

Agenda item:

Regulatory Committee

10

Dorset County Council



Date of Meeting	11 June 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 Bridleway 59 to Footpath 58, Beaminster
Executive Summary	In response to an application to add a footpath from Bridleway 59 at the start of the woodland known as Millground Woods (formerly "The Nursery") to the end of the wood just north of Millground Cottages, joining Footpath 58, Beaminster 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 a statement of historical ownership and 18 user evidence forms in support of her 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 October and November 2014, which included 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. A total of 32 evidence forms from 34 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> <hr/> <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <hr/> <p>Other Implications:</p> <p>None</p>
<p>Recommendation</p>	<p>That the application be refused.</p>
<p>Reason for Recommendation</p>	<p>The available evidence does not, on balance, show that the claimed right of way between points A and D subsists or is reasonably alleged to subsist.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and 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 13/44/1 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"> ▪ 1843 Beaminster Tithe map Parts 1 and 2

	<ul style="list-style-type: none"> ▪ 1805 Ordnance Survey Drawings ▪ 1811 Ordnance Survey First Edition map ▪ 1889 Ordnance survey First Edition map large scale, coloured ▪ 1910 Finance Act Map ▪ 1796 Isaac Taylor's Map of Dorset ▪ 1826 Greenwood Map of Dorset ▪ 1910 Parnham Sale Particulars plan <p>4 - User evidence</p> <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/T473).</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/T473, 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 on Drawing 13/44/1 (Appendix 1) was made by Maureen Philips, Jean Shearlock, June Bunt, Ann Hudson, Jennifer Makepeace, Sheila Chesterman, Roger Peers, and Dr Horner on 1 May 2008. Mrs Jennifer Makepeace was the signatory for the application.
- 1.2 The claimed route was changed slightly in order for the northern end of the route to link up with the existing recorded route of Bridleway 59. An amended plan showing the change was received on 4 June 2008.
- 1.3 The route claimed commences from its junction with Bridleway 59 south west of St Mary Well Street shown as point A on Drawing 13/44/1. The claimed route between points A and B passes through a parcel of land showing no physical line of a walked path, which is covered with trees and undergrowth. At point B it crosses a private track to Millground Cottages and continues south west through woodland with mature trees. The route follows a ditch or hollow along the edge of the woods and has an earth surface. It follows this line until it reaches point C. The claimed path then cuts down the edge of the woodland until it terminates at its junction with Footpath 58 north of Millground Cottages.
- 1.4 Its widest point is at point B at 7 metres wide and its narrowest point is 1 metre between points C and D.
- 1.5 A Land Registry search indicates that Mr Michael Treichl has owned land crossed by the whole of the claimed route since 2013. (However, Mr Treichl's Agent, Mr Wood states that part between points A and B is outside the ownership of his client.)

2 **Law**

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

3 **Documentary evidence (Appendix 3)** (copies available in the case file RW/T473)

- 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/T473)

- 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/T473)

- 5.1 Following the consultation exercise four additional submissions were made in support of the application:

Name	Comments
Mr J B Foster	"My parents lived in Beaminster from 1965 to 1979 and my mother was a keen walker for many years. I do not have a record of dates but I can recall walking this path with my mother on numerous occasions." He points out that he walked a slightly different route "through the trees of 'The Nursery' rather than on the line marked B to C".
Mrs R Beeny, Public Rights of Way Liaison Officer on behalf of Beaminster Town Council	"I myself had heard my Grandmother speak about [this] footpath when she was a child, that is now over 100 years ago".
Dr & Mrs Chambers	"We use it on a near-daily basis and have done so since moving to Beaminster six years ago.... Beaminster residents aged 80+ tell us that they played in this woodland as children and that their parents did so before them. There is no doubt it has been in regular use for at least 100 years by the towns folk. The path is also reputed to be the route of the original road to Netherbury and Bridport, in use before the present main road to the latter was built on other side of the River Brit."
Lt Col J D A Dean	"I believe that the general public have walked that track between A and D for the last 50 years. Notwithstanding the Cattle Grid at point B, this route has never been closed off and is therefore already established as a Footpath."

6 Evidence opposing the application (copies available in the case file RW/T473)

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

Name	Comments
Mr M Wood on behalf of Mr M Treichl (owner)	<p>Section A – B is outside the ownership of his client.</p> <p>He attaches an extract from the 1910 Finance Act map, which contains more detail than the extract submitted with the application. It "shows the section B – C as part of hereditament 517 and a section clearly provides the means of access between two significant parcels of this hereditament, the more southerly of which has no apparent direct frontage to the road (highway) network."</p> <p>The Finance Act map "base map shows a double pecked line to the west of the section B – C. It is annotated "F.P." it appears to equate with the bridleway now recorded on the Definitive Map. Such a feature as a means of passage (whether public or private) would plainly have been unnecessary had there been an extant public right of way over the section A – B."</p>

Name	Comments
<p>Mr M J Offer (1 Millground Cottages)</p>	<p>He and his wife “have never met anyone using it who considered the claimed footpath a public right of way; always the few walkers who use it have accepted that they are not on a waymarked footpath that would indicate a public right of way”.</p> <p>“Notices both on this path and the track to our cottage have been put up indicating that both are private (and torn down).”</p> <p>“There is no indication of the claimed footpath in all the maps attached to our title deeds.”</p>
<p>Mr M Nisbet (2 Millground Cottages)</p>	<p>Submitted a report which can be viewed in file T473:</p> <p>Overall</p> <ul style="list-style-type: none"> • “From the evidence, it seems to me that the Council should clearly reject the application ... because there is neither an historical nor a current basis for it.” <p>Historical Evidence</p> <ul style="list-style-type: none"> • “The present bridleway BR59 dates back centuries. There would have been no need to duplicate its route so close by around Millground Wood. Not a single map from the past 250 years ever shown any other path here, or any path going through Millground Wood. Whatever the arrangements in medieval or Anglo-Saxon times many hundreds of years ago, the ditch on the north side of the Wood” [the claimed route] “could not have been used by walkers or packhorses for at least a couple of centuries and it was not so used because of the presence from at least the start of the C19th of the public path now known as BR59.” • “So I believe you will have found that both your historical and your contemporary documentary records show there was and is no public path through the woods.” <p>User Evidence</p> <ul style="list-style-type: none"> • “The claimed evidence for the line of an existing path in 2008 through the wood lacks sufficient consistency and credibility to justify a new public path there. The claimed path is not clear and does not match physical evidence on the ground.” • “There are at least six different versions of the claimed path from the users. The maps differ because they involve different variants of and combinations of the three sections labelled A-B-C-D, including four versions from the two sections B-C-D alone. These six different versions of the line of the claimed path are not sufficiently consistent with either any existing defined private path or single established animal track on the ground, or among themselves, to be the basis of a new right of way. They lack credibility.”

Name	Comments
	<p>Private Sign and Cattle Grid</p> <ul style="list-style-type: none"> • “The “Private Road” signsurvived for nearly two decades from the early/mid 1990s, despite several attempts during this period to damage it and to remove it by walkers from Beaminster. It was repeatedly re-installed. Its final vandalism was in November 2011....” • “The effects of the Private Road sign and the full width cattle grid, together with no signs about a footpath’s presence and no foot access across the cattle grid, have been to emphasise and communicate since the 1990s the private status of the driveway and to discourage walkers from diverting away from the BR59 bridleway, which most people and groups do still continue to use as the path to Netherbury.” <p>Conclusion</p> <ul style="list-style-type: none"> • From the evidence, the DMMO application T473 is not appropriately or sufficiently supported for it to meet the criteria required by law for registering any existing or new rights of way: either by historical evidence, or by the line of the path, or by claimed use by the public.
<p>Mr D P Horton (Estate Manager of Parham House in 2009)</p>	<p>He states that “before undertaking the fencing” [of the wood] “a meeting took place on site with the Countryside Access Officer at the time.....to clarify the route of the fencing & where gates would need to be erected, after obtaining authorisation under section 147 of the Highways Act 1980. At the same time...[she]...recommended the displaying of signs and plans advising the public of the location of footpaths and not to enter private land.”</p> <p>“On numerous occasions whilst working in the vicinity of these woods, Parnham House staff requested that members of the public, for their own safety and the fact that there was no public right of way through the woods, should leave. More often than not this was met with abuse rather than co-operation.”</p>
<p>Clare Usher – Wilson on behalf of Parnham House Limited (ex-owners)</p>	<p>A Landowner Evidence Form was submitted in 2009 and stated their ownership of the land (at the time) since 2001.</p> <ul style="list-style-type: none"> • They were aware of the public using the route, dog walkers, children on push bikes mainly at weekends and during good weather. • No one has ever asked permission to walk through the woods. • “Whenever staff are working in this location people are asked not to use the woods.” Three dates were given, two in February 2008 and one in March 2008, when the public were stopped and challenged. All refused to stop walking through the woods.

