

Agenda item:

Regulatory Committee

10

Dorset County Council



Date of Meeting	23 October 2014
Officer	Director for Environment and the Economy
Subject of Report	Application for a definitive map and statement modification order to upgrade Footpath 17, Colehill to a bridleway from Kyrchil Lane via Kyrchil way to Leigh Lane
Executive Summary	In response to an application to upgrade Footpath 17, Colehill to a bridleway this report considers the evidence relating to the status of the route.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: The applicant submitted documentary evidence in support of his application. 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 September and October 2013 involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site. 20 user evidence forms from users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

	<p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record Footpath 17, Colehill as shown on Drawing 13/30 as a restricted byway;</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) The available evidence shows, on balance, that the claimed route ought to be shown with higher public rights than that of bridleway;</p> <p>(b) The available evidence shows, on balance, that a highway shown on the definitive map and statement as a footpath (Footpath 17, Colehill) ought to be shown as a public vehicular way. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and</p> <p>(c) The evidence shows, on balance, that the route claimed should be recorded as a restricted byway. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders help to ensure the definitive map and statement of rights of way is kept up to date and achieves the corporate aim aims to:</p> <ul style="list-style-type: none"> • Harness the unique environment to support business and sustainable growth and to increase opportunities to improve people's health

	<ul style="list-style-type: none"> • Help to keep businesses and people moving safely and sustainably on our highways and to reduce congestion
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 13/30 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"> ▪ 1910 Finance Act map – sheets 35.1 and 35.5 ▪ 1887 First Edition Ordnance at a scale of 6 inches:1 mile (1:10560) (enlarged) ▪ 1902 Second Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) (enlarged) ▪ 1923 Diversion of Footpath at Park Homer leading to Leigh Lane – plan and extract from Order ▪ Plan accompanying Deposit of statement and Statutory Declarations submitted by Kingston Lacy & Corfe Castle Estates under Rights of Way Act 1932 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/T459).</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 RW/T459, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to upgrade Footpath 17, Colehill as shown on Drawing 13/30 (Appendix 1) was made by Mrs Jean Heaton on behalf of the British Horse Society on 28 August 2007. This application is now being managed by Mrs Carol Shoopman, Dorset Vice Chairman, British Horse Society.
- 1.2 The route claimed, (Footpath 17) commences at Kyrchil Lane (point A), then travels south east along Kyrchil Way as a made up track with hedges and houses set back along both sides. At point B, where bollards have been placed across the route, the claimed route turns south south east along a double hedged/ fenced route with tarmac at its centre. The hedges are set back from the used way with undergrowth between the footpath and the hedges and fences. The claimed route slopes down to point D where staggered barriers have been erected across the way and then terminates at Leigh Lane at point D.
- 1.3 The widest part of the route at point D is 14 metres wide and the narrowest part of the route is 3 metres between points A and B.
- 1.4 Title to the claimed route is unregistered and the owner is unknown.

2 **Law**

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

3 **Documentary evidence (Appendix 3)**

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

4 **User evidence (Appendix 4)** (copies available in the case file RW/T459)

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

5 **Additional evidence in support of the application** (copies available in the case file RW/T459)

- 5.1 One response in support was received from the Parish Council Rights of Way Liaison Officer at the time in response to the application and another following the consultation exercise.

Name	Comments
K D Johnson (ex-Rights of Way Liaison Officer for Colehill)	Believes that the claimed route “used to be the cart track up from The Vineries (when it was a market-garden business) up to Middlehill Road” and mentioned the 1947 RAF Aerial Photograph and an Ordnance Survey 1902 6 inch 2 nd Edition as evidence.
A P Manly	States that “Between A and B” the claimed route “is frequently used by horses i.e. more than once a week. It is also used daily by Cars”. Also “the C – D section could be used by horses if the surface were strengthened and foliage cut back.”

6 Evidence opposing the application (copies available in the case file RW/T459)

6.1 Two submissions were received before the consultation started and five letters were received as a result of the consultation.

Name	Comments
Roger and Stephanie Selwyn	<p>Give details of their use of the claimed route over the past 46 years. State that there was “no problem with horse-riders on this footpath” until around 2003 when fields adjacent Leigh Lane were “sold by the National Trust” and “leased out by the new owner for occasional and intermittent horse grazing”. They have challenged the “odd infrequent horse- rider” on the claimed route (no dates were given).</p> <p>“A crossover barrier was erected by the County Council to indicate that it was not to be used by horses”.</p> <p>They state that several “No Horses” painted signs have been erected along the claimed route at various times.</p> <p>They refer to various Ordnance Survey maps 1960, 1980 and 1984 showing the claimed route as a footpath.</p>
J L & A Williams	“No objection to Kyrchil Way itself being upgraded to a bridleway. Indeed it has always been used by riders throughout the seventeen years we have lived here”. (2007)
Mrs EM Peckham	“Only in the past 10 yrs have I seen riders.” (2013)
J L & A Williams Mr K Wisker Mrs Ann Wisker Mrs EM Peckham Peter Scriven (Parish Rights of Way Liaison Officer) Roger and Stephanie Selwyn	<p>Issues were raised such as: -</p> <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Noise • Pollution • Suitability • Dangerous junctions • Disruption and damage to the historical environment • Current and past use

7 **Other submissions received** (copies available in the case file RW/T459)

- 7.1 Three other submissions were received, including one by telephone in 2010. The remaining two were in response to the consultation exercise.

Name	Comments
Mr Cole (by telephone)	Sign saying "No Horses" erected on the footpath in July 2010.
Graham Hemsley on behalf of the Ramblers	"No evidence to support this application."
Colehill Parish Council	No comment on the application.

8 **Analysis of documentary evidence**

Finance Act 1910

- 8.1 As there is no Inclosure award affecting this area the most important documents in this case are those to the **Finance Act 1910**.
- 8.2 The **1901 Second Edition Ordnance Survey map sheets 35.1 and 35.5** were used for the valuation exercise (although the southern sheet is badly deteriorated and the colour indistinct). They show the claimed route between points A and D as a wide route edged with solid lines and with pecked lines indicating a change in surface in two places.
- 8.3 The whole of the claimed route between points A and D is shown edged green from the additional valuation colouring and is therefore excluded from taxation.
- 8.4 Without any evidence to the contrary, the exclusion from valuation of the claimed route as shown from A to D suggests that it was regarded as a public highway, namely a public carriageway.
- 8.5 Therefore the Finance Act documents suggest that the claimed route enjoyed a higher public status than that of footpath or bridleway.

Ordnance Survey maps.

- 8.6 The **1887 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route. The lane is unnamed and has no 'F.P.' or 'B.R.' annotations alongside. It is clearly shown with shading (heavy line) on the south/western side of the lane between points A and B and on the north/eastern side of the lane between points B and D. Shading on one side indicates a public vehicular highway (see note in Table of Documentary Evidence at Appendix 3). There is no disclaimer present on this map (again, see note at Appendix 3).

