

Agenda item:

Regulatory Committee

8

Dorset County Council



Date of Meeting	12 March 2015
Officer	Director for Environment and the Economy
Subject of Report	Application for a definitive map and statement modification order to add a footpath from Old Granary Close to Footpath 15, Weymouth at Preston
Executive Summary	In response to an application to add a footpath at Preston, Weymouth this report considers the evidence relating to the status of a route from Old Granary Close to Footpath 15.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence:</p> <p>The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.</p> <p>A full consultation exercise was carried out in May and June 2014, which involved 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.</p> <p>31 user evidence forms from 32 users of the route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.</p>

	<p>Budget: 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: 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: None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application to add a footpath on the route as claimed and shown A – B – C – D – E on Drawing 14/15 be refused in part;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way by adding a footpath from Old Granary Close to Footpath 15, Weymouth at Preston as shown A – B – F – G – H on Drawing 14/15/1; and</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) Part of the footpath claimed does not subsist nor can be reasonably alleged to subsist;</p> <p>(b) The available evidence does show, on balance, that the footpath as shown A – B – F – G – H subsists or is reasonably alleged to subsist</p> <p>(c) The evidence shows, on balance, that the route A – B – F – G – H should be recorded as a footpath as described. 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 or proposals for definitive map modification orders ensure that changes to the network of public right of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage

	<p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset • Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live • Enable people to live in safe, healthy and accessible environments and communities
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 14/15 (route claimed) 2 - Drawing 14/15/1 showing route used by witnesses 3 - Law 4 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1972 Aerial Photograph ▪ 1986 Aerial Photograph ▪ 1997 Aerial Photograph ▪ 2002 Aerial Photograph ▪ 2005 Aerial Photograph ▪ 2009 Aerial Photograph ▪ Ordnance Survey maps <ul style="list-style-type: none"> - 1888/89 First Edition - 1958 5 - 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/T475).</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre.</p> <p>Copies (or photographs) of the documentary and user evidence can be found on the case file RW/T475, 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 add a footpath as shown A – B – C – D – E on Drawing 14/15 (Appendix 1) was made by Mr Richard Seys on 30 May 2008.
- 1.2 However, investigations have shown that the route actually used crosses into the field approximately 15 metres further south and follows the route as shown A – B – F – G – H on Drawing 14/15/1 attached as Appendix 2.
- 1.3 The route used (Drawing 14/15/1) commences at the junction with the county road, Old Granary Close, at point A, then heads north, along a made-up tarmac surface to point B. It then passes through a gap in a low retaining wall at point B and continues south west and south up rough stone and earth steps to point F and then west, up a steep embankment with more steps, to point G. At point G a barbed wire fence currently blocks the claimed route. From point G the route continues west north west in a grass pasture where it terminates at its junction with Footpath 15, Weymouth at point H.
- 1.4 Its widest point at point A is 2.80 metres wide and its narrowest point is 1.5 metres between points B and G.
- 1.5 The claimed route is owned by the Crown Estate between points A and G and by Christopher J Seal of PJS Developments between points G and H. G – H is tenanted by Mr R Potter of Sutton Farm, Sutton Poyntz.
- 1.6 Old Granary Close was developed from 1980, when outline planning permission was granted to Farbindle Ltd. In 2001 the Farbindle Ltd company was dissolved and the undeveloped land and ownership of the unadopted road (part of the route A – G) was transferred to the Crown Estate under section 656 of the Companies Act 1985. (Application of the law to Crown land is discussed in the Law at Appendix 3, paragraphs 8 to 8.2.)

2 **Law**

- 2.1 A summary of the law is contained in Appendix 3.

3 **Documentary evidence (Appendix 4)** (copies available in the case file RW/T475)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 4. Extracts from the key documents are also attached.

4 **User evidence (Appendix 5)** (copies available in the case file RW/T475)

- 4.1 A table of user evidence summarised from witness evidence forms, together with charts showing their periods and level of use form Appendix 5. 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/T475)

- 5.1 The applicant supplied extracts from Ordnance Survey maps dated 1929, 1958 and 1969. These are discussed at paragraph 8.
- 5.2 Three other submissions were made in support of the application.

Name	Comments
Mr J Iles (February 2009)	States that “a path near my home, which I have used for over 20 years and which has always had either a stile or gate marked as a footpath, has been blocked and a notice erected stating that it is not a public right of way”.
Mrs J Mockridge	States that she moved to Old Granary Close in 1992 “because there was direct access to the surrounding countryside from our house using the available steps. Over the years the steps up to the stile, and the 100 or so metres to walk to join Footpath 15 have been well used....When open,I walked this path every day and met many people from the local community doing the same.A few years ago a legal letter was attached to the stile at the top of the steps explaining that it was not a legal right of way.....This action came completely out of the blue, shortly after that , the stile was removed and barbed wire was put up across the gap..... I understand that this particular route up the hill adjacent to Old Granary Close is of historical interest and can be found on maps dating back over a hundred years”.
Mr Flatt	“I have been using it for decades before the entrance was abruptly obstructed...”. (He also has concerns about the “potential of parking congestion”).

6 Evidence opposing the application (copies available in the case file RW/T475)

6.1 Four letters opposing the application were received as a result of the consultation.

Name	Comments
Mr Christopher Seal, Managing Director P J S Developments (owner G – H)	States “I have had many problems in the past with walkers cutting the livestock fence to gain access, people driving out and parking cars alongside the narrow road to walk their dogs..”.
Mr R Potter, Sutton Farm (tenant of owner of G – H)	“My Family and myself moved to Sutton Farm 7yrs ago this July” and have had encounters with residents who “walk their dogs, twice daily...” “When we originally closed the access gate, which was put in only due to the public threatening to cut the fence if Mr and Mrs Lunn [previous tenants] didn’t put a proper gate in, As they only farmed the land and didn’t live nearby it was their only alternative to have sheep straying onto the highways.” “It became a well known dog walking route, from people living a good few miles away”
Mr and Mrs Berry	“The proposal does not lead to or from anywhere other than joining Old Granary Close to Footpath 15”. “The gate at point D ...was blocked off ...some four or five years ago” [referring to Drawing 14/15].
Mr Rookes Mrs R Critchell	Issues were raised such as: - <ul style="list-style-type: none"> • Current and past use • It would cause parking problems • Future maintenance

