


Dorset County Council

Ref:

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Officer Delegated Decision – from August 2014

<p>(1) Date of Decision</p>	<p>22 October 2018 (See Report to Chairman of the Regulatory Committee and the Service Director Highways and Emergency Planning)</p>
<p>(2) Matter for Decision</p> <p><i>Delegation</i></p>	<p>Proposed definitive map and statement modification order - part of Footpath 3, Barr Lane, Chickerell</p> <p>The recommendations were that: That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to: (i) Correct the route of part of Footpath 3, Chickerell as shown A1 to E and H to K on Drawing 18/08 (Appendix 1); and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to the Service Director, Highways and Emergency Planning or the Regulatory Committee.</p> <p><i>Revised scheme of delegation adopted by the County Council on 14 November 2013 - the delegated authority in relation to matters reserved to the Roads and Rights of Way Committee (now the Regulatory Committee) was approved on 15 May 2014.</i></p>
<p> Is this a key decision?</p>	<p style="text-align: center;">Yes/ No</p> <p style="text-align: center;"><i>Note: Please see definition below.</i></p>

<p>(3) Reason(s) for Decisions</p>	<p>(a) The available evidence shows, on balance, that:</p> <p>(i) There is no public right of way over land as shown A1 to E and H to K as a highway of any description; and</p> <p>(ii) A right of way, a public footpath subsists or is reasonably alleged to subsist over land as shown A – B – C – D – E and H – I – J – K – L, and</p> <p>(b) The evidence shows, on balance, that the route of part of Footpath 3, Chickerell requires modification as proposed. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on proposals 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>(4) Decision Maker (Officer Name and Title)</p>	<p>D C Jones - Chairman, Regulatory Committee Andrew Martin - Service Director Highways and Emergency Planning</p>
<p>(5) Alternative options considered and rejected</p>	<p>No. The evidence shows that the correct route of Footpath 3 is as proposed.</p>
<p>(6) Any conflict of interest declared by any member consulted</p>	<p>No</p>
<p>(7) Any dispensation granted in respect of any declared conflict of interest</p>	<p>N/A</p>

Definition of Key Decisions

Key decisions are defined in the County Council's Constitution as decisions of the Cabinet which are likely to -

- "(a) result in the County Council incurring expenditure which is, or the making of savings which are, significant having regard to the County Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making the decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms

Report to the Chairman of the Regulatory Committee and the Service Director, Highways and Emergency Planning

Dorset County Council



<u>Local Member(s):</u> Cllr Jean Dunseith - Member for Chickerell and Chesil Bank <u>Lead Officer</u> Anne Brown, Definitive Map Technical Officer	
Subject of Report	Proposed definitive map and statement modification order - part of Footpath 3, Barr Lane, Chickerell
Executive Summary	This report considers the evidence relating to the recorded route of part of Footpath 3, Chickerell and considers modifying the definitive map and statement.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: (Note: Evidence within the body text to support the recommendations and, where relevant, include a description of how the outcomes of public consultations have influenced the recommendations.) Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives. A full consultation exercise was carried out in June / July 2018, which included landowners, user groups, the local County Councillor for Chickerell and Chesil Bank, local councils, those affected and anyone who had already contacted Dorset County Council regarding this proposal. The County Councillor for Chickerell and Chesil Bank, Jean Dunseith, was also consulted. In addition notices explaining the proposal were erected on site.

	<p>Any relevant evidence provided has been discussed in this report.</p> <p>Budget: Any financial implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment: As the subject matter of this report is the determination of a definitive map modification order proposal the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications: There are no other implications to consider.</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to:</p> <p>(i) Correct the route of part of Footpath 3, Chickerell as shown A1 to E and H to K on Drawing 18/08 (Appendix 1); and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to the Service Director, Highways and Emergency Planning or the Regulatory Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) The available evidence shows, on balance, that:</p> <p>(i) There is no public right of way over land as shown A1 to E and H to K as a highway of any description; and</p> <p>(ii) A right of way, a public footpath subsists or is reasonably alleged to subsist over land as shown A – B – C – D – E and H – I – J – K – L, and</p> <p>(b) The evidence shows, on balance, that the route of part of Footpath 3, Chickerell requires modification as proposed. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on proposals 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

	<ul style="list-style-type: none"> • 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
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 18/08/1 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence <p>Extracts from key documents</p> <ul style="list-style-type: none"> • West Chickerell Inclosure Award Map (1804) • West Chickerell Inclosure Award Extract (1804) • Finance Act Plan (1910) • First Definitive Map (1966 – 67) • Special Review Decision (1973) • Chickerell Parish Survey (no date) • Letter from County Planning Dept (no date) • Draft Map (1955) • Dorset National Parks Sub-Committee Decision (1958) • Current Definitive Map (sealed 1989) • Ordnance Survey Revised New Series Map, scale 1 inch : 1 mile(1897) • Ordnance Survey Map, scale 25 inch : 1 mile, Second Edition (1902) • Chickerell Tithe Map (1840)
<p>Background Papers</p>	<p>The file of the Service Director, Highways and Emergency Planning (ref. RW/T553)</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 and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T553, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Anne Brown Regulation Team, Dorset Highways Tel: (01305) 221565 Email: Anne.K.Brown@dorsetcc.gov.uk</p>

1 Background

- 1.1 The anomaly was discovered on the line of Footpath 3, Chickerell between points A1 – E and H – I1 - K on Drawing 18/08/1 (Appendix 1) where the definitive line does not follow the track / path on the ground. A developer needs to establish the exact line and confirm status before the area is developed for housing.

The Currently Recorded route

- 1.2 At Point A1 the recorded route of Footpath 3, Chickerell departs Marshallsay Road in a northerly direction, through the garden and property of number 60. It continues in a northerly direction, through 3 gardens and a field to the east of the track known as Barr Lane before emerging onto the track at Point E. There is no indication of public use of this route.
- 1.3 Between Points E – F – G – H the recorded route corresponds with the used route.
- 1.4 From Point H the route of Footpath 3 is recorded as heading north across a field, then crossing a watercourse and entering another field at Point I1. It then continues north, on the eastern side of a water course to point K and joins Footpath 7 at Point L. There is no evidence of use of this route.

1.5 The Currently Used Route

- 1.6 On the ground the used route A – B – C – D – E is known locally as Barr Lane and H – I – I2 - J – K – L is an extension of this lane.
- 1.7 Barr Lane between Points A – E is a well-used track, part tarmac and part stony, 3.2 – 4.5 metres wide between banks topped with hedges and trees. There is evidence of vehicular use. There is a ditch along the western side. There are two entrances on the western side and a sign warning of the penalty of dog-fouling and another sign reads "*Please keep all dogs on leads and stay on the footpath*".
- 1.8 Between Points E – F – G – H the recorded route corresponds with the used route. It is mainly a grassy / earth track with signs of vehicular use.
- 1.9 From Point H the footpath continues north, across a pasture field. At point I it enters a heavily overgrown enclosed area which was originally approximately 3 metres wide with a hedge to the west and a stream to the east.
- 1.10 From Point I2 to Point J, the path runs between trees with the stream to the east, the minimum width is 2 metres. At Point J the used path continues north as a mown grass track, 2.5 metres wide, between trees and bushes. Overall available width is 3 metres. There is a sign reading "Keep dogs on lead".
- 1.11 At point K the used path continues west of the water course to cross it on a bridge at point L1 where a waymark indicates a junction with Footpath 7.
- 1.12 Barr Lane between points A – B – C – D – E – F – G – H and the used footpath H – I – I2 – J have no registered owner. Between Points J – K – L1 the used route falls within land registered with Land Registry as parcel DT350656 (Vine and Vine).