- 8.7 The **1901 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1887 edition although the larger scale map shows more detail. The route is shown with double solid lines, indicating that it is fenced or hedged on both sides and it is also shown with shading. .
- 8.8 The **1902 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) also shows the claimed route but with less detail than the larger scale edition. It is shown again with shading, suggesting that it had public vehicular rights.
- 8.9 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route quite capable of accommodating vehicular traffic. The claimed route is consistently shown in the same manner as other public carriageways in the vicinity, being clearly defined on both sides by hedges or fences. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation such as 'B.R.' or 'F.P.', which suggests that if it were considered to be a public highway it would be of a higher status than a footpath or bridleway. The presence of shading along the whole of the claimed route is also indicative of a route with public vehicular rights.
- 8.10 Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

1923 Diversion of Footpath at Park Homer, Colehill (leading to Leigh Lane)

- 8.11 A **stopping up and diversion** of a footpath at the northern end of Park Homer Drive was carried out in 1923 by the Justices of the Peace. The Order plan shows the claimed route (A – D on Drawing 13/30) and Leigh Lane, leading from point D southwards, as a continuous route. The claimed route is shown and coloured in the same manner as other public highways at that time.
- 8.12 The Order describes the current Footpath 16 (east of point D) and its connection to the claimed route: "and thence along the public footpath coloured yellow" [Footpath 16] "to the point D [also point D on Drawing 13/30] where it joins the public highway known as Leigh Lane".
- 8.13 The colouring and description is further evidence that the claimed route was regarded as a public vehicular highway at that time.

1926 Wimborne and Cranborne Rural District Council – "Schedule of District Roads taken over"

- 8.14 Within the Dorset County Council records there is a **Schedule of Wimborne and Cranborne Rural District Roads**, including those in the parish of Colehill. These were roads handed over to the Rural District Council to maintain at that time. The list includes a route described as "Leigh Lane to Park Homer Gate Road" and this suggests that the claimed route was recorded as a public road.

Rights of Ways Act 1932 – Deposit of map and statement and statutory declarations

- 8.15 On 1 January 1934 the Kingston Lacy and Corfe Castle Estates deposited a **map and statement** indicating ways admitted to have been dedicated as highways on their land in Colehill. **Statutory declarations** are indicated to have been made following this deposit in December 1939, December 1945 and December 1957, the last two not being within the prescribed time limit.
- 8.16 Although the claimed route is not shown in their ownership the route is annotated north of point D as leading “To Colehill” and is shown as other routes which are now public roads.

Commercial maps

- 8.17 Various **small scale maps** depict a route on or in the general location of the application route either completely or partially (see table at Appendix 3). Where it is shown it is depicted in the same manner as other roads in the vicinity, which are known to be public carriageways.

Parish Survey and County Council rights of way maps and records

- 8.18 The **Colehill Parish Survey** of rights of way **1951** claimed the route as a footpath and numbered it as 31. The accompanying “Statement as to public rights of way” records Footpath 31 as “- to east end of Kyrchil lane; starts from the north of the county road Leigh Lane near the end of F.P. 20” [now Footpath 16]. “It is rough and steep and wet after rain, but frequently used and has been generally recognised as a public F.P. for more than 20 years. The County Council has repaired it.”
- 8.19 The 1959 draft map for the east area shows the claimed route as Footpath 31.
- 8.20 The 1964 provisional map and 1966 first definitive maps both show the claimed route renumbered as Footpath 17.
- 8.21 In **1973** a **Special Review** Committee considered the status of the claimed route to decide how part of the claimed route should be shown on the revised draft map. The Colehill Parish Council claimed the part between points A to B “Kyrchil Way – Upgrade to R.U.P.P. [Road used as a Public Path] – B.O.A.T. [Byway open to All Traffic]”. The evidence put forward was “Evidence of use by vehicles throughout this century”.
- (a) The Committee’s decision was that the claim was “overruled” for the reason “ No evidence that this way should be termed as a road used as a public path therefore retain as ~~bridleway~~ footpath.”
- 8.22 The **1974 revised draft map** therefore shows the whole of the claimed route as Footpath 17.

- 8.23 An **objection** to Footpath 17 being shown only as a footpath on the **revised draft map** was received in **1975** by N H Hotchkiss on behalf of the Canford Purbeck Rights of Way Group. He asserted that it “should be at least Bridleway”. A County Council file note indicates that “it should be re-classified as BR”. However, the review was abandoned in the east of the County following the Wildlife and Countryside Act 1981 and because there was an outstanding objection, which had not been addressed at a local public inquiry, Footpath 17 remained a footpath and the evidence of use by vehicles, which may have had a bearing on the status of the claimed route was not considered at that time.
- 8.24 Although the fact that the whole of the claimed route is recorded upon the **current definitive map** (sealed **1989**) as a footpath is conclusive evidence as to the existence of these rights, it is not prejudicial to the existence of any higher public rights over the route.

9 **Analysis of user evidence supporting the application**

- 9.1 All of the witnesses state that they used the route, either individually or with other users, shown between points A and D on Drawing 13/30 and that this use was for pleasure.
- 9.2 The dates of use given on the user evidence forms span the period between 1939 and 2010.
- 9.3 The heaviest amount of use of the route was between 2005 and 2007, with 16 users claiming that they used the route weekly on horseback.
- 9.4 Two users claim that they were challenged by local residents while on the claimed route and two others heard second-hand from a third party that horse riders had been challenged. The applicant states in her user evidence form that Colehill Parish Council had written to the British Horse Society in 2006 to ask its members to stop using the claimed route.
- 9.5 The users mention obstructions such as the bollards at point B and the barriers at point D. The users confirm that the barriers at point D were erected in 2005 and some indicate that it hindered their use of the route with large horses. One user remembered when three bollards were erected at point B in 1995/6 and several of the users remarked that additional bollards were put in at the same time at point B.
- 9.6 With regard to frequency of use, 11 used it weekly and six used the route more than once during any such week.
- 9.7 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) The date that the barriers were erected at point D in 2005 can be seen as bringing that use into question.
- (b) There is a period of 20 years evidence of use of the claimed route by the public on horseback in a period from 1985 to 2005.

10 Analysis of evidence supporting the application

- 10.1 K D Johnson's evidence that the claimed route used to be a cart track indicates a status higher than that of footpath. The 1947 aerial photograph is indistinct as there is cloud cover in the area. The Ordnance Survey 1902 6 inch 2nd Edition map is discussed at paragraph 8.8.
- 10.2 A P Manly gives eye witness evidence of use by horses along the part of the claimed route A – B to support the claim but also indicates use by motor vehicles of this section. He also points out that the width available for use between C and D could be increased by maintenance.

11 Analysis of evidence opposing the application

- 11.1 Mr and Mrs Selwyn's submission (see table at Paragraph 6) relates to four main points.
- (a) They have challenged horse riders who were on the footpath. However, this was not a challenge by the landowner. Others can challenge use, which would bring such use into question, but this would not be a lack of intention to dedicate the route as a public right of way by a landowner.
 - (b) The barriers erected at point D in 2005 can be regarded as a challenge to use by horseriders (see paragraph 9.7) but there is evidence of use by horses 66 years prior to that date.
 - (c) The various signs "No Horses" were not erected by the landowner or the highway authority and were hand painted by local residents. These signs may be seen as a challenge to use sufficient to bring the use of the route into question but were erected in 2010, five years after the barriers.
 - (d) The various maps that show the claimed route as a footpath are in line with the various draft maps and definitive maps drawn by Dorset County Council. The Ordnance Survey maps were therefore reflecting the legal status of the claimed route at that time.
- 11.2 The majority of the other submissions made opposing the application relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

12 Analysis of other submissions

- 12.1 Mr Cole has confirmed that the date that the notices were erected was July 2010 by informing the County Council at the time.
- 12.2 The other letters contain no evidence to be considered.