7 **Other submissions received** (copies available in the case file RW/T475)

7.1 Another five submissions were received as a result of the consultation.

Name	Comments
Burgess Salmon on behalf on the Crown Estate (owner A – G)	“The Crown Estate should not be regarded as the current owner of the property, at least in any conventionally understood sense.....We appreciate that this may appear to be an unsatisfactory state of affairs, but trust that you will understand that the events leading up to the current situation are not The Crown Estate’s making and its role in relation to the Property is limited.” (Full letter on file)
Mr E Brassington, resident of Old Granary Close	Does not object to pedestrian access but suggests that signage be erected to stop parking by users.
Kate Gocher on behalf of the Ramblers	No evidence.
Claire Pinder Senior Archaeologist DCC	“There are a number of recorded archaeological finds and features and historic buildings in the general vicinity of the route affected by this proposal. None of these features has any statutory designation. They do not , in my view, constitute a constraint in the context of this proposal.”
Southern gas Networks	No comment

8 **Analysis of documentary evidence**

8.1 As there is no Inclosure award affecting this area the most helpful documents in this case are those relating to the Weymouth and Portland Borough Council planning documents and the aerial photography.

1980 Planning Permission

- 8.2 Weymouth and Portland Borough Council records show that outline planning permission was granted for 18 houses and garages for land off Puddledock Lane, west of Malt Cottages, Preston, Weymouth on 8 January 1980.
- 8.3 The Grant of Outline Planning Permission was subject to certain conditions, one being that “The retaining wall shall be constructed to the satisfaction of the local planning authority”. It appears that this refers to the wall where there is a gap at point B on Drawing 14/15/1.
- 8.4 In March 1985 the plan accompanying the Approval of Reserved Matters, which granted detailed permission for “Erection of 5 houses and garages” does not show the claimed route from the turning head of the road.
- 8.5 Although the plan accompanying the outline planning permission shows the presence of a retaining wall there is no gap or footpath shown. Therefore these documents are of limited value.

Aerial Photographs

- 8.6 The 1972 Aerial photograph was taken before the development of Old Granary Close and shows the fields but no footpaths.
- 8.7 The 1986 photograph is of poor quality and shows Old Granary Close still under construction but does not show the claimed route.
- 8.8 The 1997, 2002 and 2005 aerial photographs clearly show a used route from Old Granary Close to join Footpath 15, including the steps from point B. The route shown differs from that originally claimed and is as shown on Drawing 14/15/1 at Appendix 2.
- 8.9 The 2009 photograph shows the used route but less clearly as the path was blocked from 2008 and became overgrown.
- 8.10 The **Aerial photographs** spanning 1972 to 2005 do not provide any conclusive evidence as to the status of the route. However, they do provide evidence as to the existence and alignment of a route used between 2002 and 2005, which supports the user evidence.

Ordnance Survey maps

- 8.11 The **1888/9 First Edition Ordnance Survey Maps** (two sheets) at a scale of 6 inches:1 mile (1:10560) do not show the claimed route but do show a route slightly to the west of that claimed, from point E south east (alongside the boundary of what is now No. 15 Old Granary Close) and south south east to join Puddledock Lane. It is shown with a solid line on the western side (fenced) and a pecked line on the eastern side (unfenced).
- 8.12 The **1902 Second Edition Ordnance Survey Maps** at a scale of 1:2500 (25 inches: 1 mile) show the area similar to the First Edition maps but the path shown is annotated alongside 'F.P.'.
- 8.13 The **1903 Second Edition Ordnance Survey Maps** at a scale of 6 inches:1 mile (1:10560) are similar to the First Edition maps but at a smaller scale.
- 8.14 The **1929 Ordnance Survey Maps** at a scale of 1:2500 (25 inches: 1 mile) show a route similar to the Second Edition maps.
- 8.15 The **1958 Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) also shows a route from Footpath 15 to Puddledock Lane but it joins Puddledock Lane further east, approximately at the current junction of Old Granary Close and Puddledock Lane. It is shown fenced on the western side alongside the boundary of what is now No. 15 Old Granary Close and then unfenced continuing south eastwards.
- 8.16 The **1969 Ordnance Survey Map** at a scale of 1:25000 is at a much smaller scale but a route similar to that shown on the 1958 map can be seen as a feint pecked line and is referred to in the key as a 'path'. It is not shown as a 'public right of way' as these are shown with green symbols.

- 8.17 The maps **Ordnance Survey maps** researched were all dated before Old Granary Close was constructed and therefore the evidence does not support either the path claimed or used as they show only the presence of another route to the west and the physical characteristics on the ground at the date of the maps.

Other documents

Commercial maps

- 8.18 None of the small scale maps at the Dorset History Centre depict a route on or in the general location of the application route (see table at Appendix 4).

Parish Survey and County Council rights of way maps and records

- 8.19 A route was not claimed in this area by the Borough Council during their **Survey of public rights of way** carried out in 1951.
- 8.20 However, the 1951 Borough Council Survey and the 1954 draft map of Weymouth do show a footpath nearby numbered 16 along the same line shown on the Ordnance Survey maps from 1988 to 1929 (see above) and described in some of the user evidence forms as a route they used to access Footpath 15 before Old Granary Close was built.
- (a) County Council records show that this route was objected to by the land owners, the Weymouth Waterworks Company, who said that there was no evidence to show that this was a public footpath and it was unreasonable to include it on the draft map. The Borough of Weymouth and Melcombe Regis Town Planning Committee did not agree with this objection.
- (b) However, the objection was upheld and the National Parks Sub-Committee decided that Footpath 16 be deleted from the draft map.
- 8.21 The subsequent 1964 provisional map did not show Footpath 16, the claimed route or the route A – B – F – G – H.

Special Review to current definitive map

- 8.22 Neither the route claimed nor the route A – B – F – G – H was the subject of any investigation or claim during the **Special Review 1973** and no route here is recorded on the **current definitive map 1989**. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist or may have been created in the area.

9 Analysis of user evidence supporting the application

- 9.1 The application originally submitted was for a route westwards from Old Granary Close where it leaves the tarmac surfaced footway at point C on Drawing 14/15. The user evidence attached maps showing this route. However, the applicant was made aware that the extent of the maintainable highway along Old Granary Close stops at point A (Drawings 14/15 & 14/15/1) and the user evidence would leave a gap between the adopted public highway and the claimed route.