Name	Comments
	<ul style="list-style-type: none"> • The Estate had erected laminated signs and maps in the woods on 26 February 2008 stating that it was private land and showing where the existing paths were (as recommended by a Rights of Way Officer). These signs were defaced. (An example can be found in the Case File.) • No stiles or gates were on site. • Fallen trees were the only obstruction

7 **Other submissions received** (copies available in the case file RW/T473)

7.1 Another three submissions

Name	Comments
Mr B Earl, Curator, Beaminster Museum	"The old main road from Beaminster to Bridport, aka Kennel Lane, ran through The Nursery... rather than, as now, along its northern edge. This is based on circumstantial evidence and the existence of an obvious mini-hollow way footpath <i>outside</i> the wood, pretty much where it is today."
Richard Meatyard on behalf of The Ramblers	No evidence to offer.
Claire Pinder Senior Archaeologist	"No recorded archaeological finds or features, or historic buildings on or in the immediate vicinity of the routes affected by this proposal."
Western Power Distribution	No apparatus affected.

8 **Analysis of documentary evidence**

8.1 The Beaminster Inclosure award does not include this area and therefore the most important documents in this case are those relating to the Tithe map and Apportionments.

Tithe map and Apportionments

8.2 The strongest documentary evidence supporting the claim is from the Tithe maps, in two parts. However, each shows different parts of the claimed route.

8.3 **1843 Beaminster Tithe Map** is in two parts and the claimed route is on the edge of both, Part 1 shows the Parish of Beaminster without the town and part 2 shows only the town of Beaminster.

8.4 Part 1 shows part of the claimed route from point B to point C as a lane to the north of apportionment 375 known as Clampits Copse. It is not coloured light brown as the other roads shown on this map. At point C, when it enters apportionment 379 known as Dry Close, there is a solid line across its width, which may indicate a gate or barrier.

- 8.5 Part 2 again shows only part of the claimed route. It shows St Mary Well Street, continuing through points A and B to point C, with no line shown across the route at point C. The whole route from St Mary Well Street is coloured light brown as the other routes on this map that are now, in the main, recorded as roads and does not have an apportionment number allocated. This indicates that it may have same rights as the other routes shown in the same manner.
- 8.6 By themselves Tithe documents rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment.

Other documents

Ordnance Survey maps

- 8.7 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Beaminster parish was completed in **1805** and clearly depicts a part of the claimed route A – B – C. Between these points it is defined by two parallel solid lines, suggesting that it was fenced or hedged throughout its length and is depicted in exactly the same manner as other public roads in the vicinity.
- 8.8 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also depicts a route close to the claimed route A – B - C. It is defined in the same manner as the earlier drawing. The route is shown to be open at either end and throughout its length with no indication of the presence of any gates or other barriers. Although not conclusive to status it is shown in a similar manner as other routes in the vicinity that are known to be public carriageways.
- 8.9 The **1888 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route between points B and C as a double hedged or fenced route with solid lines across both ends, indicating gates or other barriers. On the south eastern side the wood is now called "The Nursery". The lane is not marked 'F.P.' or 'B.R.'. There is also a double pecked line running alongside it on the north western side, a continuation of two converging paths marked 'F.P' (footpath). This is the line of the currently recorded Bridleway 59 and is shown meeting St Mary Well Street at point A. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.10 The **1889 Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) is coloured. The 'road' colouring includes St Mary Well Street but stops at point A. The southern end of the part of the claimed route shown at point C shows the route open, with no gate or barrier present. Otherwise it depicts the claimed route between points B and C, similarly to the 1888 First Edition, although the larger scale map shows more detail.

- 8.11 The **1903 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation. It shows the claimed route between points B and C as before but with solid lines across both ends, indicating the presence of a gate or barrier.
- 8.12 The **1904 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route points B to C. It is shown with double solid lines, indicating that it is fenced or hedged on both sides.
- 8.13 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route quite capable of accommodating vehicular traffic between points A – B – C up to 1811. 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, as it was shown up until 1811, it would be of a higher status than a footpath or bridleway.
- 8.14 Although the Ordnance Survey maps provide evidence in support of the application for part of its length 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.

Finance Act 1910

- 8.15 The evidence from the Finance Act 1910 documents reveals that no part of the claimed route was excluded from valuation.
- 8.16 The claimed route crosses parts of **Hereditament 517** (between points A to C and a short part from the wood south of point C to point D) and in the accompanying valuation books there are deductions for the landowner for £200.
- 8.17 Although these deductions represent a significant sum of money the hereditaments to which they were allocated are also of considerable size, in many parts and may have contained a number of public rights of way. Due to the size of Hereditament 325 it is difficult to determine which rights of way the deductions may have related to.
- 8.18 From point C southwards through the wood the route claimed passes through **Hereditament 325**. There are no deductions for rights of way through this hereditament.
- 8.19 Whilst there were severe penalties for wrongfully claiming tax relief there were no penalties for not acknowledging the existence of public highways.
- 8.20 Consequently, in this instance, the documents provide no evidence for or against the claimed status of the route and are therefore considered as being neutral.

Stopping up Order

- 8.21 In 1809 Justices of the Peace signed a Beaminster Stopping up and Diversion Order, which stopped up “The Old Foot Path... beginning at the entrance into a certain field called Parnham Walk and ending at the entrance into a Lane called the Kennel Lane as “totally unnecessary for the Public and the Inhabitants of the said Parishes of Beaminster and Netherbury to go pass and repass to and from each Parish”. It substituted the “New Foot Path” “beginning at the entrance into the said field called Parnham Walk and continuing from thence on the West side of the said River there through the Mill Barton to the entrance into the said Lane called the Kennel Lane”. This is now Footpath 58. This order does not affect the claimed route. It diverted the footpath shown along the tree-lined avenue on Drawing 13/44/1 south east of the River Brit.

Sale Particulars

- 8.22 Sales particulars of “Parnham” in 1910 include a Plan of Freehold Residential Estate. It shows that the area of the claimed route was within the parcel of land for sale. Part of the claimed route from point B to point C is shown as a ditch or enclosed lane, gated at both ends as previously shown on Ordnance Survey maps. The path ‘diverted’ in 1809 (see 8.21 above) is also shown.
- 8.23 In 1955 there are further sales particulars for Parnham, described as “Parnham with Lovely Park, Home Farm and Eleven Cottages. Altogether about – 338 Acres.” An accompanying plan shows the area of the whole of the claimed route in parcel 11. The claimed route from point B to point C is shown with a solid line to the west (indicating it was fenced) and a pecked line to the east (unfenced).

Commercial maps

- 8.24 Eight various small scale maps were investigated and three depict a route on or in the general location of the application route 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, this adds weight to the documentary evidence supporting that this may have been part of a route from Beaminster to Netherbury in the early part of 19th century.

Parish Survey and County Council rights of way maps and records

- 8.25 The Beaminster Parish Survey of rights of way 1951 shows that no route was claimed that matches this application, although the path running parallel (now Bridleway 59) was claimed.
- 8.26 None of the maps of public rights of way drawn since then depict this route, including the current definitive map sealed in 1989.

