

Agenda item:

Regulatory Committee

11

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 footpaths in Whitchurch Canonorum and Chideock parishes, east of Ryall
Executive Summary	Following an application submitted in 2006 to add several footpaths in the parishes of Whitchurch Canonorum and Chideock (now unsupported by the absent applicant), this report considers the evidence relating to the status of the routes.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: The applicant submitted user evidence (witness statements) 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 July 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. Seven user evidence forms from users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

	<p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <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 rights of way subsist or can be 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 14/40 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"> ▪ 1844 Whitchurch Canonorum Tithe Apportionment Plan and Key

	<ul style="list-style-type: none"> ▪ 1910 Finance Act Plan ▪ 1811 Ordnance Survey First Edition scale 1 inch:1 mile ▪ 1888 Ordnance Survey First Edition scale 6 inches:1 mile ▪ 1888 Ordnance Survey scale 25 inches:1 mile ▪ 1930 Ordnance Survey scale 6 inches:1 mile ▪ 1946 Ordnance Survey scale 1 inch:1 mile <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/T446).</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/T446, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add several footpaths as shown between points A – B, C – D – E – F, E – G – H – I – J and G – F – K – L on Drawing 14/40 (Appendix 1) was made by Mrs Alison Macdermott on 21 September 2006. On 4 September 2014 she was contacted to provide any additional evidence in support of the application. Since then she has not been in touch and despite several attempts to contact her no further communication has been received.
- 1.2 Route A – B commences from its junction with Byway 82, Whitchurch Canonorum (Butt Lane), shown as point A, continuing northward along the eastern boundary of an arable field adjacent the parish boundary with Symondsburry to its junction and termination point with Footpath 24, Whitchurch Canonorum, shown as point B.
- 1.3 Route C – D – E – F commences from its junction with the unclassified County Road known as Butt Lane and Footpath 26, Whitchurch Canonorum shown as point C and at which there is a 12 foot wide field gate. It continues generally south westerly across an open pasture field descending to a gateway with a 12 foot wide field gate and shown as point D. From point D the route follows a south easterly direction across an open pasture field to point E, from where it continues south easterly across the field to its termination point shown as point F.
- 1.4 Route E – G – H – I – J commences at its junction with the route described at paragraph 1.3 above at point E and continues easterly across an open pasture field through point G, continuing to point H. At point H there is a gateway, consisting of two posts with no gate, which has been fenced with a post and wire fence. From H the route continues easterly across an arable field to point I, a junction with Footpath 33, Chideock, then it deviates from Footpath 33 and continues north easterly to its termination point with the unclassified County Road known as Butt Lane and shown as point J.
- 1.5 Route G – F – K – L commences at its junction with the route described at paragraph 1.4 above at point G and continues in a southerly direction along the eastern side of a pasture field adjacent a hedge to point F, where there is a 12 foot field gate. From F it continues southerly along the eastern margin of an arable field adjacent a hedge to a gateway with a 12 foot wide field gate at point K. From K the route turns south westerly across a pasture field, terminating at its junction with Bridleway 34, Chideock shown as point L.
- 1.6 All of the routes are undefined in respect of width and all of the affected land is owned by Mr & Mrs Coates of the Chideock Manor Estate, some of which is rented to Mr R Cook.

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/T446)
- 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. An analysis of the documentary evidence is contained at paragraph 8 of this report.
- 4 **User evidence (Appendix 4)** (copies available in the case file RW/T446)
- 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/T446)
- 5.1 No additional evidence in support of the application has been submitted.
- 6 **Evidence opposing the application** (copies available in the case file RW/T446)
- 6.1 One submission was received following the submission of the application in 2006 and a further four letters were received as a result of the consultation in 2014. All are summarised in the table below.

Name/ date	Comments
Mr S Allen, Pentagon Associates Ltd (on behalf of owners) 7 November 2006	Refutes that the routes claimed are public rights of way.
12 August 2014	Objection to claim. Grounds relate to issues of desirability, suitability etc, consequently cannot be taken into consideration in determining the application.
9 September 2014	Provided four witness statements and various photographs. Notes that the applicant has been challenged on several occasions by the Gamekeeper. Also notes that there have been numerous signs over a significant period of time, indicating that the land was private with no public access.
Witness 1 J Cook	Rents some grassland from Chideock Estate. Was asked by the Gamekeeper to look out for an individual (Mrs Macdermott – applicant) walking with a dog off the lead and causing distress to stock in the field. Despite regular checks on his stock he never saw Mrs Macdermott walking on the land.
Witness 2 R Cook	As Witness 1 above

