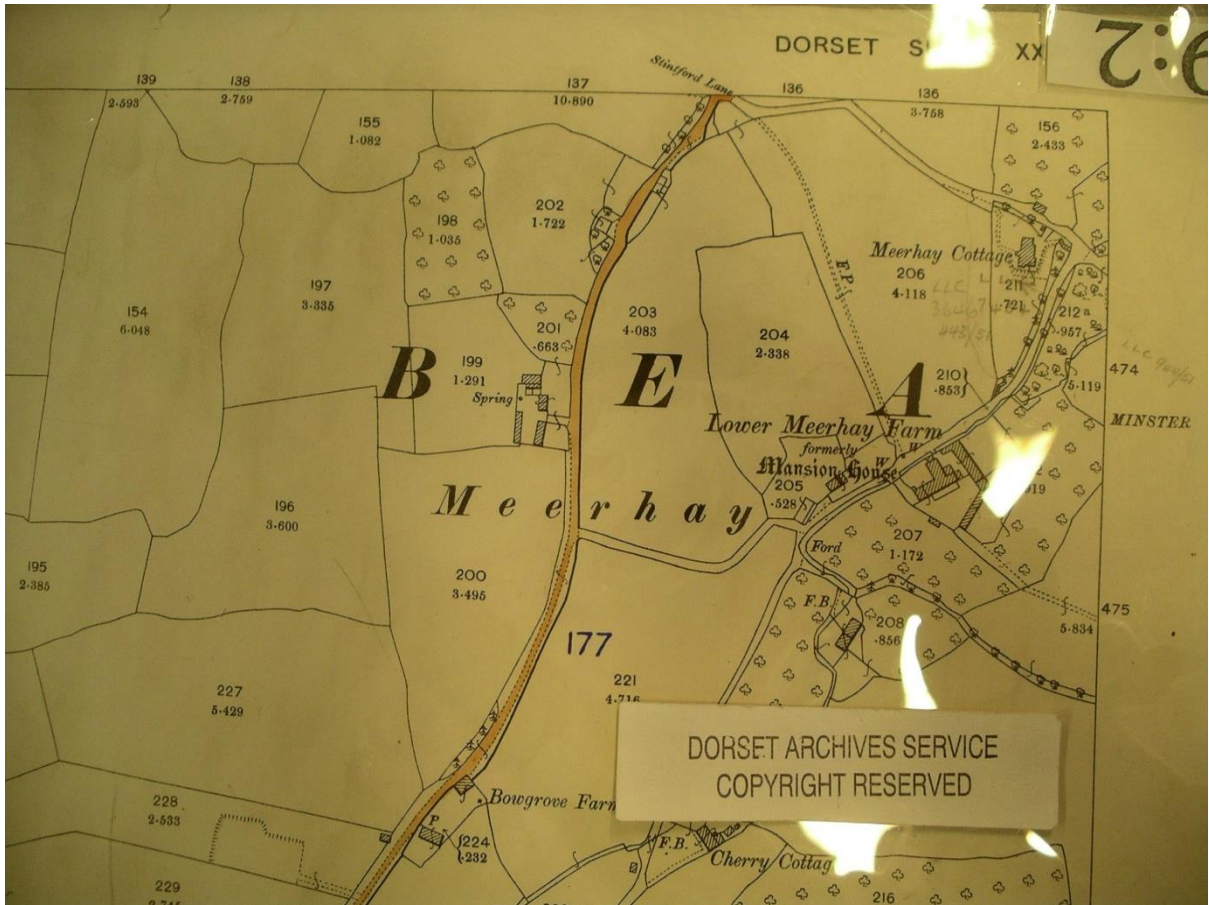


1811 OS Map



1886 Ordnance Survey Map

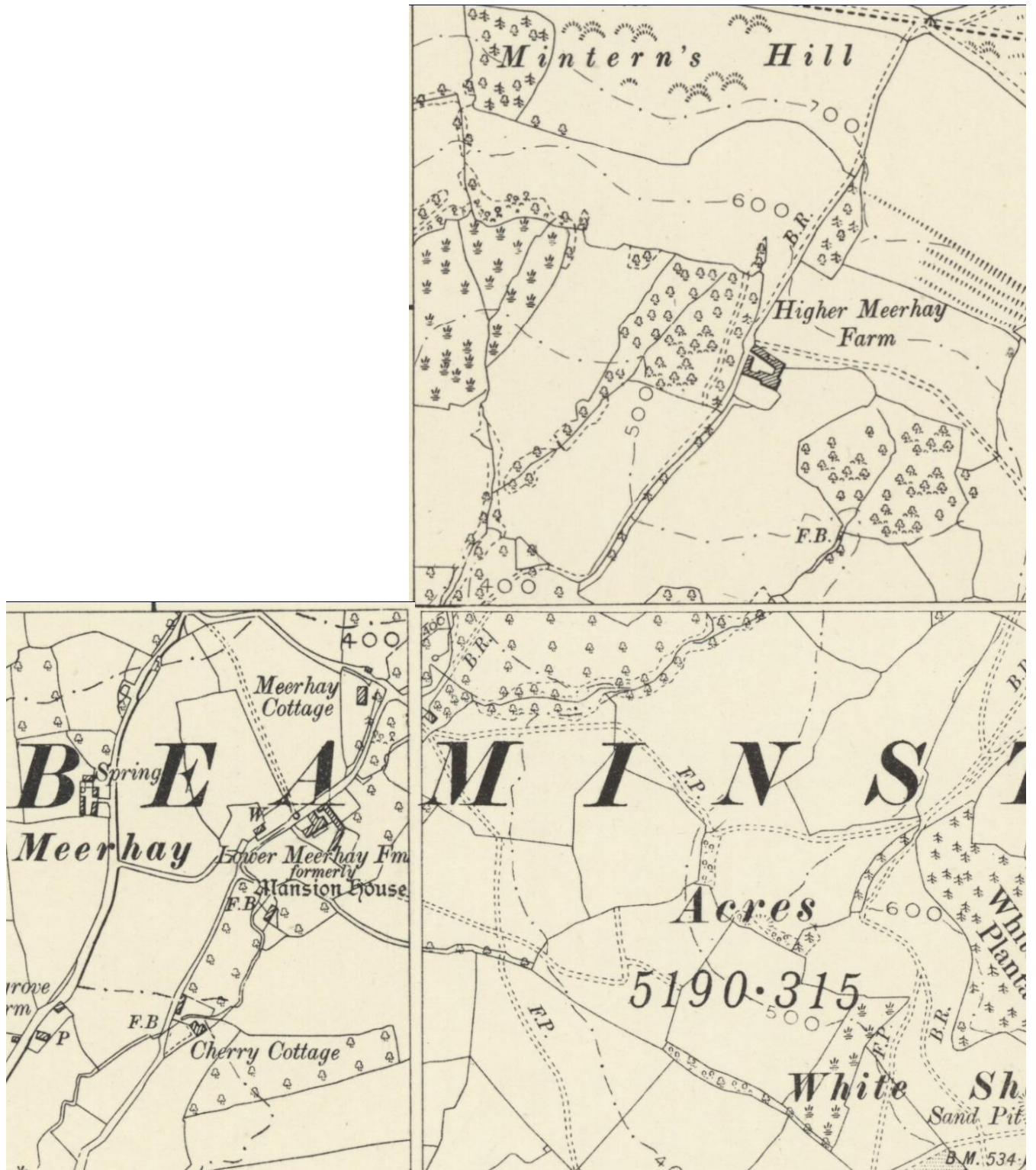




Six Inch Ordnance Survey Map 1888



Six Inch Ordnance Survey map. 1904



Greenwoods map 1826