Deposits made under Rights of Way Act 1932 and Highways Act 1980

- 8.27 There are records that Statutory Declarations were deposited under the Rights of Way Act 1932 in 1940, 1944 and 1948 by Mrs Bullivant, which referred to a deposit of a map and statement previously deposited describing those ways dedicated for use as public highways on the Parnham Estate. However, the correspondence with the Clerk to the County Council in 1951 reveals that the “map and statement referred to ...had not been received” by the County Council and asked if it were “possible that they were sent to the Beaminster Rural District Council?”.
- 8.28 A statement and plan dated 1 December 2009 was submitted under Section 31(6) of the Highways Act 1980 by Parnham House Limited for the Parnham House Estate Beaminster, which was followed by a Statutory Declaration dated 19 January 2010.
- 8.29 The earlier statutory declarations are not valid as they were not preceded by a map and statement. The later deposits were submitted after the date of challenge in March/April 2008 and after the submission of the application to add this footpath on 1 May 2008 and therefore also cannot be taken into account.

9 Analysis of user evidence supporting the application

- 9.1 All the users who filled in user evidence forms used a route on or near the claimed route and stated that this use was for pleasure or going to work.
- 9.2 However, the routes shown on the maps submitted by many of the total of 34 witnesses do not all support the route claimed. Seven did not supply a map of the route used and without further information it may be assumed that their use was as claimed. Of those that did show the route used, five showed a route used similar to the whole of that claimed but seven used the part B – C – D, three used the part B – C and one used a route through the wood and part of the claimed route C – D.
- 9.3 Out of the remaining 11 that did not use any part of the claimed route, 10 used a route through the wood south east of that claimed and one used the private road from point B to Millground Cottages. Use by these witnesses will therefore be discounted.

No Map	Whole route A – B – C – D	B – C – D	B – C	C – D	Used path in the woodland	Used private road
7	5	7	3	1	10	1

- 9.4 From those that used all or part of the claimed route (23):
 - (a) 10 started using the claimed route at point B, using Bridleway 59 and then over the cattle grid and along the track to point B to enter the woods.

- (b) 12 users state that they did not see any notices or signs when walking along the claimed route.
- (c) 12 users state that notices were erected on the claimed route in March 2008 or when Parnham was sold.
- (d) The notices were either 'Private Land', 'Private Road', 'This is not a Right of Way' 'You are now entering Private Land' or 'Notice of marked Rights Way'.

9.5 From those 12 users who may have used the whole of the claimed route:

- (a) The earliest date of use is 1935 and 2008 is the last date of use.
- (b) The most used years were from 2000 to 2008 when 10 users used the claimed route.
- (c) All used a route on foot, with additional use on horseback from one user.
- (d) The frequency of use stated ranged from daily and "sometimes twice a day" to 12 times a year.

9.6 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 notices erected in March 2008 are evidence of bringing the use of the route into question. The user evidence is limited on the claimed route A – B – C – D, with a maximum of 12 users (including those that did not supply a map).
- (b) The application was made on 1 May 2008 and is a further date of bringing that use into question.

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

10.1 The documentary evidence submitted and investigated shows a route, close to the claimed route from St Mary Well Street on the northern side of the River Brit continuing south to Parnham and beyond, shown on the early maps of the Ordnance Survey and three commercial maps. By 1843, as shown on the Beaminster Tithe Maps, the route is not shown to continue past point C.

10.2 The applicant and other users state that this route was the old road from Beaminster to Netherbury. However, only the early maps show a continuous route. It is possible that the current Bridleway 59, which runs parallel to the claimed route, could be the route shown old maps, so therefore the documentary evidence adds little or no weight to this claim.

- 10.3 The user evidence provided shows a lot of pedestrian access to the wood from beyond point B. However, to allege the subsistence of public footpath rights the use must be on the same route over a sustained period. There is a maximum of 12 users who filled in evidence forms (including those that did not supply a map), whose use *may* have been on the claimed route, together with three other users who wrote in to support the application, who use the whole of the claimed route.
- 10.4 As the route is on the edge of an urban environment, just on the southern edge of the town of Beaminster, it may be considered that, in this case, use by only, perhaps, 12 people is not sufficient.
- 10.5 Section A to B shows no signs of use and would be very difficult to walk in its present state with overgrown trees and bushes. Its addition to this claimed route was based on historical evidence that it was the old road from Beaminster to Netherbury. There is some doubt whether the users have, in fact, used this section as Bridleway 59 also takes the user from point A almost to point B along a well used track.
- 10.6 The application was submitted as a result of the erection of the signs by the Estate in 2008, as stated by many of the users. The other signs, which state "Private land" or "Private Road" are not specific enough to stop accruing public footpath rights and therefore do not bring that use into question.

11 **Analysis of evidence opposing the application**

- 11.1 Mr Wood, on behalf of Mr Treichl, states that section A – B is outside of the ownership of his client.
- However, the Land Registry map does show this section within Mr Treichl's property.
- 11.2 Mr Wood also comments on the 1910 Finance Act map, stating that the route between points B and C provides the means of access between two significant parcels of this hereditament,
- This may be the case.
- 11.3 Mr Wood points out that there was already a bridleway shown to the west and that it would have been unnecessary had there been an existing public right of way to the west.
- It is not unusual for routes to run parallel, if, for example, one route tended to suffer in wet conditions.
- 11.4 Mr Offer comments on the small number of walkers he has met using the claimed route and their acceptance that it was not a public right of way.
- This claimed route may have unrecorded public rights and this application is addressing this issue.
- 11.5 Mr M Nisbet states that "the present bridleway BR59 dates back centuries.... Not a single map from the past 250 years ever shows any other path here, or any path going through Millground Wood".

- Looking at the historical evidence this seems to be the case, although early Ordnance Survey and commercial maps show a route to the north of the River Brit, which could be either part of the claimed route or Bridleway 59.
- 11.6 The evidence given by users is also questioned Mr M Nisbet, stating that, as there are various different versions of a route used, “They lack credibility”.
- The different routes used have been discussed at paragraph 9.
- 11.7 Mr Nisbet states that the ‘Private Road’ sign and full width cattle grid, have discouraged “walkers from diverting away from the BR59 bridleway”.
- As stated in paragraph 10.6, the ‘Private’ sign is not considered specific enough to stop public rights of way on foot from being accrued and therefore cannot be used as a challenge sufficient to bring the right into question. The cattle grid may have discouraged walkers but does not prevent them from crossing it.
- 11.8 Mr D P Horton, Estate Manager, states that he had a meeting with the Countryside Access Officer in 2008 and that after this site visit he was recommended to display the sign and plan advising the public of the location of footpaths and not to enter private land. The signs were erected in several places in the woodland.
- This advice is routinely given to landowners to prevent public acquiring rights to access their land.
- 11.9 Mr D P Horton stated that the Parnham House staff had asked users to leave the wood. Also Clare Usher–Wilson, on behalf of Parnham House Limited, gave three dates, two in Feb 2008 and one March 2008, when the public had been stopped and challenged.
- These dates of challenge could be used as evidence of bringing the use of the route into question.

12 Analysis of other submissions

- 12.1 Mr B Earl, Curator of the Beaminster Museum, believes that the old road from Beaminster to Bridport ran along the part of the route claimed through ‘The Nursery’ as it demonstrates the character of an “obvious mini-hollow way footpath *outside* the wood”.
- Within the documentation of the earlier maps investigated a through route near the claimed route is shown and could be either the route claimed B –C along the north western side of the woodland or Bridleway 59.