- 9.2 As a consequence the applicant asked the witnesses to amend their plans showing the route used to include the part along Old Granary Close from point A as shown A – B – C – D – E on Drawing 14/14 (Appendix 1). As a result 27 out of a total 32 users' maps were changed.
- 9.3 The information given on the forms and close examination of the aerial photographs strongly indicates that, while the witnesses did use a route from Old Granary Close to join Footpath 15, they did not use the whole of the route actually claimed but in fact used a route that crosses into the field approximately 15 metres further south, as shown A – B – F – G – H on Drawing 14/15/1 attached as Appendix 2. The applicant has been made aware of this.
- 9.4 The use of this route spans a period from 1982 until 9 May 2008.
- 9.5 Use prior to 1982 before the development took place, as stated by five users on their evidence forms, refers to another path further west, which was claimed at the time of the draft map in 1954 as described in paragraph 8.19. Before 1982 the site now known as Old Granary Close was grazing fields.
- 9.6 The most used years were 2006 with 32 users and 2007 with 31 users.
- 9.7 The route was used for pleasure and a stile was present at point G on Drawing 14/15/1, which was replaced with an unlocked gate until it was locked and removed from 20 May 2008. Notices were noted at point G during the Foot and Mouth outbreak (2001) and in May 2008 stating "No Public Right of Way".
- 9.8 The frequency of use ranged from occasionally to twice a day.
- 9.9 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 notice erected at the time of the Foot and Mouth outbreak in 2001 stopping use of the route temporarily does not constitute an "interruption" to use under Section 31(1) of the Highways Act 1980 (see Law, Appendix 3).
 - (b) The notice on the gate stating "No Public Right Of Way" in May 2008 and the removal of the gate and replacement with a fence across the route at point G is evidence of bringing the use of the route into question.
 - (c) The application was made on 30 May 2008 and is a further date of bringing that use into question.
- 9.10 Part of the used route between points A and G is owned by the Crown Estate.

- 9.11 Although the Wildlife and Countryside Act 1981 provides that it applies to Crown land and therefore rights of way over Crown land are recorded on definitive maps, because the Highways Act 1980 and its predecessors do not bind the Crown any claim for a right of way across land which is, or was at the relevant time, Crown land cannot rely on the 20 year user provisions in section 31 of the 1980 Act.
- 9.12 However, the letter from The Crown Estate Solicitor, Burges Salmon LLP, states that “The Crown Estate does not propose to take any action which might be construed as an act of management, possession or ownership in relation to the property”. This infers that they will not intervene in this process.
- 9.13 The common law can be applied over Crown Land. The evidence of use over the Crown Land, both before and after that land was vested in the Crown, may be sufficient for inferred dedication at common law.

10 Analysis of evidence in support of the application

- 10.1 Mr Iles states that he has used the route for 20 years prior to it being blocked.
- His use adds to that given by the other witnesses.
- 10.2 Mrs Mockridge states that she used the path every day from 1992 and that it was well-used.
- Her user evidence also adds to the witness evidence.
 - No maps have been found that show a path here except for the path shown on Ordnance Survey maps as described in paragraph 8.19.
- 10.3 Mr Flatt states that he has been using the path for “decades”. He has also completed a user evidence form (see Table of user evidence at Appendix 5).
- Again, this adds to the witness evidence.
 - His comments about potential parking problems cannot be taken into consideration.

11 Analysis of evidence opposing the application

- 11.1 Mr Seal’s comments suggest that some walkers used force by cutting the fence to access the path.
- This suggests that people were already using the path before the fence was erected.
- 11.2 Mr Potter of Sutton farm does mention that it was a “well known dog walking route, from people living a good few miles away”. He also says that the gate was erected by previous tenants as people were threatening to cut the fence.
- He acknowledges that people were using the route and wished to continue using it.
- 11.3 Mr & Mrs Berry state that the path does not lead anywhere except to join Footpath 15.

- Therefore the path does provide a useful link to another public footpath.

11.4 The majority of the other submissions 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 The letter from the Crown Estate Solicitors cannot be taken to be opposition to the application.

12.2 The other letters contain no evidence to be considered.

13 Conclusions

13.1 The evidence from the aerial photography shows that part of the route as claimed by the applicant as shown B – C – D – E on Drawing 14/15 (Appendix 1) was not the route actually used by the witnesses who filled out their evidence forms. Therefore the application to record a public footpath on the claimed route should be refused for this part of the route.

13.2 However, it is clear that witnesses were using a slightly different route as shown A – B – F – G – H on Drawing 14/15/1 (Appendix 2) and so, under the County Council's duty to keep the definitive map and statement under continuous review and to modify them as necessary, their evidence regarding this route can be used to support the addition of a public right of way on this route. As the route is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

13.3 The documentary evidence is insufficient to demonstrate, on balance, that the rights subsist or can be reasonably alleged to subsist along the route A – B – F – G – H as only the aerial photography shows the route.

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

13.5 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 fence across the route in May 2008.

13.6 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 years or more use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public footpath rights exist along the whole of the claimed route and an order should be made.

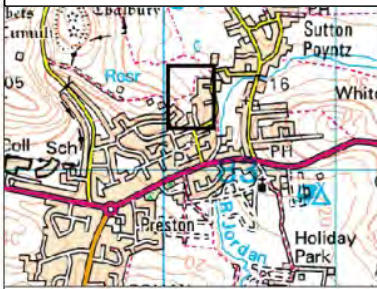
13.7 In this instance Section 31(1) of the Highways Act 1980 may not apply to part of the used route.

- 13.8 Crown Land is normally exempt from the provisions of the Highways Act 1980 (Section 31) although the Act does provide for the Crown Estate to waive such protection. From the response by Burges Salmon on their behalf it could be construed that in this instance the Crown Estate would not seek to exercise the protection afforded to them under the Act although they have not indicated categorically that this is the case.
- 13.9 However, use between 1982 and 2001, before The Crown Estate became the owner, together with later use, could be a period of use sufficient to infer a dedication under the common law.
- 13.10 The fact that a gap was left when the wall was constructed at point B when the development was started is evidence of an inferred dedication of this part of the route by the landowners under common law. As it was the tenants, rather than the landowner who installed first a stile and then a gate at point G they were not capable of dedicating the way G – H as public and therefore this is not such a strong inference of dedication on behalf of the landowner.
- 13.11 The evidence of use, together with the aerial photographic evidence, which reflects the use, is considered, on balance, sufficient to raise an inference of dedication of a public right on foot either under the Highways Act or under the common law. Therefore it is recommended that an order be made to record the route A – B – F – G – H as a footpath.
- 13.12 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.