13 Conclusions

- 13.1 As the route is currently recorded as a footpath it is necessary for members to decide whether, on the balance of probability, the highway shown in the map and statement as a footpath ought to be shown as a highway of a different description.
- 13.2 It is considered that the most important pieces of documentary evidence are those provided by the **1910 Finance Act maps**, which show the whole of the claimed route as excluded from valuation.
- 13.3 This is reinforced by the shading of the claimed route on the 1887, 1901 and 1902 Ordnance Survey Maps, its depiction on the 1923 Diversion Order plan and its description in the Order, being listed in the roads taken over by the Wimborne and Cranborne Rural District Council in 1926 and the annotation on the map used for the Deposit by the Kingston Lacy and Corfe Castle Estate under the Rights of Way Act 1932.
- 13.4 The documentary evidence is considered to be sufficient to demonstrate, on balance, that the claimed route carries public vehicular rights.
- 13.5 If members are not satisfied that the documentary evidence alone shows, on balance, that a public vehicular right exists they should consider whether the documentary evidence demonstrates the existence of bridleway rights or whether, in conjunction with the user evidence, it constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication of bridleway or public vehicular rights under Section 31 of the Highways Act 1980.
- 13.6 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the erection of the barriers, challenging use by horses and vehicles in 2005. Although other actions (challenges and notices) could bring the use of the route into question these occurred later than the erection of the barriers.
- 13.7 The quantity of evidence of use on horseback fulfils the requirement of 20 or more years use as a bridleway by the public, as of right and without interruption, prior to the date that use by horses was brought into question in 2005. It is considered that the evidence of vehicular use is not sufficient to satisfy Section 31 of the Highways Act 1980.
- 13.8 On balance, Section 31 of the Highways Act 1980 applies to 20 or more years use of the way by the public on horseback, leading to a presumed dedication of public bridleway rights along the whole of the claimed route.
- 13.9 However, the documentary and user evidence combined is considered sufficient to raise an inference that public vehicular rights have been dedicated along the claimed route.

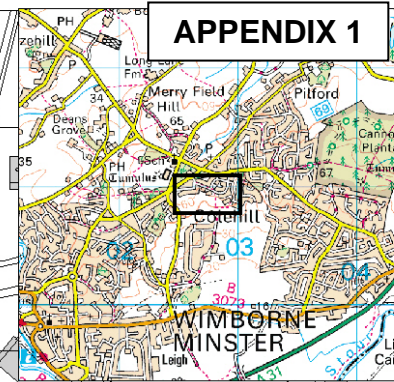
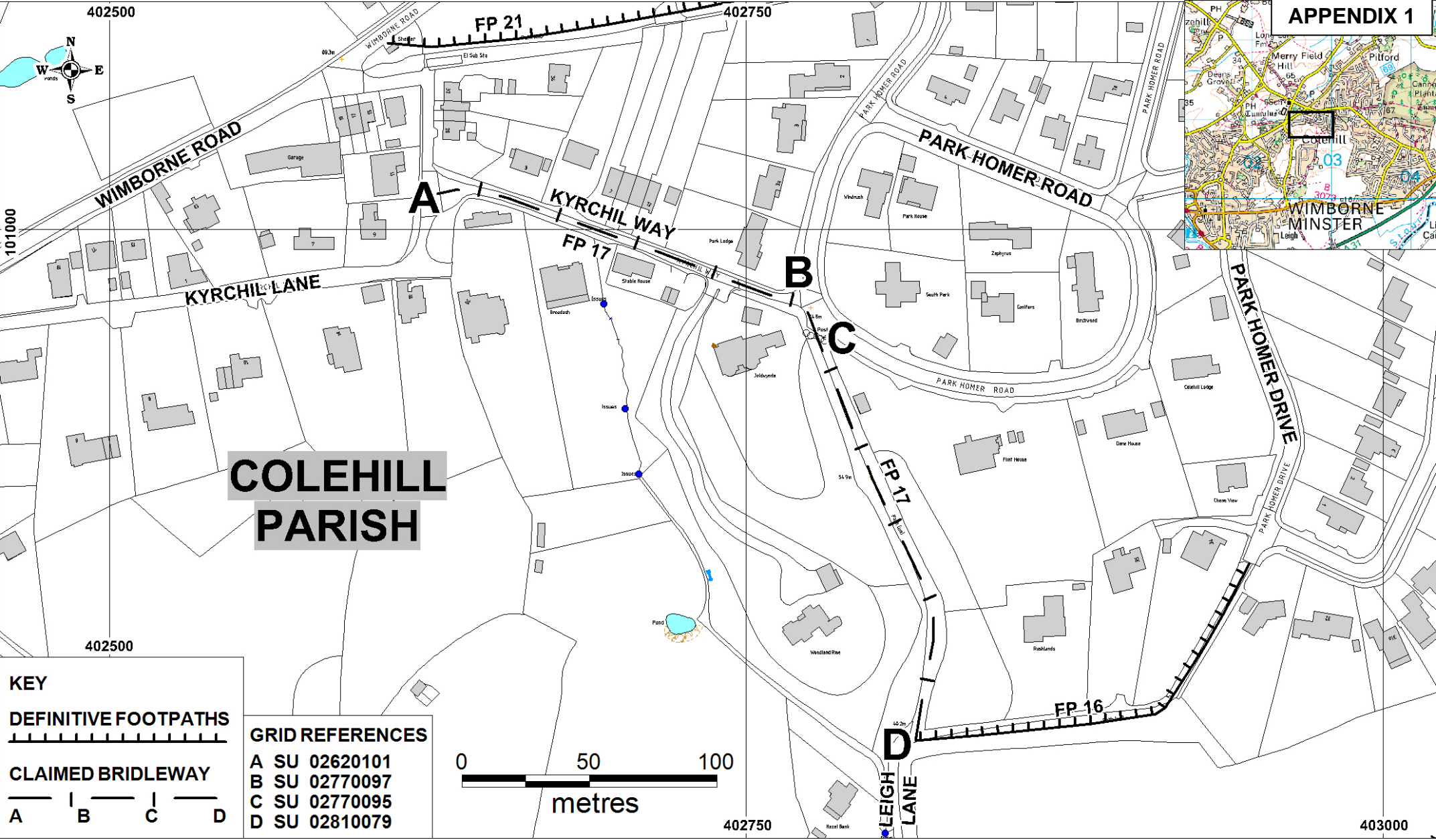
Page 12 An Application for a definitive map and statement modification order to upgrade Footpath, 17 Colehill to a bridleway from Kyrchil Lane via Kyrchil way to Leigh Lane

- 13.10 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished and the remaining vehicular rights may be recorded as a restricted byway.
- 13.11 Therefore it is recommended that an order be made to record the claimed route as a restricted byway.
- 13.12 If, however, members do not consider the evidence sufficient to support public vehicular rights then they should consider if it instead supports the claimed bridleway rights and in that case an order should be made to record the claimed route as a bridleway.
- 13.13 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Mike Harries

Director for Environment and the Economy

October 2014



**COLEHILL
PARISH**

KEY

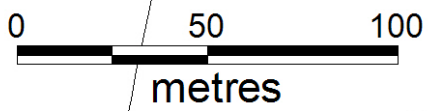
DEFINITIVE FOOTPATHS

CLAIMED BRIDLEWAY

A B C D

GRID REFERENCES

A	SU 02620101
B	SU 02770097
C	SU 02770095
D	SU 02810079



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE FOOTPATH 17, COLEHILL TO BRIDLEWAY FROM KYRCHIL LANE VIA KYRCHIL WAY TO LEIGH LANE.