12.2 The other submissions contain no evidence to be considered.

13 Conclusions

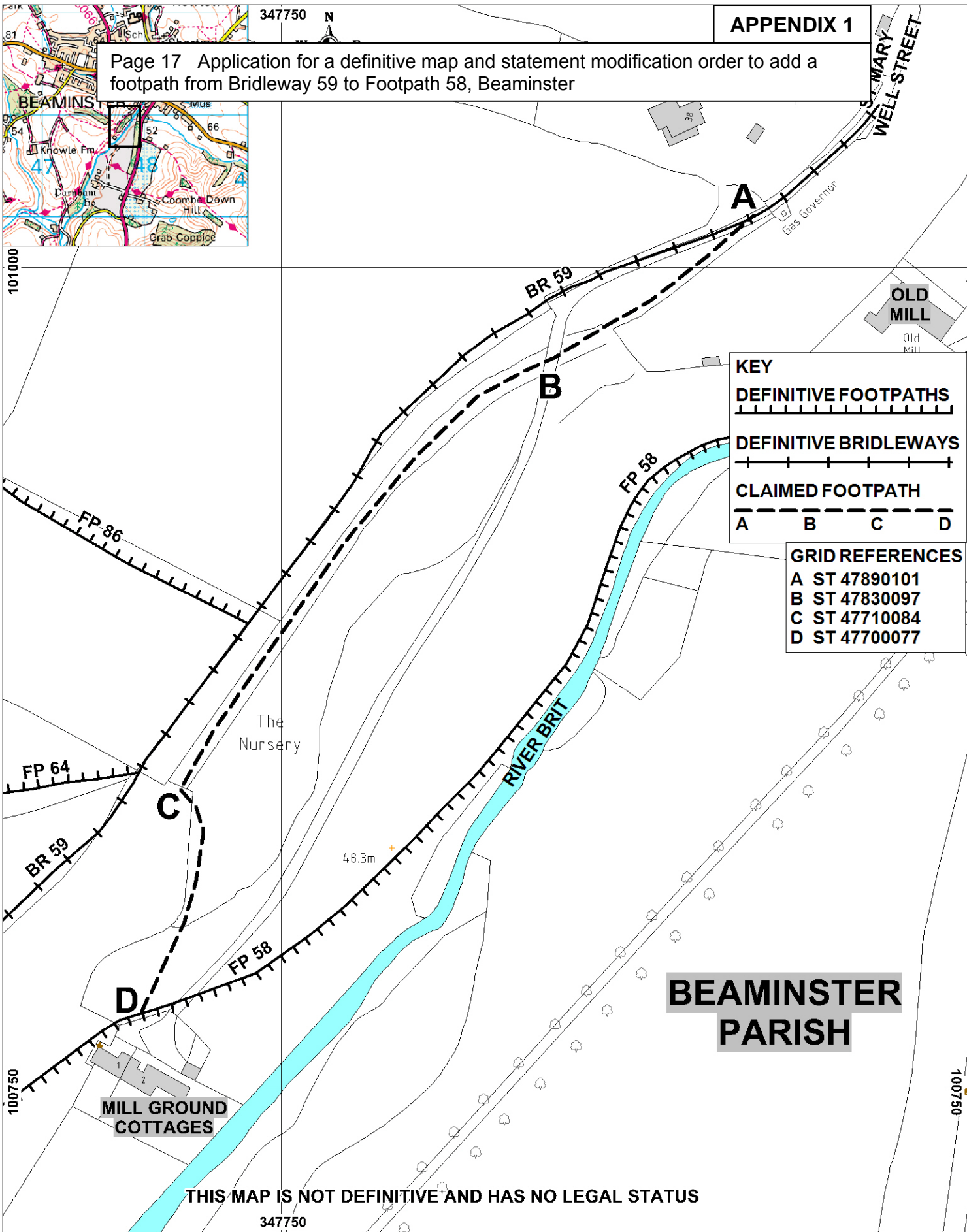
- 13.1 As the claimed route is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

- 13.2 The strongest documentary evidence supporting the claim is from the early maps investigated, including the Tithe maps (as shown on two maps) and these support the existence of a route as shown A – B – C on Drawing 13/44/1 but not between points C and D. It is also possible that the route shown on these maps reflects the current Bridleway 59 and not the claimed route.
- 13.3 The documentary evidence is therefore considered insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the whole of the claimed route.
- 13.4 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right 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 2008, the date of bringing into question, therefore from 1988 to 2008.
- 13.6 There is some evidence of use on foot. However, the possible number of users varies only between 7 and 10 in the period 1988 to 2008 and is considered as being insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to either date that public rights were brought into question, necessary for presumed dedication under Section 31 of the Highways Act 1980, nor would it satisfy the common law requirements to infer a dedication of public footpath rights.
- 13.7 If Section 31(1) of the Highways Act 1980 is considered not to apply, the evidence of use, together with the historical documentary evidence, is also considered, on balance, insufficient to raise an inference of dedication of a public right on foot under the common law.
- 13.8 Therefore it is recommended that the application be refused.

Mike Harries

Director for Environment and the Economy

May 2015



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A FOOTPATH FROM BRIDLEWAY 59 TO FOOTPATH 58, BEAMINSTER

Ref: 13/44/1

Date: 02/03/2015

Scale 1:1500

Drawn By: ACWH

Cent X: 347812

Cent Y: 100893

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 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.