1.13 The recorded route of Footpath 3 falls within land registered with Land Registry as parcels DT205800 (Magna Housing), DT323683(Gomm, Clark, Clough and Sloss), DT395995 (Webb and Webb), and DT350656 (Vine and Vine).

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/T553)

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

4.1 As this case is not the subject of an application but is being investigated under the continuous review procedure, no user evidence has been submitted either in response to consultation, or in the past.

5 Consultation responses

5.1 The County Council carried out a wide consultation in June / July 2018 and six responses were received.

6 Evidence in support of the proposal (copies available in the case file RW/T553)

6.1 Two responses were received which were broadly in support of the proposal, but offered no evidence.

Name	Comments
Mr M Clough (07/06/2018)	Mr Clough is part-owner of a field to the east of Barr Lane. He confirms that the line of the right of way has always run along Barr Lane. There is no right of way or footpath on his land adjacent Barr Lane.
Mr A Henderson (14/07/2018)	Mr Henderson with his family own a piece of land to the west of the northern section of the route in question. He states that the footpath has always run alongside, but does not encroach upon his land and this, he accepts. If the path is modified to stray onto his land he will object.

7 Evidence opposing the proposal

7.1 No opposing submissions were received in response to the consultation exercise. No evidence was submitted in opposition to the proposal.

8 Other submissions received

- 8.1 A further four responses were received to the consultation. None contained any relevant information to be taken into consideration.

9 Analysis of documentary evidence

- 9.1 The most important documents in this case are the **Inclosure Award and Map for Chickerell (1804)**, the **Finance Act Plans and Field books (1910)** and the documents relating to the **National Parks and Access to the Countryside Act (1949)**.

Inclosure Award

- 9.2 The **Inclosure Award Map for Chickerell (1804)** depicts the route in question between points X - A – B – C – D – E – F – G – H on Drawing 18/08/1. It is shown as an ochre shaded road and labelled '**No. 8**'. Lines are marked across the route at points A, E, G and H, possibly indicating the presence of gates or barriers.
- 9.3 The **Inclosure Award for Chickerell (1804)** describes '*One other private road no 8 of the breadth of twenty five feet branching out of the public road.....*'. It continues: '*...described private roads or ways shall be and forever remain private carriage roads and driftways for the use of the respective owners and occupiers for the time being of the allotments adjoining the said roads and of allotments over which the same lead...*' The document then goes on to list the names of people responsible for the upkeep of the road, and the proportions of costs that each must pay.

- The inclosure award provides strong evidence that in 1804, that part of Barr Lane from A – B – C – D – E – F – G - H was legally set out as a private road for the exclusive use of adjoining landowners.

Finance Act 1910

Finance Act Plans 1910

- 9.4 The base maps used in compiling the Finance Act were Ordnance Survey Second Edition 25 inch: 1 mile sheets, numbers Dorset LIII.1 and Dorset LIII.5 (1901, published 1902).
- 9.5 Barr Lane, as shown between points A and E on Drawing 18/08/1, is shown on the Finance Act Plans to have been excluded from valuation, this being defined by the colour wash to either side, thereby excluding it from adjacent hereditaments. The resulting parcel lacks any hereditament number. The route is not named and extends across Finance Act sheet IR125/2/563.
- 9.6 Barr Lane between points E and F is shown excluded from the valuation of the land parcel with Hereditament number 54 on the same Finance Act Plan. In this case, where the lane enters the hereditament at point E, and leaves the hereditament at point F, there is a red bar in the centre of the lane, indicating that the lane itself is excluded from the land parcel, although the customary bracing of the two parts of Hereditament 54 is not present.

- 9.7 Barr Lane between points F and H also appears to be excluded from valuation, but the bar in the centre of the lane is absent at H.
- 9.8 Depiction of the path between point H and point I is also suggestive that it was excluded from the valuation of the land parcel with Hereditament number 378, although the depiction here is slightly unusual.
- 9.9 Between point I and point J the lane appears to be excluded from valuation, although the representation is again slightly unusual.
- 9.10 From Point J to point L the route is depicted on the base map with parallel dotted lines and marked 'FP'. It lies within Hereditament 5357. This part of the route extends across Finance Act sheet IR125/2/563 and IR125/2/559.

Finance Act Field Books

- 9.11 The Field Book entries for **Hereditaments 54** and **378** do not record that any deductions were allowed in respect of 'Public Rights of Way or User'. Nor do they list any 'Easements, Common Rights or Restrictions'. Hereditament 378 is described as situated on 'Barrow Lane'.
- 9.12 The field book for **Hereditament 378** quotes the area as equivalent to 4.54 acres, i.e. 0.11 acres less than the area of the two fields as stated on the Ordnance Survey Maps suggesting that the path is excluded from valuation.
- 9.13 The field book entry for **Hereditament 5357** is not available.
- The fact that Barr Lane, as shown from point A to point E, and most likely between A – J was excluded from valuation provides a strong indication that it was considered to be a public highway.
 - Vehicular roads were typically depicted in this manner, suggesting that this section of Barr Lane might have been regarded as a public carriageway at that time. However, this evidence alone cannot be used to determine public carriageway status.
 - The field books do not provide any support for public rights along Barr Lane between points J and L.
 - The name 'Barr Lane may derive from an abbreviation of 'Barrow Lane'.

National Parks and Access to the Countryside Act 1949

Parish Survey

- 9.14 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.

9.15 The **Chickerell Parish Survey** (no date) is shown from A – B – C – D – E – F – G – H – I – I2 - J - K on Drawing 18/08/1 shaded in green, labelled 'Barr Lane' and 'CRF', it is given number '38'.

- CRF was the abbreviation used for 'Carriage Road used mainly on Foot', a class of highway which had no legal standing, and is no longer in existence.

9.16 The **Chickerell Parish Survey Statement** describes path 38 as running from North Square to FP 12. The status of the path is listed as '*CRF (Barr Lane)*' and it details it as leading out of the parish to Nottingham Lane. The condition is described as '*Track partly hardened*'. It is described as having no gates or stiles, and no notice boards or direction signs.

9.17 A **Letter from the County Planning Department** (undated), headed '*Rights of Way Survey – Parish of Chickerell*' lists CRF 38 as having been not included in the original parish survey, but agreed by the Chairman of the Parish Council in consultation with representatives of the Planning Department.

- The Chickerell Parish Survey suggests that Barr Lane was capable of carrying vehicular traffic but, use by the public was mainly / exclusively on foot.
- The County Planning Department letter suggests that Barr Lane was added to the survey after original submission, although there was no requirement to record such routes on the parish survey.

9.18 There were various maps produced by the County Council leading up to the current definitive map, all at a scale of 1:25000. They are attached as Appendix 3:

Draft map

9.19 The **Draft map for the Chickerell area (1955)** shows Barr Lane from point A – B – C – D – E – F – G – H as Chickerell CRF 38. From point H – I – I2 - J – K – L was recorded as Chickerell footpath 12.

- No explanation can be found to explain why section H – L was recorded with a different status.

9.20 The **Dorset National Parks Sub-Committee 1958** decided to resolve the confusion caused by use of the term 'CRF' by recording all such routes as footpaths.

- This was a pragmatic decision taken at local level and did not have legal backing.