Name/ date	Comments
Witness 3 Mr L Aplin (Gamekeeper)	Gamekeeper for the Chideock Estate. Footpaths are clearly marked and other areas signed, indicating they are private with no public access. Walkers and locals generally stick to the footpaths but on occasions he has encountered people who were clearly lost and he would advise them they were in the wrong place and direct them back to the footpath. Gates and/or gateways that are not rights of way have been sealed to prevent unauthorised access. Has challenged Mrs Macdermott on several occasions, the last being the spring of 2006.
Witness 4 Jenny Ironmonger	She was a contractor at the Chideock Estate for approximately 20 years to September 2012. On occasions came across lost walkers or locals taking short cuts and would advise them that they were “either lost” or “walking where they shouldn’t be”. Also aware of signs notifying the public that there was no public right of access across the fields.
Mr H Coates (Landowner) 13 August 2014	Objects to application. States routes are not used as footpaths nor, to his knowledge, have they ever been. Locally produced footpath map of Chideock does not include them (map not enclosed).
28 August 2014	States that Gamekeeper has been diligent in directing trespassers onto the ‘allowed’ routes and in maintaining signs pointing out private property. Enclosed photographs of signs on the estate, which consist of ‘private property no public access’ or requests to keep dogs on leads on the public rights if way.

7 **Other submissions received** (copies available in the case file RW/T446)

7.1 Another five submissions were received, including two in response to the consultation, which are summarised in the table below.

Name	Comments
Mrs A Macdermott (Applicant) 5 September 2006	Letter accompanying application, notifying that she had sent forms to landowner and tenant.
Mr S Allen, Pentagon Associates Ltd 26 September 2006 (Agent for landowner)	Request for further information.
Mrs A Macdermott (Applicant) 28 April 2008	Reported a number of issues e.g. tree felling in the area but nothing of relevance to the claimed routes.
Mrs C Shoopman, British Horse Society 5 August 2014	No evidence for consideration

Name	Comments
Mr R Meatyard (The Ramblers) 2 September 2014	Provided evidence in respect of route J – I – H – G – F – K – L, no evidence in respect of routes A to B and C – D – E – F – G. He surveyed the route, which was waymarked, and believes that the waymarking may have been done by the Chideock Rights of Way Liaison Officer and that they have been in place since at least 1995.

8 Analysis of documentary evidence

Tithe Apportionment

- 8.1 The **1844 Whitchurch Canonorum Tithe Apportionment Plan** includes the area in Whitchurch Canonorum parish over which the parts of the routes are claimed as shown between points A to B and C to D. The plan has a key that includes footpaths, which are shown by a pecked line (refer to extract at Appendix 3). The plan provides no indication of a path or way along the routes of either of these parts of the claimed routes.
- 8.2 The Tithe plan therefore does not provide any evidence to support the routes as claimed.

Finance Act 1910

- 8.3 None of the claimed routes are depicted upon the **1910 Finance Act Plan**, which uses the 1903 Ordnance Survey 25 inch Second Edition map as its base map. The part of the route shown between points A to B passes through **Hereditament 141**, the remainder of the routes all pass through parts of **Hereditament 88**.
- 8.4 The accompanying **Field Books** demonstrate that there were no deductions claimed or given for public rights of way within **Hereditament 88**, although a sum of £35 was granted in the case of **Hereditament 141**.
- 8.5 Although £35 was a considerable sum of money at that time, as **Hereditament 141** is known to contain several public rights of way, in addition to a public carriageway, it is reasonable to conclude that the deduction was allowed in respect of these public highways and without further information it is not possible to determine whether any of the claimed routes were subject to this deduction.
- 8.6 Therefore the evidence provided by the Finance Act documents does not support the routes as claimed.

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, were 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 Whitchurch Canonorum and Chideock parishes was completed in **1806/07**. None of the claimed routes are depicted.

- 8.8 Neither the **1811 First Edition Ordnance Survey** map nor the **1898 Revised New Series Ordnance Survey** map at a scale of 1 inch:1 mile depicts any of the claimed routes. The **New Popular Edition 1946** at a scale of 1 inch:1 mile does not show any of the claimed routes.
- 8.9 Neither the **1888 First Edition Ordnance Survey map** nor the **1902 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) depicts any of the claimed routes, nor do the **1904** or **1930** editions.
- 8.10 Neither the **1888 First Edition Ordnance Survey Map** nor the **1902 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) depicts the claimed routes.
- 8.11 The **Ordnance Survey Maps** provide no evidence in support of the application.