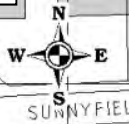
Mike Harries

Director for Environment and the Economy

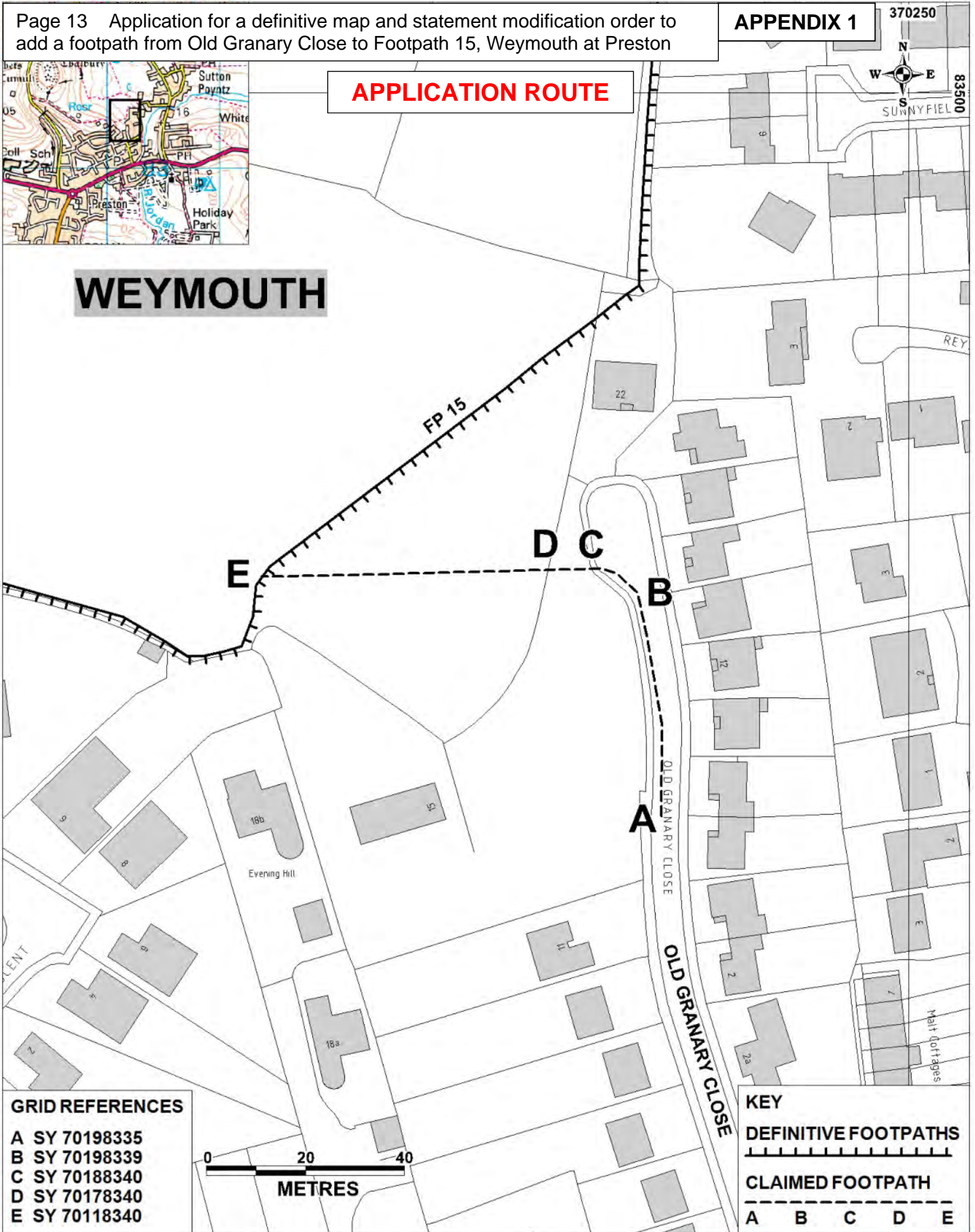
February 2015



APPLICATION ROUTE

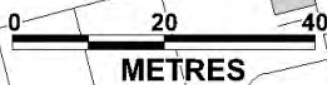


WEYMOUTH



GRID REFERENCES

- A SY 70198335
- B SY 70198339
- C SY 70188340
- D SY 70178340
- E SY 70118340



KEY

DEFINITIVE FOOTPATHS

CLAIMED FOOTPATH

A B C D E

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A FOOTPATH FROM OLD GRANARY CLOSE TO JOIN FOOTHPATH 15, WEYMOUTH

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 14/15

Date: 22/05/2014

Scale 1:1000

Drawn By: ACWH

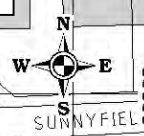
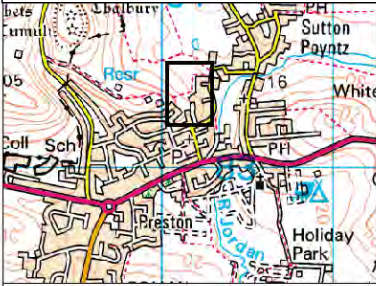
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Cent Y: 83394