Provisional map

9.21 The **Provisional map of 1964** consequently shows the whole of Barr Lane from A – B – C – D – E – F – G and H – I – I2 - J (and onwards) as a footpath, Chickerell FP 3. Between points G – H the right of way is depicted as lying just outside the line of the lane, to the south.

- No objections were received in respect of this classification, although the Provisional Map was only open to scrutiny by landowners.

First definitive map

- 9.22 The **First definitive map of 1966 - 67** replicates the provisional map for this area: it shows the whole of Barr Lane from A – B – C – D – E – F – G – H – I – J – K – L (and onwards) as a footpath, Chickerell FP 3. The right of way is depicted as lying within the boundaries of the lane. The accompanying **Statement** describes Chickerell FP3 as extending from North Square (point A), northwards via Higher Barn to Nottingham Lane opposite Hyde Coppice (beyond and to the north east of point J).

Revised draft map

- 9.23 In **1973** a **Special Review** Committee considered the status of part of Chickerell Footpath 3 from Point X to point H to determine how the route should be shown on the revised draft map. An application was received to record this section of Barr Lane as a Road Used as a Public Path (RUPP). The committee decided to retain the status as public footpath because there was no evidence of public vehicle use.
- RUPP was a term used in the National Parks and Access to the Countryside Act 1949. It encompassed the earlier non-legal term of 'Carriage Road used mainly on Foot'. It is no longer a classification of highway.
- 9.24 The **1974 Revised draft map** shows Chickerell Footpath 3 in exactly the same way as the First Definitive Map, and the accompanying statement is also the same as the earlier document.

Current definitive map

- 9.25 The current **Definitive map (sealed in 1989)** depicts a similar situation to that shown on the revised draft map, with the exception that:
- Chickerell Footpath 3 now commences at point A1 and extends in a northerly direction to point E, but running to the east of the lane by a few metres.
 - Between points I1 and K the footpath is shown to the east of the drainage channel rather than between the lane boundaries.
- 9.26 The Statement accompanying the map describes Chickerell Footpath 3 in exactly the same way as on the previous statement.
- Without any evidence to suggest that the location of the start of Chickerell Footpath 3 has altered, or that the line of the right of way has been shifted to the east, it seem most likely that the Current Definitive Map has been drafted in error, and the right of way lies within the lane as shown on the First Definitive Map.

9.27 Although Barr Lane is recorded on the definitive map as a public footpath, this is not prejudicial to the existence of any higher public rights over it.

- The matter of higher rights was investigated during the Special Review of the Definitive Map in 1973 and no evidence was found of higher rights.

9.28 **Definitive Map Modification Order (confirmed 1998)** That part of Barr Lane from Point X to point A was subject to a definitive map modification order. The evidence submitted was evidence of use with vehicles and the resulting order resulted in this part of Barr Lane being recorded as a byway.

Other documents

Tithe Maps

9.29 The **Chickerell Tithe Map of 1839** depicts a route corresponding to that known as Barr Lane as shown between points A and H on Drawing 18/08. The lane is bounded on both sides by solid lines, suggesting that it was fenced or hedged, and is coloured brown, in the same manner as many other roads in the locality, many of which are recorded as highways today. It has no apportionment number and is not described in any of the adjoining apportionments.

- Tithe documents, in isolation, rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment.
- It is of some significance that it was not ascribed an apportionment number, indicating that it was not subject to tithe, which may suggest that it was regarded as a 'public' highway, but could equally well support the evidence of the earlier Inclosure Award that it was a private road.

Ordnance Survey maps

One Inch Series

9.30 The **1897 Revised New Series Ordnance Survey Map** at a scale of 1 inch: 1 mile depicts Barr Lane as shown X – A – B – C – D – E – F – G – H – I – J. For most of this length it is depicted with parallel solid lines, except between points H and I where it is depicted with one solid line and one pecked line, suggesting it was not fenced / hedged on the western side.

- The depiction of Barr Lane on a small scale map suggests that it may have been regarded as a route of some significance at that time.

25 Inch Series (1:2500)

- 9.31 The **1890 First Edition Ordnance Survey Map (surveyed in 1863 - 1888)** at a scale of 25 inches: 1 mile (1:2500) depicts Barr Lane between points A – B – C – D – E – F – G – H – I – I2 - J as an uncoloured lane, between two parallel lines indicating that it was fenced / hedged throughout this length. Between point X and point A the lane is depicted shaded ochre, in common with other routes that are today public carriageways. A route is not depicted north of point J. There are lines drawn across the route at points E, H and J, possibly indicating gates/barriers. A brace joins the parts to the north and south of point E, and this part of the lane has a separate parcel number. The lane between points H – J has a different parcel number. The drainage ditch between points H – J and points G – H is braced with the adjoining lane. None of the route is annotated 'F.P.' or 'B.W.'.
- 9.32 The **1902 Second Edition Ordnance Survey Map, revised in 1901**, at a scale of 25 inches: 1 mile (1:2500), uncoloured, (which is the map used for the Finance Act valuation), depicts the claimed route in a similar manner to the 1890 edition with the exception that the path now continues to the north depicted with parallel pecked lines. From point J, through points K and L, and on to 'Higher Barn', the path is annotated 'F.P.' and is braced with the field through which it passes. In addition, there is now a line across the lane between points I and J, possibly indicating a gate / barrier, with the two parts either side of the line braced together.
- 9.33 The **1929 Ordnance Survey Map, revised in 1927** and the **1946 Ordnance Survey Map, revised 1938**, both at a scale of 25 inches: 1 mile (1:2500), depict Barr Lane in a similar manner to the earlier maps. There is no longer a gate or barrier indicated at point E.
- Although not conclusive as to status, Ordnance Survey maps do provide evidence as to the physical existence of ways on the ground at the time of the survey. In respect of Barr Lane, the Ordnance Survey maps demonstrate that the lane, as shown from point X – A - B – C – D – E – F – G – H - I – I2 - J on Drawing 18/08, has existed from at least 1888.
 - In addition, the Ordnance Survey maps have consistently depicted Barr Lane between points X – A – B – C – D – E – F – G – H – I – I2 - J in a similar manner to other roads in the vicinity, many of which are known to be 'public' highways, namely carriageways. It has not been annotated with an 'F.P.' or 'B.R.', which suggests that it may have been suitable for use with vehicles.
 - The Ordnance Survey maps have also consistently depicted the existence of several paths, leading from Barr Lane which are today public footpaths, as is Barr Lane itself for much of its length.

Commercial maps

- 9.34 **Taylor's map of Dorset 1765** does not depict a route corresponding to Barr Lane confirming that prior to the Inclosure Award of 1804 it probably did not exist.

- 9.35 **Greenwoods' Map of Dorset 1826** Also does not depict a route corresponding to Barr Lane. This would be consistent with the route having no public significance at the time, in agreement with the Inclosure Award of 1804.
- 9.36 **Johnston's Map (no date but assumed to be early 1900's)** Depicts Barr Lane with parallel solid lines between point X – A – B – C – D – E – F – G – H – I – I2 - J, open at the northern end.
- 9.37 **Bartholomew's Revised Half Inch Map (1942)** Depicts Barr Lane (uncoloured) with parallel solid lines between point X – A – B – C – D – E – F – G – H – I – I2 - J, open at the northern end. The key describes this as 'other fenced road or track'.
- Whilst the evidence from these maps provides nothing conclusive as to the status of Donkey Lane, it does provide evidence as to its physical existence at the time, and the manner in which is depicted and described suggests that it may have been considered to be suitable for vehicular traffic since at least the early 20th Century.