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/30
 Date: 02/08/2013
 Scale 1:2000
 Drawn By: ACWH
 Cent X: 402739
 Cent Y: 100925

GEOGRAPHICAL INFORMATION SYSTEMS

**DORSET
County Council**

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LAW

General

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council 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 highway shown on the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 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 highway shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to alter the status of a route on the definitive map and statement if the balance of evidence shows that a highway shown in the map and statement ought to be shown as a highway of a different description.
- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
 - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.4 Section 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 2.5 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.
- 3 Human Rights Act 1998
- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act may bring proceedings against the authority under the Act in the appropriate court or tribunal or may rely on the convention right or rights concerned in any legal proceedings.
 - (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.

- (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

- (b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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.

Table of documentary evidence

Date	Document	Comment
1765	Isaac Taylor's Map of Dorset	Not shown
1773	Map of Dorset by J Bayly	Not shown
1787	J Cary Map of Dorset	Not shown
1796	Isaac Taylor's Map of Dorset	Not shown
1801	C Smith New Map of Dorset	Not shown
1805	Map of Dorset by J Stockdale	Not shown
1805	Ordnance Survey Drawings	Shows part of the claimed route.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows the claimed route as an unfenced track.
1826	Greenwood Map of Dorset	Shows part of the claimed route.
1847	Wimborne Minster Tithe map	Not shown
1846	Gazetteer Dorset	Not shown
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.	
1887	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows the claimed route shaded along its length indicating a public road
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.	
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.	
1901	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows the claimed route 'shaded' along its length, indicating a public road.
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows the claimed route 'shaded' along its length, indicating a public road.
1900s	W & A K Johnston Map of England scale 3 miles:1 inch	Shows a route near the claimed route.

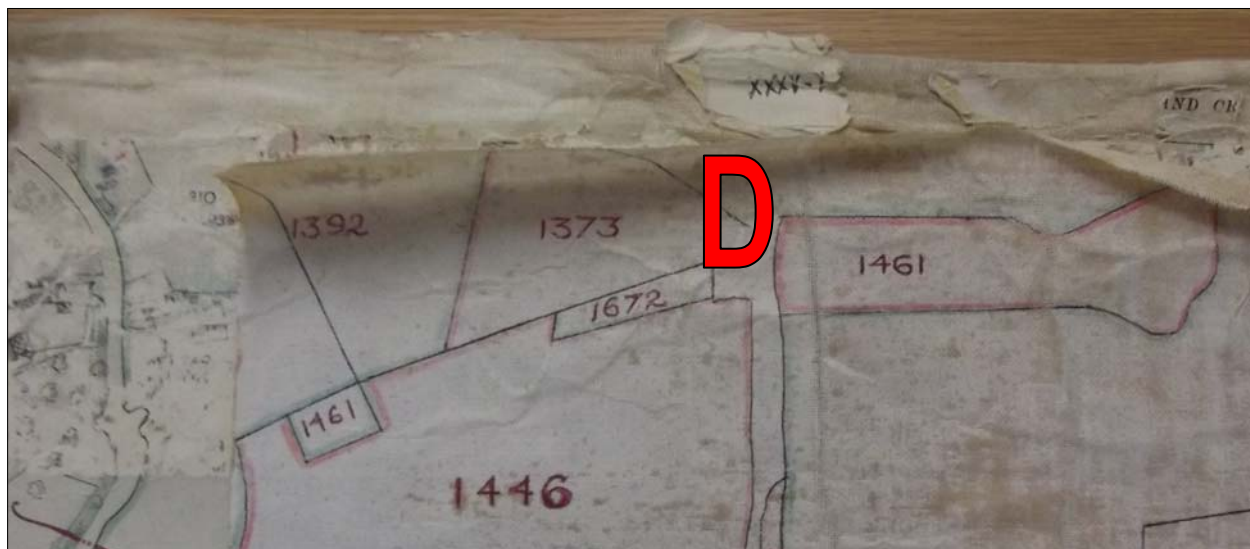
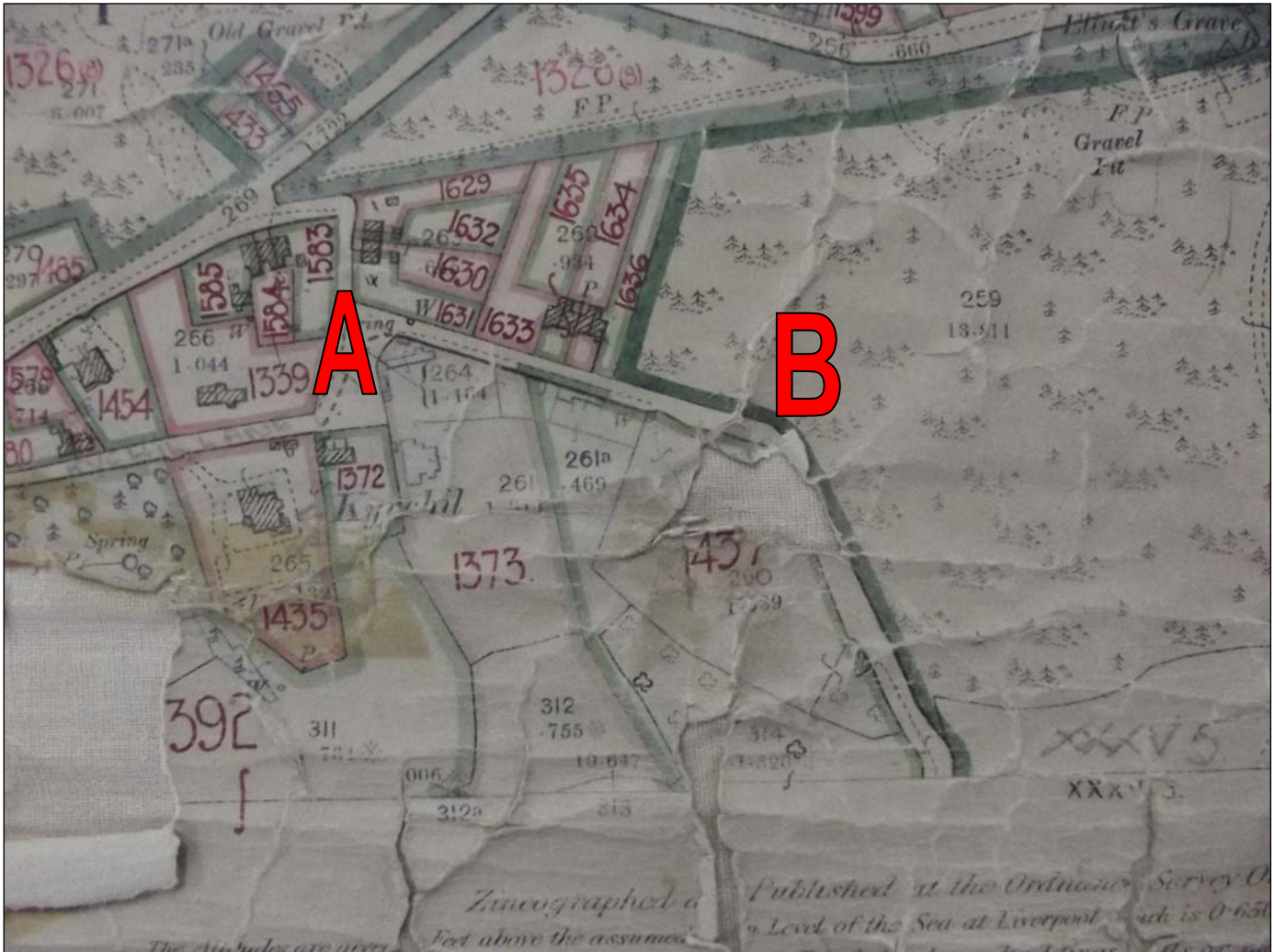
Date	Document	Comment
1900s	Bacon's New Revised Map of Dorsetshire	Not Shown
1900s	Bacon's Geographical Map of Dorsetshire	Not Shown
1900s	G Philip & Son Geological Map of Dorset	Not Shown
1900s	G Philip & Son Botanical Map of Dorset	Not shown
1910	Finance Act plans	Show the claimed route excluded from taxation.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1923	Diversion of footpath at Park Homer leading to Leigh Lane	The Order includes the wording "and thence along the public footpath coloured yellow to the point D where it joins the public highway known as Leigh Lane" (the claimed route).
1923	Ordnance Survey Ministry of Transport road map scale ½ inch:1 mile	Not shown
1926	Wimborne and Cranborne RDC. Schedule of District Roads taken over	Lists a road from "Leigh Lane to Park Homer Gate road".
1929	Ordnance Survey map scale 6 inches:1 mile (1:10560) revised 1927	Shows the claimed route as a well defined track linking Colehill to Leigh Lane.
1934	Kingston Lacy and Corfe Castle Estates – Deposit of map and statement under Rights of Way Act 1932	The claimed route is not shown in their ownership but is annotated as "To Colehill".
1936	Ordnance Survey map scale 25 inches:1 mile (1:2500)	Shows the claimed route 'shaded' along its length, indicating a public road.
1939	Kingston Lacy and Corfe Castle Estates – Statutory Declaration under Rights of Way Act 1932	The claimed route is not shown in their ownership but is annotated as "To Colehill".
1945	Kingston Lacy and Corfe Castle Estates – Statutory Declaration under Rights of Way Act 1932	The claimed route is not shown in their ownership but is annotated as "To Colehill".
1949	Ordnance Survey map scale 6 inches:1 mile (1:10560) revised 1938	Shows the claimed route as a well defined track linking Colehill to Leigh Lane.
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	