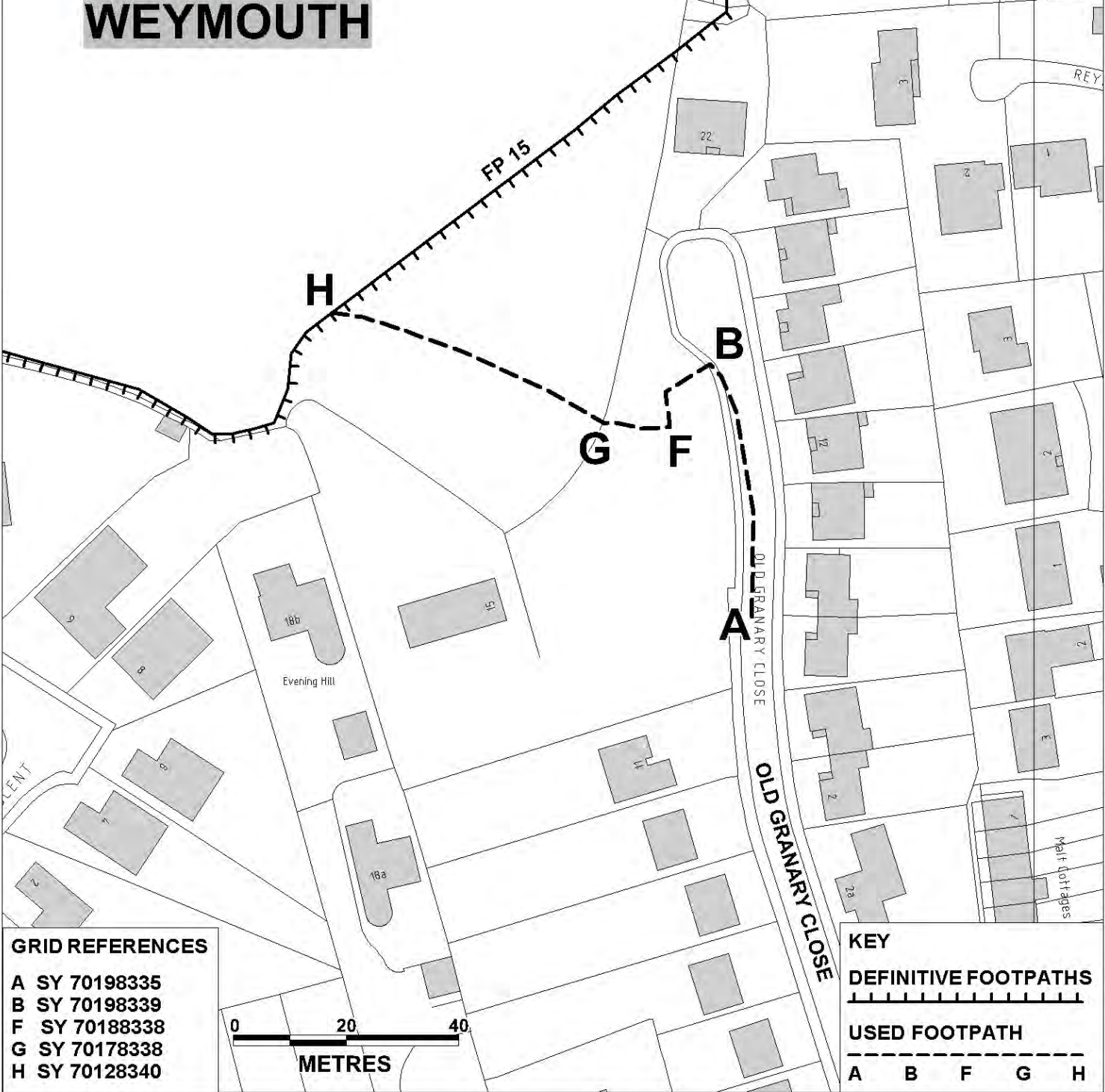
GEOGRAPHICAL INFORMATION SYSTEMS



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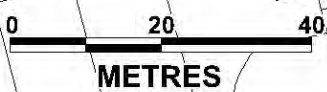


WEYMOUTH



GRID REFERENCES

A	SY 70198335
B	SY 70198339
F	SY 70188338
G	SY 70178338
H	SY 70128340



KEY

	DEFINITIVE FOOTPATHS
	USED FOOTPATH
A B F G H	

WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD A FOOTPATH FROM OLD GRANARY CLOSE TO JOIN FOOTPATH 15, WEYMOUTH

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 14/15/1
 Date: 10/02/2015
 Scale 1:1000
 Drawn By: ACWH
 Cent X: 370165
 Cent Y: 83394

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 right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to add a right of way to the definitive map and statement if the balance of evidence shows either:
- (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

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

- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.
- #### **2 Highways Act 1980**
- 2.1 Sections 31(1) and (2) 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.
 - (a) Advice Note 15 issued by the Planning Inspectorate indicates that "it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease order 1983 could be classified as an "interruption" under section 31(1)".
- 2.4 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 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.

5 Crown Land

- 5.1 The general principle is that legislation applies to Crown land only if the particular legislation provides that it is so to apply. Thus since the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981 provide that they are to apply to Crown land, public rights of way over Crown land are recorded on definitive maps.
- 5.2 However, the Highways Act 1980 and its predecessors do not bind the Crown, therefore any claim for a right of way across land which is, or was at the relevant time, Crown land cannot rely on the 20 year user provisions in section 31 of the 1980 Act.

Table of documentary evidence

Date	Document	Comment
1805	Ordnance Survey Drawings	Used route not shown.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Used route not shown.
1888/9	Ordnance Survey First Edition maps sheets 47 SE and 53 NE scale 6 inches:1 mile	Used route not shown. Another route shown to the west joining Seven Acres Road with current Footpath 15.
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.	
1902	Ordnance Survey Second Edition maps sheets 47.12 and 53.3 scale 1:2500 (25 inches:1 mile)	Used route not shown. Another route shown to the west joining Seven Acres Road with current Footpath 15.
1903	Ordnance Survey Second Edition maps sheets 47 SE and 53 NE scale 6 inches:1 mile	Used route not shown. Another route shown to the west joining current Footpath 15.
1929	Ordnance Survey maps sheets 47.12 and 53.3 scale 1:2500 (25 inches:1 mile)	Used route not shown. Another route shown to the west joining Seven Acres Road with current Footpath 15.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Weymouth Borough survey of rights of way	Used route not claimed.
1954	Draft map for Weymouth - south area	Used route not shown.
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.)	
1958	Ordnance Survey plan SY 7083 scale 1:2500	Used route not shown. Another route shown to the west joining current Footpath 15 to Puddledock Lane near current junction with Old Granary Close.