Dorset County Council List of Private Streets

- 9.38 Barr Lane, Chickerell is listed as a private street with National Street Gazetteer Reference Number 43200630. Although no grid references for the beginning and end of the street are listed, the electronic copy held by Dorset County Council shows it as extending from point A to point H. The whole road is listed as 'private'.
- Streets listed in the List of Private Streets are all privately maintained and are usually (but not always) public highway. However, there is no indication of status.

Land Registry

- 9.39 Barr Lane (the track) as shown from point A – B – C – D – E – F – G – H – I – I2 - J on Drawing 18/08/1 is currently not registered with Land Registry. Between point J and point L the right of way passes through land parcel DT 350656. The register of this title describes that the land is subject to the rights reserved by a previous conveyance, but these are not detailed.
- 9.40 The right of way shown on the Current Definitive Map between points H and I1 passes through land parcel DT 395995. The register of this title does not list any rights. That section shown between points I1 – K is not registered with Land Registry.
- 9.41 The right of way shown on the Current Definitive Map between points A1 and E passes through land parcels DT 323683 and DT 205800. The register for these land parcels does not describe any relevant rights.
- Land Registry documents provide no support or otherwise for the right of the public to pass along Barr Lane (the track) or the footpath as it is recorded on the current definitive map.

Summary of Documentary Evidence

- 9.42 The Chickerell Inclosure Award of 1804 described the setting out of a private carriageway from point A – H on Drawing 18/08/1 along the route of the track now known as Barr Lane, the existence of this carriageway was confirmed by the Tithe Map of 1840.
- 9.43 Ordnance Survey maps from 1890 onwards suggest that a route existed on the ground from A – B – C – D – E – F – G – H – I – I2 – J, it was not annotated FP or BW suggesting that it was suitable for use with vehicles.
- 9.44 That section of the route J – K – L first appeared on Ordnance Survey maps which were surveyed in 1900, and it was annotated 'FP' suggesting that it was mainly used on foot.
- 9.45 The first documentary evidence of public status of the route was the Chickerell Parish Survey which, following amendment by the County Planning Dept showed Barr Lane between A – B – C – D – E – F – G – H – I – I2 – J – K – L as a 'Carriage Road used mainly on Foot' (CRF).
- 9.46 The Draft Map of 1955 confirmed the recording of that section of the route A – H as a CRF, but recorded that section H – I – I2 – J – K – L as a public footpath.
- 9.47 Following a decision of the National Parks Sub-Committee in 1958, the whole route A – L was designated as a public footpath. This was shown on the Provisional Map of 1964, the First Definitive Map of 1966-67 and the Revised Draft Map of 1974. An application under the Special Review of the Definitive Map to record the route as a Road Used as a Public Path (RUPP) was rejected in 1973 due to lack of evidence of public vehicular use.
- 9.48 The current Definitive Map (sealed 1989) shows the route of public footpath 3 lying outside the line of the lane between points A – E and H – K. No legal explanation for this has been found.
- 9.49 The documentary evidence suggests that Barr Lane was originally set out as a private carriageway for the use of adjoining landowners. It subsequently acquired rights as a public footpath for the whole of its length A – B – C – D – E – F – G – H – I – I2- J – K – L.
- 9.50 The line of the footpath was first recorded outside the confines of the lane on the Definitive Map of 1989. It is believed this was a drafting error.

10 Analysis of user evidence

- 10.1 No user evidence was submitted.

11 Analysis of the consultation responses

- 11.1 None of the responses suggest that the proposal is incorrect.

12 Analysis of evidence or representations in support of the proposal

12.1 Two adjoining landowners made representation.

12.2 Mr M Clough, part-owner of the field to the east of Barr Lane between points C and E (title number DT323683) confirmed that the line of the right of way had always run down Barr Lane and that there was not a right of way or footpath on his land adjacent to Barr Lane.

- This supports the proposal that the recorded line of footpath 3 is incorrectly aligned to the east of Barr Lane at this point, and should actually be recorded within Barr Lane.

12.3 Mr Henderson, joint owner with his family of land to the west of footpath 3 between points I and J (title number DT432871) stated that the line of footpath 3 on the ground does not encroach on his land and never has. He is content with this situation but states that should the modification result in the footpath straying onto his land he would object in the strongest possible terms.

- The proposal is that footpath 3 should be recorded as running to the east of Mr Henderson's land and to the west of the stream.

13 Analysis of evidence or representations against the proposal

13.1 There were no representations or submissions against the proposal.

14 Analysis of other submissions

14.1 None of the submissions contain any evidence for consideration.

15 Conclusions

15.1 It is necessary for the Chairman and the Service Director, Highways and Emergency Planning to decide whether:

- (a) There is no public right of way over land shown in the map and statement as a highway of any description (in respect of the route shown A1 – E and H – I1 - K).
- (b) A right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist (in the respect of the proposed route A – B – C – D – E, and H – I – I2 – J – K - L) as this route is not currently recorded with public rights.

15.2 The documentary evidence strongly supports the proposed modification. The First Edition Ordnance Survey map (1:2500 scale) shows the path A – J in this position and the documents relating to the National Parks and Access to the Countryside Act 1949 reinforce this, especially the First Definitive Map.

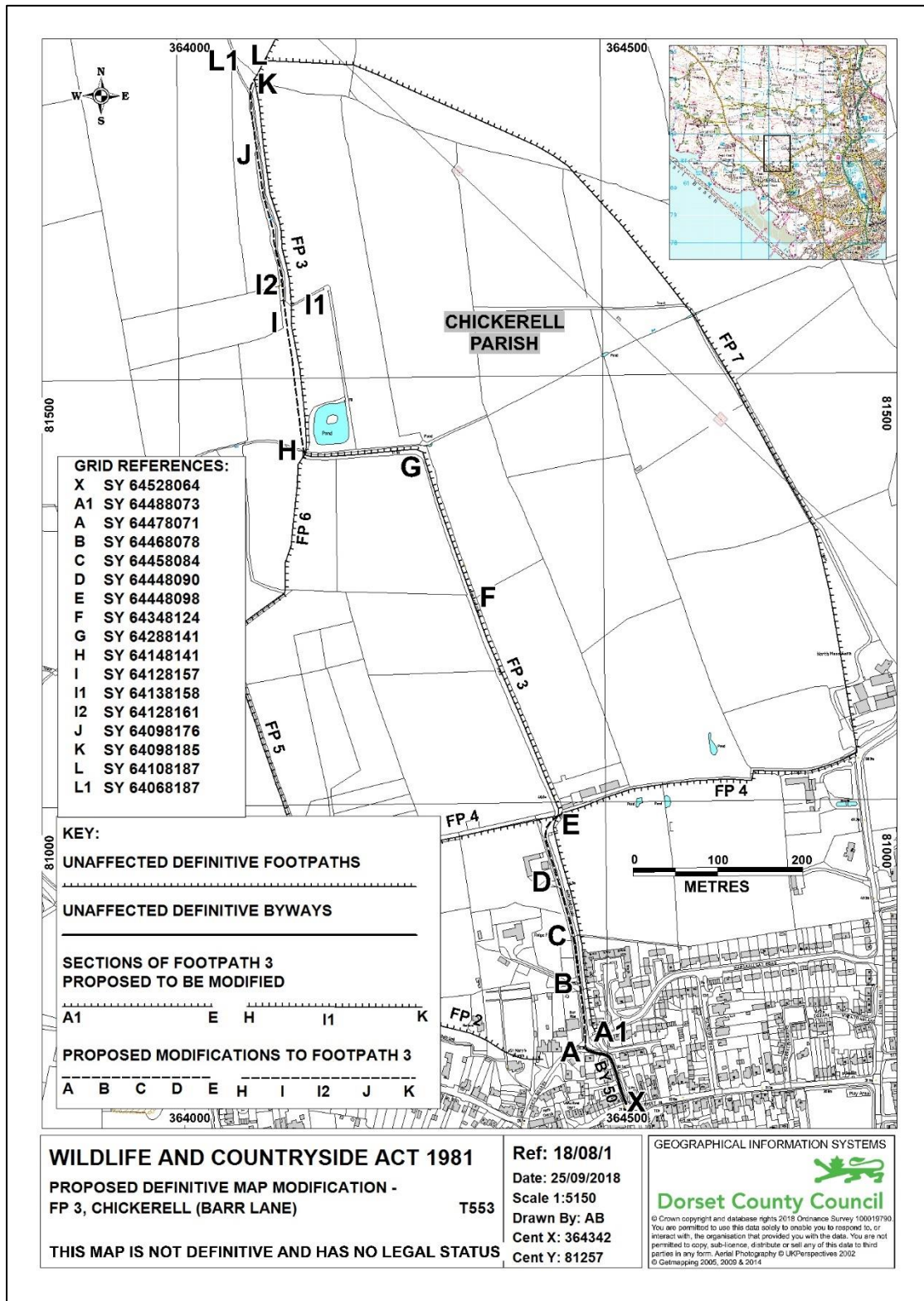
15.3 There is no documentation before 1989 that shows the route of the footpath A1 – E and H – I2 - K. It appears, on balance, that the route intended was that shown A – B – C – D – E – F – G – H – I – I2 – J – K – L on Drawing 18/08/1, as depicted on the First Definitive Map.