Date	Document	Comment
	booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Colehill Parish Survey of public rights of way	Claimed as Footpath 31.
1957	Kingston Lacy and Corfe Castle Estates – Statutory Declaration under Rights of Way Act 1932	The claimed route is not shown in their ownership but is annotated as “To Colehill”.
1959	Draft map for the east area	Shown as Footpath 31.
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.)	
1961	Ordnance Survey 1:25,000	Shows A to B as a “Poor or unmetalled road” and B to C between field boundaries.
1964	Provisional map	Shown as Footpath 17.
1966/7	First definitive map	Shown as Footpath 17.
1971	Review of definitive map	Parish Council claimed part of Footpath 17 A – B as RUPP/BOAT.
1973	Special Review Committee	Decided no evidence that path should be RUPP – retain as footpath.
1974	Revised draft map	Shown as Footpath 17.
1975	Objection by N H Hotchkiss to Footpath 17 being shown on Revised Draft map as a footpath – should be a bridleway.	Objection not considered as Review abandoned in the east of the County.
1989	Current definitive map	Shown as Footpath 17.

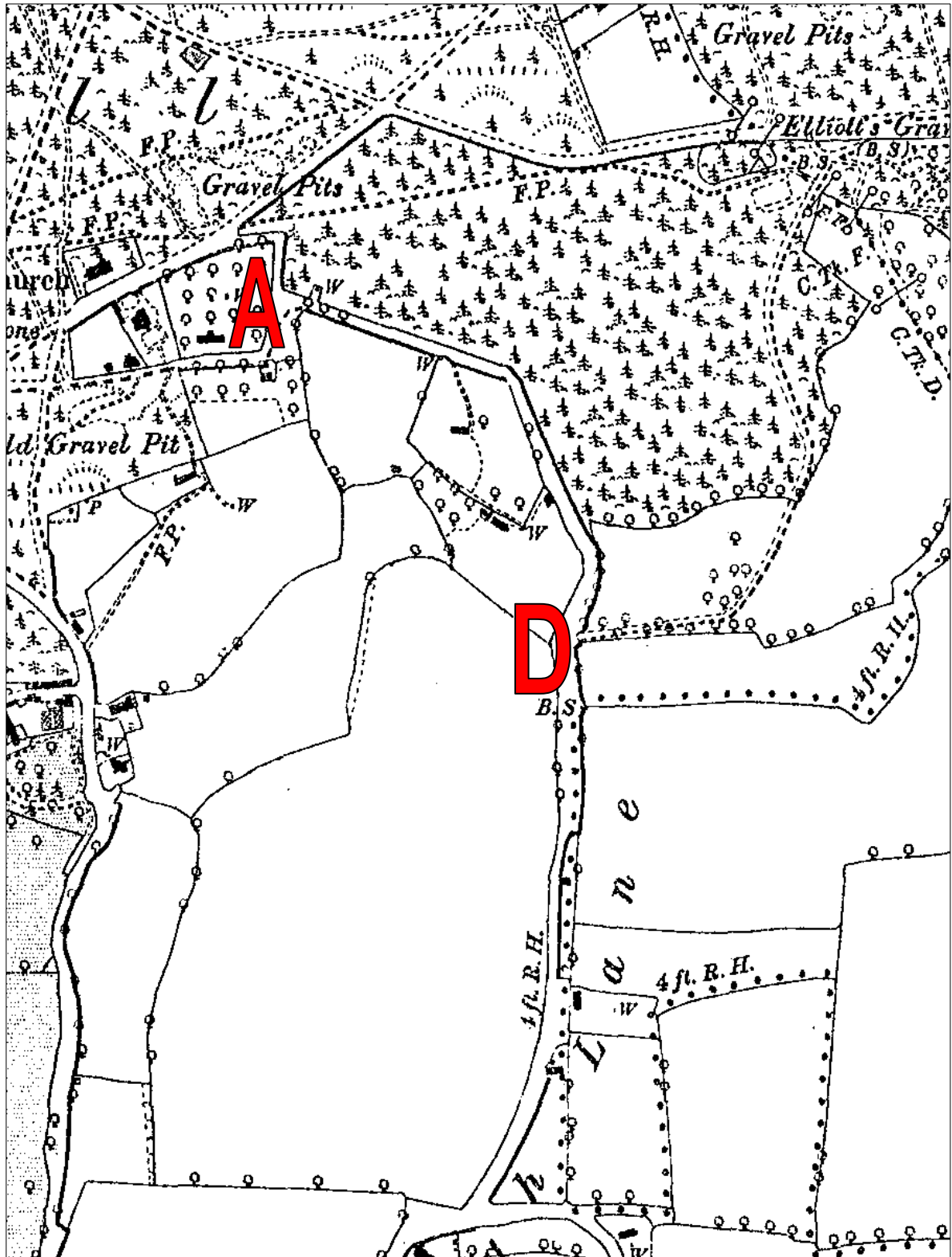
Page 20 An Application for a definitive map and statement modification order to upgrade Footpath, 17 Colehill to a bridleway from Kyrchil Lane via Kyrchil way to Leigh Lane