Date	Document	Comment
1964	Provisional map	Used route not shown.
1967	First definitive map	Used route not shown.
1969	Ordnance Survey map scale 1:25000	Used route not shown. Another route shown faintly to the west joining current Footpath 15 to Puddledock Lane near current junction with Old Granary Close.
1972	Aerial Photograph	Used route not shown.
1974	Revised draft map	Used route not shown.
1980	Grant of outline planning permission	Mentions that a retaining wall should be constructed (where gap now at point B). Used route not shown on accompanying plan.
1985	Detailed planning permission for erection of five houses	Claimed route not mentioned or shown on the plan.
1986	Aerial Photograph	Used route not shown – poor quality photograph.
1989	Current definitive map	Not recorded
1997	Aerial Photograph	Used route visible
2002	Aerial Photograph	Used route clearly visible, including the presence of steps.
2005	Aerial Photograph	Used route clearly visible, including the presence of steps.
2009	Aerial Photograph	Used route more indistinct, vegetation increased.

Extracts from key documents
(See the Director for Environment's file RW/T475
for copies of other documents mentioned)

Aerial Photographs

1972



1986



1997



2002



2005

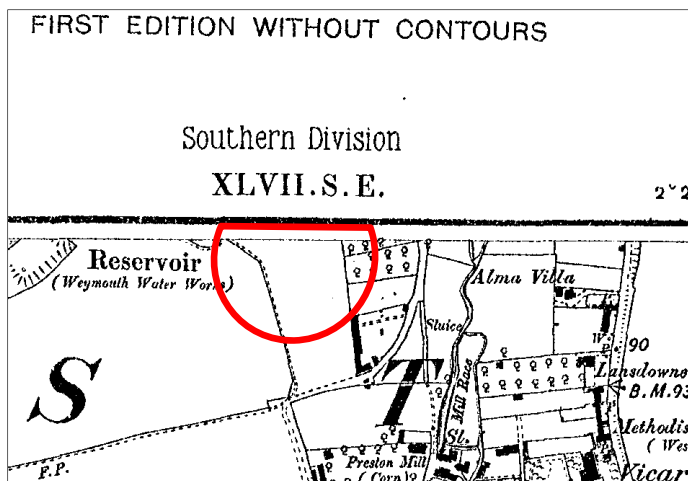
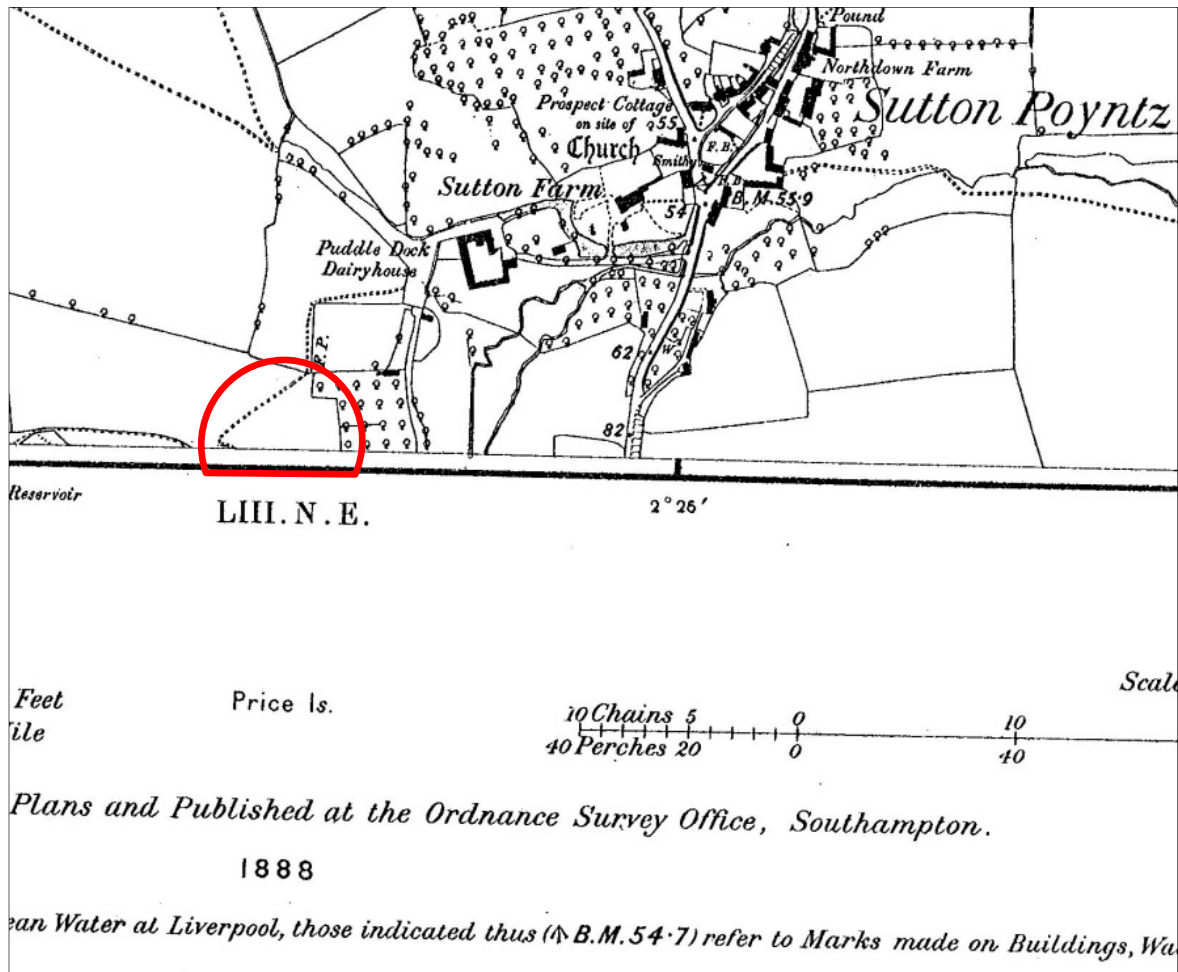