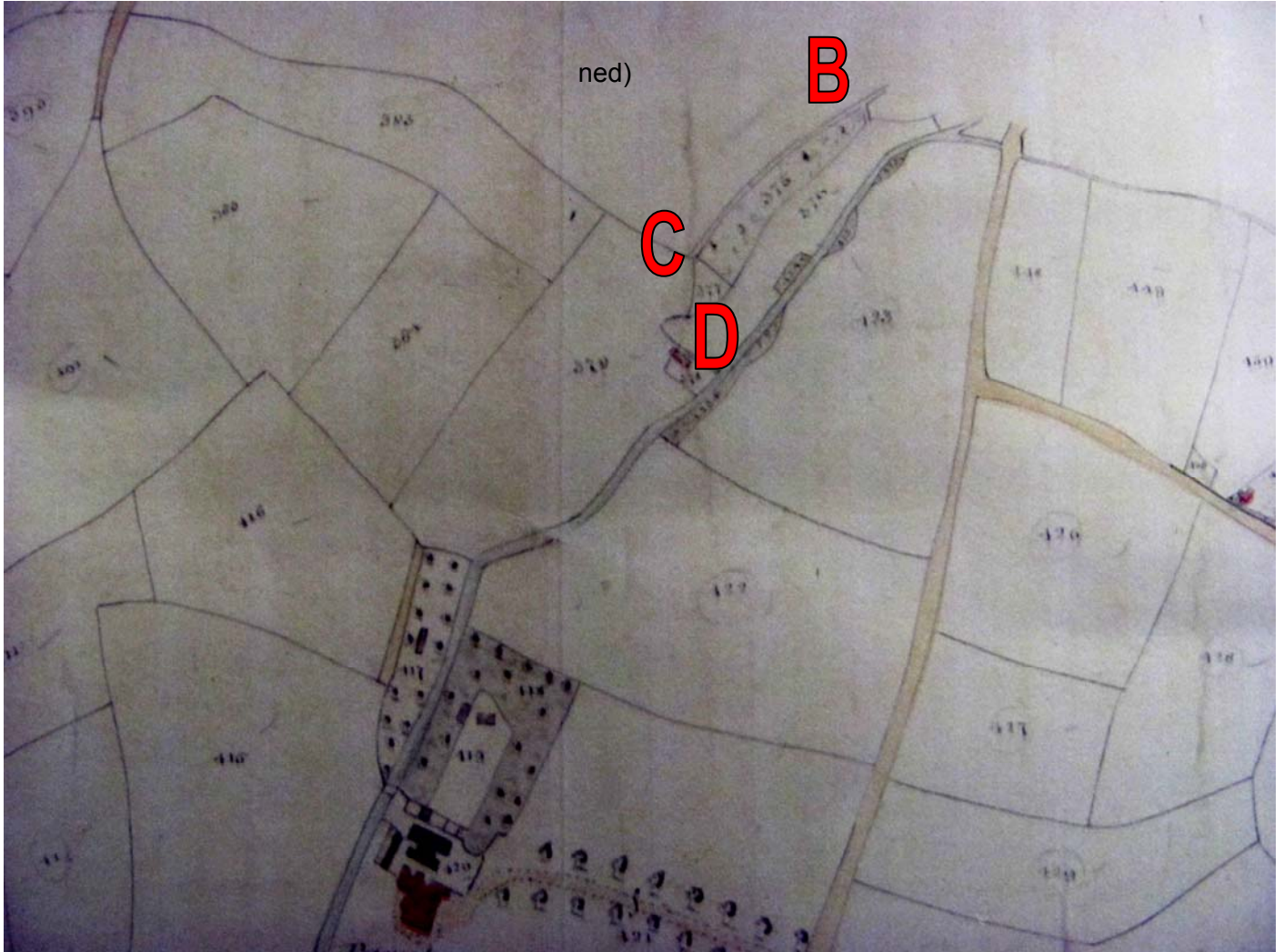
Table of documentary evidence

Date	Document	Comment
1765	Isaac Taylor's Map of Dorset	Shows a route close to part of the claimed route A to C.
1773	Map of Dorset by J Bayly	Claimed route not shown.
1787	J Cary Map of Dorset	Claimed route not shown.
1796	Isaac Taylor's Map of Dorset	Shows a route close to part of the claimed route A to C.
1805	Ordnance Survey Drawings	Shows a route close to part of the claimed route A to C.
1809	Stopping Up Order (footpath)	Claimed route not shown.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows a route close to part of the claimed route A to C.
1826	Greenwood Map of Dorset	(Key: Cross road) shows a route on or near claimed route A to C
1843	Beaminster Tithe Map	Shows part of the claimed route between points A and C.
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows part of the claimed route between points B and C.
1889	Ordnance Survey map scale 25 inches:1 mile (1:2500) - coloured	Shows part of the claimed route between points B and C.
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.	
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows part of the claimed route between points B and C.
1904	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows part of the claimed route between points B and C.
1910	Parnham Sale Particulars – Plan	Part of the claimed route from point B to point C is shown as a ditch or enclosed lane, gated at both ends.
1910	Finance Act plan	Claimed route shown in two Hereditaments. Deductions for rights of way made for both but not specific as to which they were.
1923	Ordnance Survey Ministry of Transport road map scale ½ inch:1 mile	Claimed route not shown.

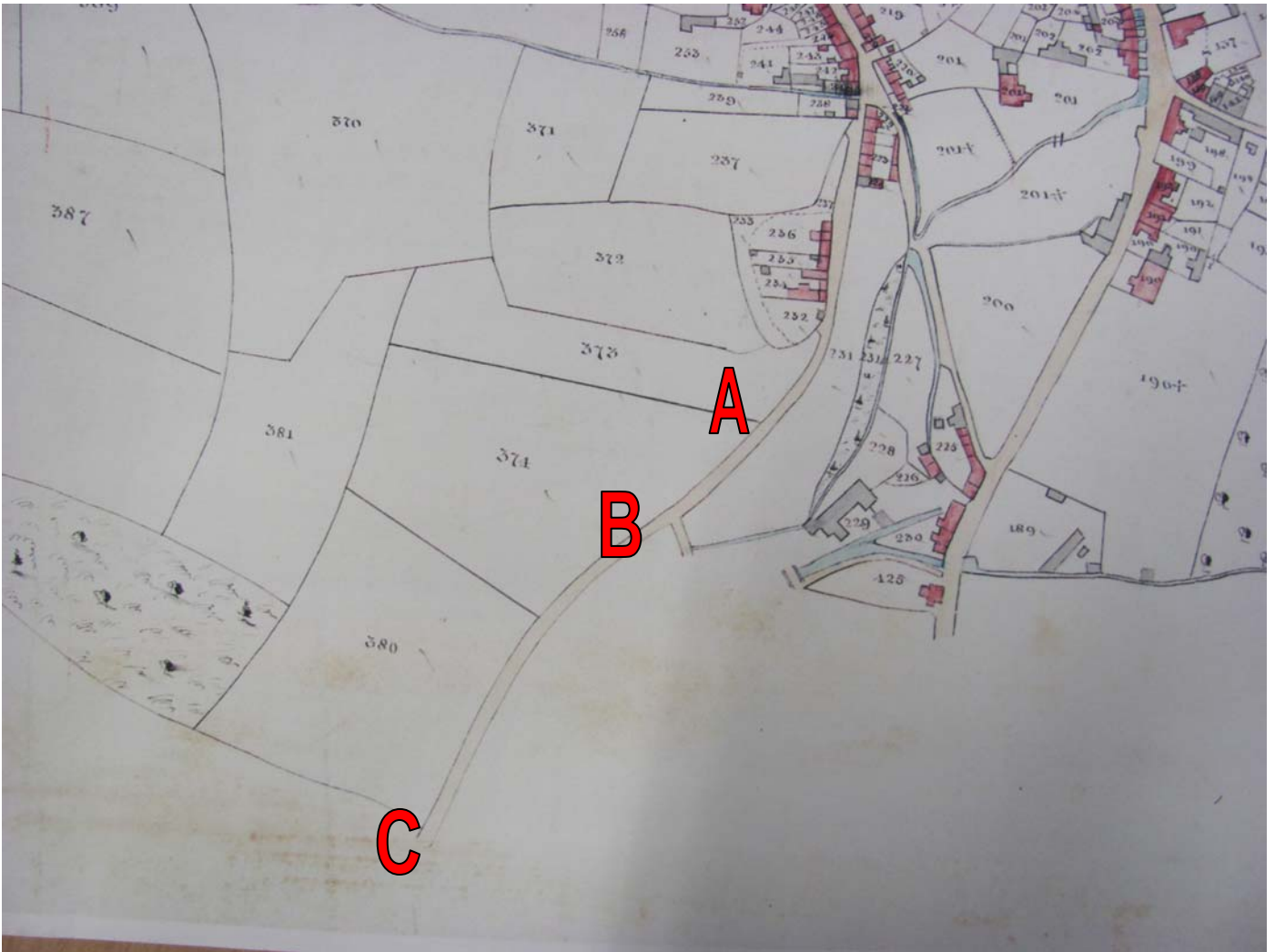
Date	Document	Comment
1936	W & A K Johnston Motoring & Touring map of England scale 3 miles:1 inch	Shows a dotted line near claimed route.
1940	Deposit of Statutory Declaration by Mrs Bullivant, Parnham Estate	No map
1944	Deposit of Statutory Declaration by Mrs Bullivant, Parnham Estate	No map
1948	Deposit of Statutory Declaration by Mrs Bullivant, Parnham Estate	No map
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	Beaminster Parish Survey	Claimed route not shown.
1953	Draft map for the West area	Claimed route not shown.
1955	Parnham Sale Particulars	The claimed route from point B to point C is shown with a solid line to the west (indicating it was fenced)and a pecked line to the east (unfenced).
1964	Provisional map	Claimed route not shown.
1966/7	First definitive map	Claimed route not shown.
1974	Revised draft map	Claimed route not shown.
1989	Current definitive map	Claimed route not shown.
2008	Application submitted	Route claimed was slightly amended to A – B – C – D.
2009	Deposit of Statement and Plan by landowner	Showed the claimed area ,this was deposited after the date of challenge
2010	Deposit of Statutory Declaration	Showed the claimed area ,this was deposited after the date of challenge

Extracts from key documents
(See the Director for Environment's file RW/T473
for copies of other documents mentioned