Extracts from key documents
(See the Director for Environment's file RW/T459 for copies of other documents mentioned)

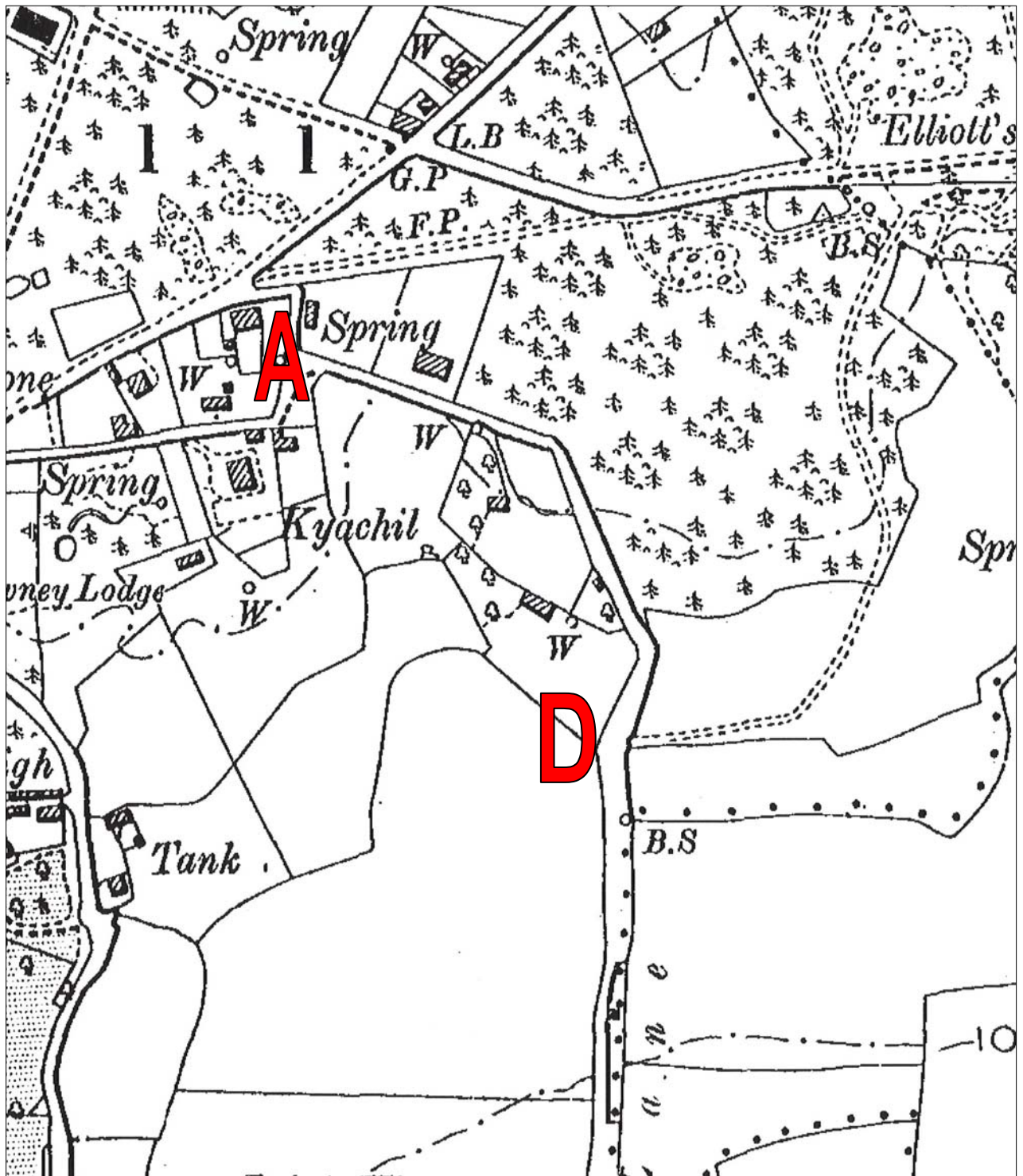
1910 Finance Act map – sheets 35.1 and 35.5



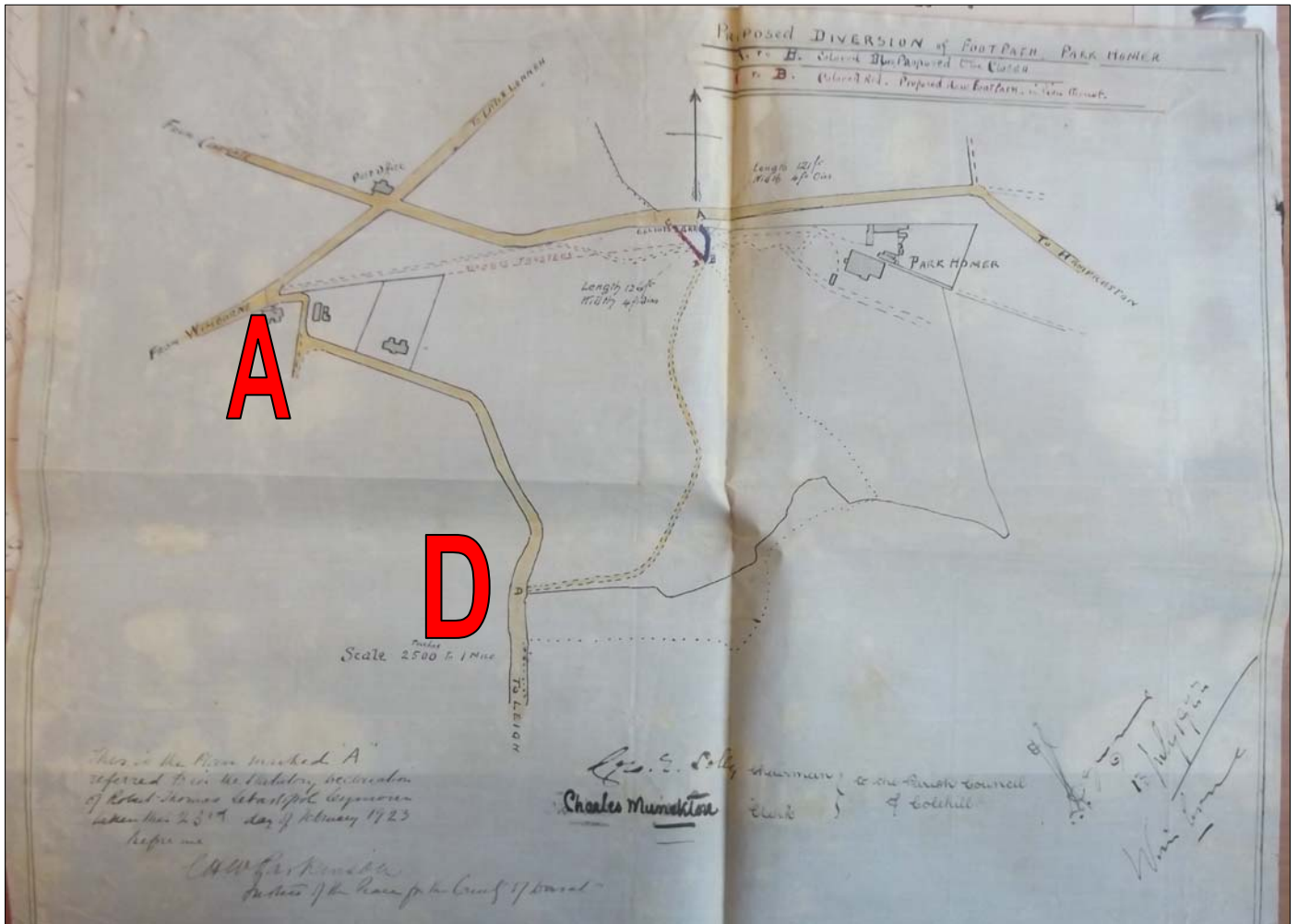
1887 First Edition Ordnance at a scale of 6 inches:1 mile (1:10560) (enlarged)