2009

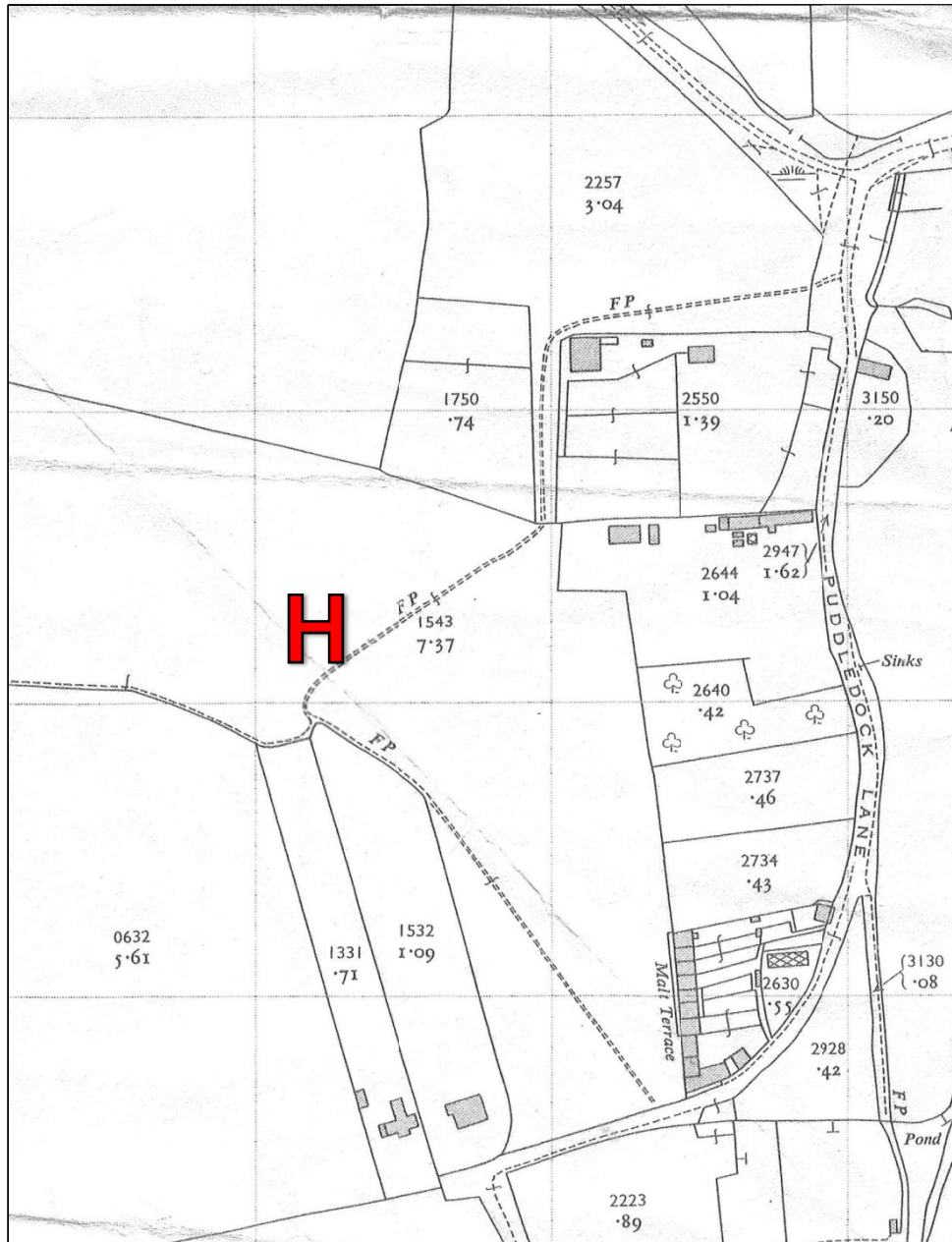


Ordnance Survey Maps

1888/1889 First Edition



1958



User Evidence
Table summarising user evidence from form

USER EVIDENCE (FROM FORMS COMPLETED IN 2008)