1843 Beaminster Tithe map part 1



1843 Beaminster Tithe map Part 2



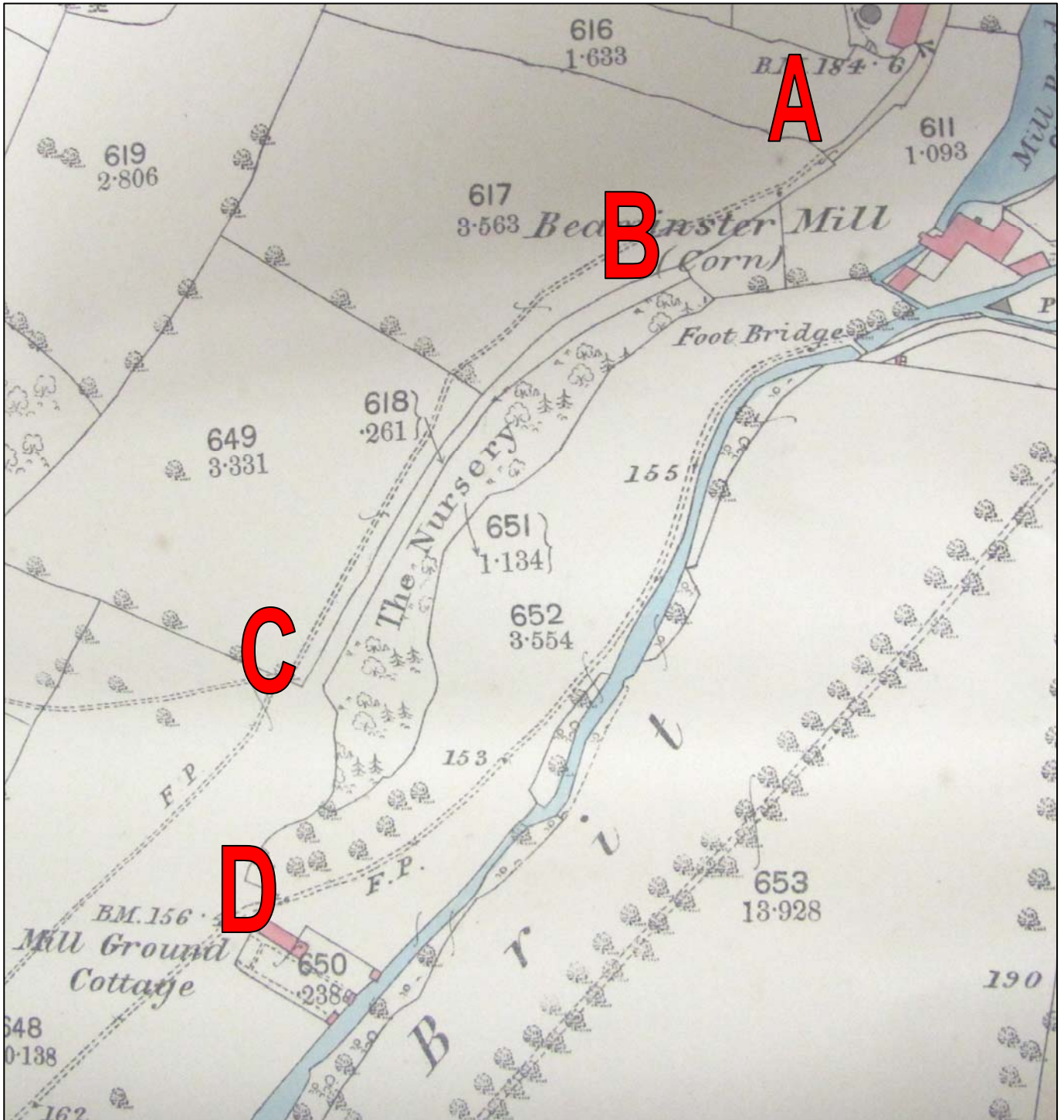
1805 Ordnance Survey Drawings



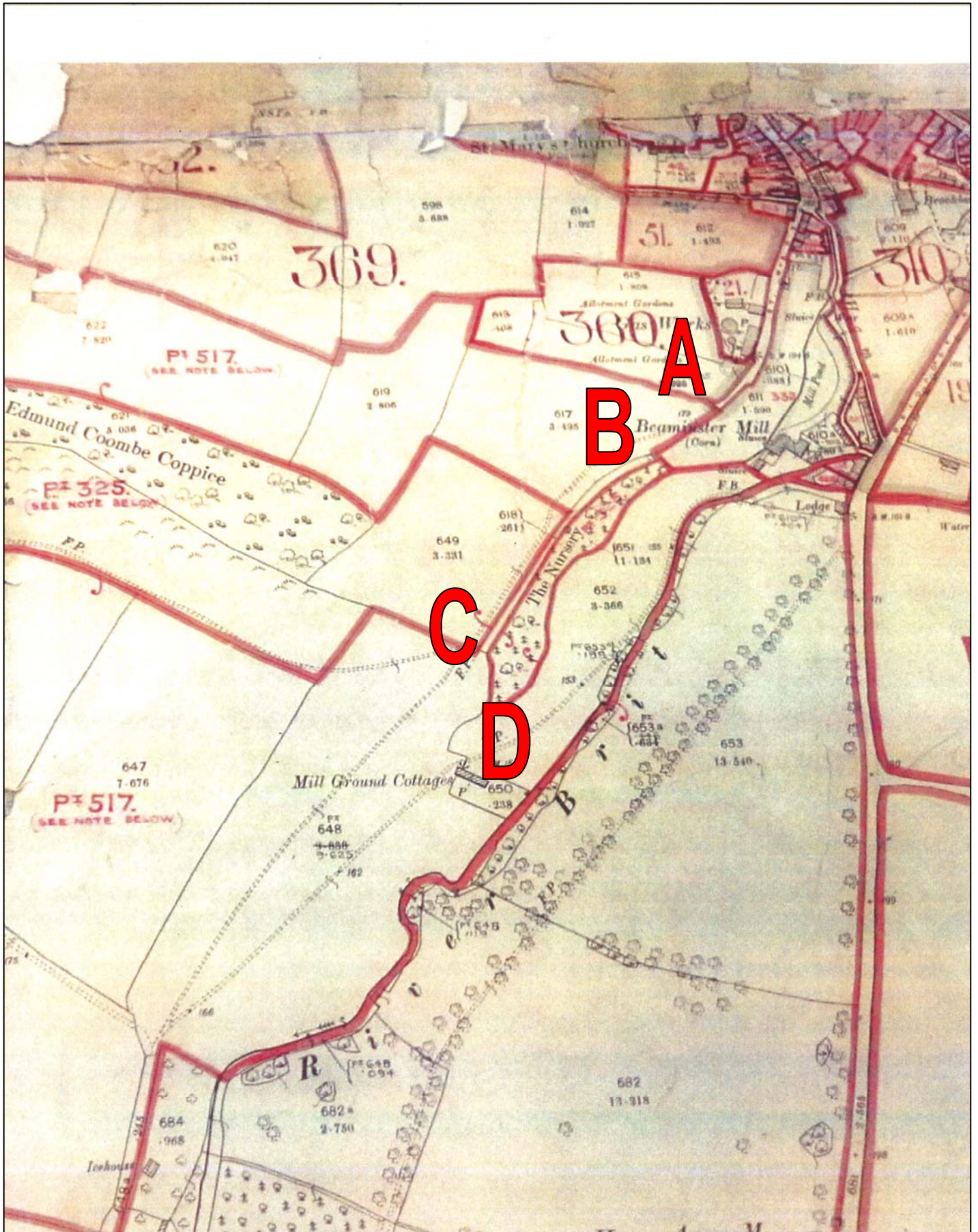
1811 Ordnance Survey First Edition



1889 Ordnance Survey – large scale, coloured



1910 Finance Act Map



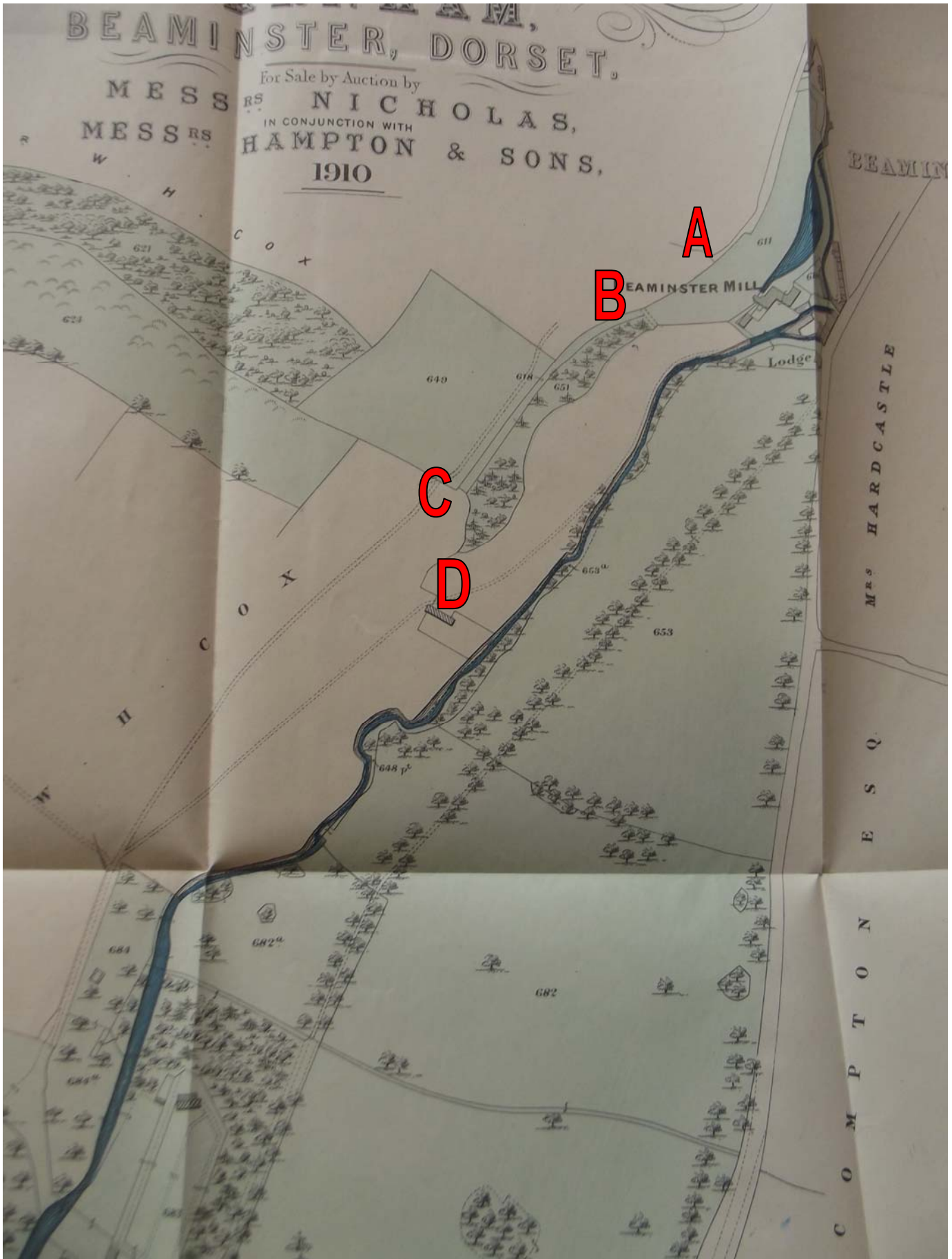
1796 Isaac Taylor's Map of Dorset



1826 Greenwood Map of Dorset



1910 Parnham Sale Particulars Plan



User Evidence
Table summarising user evidence from forms completed in 2008
(with three exceptions, where shown)