Commercial maps

- 8.12 A number of **Bartholomew** and other commercially produced maps have been examined, none of which depict any of the claimed routes or provide any support to the application.

Parish Survey and County Council rights of way maps and records

- 8.13 Neither the **Whitchurch Canonorum Parish Survey of rights of way** nor the **Chideock Parish Survey of rights of way**, completed in **1953** and **1951** respectively, depicts any of the claimed routes.
- 8.14 The **1953 draft map** for the **West area**, **1964 provisional map** and **1966 first definitive map** do not depict any of the claimed routes nor does the **current definitive map sealed in 1989**.
- 8.15 Prior to the present claim there is no reference to any previous claim in respect of any of the claimed routes.

Ramblers' Association Condition Survey Footpath 33, Chideock

- 8.16 In **February 1999** the **Dorset Area Ramblers' Association** (now The Ramblers) undertook a survey of Footpath 33, Chideock. It was noted by the surveyor that a possible unofficial diversion of Footpath 33 existed on the ground. This diversion would have used part of the claimed routes, namely that between points L – K – F – G and connecting with Footpath 33 at the field boundary south of point H.
- 8.17 It appears that the surveyor inspected some or all of the unofficial diversion, noting the following points: the way-marking of the route was confusing; a gate was impossible to open and another required re-hanging; and a fence prevented access.
- 8.18 Although, in respect of all of the claimed routes, nothing of any substance is provided by this evidence it does provide a little support to the route claimed between points L – K – F – G only.

Aerial Photographs

- 8.19 Aerial photographs of the area from the years **1947, 1972, 1997 and 2005** have been examined. Whilst during this period some of the field boundaries have been removed, generally speaking the area is largely the same. Although it can be argued that some parts of the claimed routes are clearly visible, suggesting that they are being used, it is more probable that such use was from stock moving between fields rather than from users of the claimed ways.
- 8.20 Consequently it is considered that the aerial photographs provide no support to the application.

9 Analysis of user evidence supporting the application

- 9.1 A total of **seven forms of user evidence** were submitted with the application in 2006. No further user or supporting evidence was received in response to the consultation that commenced in July 2014.
- 9.2 Only four of the witnesses have used all of the claimed routes, one other witness has used all of the routes with the exception of those shown between points A to B and I to J, one other witness used only the route as shown between points C to D and the remaining witness used only the route as shown between points C – D – E – G – H – I.
- 9.3 All of the witnesses state that they used the route(s) for pleasure and on foot. Six of the witnesses state they had observed other users either on foot or horseback and one witness, the applicant, states that she had also observed users on cycles and scramble bikes.
- 9.4 The earliest date of use on foot is from 1983 and the latest date of use is 2006. This encompasses a period of 23 years. Of those who used all of the routes, the number of users per year varies from two in 1983 to three from 1994. One other witness used all of the routes apart from A to B and I to J from 1999. One witness stopped using the routes in 2001. One witness used only the route from C to D from 2005 and one other witness the route C – D – E – G – H – I from 1999. Frequency of use varies from three or four times a week to three or four times a year: the majority of witnesses used the route(s) on a weekly basis.
- 9.5 The majority of witnesses state that they were never challenged when using the route but were aware of the challenge to Mrs Macdermott in 2006. One witness states that other users, including dog walkers, had been challenged. None of the witnesses were aware of any locked gates or other obstructions, which would have prevented their use of the route, nor of the existence of any notices, the effect of which would have been to make them aware the route was not a public highway. Several witnesses refer to waymarks and to notices stating "Farmland please shut the gate".

9.6 Mrs Macdermott, the applicant, acknowledges being challenged by the gamekeeper on 28 June 2006, adding that this was the only challenge made to her in 23 years of use. Mrs Macdermott provided additional information with her form of user evidence to the effect that the routes were all well-defined, leading to waymarkers with two stiles at point K and that the routes have obviously been used for years. She is of the opinion that the actions of the owner and tenants led her to believe that the routes were public and that they were happy for her to use them.

10 Analysis of evidence opposing the application

Mr S Allen, Pentagon Associates Ltd, Agent for the Chideock Manor Estate (landowners)

10.1 Mr Allen wrote on 7 November 2006 acknowledging receipt of a letter and enclosures, stating that he had consulted with the owners and their farm manager and that they refuted the allegation that the claimed routes are rights of way. He conceded that the routes may have been walked but the actual footpaths are those marked in red on his plan (those already recorded as definitive footpaths).