- 15.4 The balance of evidence shows that the currently recorded route is shown in error on the definitive map of rights of way and this should be modified to the route as proposed. No evidence of higher public rights was found.
- 15.5 Therefore it is recommended that the definitive map and statement should be modified to delete Footpath 3, Chickerell as shown A1 - E and H - I1 - K and instead to add Footpath 3 as shown A - B - C - D - E and H - I - I2 - J - K on Drawing 18/08/1 (Appendix 1).
- 15.6 If there are no objections to a modification order, the criterion for confirmation may be assumed to have been met and therefore, in these circumstances, the order should be confirmed.

May 2019

Drawing 18/08/1

APPENDIX 1



LAW

APPENDIX 2

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 by the authority of evidence which shows: -
 - (a) There is no public right of way over land shown in the map and statement as a highway of any description;
 - (b) That a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path;
 - (c) That any particulars contained on the definitive map and statement require modification.
- 1.2 The Chairman and the Service Director, Highways and Emergency Planning must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.3 The County Council must make a modification order to
 - (a) Add a right of way to the definitive map and statement if the balance of evidence shows either:
 - (i) that a right of way subsists or
 - (ii) that it is reasonably alleged to subsist.The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
 - (b) Delete a right of way from the definitive map and statement if evidence of some substance can outweigh the initial presumption that the way has been correctly included.
- 1.4 An order can be confirmed if, on the balance of probability, it is shown that the route should be modified as described.
- 1.5 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 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 – Human rights implications

- 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

APPENDIX 3

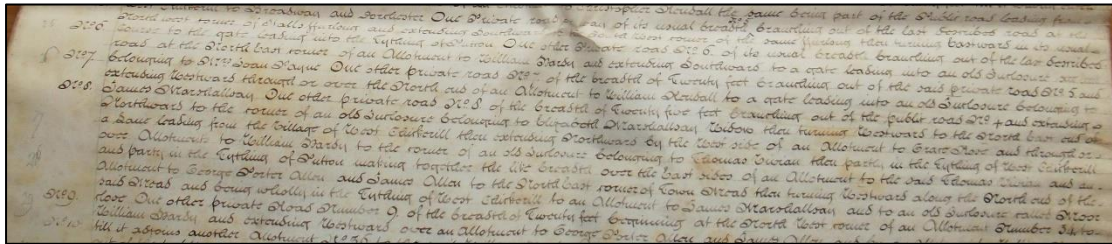
Evidence Type & date	Location and Ref no.	Summary of evidence
Taylors Map (1765)	DCC	Does not depict a route corresponding to the route in question.
West Chickerell Inclosure Award & Map (1804)	DHC, I33	Depicts Barr Lane in a similar way to roads, with parallel solid lines and ochre shading. It begins at point X and goes to point H, it is labelled 'No. 8'. The accompanying award describes No. 8 as a 'private road of breadth 25 feet'.... Describes the people who are entitled to use the road, and who are responsible for its upkeep.
Greenwood's Map (1826)	DCC	Does not depict a route corresponding to the route in question.
Chickerell Tithe Map (1840)	DHC, T-CHI	Depicts route between A and H with parallel solid lines and shaded brown, in same way as other roads which are mostly now public carriageways. It is not given an apportionment number.
Ordnance Survey Revised New Series 1": 1mile (1897)	NLS, Sheet 341	Depicts Barr Lane X - A - J with parallel solid lines throughout (no shading)
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
Ordnance Survey 25": 1mile First Edition (surveyed 1863-88, published 1890)	NLS, Dorset L.III.5	Depicts Barr Lane X - A - J with parallel solid lines. No route is depicted between J - K - L. Between points A and X the route is coloured ochre, the same as other roads in the area, which are today public carriageways. There is a pecked line across the route at point A (possibly indicating a separate land parcel) and a solid line across the route at point E (possibly indicating a gate / barrier). The two halves are braced at E.

Evidence Type & date	Location and Ref no.	Summary of evidence
Ordnance Survey 25": 1mile Second Edition (revised 1901, published 1902)	NLS, Dorset L.III.5	Depicts Barr Lane X – A – J with parallel solid lines throughout (no shading), and from J – K – L with parallel pecked lines and labelled 'FP'. There is a pecked line across the route at point A (possibly indicating a separate land parcel) and a solid line across the route at point E (possibly indicating a gate / barrier). The two halves are braced at E
Ordnance Survey 25": 1mile (revised 1927, published 1929)	NLS, Dorset L.III.5	Depicts Barr Lane X – A – J with parallel solid lines throughout (no shading), and from J – K – L with parallel pecked lines and labelled 'FP'. There is a pecked line across the route at point A (possibly indicating a separate land parcel) but there is no longer a solid line at E.
Ordnance Survey 25": 1mile (revised 1938, published 1946)	NLS, Dorset L.III.5	Depicts the whole of Barr Lane with parallel solid lines throughout (no shading), and from J – K – L with parallel pecked lines and labelled 'FP'. There is a pecked line across the route at point A (possibly indicating a separate land parcel) but there is no longer a solid line at E.
Finance Act Plans (1910)	NA, IR125/2/563 & IR125/2/559	Barr Lane A - E - excluded from valuation, E - F - shown excluded from the valuation of land parcel 54, and F - H also appears to be excluded from valuation. H - I - suggestive that it was excluded from the valuation of land parcel 378, and I – J although the depiction here is slightly unusual. J - L the route shown with parallel dotted lines and marked 'FP', lies within Hereditament 5357. This part of the route crosses sheets IR125/2/563 and IR125/2/559.
Finance Act Field Books (1910)	NA, IR58/27863 & IR58/27866	Hereditaments 54 and 378 no record of any deductions for 'Public Rights of Way or User', or any 'Easements, Common Rights or Restrictions'. Hereditament 378 is described as situated on 'Barrow Lane'. Hereditament 378 area is equivalent to 4.54 acres, (0.11 acres less than the area of the two fields on OS. The field book Hereditament 5357 not avail.
Johnston's Map (no date)	DHC, DC/BTB/R/5	Depicts Barr Lane with parallel solid lines between point X – A – B – C – D – E – F – G – H – I - J, open at the northern end.
Bartholomew's (1942)		Depicts Barr Lane (uncoloured) with parallel solid lines between point X – A – B – C – D – E – F – G – H – I - J open at the northern end. The key describes this as 'other fenced road or track'.