Dark shading indicates users did NOT use any part of the claimed route

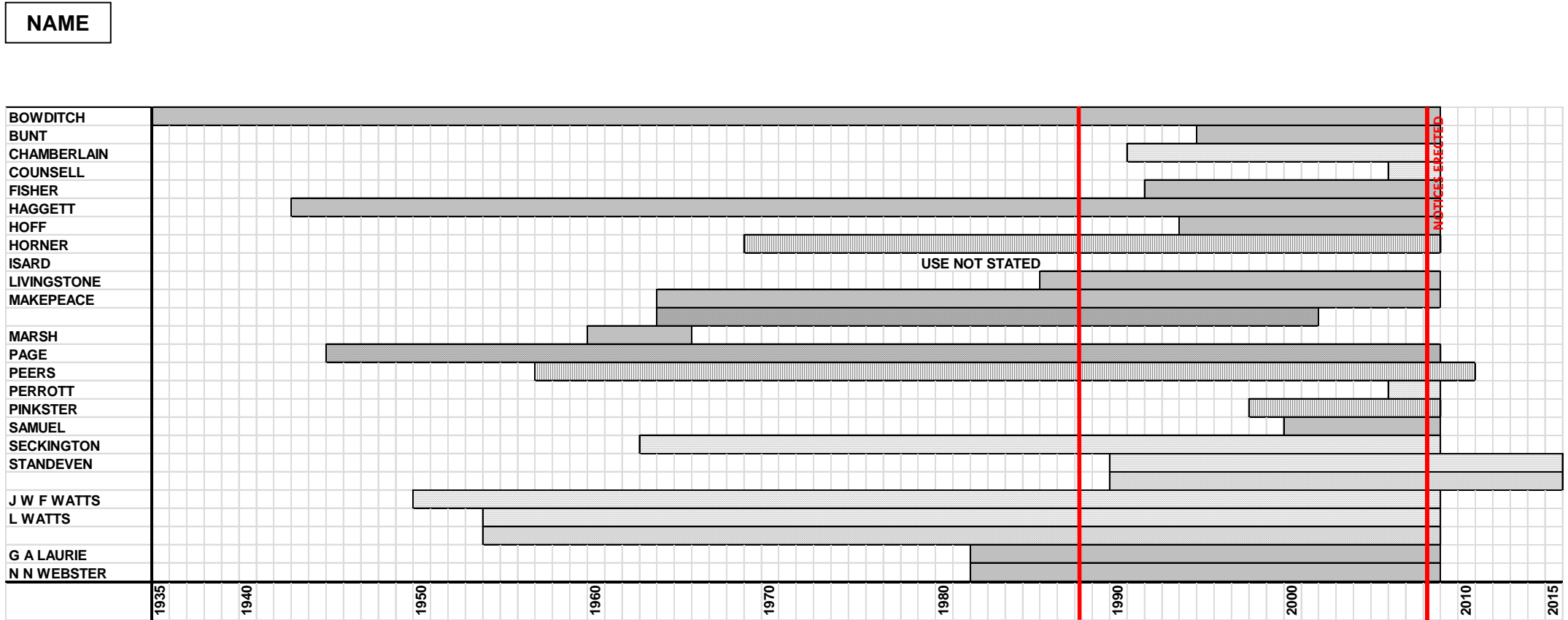
NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs R Bowditch (no map)	From 1935 to date (submitted in 2008)	Numerous times a year	On foot	Used for pleasure. Other people also used route on foot. No stiles, gates, notices or other obstructions. Not challenged whilst using route. Route was also used daily by other family members in the early 1900s.
Mrs J M Bunt (no map)	1995-2008	Very frequently	On foot	Used for pleasure on circular walk. Other people also used route on foot. No stiles or gates. Notices stating 'Private property danger of falling branches' No other obstructions apart from fallen tree across the path. Not challenged whilst using route. Notice 'This is not a Right of Way' March 2008. This path is an old track.
Mrs J Chamberlain B – C – D only	1991-present day (form completed in 2008)	Daily	On foot	Used for pleasure and access. Other people also used it on foot. No stiles, gates, notices or other obstructions. Never needed permission, it has always been open. Notice since March 2008.
Miss S M Chesterman – 2 forms) Co-applicant Not claimed route, through wood	1984-2008	12-60 times a year	On foot	Used for pleasure. Other people used route on foot and horseback. No stiles or gates. Notice put up in 2008 'Private land' Other obstruction present was wire and barbed wire – only in last few weeks. Not challenged whilst using route. Approx. 4-6 feet wide.
S Counsell B – C – D only	2006-2008	Most days	On foot	Used for pleasure and dog walking. Other people used route on foot. No stiles or gates. Notice put up in last 2 months – notice of the marked route as being not a public right of way. Never challenged whilst using route. Width approx 2 metres.
Mrs H Crabb Not claimed route, through wood	Over the last 65 years (form completed in 2008)	Around 50 times a year	On foot	Used for pleasure. Other people used on foot. No stiles, gates or notices. Other obstructions present were fallen trees. Never challenged whilst using route.
Mr R J Crabb Not claimed route, through wood	Past 50 years (form completed in 2008)	Approx. 20 times a year	On foot	Used for pleasure. Other people used route on foot. No stiles, gates or notices. Other obstructions present were fallen trees – climbed over. Never challenged whilst using route.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
E L Fisher (no map)	1992-2008	Nearly every day	On foot	Used for walking dog. Other people used route on foot. No stiles or gates. Notices from March 2008 saying route was not public. No other obstructions. Wide enough for 2 people side by side.
Mr P Fowler – 2 forms signed in 2010 Not claimed route, along private road	2003/4 to 2010	4/5 to 40 times a year	On foot	Routes used shown on map were not on the claimed route.
Mr M Garcia Not claimed route, through wood	2003 to date (form completed in 2008)	2 to 3 times weekly	On foot	Used for pleasure. Used by others on foot. No stiles on route. Kissing gate at cottages. Occasional fallen tree, walked over or around. Never challenged. Notices put up after change of ownership of Parnham House. Clearly worn footpath through 'The Nursery' sometime used by cattle. Path 2-3 feet wide.
Mr M Gibbs Not claimed route, through wood	All his life (form completed in 2008)	60 times a year	On foot	Born at Millground cottages. Used for pleasure. Used by others on foot. No stiles, gates present and notices present until 2008. Fallen trees present. Never challenged. Width approx 2 metres.
Mrs M Haggett	1943 to present (form completed in 2008)	2 or 3 times a week	On foot	Used for pleasure. Used by others on foot. No stiles or notices present. Gate unlocked. No other obstructions. Never challenged.
Mr G Hoff (no map)	1994 to 2008	12 times a year	On foot	Used for pleasure. Used by others on foot. Stile adjacent Millground Cottages (stile replaced by gate) No other obstructions. Prevented from using path by private notices appearing in 2008.
Dr A Horner Co-applicant B – C only	1969 to present day (form completed in 2008)	45 times a year approx.	On foot	Used for walking. Used by others on foot. No stiles or gates present. Notices in March 2008. No obstructions. Notices stated 'Private Land' Width no less than 2 metres at any point.
Mrs A Hudson Not claimed route, through wood	1964 to present (form not dated)	Several times a week	On foot	Used occasionally for work or pleasure. Used by others on foot. Occasional diversion when a tree fell down. No stiles or gates. Notices in last few months. Occasional single wire fence to prevent cattle getting in. Notices in March 2008. 2 persons can walk side by side for most of the path
Miss N Isard (no map)	Not stated	Not stated	Not stated	Used by others on foot. No stiles present. Unlocked gate. No notices. Path has been present since 16 th Century. Seen it used for at least 25 years.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs J A Livingstone (no map)	1986-2008	200 or more times a year	On foot	Used for walking dog. Used by others on foot. No gates or stiles. Notices in recent weeks saying 'This is not a Right of Way'. Fallen trees – able to climb over/walk around. Path is no less than 2 metres wide. Understands path has been used for many years.