10.2 Mr Allen submitted a further letter dated 12 August 2014 in which he discusses the various claims and states that his clients, Mr & Mrs Coates of Chideock Manor, wish to appeal against the application.

- (a) With respect to the route A – B, Mr Allen states that historically the Chideock Manor Estate has been within a Countryside Stewardship agreement since 2002 and a grass margin or buffer strip was created along the field margin. He believes that the public may have mistaken this as a footpath.
- (b) With respect to C – D, D – E, E – F, E – G and G – H, they wish to object to this part of the application on the grounds that these parcels of land are used for the grazing of sheep and raising of pheasants. It is feared that walkers and dogs would cause undue stress to young birds and lambs.
- (c) With respect to H – I and H – J, this land is arable and already subject to a right of way and the addition of another footpath would increase crop losses.
- (d) With respect to F – K and K – L they would object on the basis that walkers are disruptive to livestock.
- As Members will be aware, issues relating to the desirability, suitability or safety cannot be taken into account when determining whether the claimed rights exist. Consequently none of this evidence can be taken into consideration.

10.3 Mr Allen made a further submission dated 9 September 2014 that included documentary evidence, photographs and four witness statements.

- (a) Mr Allen notes that the applicant, Mrs Macdermott, has been challenged by the estate's Gamekeeper, Mr Aplin, on several occasions, commencing in the spring of 2006. On such occasions Mr Aplin made it clear to Mrs Macdermott that she was not walking on a footpath and that **"she should stick to existing footpaths"**.
- (b) Mr Allen also notes that numerous signs have been erected for a significant period of time around the estate stating **"private property no public access"**.
- (c) Mr Allen concludes, stating that Mr Aplin, the Gamekeeper, patrols the estate on a regular basis and has to be fully aware of daily activities. As the estate is a sporting estate with a commercial shoot, part of his role and that of the other members of staff is to be aware of unauthorised persons **"as they could inadvertently be shot"**.
- (d) The first witness statement, dated 21 August 2014, was provided by Mr J Cook, an Agricultural Contractor.
- Mr Cook rents land from the Chideock Estate and had been asked to look out for a person walking an unleashed dog that had been causing distress to the pheasants and other stock.
 - Mr Cook confirms that on no occasion had he seen Mrs Macdermott walking on the land.
- (e) The second statement, dated 21 August 2014, was provided by Mr R Cook, Agricultural Contractor, which confirms and concurs with Mr J Cook's statement, which is summarised above.
- (f) The third statement was provided by Mr L Aplin, Gamekeeper, Chideock Estate.
- Mr Aplin states that as Gamekeeper he spends a lot of time out and about on the land and **"there is very little that goes on at the Chideock Manor Estate"** without him noticing it.
 - Mr Aplin states that he is very familiar with the footpath routes that cross the estate, which are well marked and maintained. In general walkers will stick to the footpaths but on odd occasions he comes across walkers who are lost and he points them in the right direction. Locals generally stick to the paths but on occasions take short cuts from one path to another.
 - Whenever he sees somebody who is not on a footpath he does challenge them and makes it clear that they are in the wrong place.
 - A fence has been cut by a walker to gain access and gates have been sealed or wired up with barbed wire to stop unauthorised access.
 - Mr Aplin concludes by stating that he has challenged the applicant, Mrs Macdermott on several occasions since the spring of 2006.

- (g) The fourth statement, dated 24 August 2014, was provided by Jenny Ironmonger, Agricultural Contractor.
- Ms Ironmonger states that for approximately 20 years, until September 2012, she provided all of the arable contracting services to the estate. Her job involved a lot of outdoor work around the estate, part of which was footpath maintenance.
 - In undertaking many of the operations such as spraying and hedge trimming she had to be wary of lost walkers or locals taking short cuts and on occasions she did encounter lost walkers or locals and pointed out to them that they were “walking where they shouldn't be”.
- Mr Allen provided written statements from witnesses that support the assertion that the applicant was first challenged in the Spring of 2006 and on several occasions since.
 - The photographs of the various signs said to have been erected around the estate lack any details as to where and when they may have been erected. However, in his statement, summarised in paragraph 11 below, Mr Meatyard, representing The Ramblers, supports the assertion that after 1995 the landowner had taken action to inform and prevent public use of the routes by the placing of signs including ‘no footpath’ signs.
 - The witness statements provide evidence to the effect that employees, tenants and contractors acting under the authority of the estate had, on occasions, challenged users over a period of years dating from around 1992.
 - Mr Aplin, the gamekeeper, confirms that he challenged the applicant in 2006, this action being corroborated by the applicant.