Evidence Type & date	Location and Ref no.	Summary of evidence
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.
Chickerell Parish Survey and Statement (no date)	DCC	A – B – C – D – E – F – G – H – I – I2 - J - K shaded green, labelled ‘Barr Lane’ and ‘CRF’, it is given number ‘38’. It is described as ‘CRF’ ‘Track partly hardened’.
Letter from County Planning Dept (no date)	DCC	Lists CRF 38 as not included in the original parish survey, but agreed by the Chairman of the Parish Council in consultation with representatives of the Planning Department
Draft Map (1955)	DCC	Barr Lane from A – B – C – D – E – F – G – H shown CRF 38. H – I – I2 - J – K – L shown Chickerell footpath 12. No explanation to explain why section H – L was recorded with a different status.
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.)	
Dorset National Parks Sub-Committee Decision (1958)	DCC	Decided to resolve the confusion caused by use of the term ‘CRF’ by recording all such routes as footpaths.
Provisional Map (1964)	DCC	Barr Lane from A – B – C – D – E – F – G and H – I – I2 - J (and onwards) as a footpath, Chickerell FP 3. Between points G – H the right of way is depicted as lying just outside the line of the lane, to the south.
First Definitive Map & Statement (1966-67)	DCC	Barr Lane A – B – C – D – E – F – G – H – I -I2 – J – K – L (and onwards) shown footpath, Chickerell FP 3. The right of way is depicted as lying within the boundaries of the lane. The Statement describes Chickerell FP3 as extending from North Square (point A), northwards via Higher Barn to Nottingham Lane opposite Hyde Coppice (beyond and to the north east of point J).

Evidence Type & date	Location and Ref no.	Summary of evidence
Special Review Committee Decision (1973)	DCC	Considered status of Chickerell FP 3 from X - H. Application received to record this section of Barr Lane as a Road Used as RUPP. The committee decided to retain status as public FP because there was no evidence of public vehicle use.
Revised Draft Map (1974)	DCC	Same as first definitive map and statement.
Current Definitive Map and Statement (sealed 1989)	DCC	Chickerell FP 3 now starts at A1 and extends north to E, but running to the east of the lane by a few metres. Between I1 and K the footpath is shown to the east of the drainage channel rather than between the lane boundaries. The remainder of the FP is the same as on the First Definitive Map. The Statement replicates that of the First Definitive Map.
Definitive Map Modification Order (confirmed 1998)	DCC	Barr Lane X - A was subject to DMMO based on evidence of use with vehicles. The resulting order recorded this part of Barr Lane as a byway.
Dorset County Council List of Private Streets	DCC	Barr Lane, Chickerell is listed as a private street; National Street Gazetteer Reference 43200630. No grid references listed, but electronic copy held by Dorset County Council shows it from A - H. The whole road is listed as 'private'.
Land Registry (2018)	DT 350656	J - L the right of way passes through DT 350656. Title describes that the land is subject to the rights reserved by a previous conveyance, but these are not detailed.
Land Registry (2018)	DT395995, DT323683, DT205800	H - I1 passes through DT 395995. A1 – E passes through DT323683 and DT205800. The registers of these titles do not list any rights.
Land Registry (2018)		The remainder of the route is across land not registered with Land Registry.

West Chickerell Inclosure Award extract (1804) and transcript



Roads numbered 1 – 4 are then described as ‘Public Carriage Roads’ and are all public carriageways today. Roads numbered 8 -13 are referred to as ‘Private roads’

One other private road no. 8 of the breadth of twenty five feet branching out of the public road no. 4 and extending northward to the corner of an old inclosure belonging to Elizabeth Marshallsay Widow, then turning Westward to the North East end of a lane leading from the village of West Chickerell, then extending Northward by the West side of an allotment to Grace Rose and through or over allotments to William Hardy to the corner of an old inclosure belonging to Thomas Vivian then partly in the Tything of West Chickerell and partly in the Tything of Putton making together the like breadth over the East side of an Allotment to the said Thomas Vivian and an Allotment to George Porter Allen and James Allen to the North East corner of Town Mead, then turning Westward along the North end of the said Mead and being wholly in the Tything of West Chickerell to an Allotment to James Marshallsay and to an old inclosure called Moor Moot.....

After Road No 13

Which nine last described private roads or ways shall be and forever remain private carriage roads and driftways for the use of the respective owners and occupiers for the time being of the allotments adjoining the said roads and of allotments over which the same lead and of the several old inclosures and cottages to which the same adjoin or lead respectively.

Finance Act Plan (1910)



Chickerell Parish Survey (no date but assumed to be ~1950)



Letter from County Planning Department

DORSET COUNTY COUNCIL
COUNTY PLANNING DEPARTMENT

L. ABBOTT, M.B.E., M.T.P.I.,
A.R.I.C.S., M.I.Mun.E.,
County Planning Officer.

County Hall,
Dorchester,
Dorset.

Telephone: Dorchester 1000
Ext. 343

My Ref: 17/...

Dear

Rights of Way Survey - Parish of Chickerell (continued)

Will you please note that in order to keep the numbering on the rights of way Draft Map uniform throughout the County, it has become necessary to re-number the paths submitted by you according to the following schedule. All numbers not appearing below will remain in their original form.