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R Backwell	1974 – 2008	40 times a year	Foot	Used by many others on foot. Route has never been diverted. Gate present but unlocked. No other obstructions. Has never enjoyed a private right along this route.
Mrs A Bond	1988-2008	Daily	Foot	Used by others on foot. Route has never been diverted. Gate was not present until now (form filled out in 2008). No other obstructions. Many visitors and locals use this path through unlocked gates to enjoy a walk across the hills by the reservoir.
Mr A R Bugler	1986 onwards (form filled out in 2008)	Weekly	Foot	Used by others on foot. Stile present at north end of Old Granary Close. Gate present. Has never enjoyed a private right along this route. A favourite path for dog walkers.
Mrs A Burgess	From 1988 (form filled out in 2008)	30 – 40 times a year	Foot	Used by others on foot regularly at all times of day. Unlocked gate present. Notice 01/05/2008 'No Public Right of Way'. Gate blocked 09/05/2008, unable to pass.
Mr D J Caddy	1975 – 2008	At least 50 times a year (1975 – 2005) Twice a day (2005 – 2008)	Foot	Used by others on foot. Notice indicating 'No Public Right of Way' 01/05/2008. Locked gate 09/05/2008 – could not pass had to turn back. Originally there was a stile at the start of route (now Old Granary Close) which fell into disrepair and was replaced with a small iron gate, presumably by landowner.
Mr A A Candy	Late 1980s to 2008	Occasional, increasing to daily over last 5 years approx	Foot	Used by others on foot. Gate present, not locked, then on 09/05/2008 gate secured with combination lock. Notice present 01/05/2008 'No Public Right of Way'. Has spoken to tenant/former tenant in field. Width 20-30cm.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs J Caswell	1990 – present (2008)	100 times a year	Foot	Used by others on foot. Closure of gate 09/05/2008. First notice displayed 01/05/2008. The owner is aware the public is using the way “because its used so frequently. The footpath is well worn and most people keep to the single track.”
Mrs M Crane Plan shows route C – E on Drawing 14/15	1990 – 2008	150 times a year approx	Foot	Used by others on foot. Padlocked gate present from 9 th May 2008. Notice previously said ‘No Tipping’ now ‘No Right of Way’.
Mrs R Critchell Plan shows route C – E on Drawing 14/15	2006 to 2008	730 times a year (twice daily)	Foot	Used by others on foot. Unlocked gate present until 08/05/2008 – gate locked. Notice 01/05/2008 stating ‘No Public Right of Way’. Believes farmer put in gate to facilitate right of way.
Mr B Crocker	Last 10 years (form filled out in 2008)	200 times a year	Foot	Used by others on foot. No obstructions. Has never enjoyed a private right along this route.
Mrs J Crofts	1991 – 2006	100 times a year (1996 – 2005) Other years less (form filled out in 2008)	Foot	Used by others on foot. Stile at Old Granary Close into field. Width of path is 2 to 3 feet. Well trodden path. Has met farmer on route.
J W Flatt	Since before 1966 (form filled out in 2008)	Virtually daily since January 1994	Foot	Used by others on foot and bicycle. Stile at top of steps then some years later a gate was put in at the top of the steps to prevent sheep from wondering into Old Granary Close. Purpose built gap in the brick wall in Old Granary Close leading to path.
Mr H J Griffiths	1981 – Present (form filled out in 2008)	350 times a year until August 2007	Foot	Used by others on foot. Path was diverted in mid 1980s via what is now house no. 22. At point D stile until 5 years ago, then gate. Has been seen by people tending to livestock for years. Steps/path to stile 2 metres wide – clear trodden path from stile/gate to FP 15.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr M Haine	1966 – 2008	Approx 12 times a year in 60s, 70s and 80s. 4 times a year in last few years.	Foot	Used by others on foot. Before Old Granary Close was developed it crossed some rough ground and joined Puddledock Lane at approx grid reference 702833. Unlocked gates present. Owner or occupier was aware of the public using the way as a gate was provided. Has never enjoyed a private right along this route.
Mr and Mrs G Howlett	1984 – 2008	24 times a year	Foot	Used by others on foot. Unlocked gate present. Path is well worn in constant use. Has never enjoyed a private right along this route.
Mr Hudson	1998 to present (form filled out in 2008)	55 – 60 times a year	Foot	Used by others on foot. Stile – pathway to a gate. Notices 01/05/2008 'No Public Right of Way'. Gate locked on 09/05/2008. There is a defined path from Old Granary Close. Width of route between 0.5 and 1m.
Mr R W Madge	1998 – 2008	Approx 50 times a year	Foot	Used by others on foot. Notices 04/05/2008 'No Public Right of Way'. Unlocked gate until 09/05/2008. Believes owner was aware of public using the route as there were steps leading to a small gate to field. Width is approx 1 metre.
Mr I McHarrie Plan shows route C – E on Drawing 14/15`	2002 – 2008	Almost daily	Foot	Used by others on foot. Notice put up on 1 st May 'No Public Right of Way'. Gate closed on 9 th May. Has never enjoyed a private right along this route.
Mrs Mee	1976 onwards (form filled out in 2008)	12 times a year	Foot	Used by others on foot. Stile present where the gate is now situated. Gate was unlocked. Recent obstruction/note on gate May 2008. Track is worn in field. Width approx 1 metre. Foot and mouth notice at last outbreak.
Mrs S Meech	1982 to 2008	5 times weekly to 1992 then occasionally (form filled out in 2008)	Foot	Used by others on foot. Notice from 01/05/2008. Gate present until 20/05/2008. Stile and gate installed by the farmer. Has never enjoyed a private right along this route.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr A E Mockridge	1984 – Present (form filled out in 2008)	100+ times a year	Foot	Used by others on foot. Stiles at 3 points on route (with the gates) and gates at 3 points on route - not locked. Notice 01/05/2008 'No Public Right of Way'. Gate (at C) secured with bike lock 09/05.2008. From the entry gate at Old Granary Close the distance to Footpath 15 is about 200 metres only. Width used – approx. 1 metre.
Mrs C A Norman	2005 – 2008	Daily	Foot	Used by others on foot. Gate present. Notices 01/05/2008. Has never enjoyed a private right. "It's always been a public right of way."
Mrs S Parker Plan shows route D – E on Drawing 14/15	2001 to date (form filled out in 2008)	365 times a year	Foot	Used by others on foot. Gate was locked on 09/05/2008 and notice erected 01/05/2008 'No Public Right of Way'.
Mr D E Penny	Last 10 years (form filled out in 2008)	Over a hundred times a year	Foot	Used by others on foot. There have been no diversions in the last 10 years. Unlocked gate present. Has never enjoyed a private right along route.
Mr J M Robertson	1973 – 2008	50 – 150 times a year	Foot	Used by others on foot. Notice 01/05/2008 'No Public Right of Way'. Unlocked gate present until 09/05/2008 when gate was closed. On completion of Old Granary Close in the early 1980s the developer caused an access from the western side of the turning head to the new boundary fence to be constructed. This route allowed for pedestrian access from the footway or the turning head to FP 15 and comprised a series of rustic timber steps to allow for the difference in levels caused by the excavation of the new road to the new boundary at which point a pedestrian gate was installed which did not at any time exhibit a notice nor at any time was it locked.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs C Rodari	1994 – 2008	Around 120 times a year	Foot	Used by others on foot. Stile at entrance to field. 'No Right of Way' sign appeared 01/05/2008. Gate present and padlocked on 09/05/2008. Gate removed and replaced by wire fence around 17/05/2008. Well trodden path used several times a day – clearly visible.
Mr A Rowbotham	1982 – 2008	10 times a year	Foot	Used by others on foot. Stile and unlocked gate present. Has never been challenged. Has never enjoyed a private right along this route.
Mr R S Seys	1982 – 2008	300 times a year	Foot	Used by others on foot. Notice present and first displayed 01/05/2008. Gate present removed 20/05/2008. and replaced with fence topped by barbed wire and stile (to prevent sheep escaping onto Old Granary Close). Regular use by residents daily. When building commenced the builder left gap in wall and constructed steps up to farm fence. Width of route is 3 feet.
Mr H J Sibley	1995 – 2007	Twice a year	Foot	Used by others on foot. Gate present.
Mr R Starling	1980 – 2008	120 – 150 times a year	Foot	Used by others on foot. Gate present. No notices or other obstructions. Route in regular use.
Mr G Stevens	2003, 2004, 2006, 2007 & 2008	70 times a year approx for "first four years"	Foot	Used by others on foot. No notices present until May 2008 when notice displayed 'No Public Right of Way'. Unlocked gate present until May 2008. The route is used by many people and some have protested. Was unaware that the route was not a designated footpath. The route is a natural extension of a footpath from Chalbury reservoir.

OTHER SUBMISSIONS RECEIVED

Name	
Mr J Iles	See table at paragraph 5
Mrs J Mockridge	See table at paragraph 5
Mr Flatt	See table at paragraph 5