Mr H Coates, landowner

10.4 Mr Coates e-mailed on 13 August 2014.

- (a) He states that he knew of no reason why the routes “A – L” should be given the status of footpath.
- (b) He states that the routes were “not used as footpaths, nor have they been to my knowledge as the landowner”.
- (c) Also, “A locally produced map of footpaths in Chideock does not include them” and as “there are a large number of footpaths already in existence over this ground so yet more are not required”.
- Issues relating to the desirability, suitability or safety of the application cannot be taken into account when determining whether the claimed rights exist. Consequently none of this evidence can be taken into consideration.

- 10.5 Following a telephone conversation with the investigating officer, Mr Coates wrote on 28 August 2014 to confirm that Mr L Aplin had been his gamekeeper for 10 years.
- (a) Mr Aplin was “diligent about directing trespassers to the footpaths on the estate and informing walkers of the need to adhere to the allowed routes”.
 - (b) Mr Aplin also maintains signs indicating that it is private property.
 - (c) Mr Coates believes that Mr Aplin “confronts walkers straying from footpaths on a regular basis, perhaps once a week across the estate”, something he strongly encourages him to do.
 - (d) Mr Coates enclosed a number of photographs showing a variety of signs found on the estate stating, ‘NO FOOTPATH’, ‘PRIVATE PROPERTY NO PUBLIC ACCESS’ and ‘PLEASE KEEP DOGS ON LEADS’.
- This evidence supports the assertion that public use of the routes may have been challenged, either directly or indirectly through the actions of the gamekeeper in challenging users or erecting and maintaining signs.

11 Analysis of other submissions

- 11.1 There was one submission providing information in respect of part of the claimed routes, namely that part between points J – I – H – G – F – K – L, which was made by Mr R Meatyard on behalf of The Ramblers. Mr Meatyard has no evidence in support of the routes as shown between points A – B, C – D – E – F and E – G.
- 11.2 Mr Meatyard refers to a conversation that took place when he was conducting research in the Bridport Museum, following which he conducted a survey of paths in Chideock in February 2009. Mr Meatyard discovered that the route was waymarked with official waymarks which, from their type and condition, appeared to have been in place for some considerable time. He believes that they were placed by somebody with knowledge of the local rights of way as they had been marked with the ‘supposed’ definitive path number. His enquiries led him to conclude that they had been placed by the previous Chideock Parish Rights of Way Liaison Officer in consultation with the landowner at the time and that these events would have taken place some considerable time prior to the application, the waymarks having been recorded during the Ramblers’ Survey in December 1995.
- 11.3 Mr Meatyard states that, in his opinion, it was the intention of the landowner at the time, however misguided or misinformed, to seek to divert the route of definitive Footpath 33 to a more convenient location and not to create additional rights of way. Although subsequent landowners do not appear to have taken any action to reinstate the definitive route it does appear that they have attempted to deny the presence of the unofficial diversions by placing ‘no footpath’ signs, although they did not remove the waymarks.

- 11.4 Mr Meatyard concludes that the section of the claimed routes J – I – H – G – F – K – L should not be part of the application but that either the definitive path (Footpath 33) should be reinstated or an application should be made to divert both Footpath 33 and Bridleway 35. “If no application is made then enforcement action ought to be taken to reinstate the definitive lines.”
- Mr Meatyard states that he has no evidence in support of the application. However, some support is provided by his observation that since 1995 the application routes, or parts of them, may have been waymarked.
 - Mr Meatyard appears to corroborate the statements of the landowner, agent and gamekeeper in acknowledging that subsequent landowners had made attempts to prevent use of these routes through the placement of various signs, including ‘no footpath’ signs’.
 - Whilst Mr Meatyard’s conclusions in respect of the actions he believes the former Rights of Way Liaison Officer undertook may be correct, this is not corroborated by the current landowner, his agent or employees.