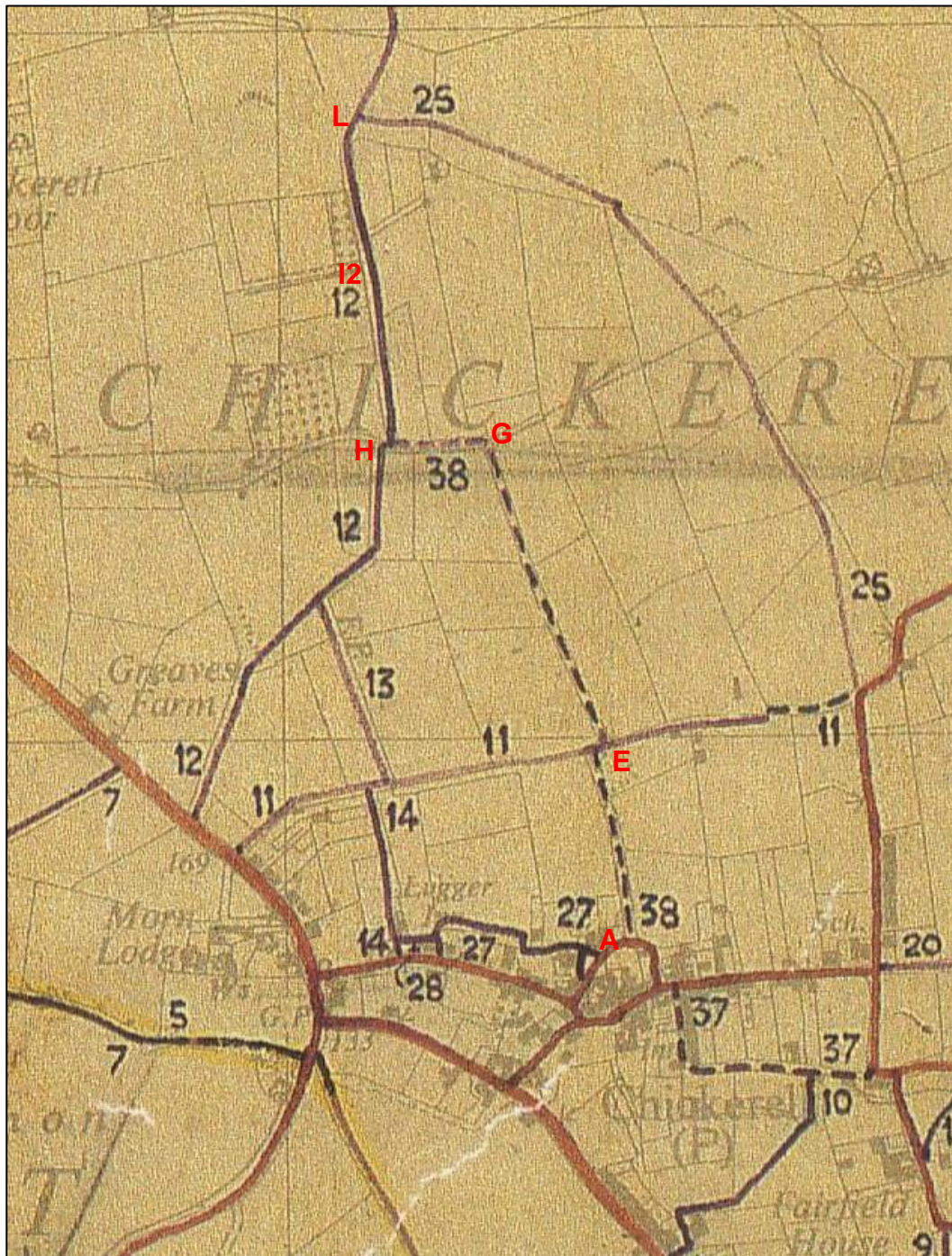
Yours faithfully,

County Planning Officer

SCHEDULE

Original No. on Survey	New No. Appearing on Draft Map	Original No.	New No. Appearing on Draft Map
Not included – additions to original parish survey agreed by chairman of Parish Council in consultation with representatives of this Department.	<u>Chickerell Village:</u> FP 27, 28, 35, 36 CRF 37, 38.	Not included – non-county road added for continuity with paths leading from it. * FP 5 Section across Crook Hill from Fleet Lane to junction with FP 6 Not included – Short section of path claimed by Wimborne	Fleet Lane: CRF 4
	<u>Parish H. of Worlington Lane:</u> FP 29 to 34 connecting with paths claimed by Wimborne Bar & Portesham Bk. adjoining. <u>Buckland Ripers:</u> BR 40, FP 41		Deleted – in Fleet Hk. Survey. FP 41

Draft Map (1955)



Dorset National Parks Sub-Committee Decision (1958)

National Parks Sub-Committee - 23rd June, 1958

Carriage Roads

21. The Sub-Committee discussed the question of the designation on Draft Maps of those rights of way which were defined as Public Carriage or Cart Roads or Green (unmetalled) Lanes mainly used as (i) Footpath (C.R.F.) or (ii) Bridleway (C.R.B.). It was felt that these designations caused a considerable amount of confusion as to the right of way which the public could claim and that as the County Council were required under the provisions of the National Parks and Access to the Countryside Act, 1949, to establish the public rights on footpaths and bridleways only, references to any other uses should be omitted.

RECOMMENDED

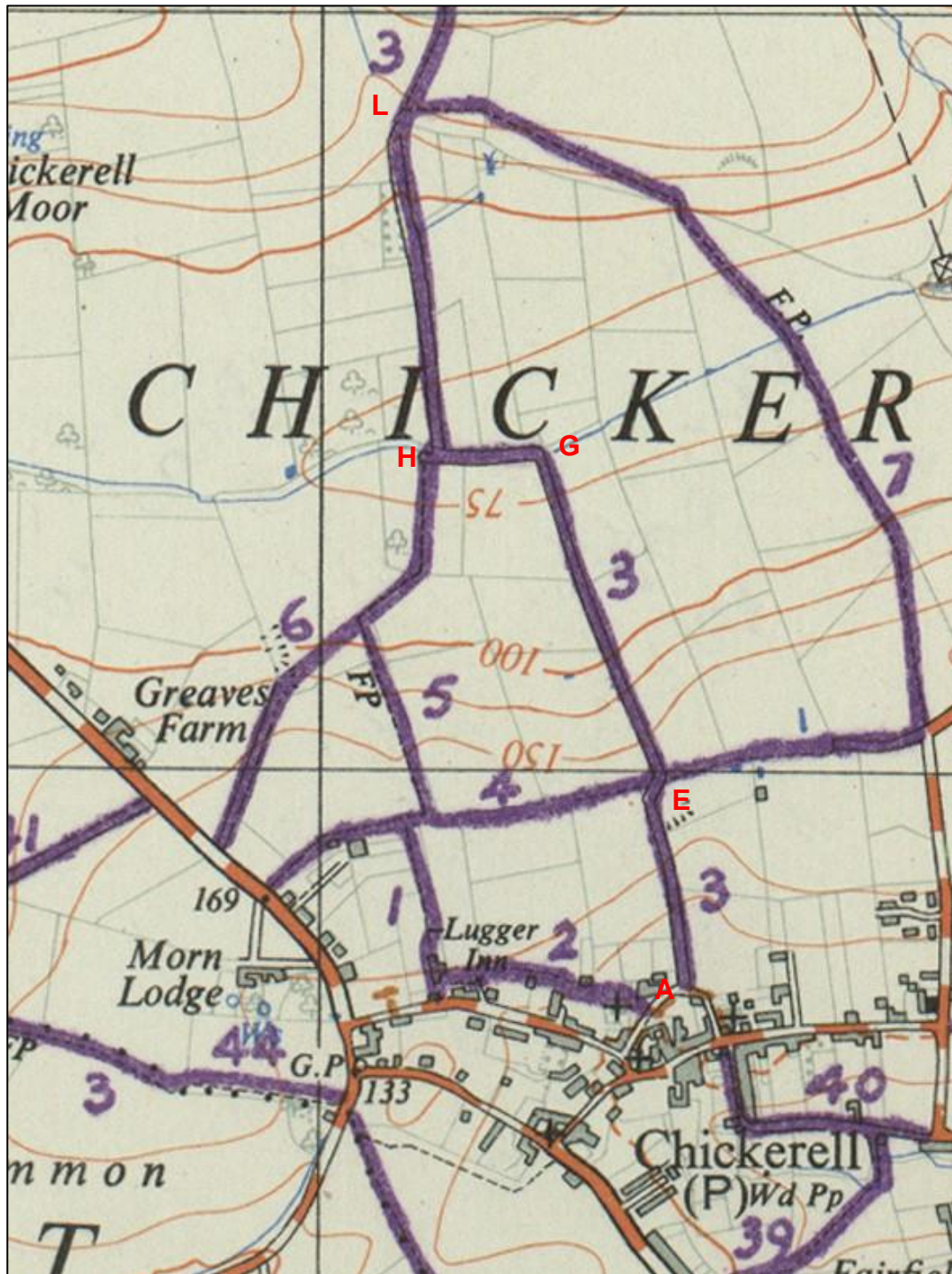
22. That the designation of certain rights of way as C.R.F. or C.R.B. be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.).