Mrs J Makepeace Applicant	1964-2008	Almost daily since 2001	On foot and occasionally riding, until 2001)	Used for dog walking. Used by other people on foot, bikes and horseback. No stiles or gates. Notices in March 2008 stating "You are now entering private land". Since March 2008 partially fenced with plastic wire. Sometimes fallen branches. This path is part of the medieval road from Beaminster through the Brit Valley. Not less than 2 metres wide at any point.
Ms L Marsh	1960-1965	Used approx 30 times a year	On foot	Used for pleasure. Others also used the route on foot. No stiles, notices or other obstructions. Gate present. Never challenged.
Mr J Page C – D only	1945 to present day (form completed in 2008)	Early years once a day, later years once a week	On foot	Used for pleasure. Used by others on foot. No stiles, gates or other obstructions. Notices when road was built in 1990, 'Private Road' nailed to tree. Approx. 24" wide.
Mr R Peers - 2 forms Co-applicant B – C only (as shown in signed map dated 2014)	1957 - 2010	Varied from 300 times to half a dozen per year	On foot	Used for pleasure and occasionally work. Used by others on foot. No stiles, gates or other obstructions. Notices in March 2008. Wide enough for two people to walk side by side. On his user evidence form he stated that he had a private right for many years and certainly daily since 1992. However, after a phone call, he stated that he had not answered this question correctly and in fact he had never asked permission to use the route.
Dr G Perrott B – C – D only	2006-2008	150 times a year	On foot	Used for pleasure. Used by others on foot. No stiles or gates present. Notices present – only in last two months – notice of marked ROW. No other obstructions. Never challenged. Width: 5-6' wide. Appearance of an old trail – mature trees alongside.
K M Phillips Not claimed route, through wood	1986 to 2008	Until 2004 every day	On foot	Used for pleasure. Used by others on foot. No stiles or gates. No notices until March 2008. No other obstructions. It is an old track.
Mrs J Pinkster B – C only	1998-2008	at least once or twice a week	On foot	Used for pleasure. Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged. Worn path.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs S A Samuel (no map)	2000-2008	Daily	On foot	Used for pleasure, Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged. Path is over 2 meters wide. Well defined route and well used.
Mr R Seckington B – C – D only	1963 – 2008	Varied	On foot	Used for pleasure. Route also used by others on foot and some on bicycle. No gates or stiles. No notices until March 2008. Occasionally fallen trees. Was never challenged using the route. Took scout troop there in 1960s on occasions. Width not less than 2 metres.
Mrs J M Shearlock Co-applicant Not claimed route, through wood	1979-2008	About 30-40 times a year	On foot	Used for pleasure. Used by others on foot. No stiles or gates present. No notices until March 2008. No other obstructions. Never told route was not public until recently (form completed in 2008). Width approx. 6-7 feet.
Mrs S M Standeven – map signed 2015 B – C – D only	25 years from 1990	Weekly	On foot and occasionally on horseback	Used for pleasure, dog walking. Others also used the route on foot and occasionally on horseback. Stile by Millground Cottages and gates on route. Not aware of any notices. Had to climb over fallen trees. Other people have been stopped.
J & S Teasdale Not claimed route, through wood	1976 onwards (form completed in 2008)	10-20 times a year	On foot	Used for pleasure. Used by others on foot. No stiles or gates on route. Notices March 2008. Obstructions – fallen trees. The route is well used.
J W F Watts B – C – D only	1950 – 2008	Many times a year	On foot	Used for pleasure. Used by others on foot, bicycle and horseback. No stiles, gates or notices. Obstructions – fallen tree. Never challenged whilst using the route.
Mrs L Watts B – C – D only	1954 to present (form completed in 2008)	Several times a week.	Foot and bicycle	Used for pleasure. Used by others on foot, bicycle and horseback. No stiles, gates or notices present. Fallen tree on route. Never challenged. The track through the wood was clearly visible.
Mrs G A Laurie & N N Webster	1982 – present (form completed in 2008)	Sometimes twice a day	On foot	Used for pleasure. Used by others on foot, some on horseback and bicycle. No stiles, gates or notices. Recently there has been a barbed wire fence restricting access between bridleway and footpath in wood. Never challenged.

Chart of user evidence to show periods of use of those who used parts of the route claimed



YEARS OF USE

	CLAIMED ROUTE USED - ON FOOT
	CLAIMED ROUTE USED - ON HORSEBACK
	ROUTE B-C-D USED ONLY - ON FOOT
	ROUTE B-C-D USED - ON HORSEBACK/BICYCLE
	ROUTE B-C USED ONLY - ON FOOT
	ROUTE C-D USED ONLY - ON FOOT

Chart to show level of use of those who used the whole of the claimed route