1902 Second Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) (enlarged)



1923 Diversion of Footpath at Park Homer leading to Leigh Lane – plan and extract from Order



existing public footpath at the point B and thence along the public footpath coloured yellow to the point D where it joins the public highway known as Leigh Lane.

And whereas the said Maud Davies Borington has by a

Page 24 An Application for a definitive map and statement modification order to upgrade Footpath, 17 Colehill to a bridleway from Kyrchil Lane via Kyrchil way to Leigh Lane

Plan accompanying Deposit of statement and Statutory Declarations submitted by Kingston Lacy & Corfe Castle Estates under Rights of Way Act 1932

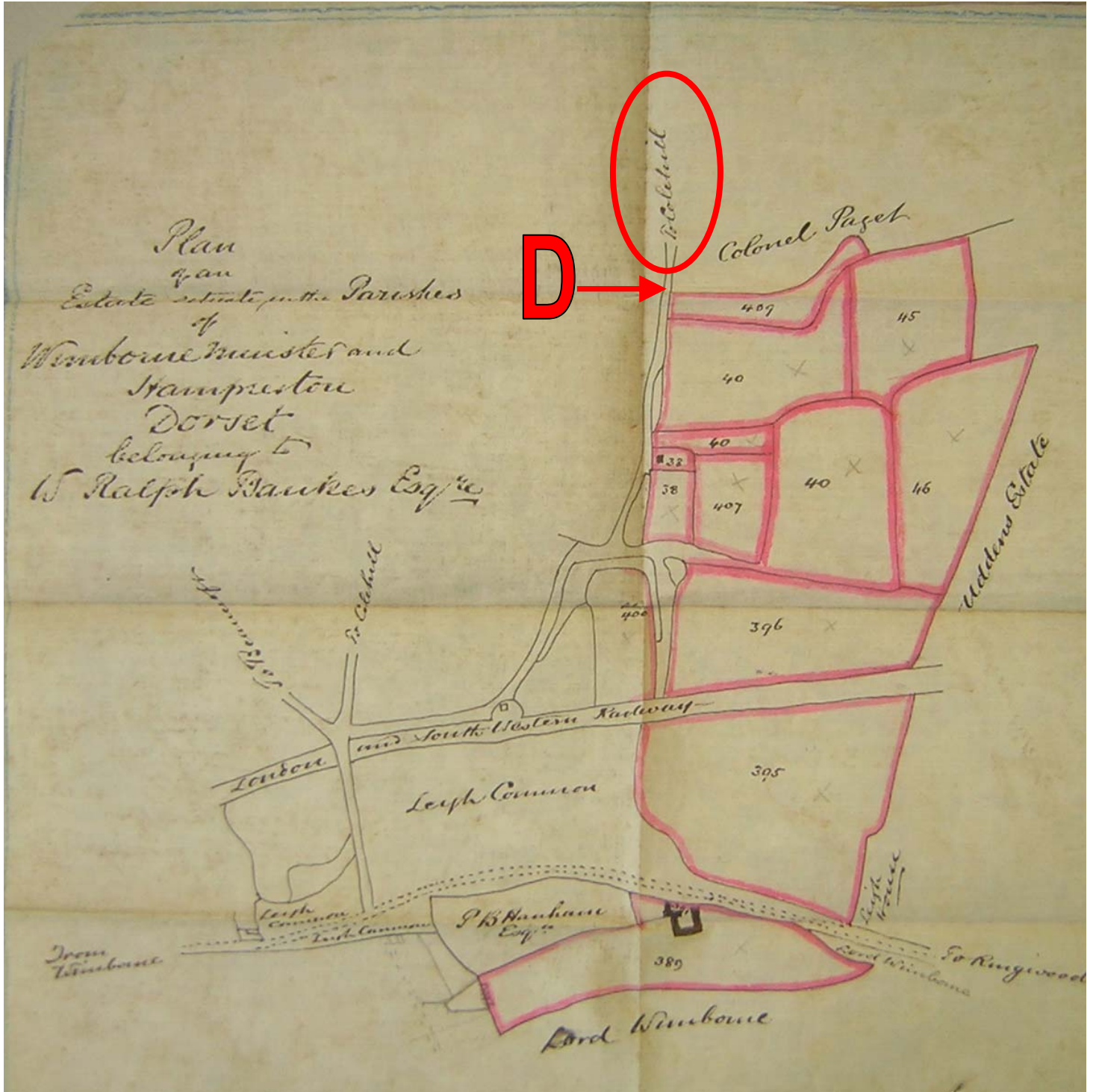


Table of user evidence (from user evidence forms submitted in 2007 & 2010)