Draft Maps - Inquiries

23. The Sub-Committee expressed their appreciation of the considerable amount of work which the Chairman had undertaken in conducting the numerous Inquiries into objections and representations made to the Draft Maps. These Inquiries had occupied a great deal of Col. Mansell's time and his thorough investigations into these cases was evident from the fact that so far only one appeal had been made to the Minister on any of the determinations.

S. Mansell
Chairman
13th October, 1958.

First Definitive Map (1966-67)



Special Review Decision (1973)

DORSET COUNTY COUNCIL REF RW/5/6(9)

SPECIAL REVIEW OF DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY

1. Municipal Borough/Urban District/Parish of Chickereil

2. Claim for inclusion on the Revised Draft Map of Rights of Way of -

(a) a new Footpath	<input type="checkbox"/>	(a)
(b) a new Bridleway	<input type="checkbox"/>	(b)
(c) a Byway Open to all Traffic	<input type="checkbox"/>	(c)
(d) that a path shown on the present Definitive Map should be upgraded to a higher status	<input type="checkbox"/>	(d)
(e) any other relevant claim, eg new evidence concerning an existing path or way (please specify below)	<input checked="" type="checkbox"/>	(e)

R.U.P.

3. Claim originated by (MB/UD/Parish Council/Meeting/User Organisation/Private Person, etc (please state))

See 6 below

4. Official number of path or way if already shown on Definitive Map Part F.P. 3

5. From East St. Map Ref. 644807

To F.P. 6. Map Ref. 642814

6. Precis of Claim Original Parish Surveys and Draft Map shows as Carriage Rd. F.P. 38 (F.P. 3 on Def Map). The section was awarded as a private road in the Gnetonre Award of 1804. It is a green lane which is hardened as far north as its junction with F.P. 4 at 644810. Entered on the O.S. Map in its existing status of F.P.

See also RW 5/11 (13)

7. COMMITTEE'S DECISION - ~~CLAIM UPHOLD/OVERRULED~~ for the following reasons:-

Retain as a public footpath on the Revised Draft Map -
no evidence of public vehicular use

Date 24th July 1973

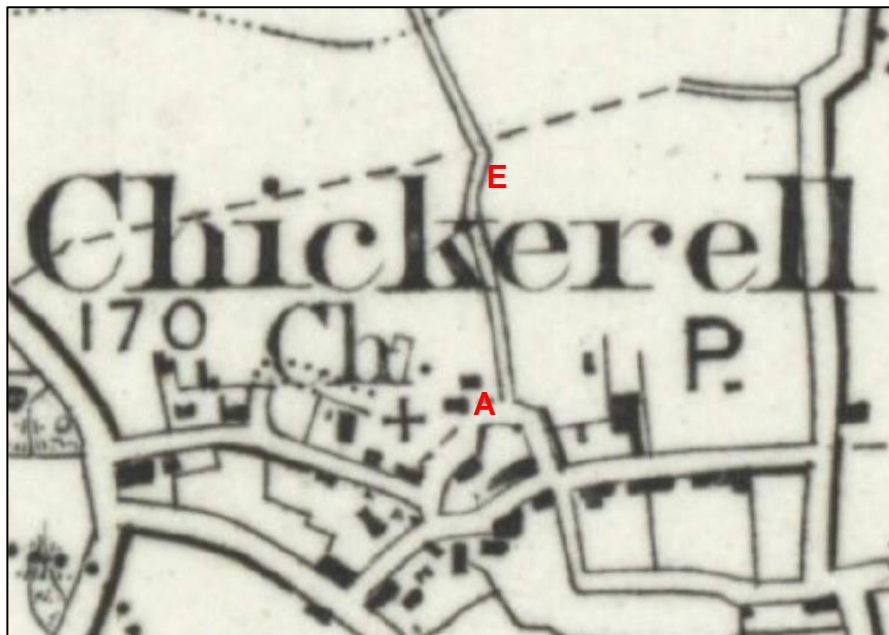
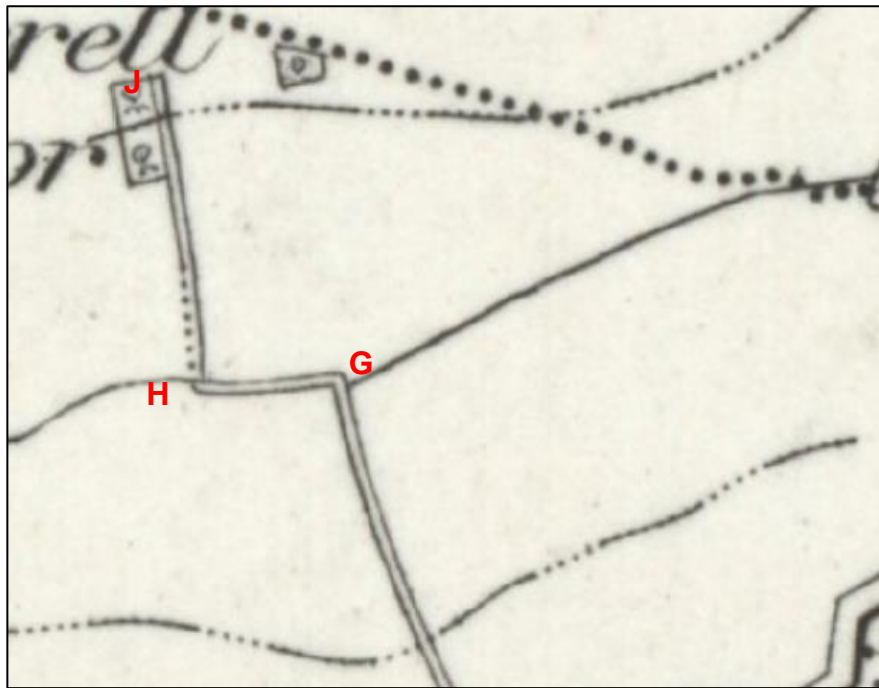
Signed R. Fare
Chairman of the Special Review
Committee

AJS/EH

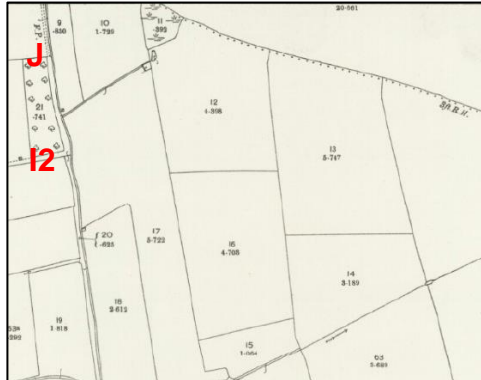
Current Definitive Map (sealed 1989)



Ordnance Survey Revised New Series 1 inch: 1 mile scale map (1897)



Ordnance Survey 25 inches : 1 mile scale map, Second Edition (surveyed 1902)



Chickerell Tithe Map (1840)



Recommendations accepted:

Signed

Signed

.....

Date.....18/10/2018

D C Jones

Chairman, Regulatory Committee

Signed

Signed

.....

Date...22/10/2018

Andrew Martin

Service Director, Highways and Emergency Planning