12 **Date public use was brought into question**

- 12.1 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.
- 12.2 There is a suggestion that signs stating that the property was private and had no public access were erected at a number of locations around the estate and photographs of these signs have been provided. However, there is no indication as to when these signs were first erected and none of the user witnesses (preceding 2006) recall seeing them.
- 12.3 There is corroborated evidence of a challenge to public use of the routes in June 2006 involving the applicant, Mrs Macdermott. Other user witnesses are aware that this challenge took place.
- 12.4 The application was made on 21 September 2006 and is a further date of bringing the use of the route into question.
- 12.5 Witnesses opposing the application have provided statements that they were aware of signs and of gates that were sealed. However, the majority of these provide no specific dates. One witness, Ms Ironmonger, does state that she worked on the estate for 20 years until September 2012, suggesting that the signage may have been in existence from 1992. However, the other witnesses are not able to corroborate this.
- 12.6 It is considered that the earliest evidence of a date of a challenge to public use of the claimed routes as shown from A – B, C – D – E – F, E – G – H – I – J and G – F – K – L is as a result of the challenges made to the applicant that first took place in June 2006.

13 **Conclusions**

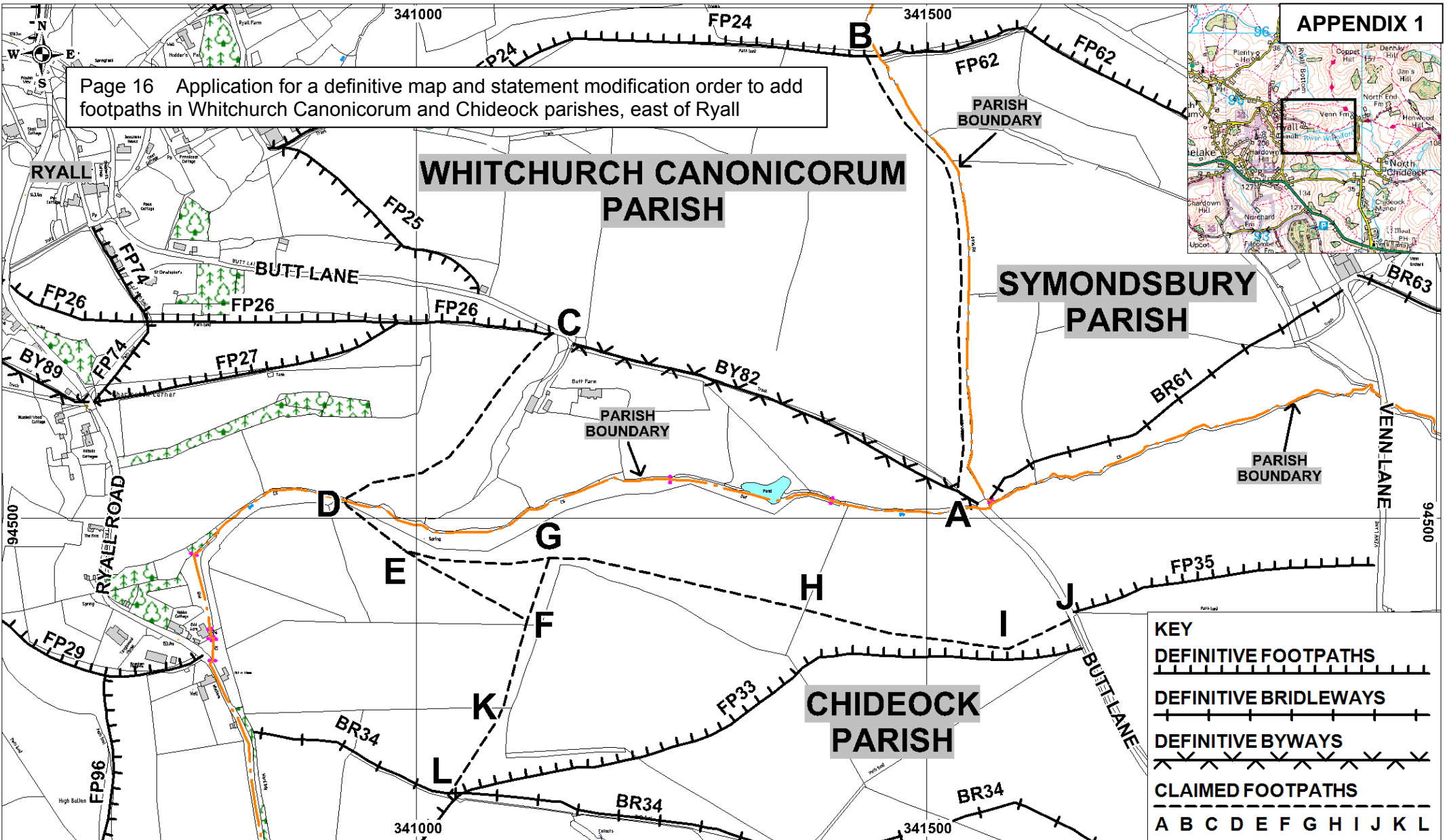
- 13.1 As no parts of the routes to be considered as shown A – B, C – D – E – F, E – G – H – I – J and G – F – K – L on Drawing 14/40 are currently recorded with public rights it is necessary for members to decide whether rights of way not shown in the definitive map and statement subsist or can be reasonably alleged to subsist.
- 13.2 None of the documentary evidence examined provides any support to the application and is considered insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist.
- 13.3 If members are satisfied that the documentary evidence does not show, on balance, that public rights of way on foot exist 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.
- 13.4 In respect of all of the routes 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 date of challenge in June 2006.
- 13.5 There is evidence of use of all of the routes by several members of the public but only one of these individuals, the applicant, has used all of the routes for the required minimum period of 20 years prior to the date of challenge in June 2006. There is also evidence that some of this use may not have been ‘as of right’ as one witness, Mr Aplin the gamekeeper, is aware that fences have been cut. Consequently, the user evidence is considered as being extremely weak and, on balance, insufficient to demonstrate a presumed dedication under Section 31 of the Highways Act 1980. Nor is it considered to raise any inference of dedication under common law.
- 13.6 It is therefore recommended that the application be refused.