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Miss T Baker	1997 to present (2007)	52 times a year	Horseback & on foot	Also used by others on horseback and on foot. No gates, stiles or notices. Other obstructions included bollards, 2 now 5. Also fencing erected at Leigh Lane end approx 2 years ago. Never challenged. Approx vehicle width.
Miss H Bell	1987-1996	Weekly	Horseback	Also used by others on horseback, foot and bicycle.
Mrs M A Bosworth	2003 to 2007	52 times a year	Horseback	Also used by others on foot, bicycle and horseback. No stiles, gates or notices. Two concrete bollards at Park Homer Rd (now five) fence at Leigh Lane end put in approx 2 years ago. Never challenged. Room for vehicle.
Mrs S Bowers	1973-1986	minimum 52	Horseback	Also used by others on foot and horseback. No stiles, gates or notices. Bollards at top of hill. Never challenged. Path is vehicle width at least.
Miss J Café	1979 – present (2007)	Twice a week	Horseback	Also used by others on foot and horseback. No stiles. Wooden structure appeared making negotiations difficult and dangerous to horse and rider, plus concrete bollards other end that can be ridden between. Has been told route is not public in 2006 by a person in house living near. Width is between 3 & 5 metres wide, gravel track.
Mrs I Christie	Starting 1987 (form filled out 2010)	Most weeks	Horseback	Also used by others on horseback. Obstructions - fence present at bottom of this path at the Leigh Lane end. Aware of residents of local houses being stopped/turned back/ prevented from using it.
Mrs G Cure	Off and on since 1952	Once or twice a week	Horseback	Also used by others on horseback. No stiles, gates or notices. No other obstructions. Never challenged. Approx 2 horse width in places.
Mrs D Dover	1985-2007	150+	Horseback	Also used by others on foot and horseback. No stiles, gates or notices. 2 small cement bollards at Parkhomer Rd and then about 2 years a further 3 bollards were added and a fence at Leigh Lane end. Never challenged.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs R Ellery	1979-1983 and 2005 – 2007	Weekly	Horseback and on foot	Also used by others on horseback and on foot. No stiles, gates or notices. Fencing at bottom making it difficult to progress with large horse also 5 more bollards at top. Large notice 'No horses' (amateurish) at Leigh Lane end. Approx 6-8 ft width across running between properties.
Mrs D C Harry	1983-2007	Weekly Plus	Horseback and on foot	Also used by others on horseback and on foot. No stiles, gates or notices. From about 12 years ago. Bollards at Parkhomer now 5. Wooden zigzag at bottom problem with large horse. Narrow steep hill 8ft about at places due to undergrowth each side of track. Never challenged.
Mrs J Heaton (Applicant)	1973 – 1986	52 times a year	Horseback until 1986 then sometimes walked	Also used by others on foot, bike and horseback. No stiles, gates or notices. Other obstructions were 2-5 bollards below Park Homer Rd for many years, wood rails at lower end approx 2 years ago [2005]. Has never been stopped but Parish wrote to BHS asking her to stop horses hence this claim. Was vehicle width – nurseries at vineries used to bring produce up this hill by horse and cart. Probably has byway or UCR rights.
Mrs J Jones	1984-2007	Average 20+	Horseback	Also used by others on horseback and foot. No stiles, gates or notices. Bollards placed approx 2 yrs ago at Park Homer end and fencing at Leigh Lane. Never challenged. Width 10ft.
Miss M P Jones	1980 – present (2007)	40-50 times per year	Horseback	Also used by others on foot and horseback. No stiles, gates or notices. Fencing at Leigh Lane. Never challenged. About a vehicle width.
Mrs L A Joy	26/06/1982 – 29/07/1988	52 times a year	Horseback	Also used by others on foot and horseback. No stiles, gates or notices. 2 cement bollards at Park Homer end. Never challenged. Approx 8ft wide.
Mrs C J Luther	1989 – 2010	About once a week	Horseback	Also used by others on horseback. No stiles, gates or notices. Obstructions included staggered posts & rails at top of Leigh Lane. Passable but with difficulty and danger to your legs. Never challenged.

Page 27 An Application for a definitive map and statement modification order to upgrade Footpath, 17 Colehill to a bridleway from Kyrchil Lane via Kyrchil way to Leigh Lane

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs G A Poole	1939-1945 from 1979 – present (2007)	52 times a year	Horseback	Also used by others on bicycle, foot and on horseback. No stiles, gates or notices. 2 bollards at Park Homer end approx put in 2 years ago now there are 5 bollards and fencing at Leigh Lane approx 2 years ago (2005). Never challenged. At least vehicle width.
Miss S Pulford	1980 – 2007	Weekly	Horseback and on foot	Also used by others on horseback and on foot. No stiles, gates or notices. Wooden zigzag at bottom onto Leigh Lane making it difficult to ride large horse. Park Homer Road at the top now has 5 bollards. Never challenged. Width about 8ft, a narrow steep lane.
Mrs P Rose	1982 – 2007	Approx twice a week	Horseback	Also used by others on horseback. No stiles, gates, notices or other obstructions. Never challenged.
Mrs G Shorter	2000 – present (2007)	At least 30 times a year	Horseback	Also used by others on foot, horseback and bicycle. No stiles, gates or notices present. Other obstructions include 2 boulders (which have increased to 5 approx 2 years ago). Fencing at Leigh Lane end put up about 2 years ago. Never challenged. Estimate that path is about 12 feet wide.
Mrs J Walker	1983 – present (2007)	Twice per week minimum	Horseback	Also used by others on horseback. Gates present. There are concrete bollards (posts) which passed with difficulty - points out safety issues. Also wooden structure not easy to negotiate on horseback. Has been told route is not public in summer by 2006 by unknown person. Path is 3m-5m in width.

User Evidence
Chart to show periods of use (from user evidence forms)

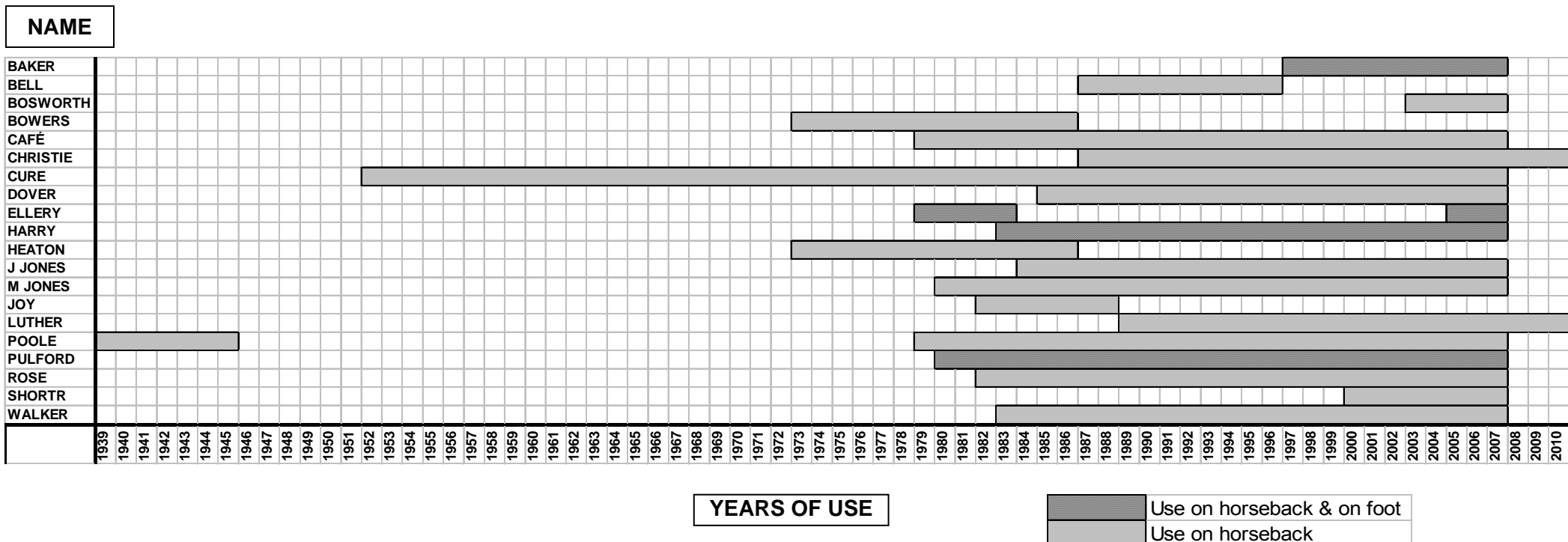


Chart of user evidence to show level of use (from user evidence forms)