Mike Harries

Director for Environment and the Economy

May 2015

Page 16 Application for a definitive map and statement modification order to add footpaths in Whitchurch Canonorum and Chideock parishes, east of Ryall



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD FOOTPATHS, CHIDEOCK AND WHITCHURCH CANONICORUM PARISHES NEAR RYALL

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

GRID REFERENCES

- | | |
|---------------|---------------|
| A SY 41539453 | G SY 41129446 |
| B SY 41449495 | H SY 41379441 |
| C SY 41139468 | I SY 41579437 |
| D SY 40939451 | J SY 41639439 |
| E SY 40989446 | K SY 41089431 |
| F SY 41119439 | L SY 41039422 |

Ref: 14/40

Date: 29/07/2014

Scale 1:5000

Drawn By: ACWH

Cent X: 341299

Cent Y: 94593

GEOGRAPHICAL INFORMATION SYSTEMS



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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 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

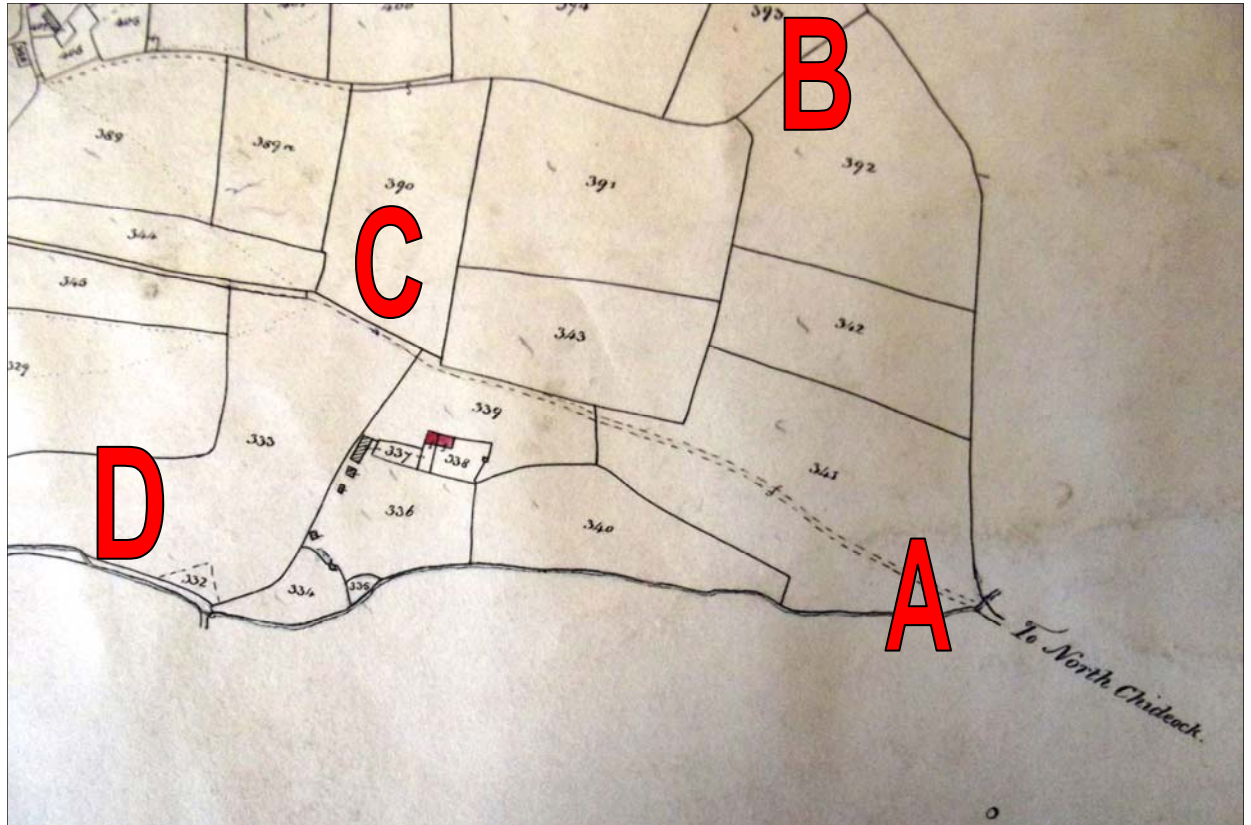
Date	Document	Comment
1765	Isaac Taylor's Map of Dorset	Not shown
1773	Map of Dorset by J Bayly	Not shown
1787	J Cary Map of Dorset	Not shown
1796	Isaac Taylor's Map of Dorset	Not shown
1801	C Smith New Map of Dorset	Not Shown
1805	Map of Dorset by J Stockdale	Not shown
1805	Ordnance Survey Drawings	Not shown
1811	Ordnance Survey First Edition scale 1 inch:1 mile	Not shown
1815	J Arrowsmith's Map of Dorset	Not shown
1826	Greenwood Map of Dorset	Not Shown
1844	Whitchurch Canonorum Tithe Apportionment & Plan	Not shown
1846	Gazetteer Dorset	Not shown
1848	Pigot & Son Map of Dorset	Not shown
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	Not shown
1888	Ordnance Survey First Edition map scale 25 inches:1 mile	Not shown
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.	
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1898	Ordnance Survey Revised scale 1 inch:1 mile	Not shown








Date	Document	Comment
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Not shown
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Not shown
Early 1900s	Map of Dorset by George Richmond	Not shown
1900s	W & A K Johnston Map of England scale 3 miles:1 inch	Not shown
1900s	Bacon's New Revised Map of Dorsetshire	Not shown
1900s	Bacon's Geographical Map of Dorsetshire	Not shown
1900s	G Philip & Son Geological Map of Dorset	Not shown
1900s	G Philip & Son Botanical Map of Dorset	Not shown
1900s	Weller Despatch Atlas	Not shown
1910	Finance Act plans	Not shown
1911	Bartholomew Tourists & Cyclists map scale 2 miles:1 inch	Not shown
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1920	Bartholomew Tourists & Cyclists Map scale 2 miles:1 inch	Not shown
1920s	Bacon's Motoring and Cycling Road map	Not shown
1936	W & A K Johnston Motoring & Touring map of England scale 3 miles:1 inch	Not shown
1944	Bartholomew's Revised Half Inch Contoured map	Not shown
1946	Ordnance Survey 1 inch to 1 mile New popular edition sheet 177	Not shown
1947	Aerial Photograph	Not shown
1953	Parish Survey Whitchurch Canonorum	Not shown

Date	Document	Comment
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.	
1953	Draft map for the west area	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.)	
1964	Provisional map	Not shown
1966	First definitive map	Not shown
1972`	Aerial Photograph	Not shown
1974	Revised draft map	Not Shown
1989	Current definitive map	Not Shown
1997	Aerial Photograph	Not shown
2005	Aerial Photograph	Not shown

Extracts from key documents
(See the Director for Environment's file RW/T446
for copies of other documents mentioned)

1844 Whitchurch Canonorum Tithe Apportionment Plan & Key



EXPLANATION	
<i>Dwellinghouses</i>	— — — — — 
<i>Outhouses</i>	— — — — — 
<i>Roads</i>	— — — — — 
<i>Water</i>	— — — — — 
<i>Footpaths</i>	— — — — — 
<i>Parish Boundary</i>	— — — — — 
<i>Division Boundary</i>	— — — — — 

1910 Finance Act Plan

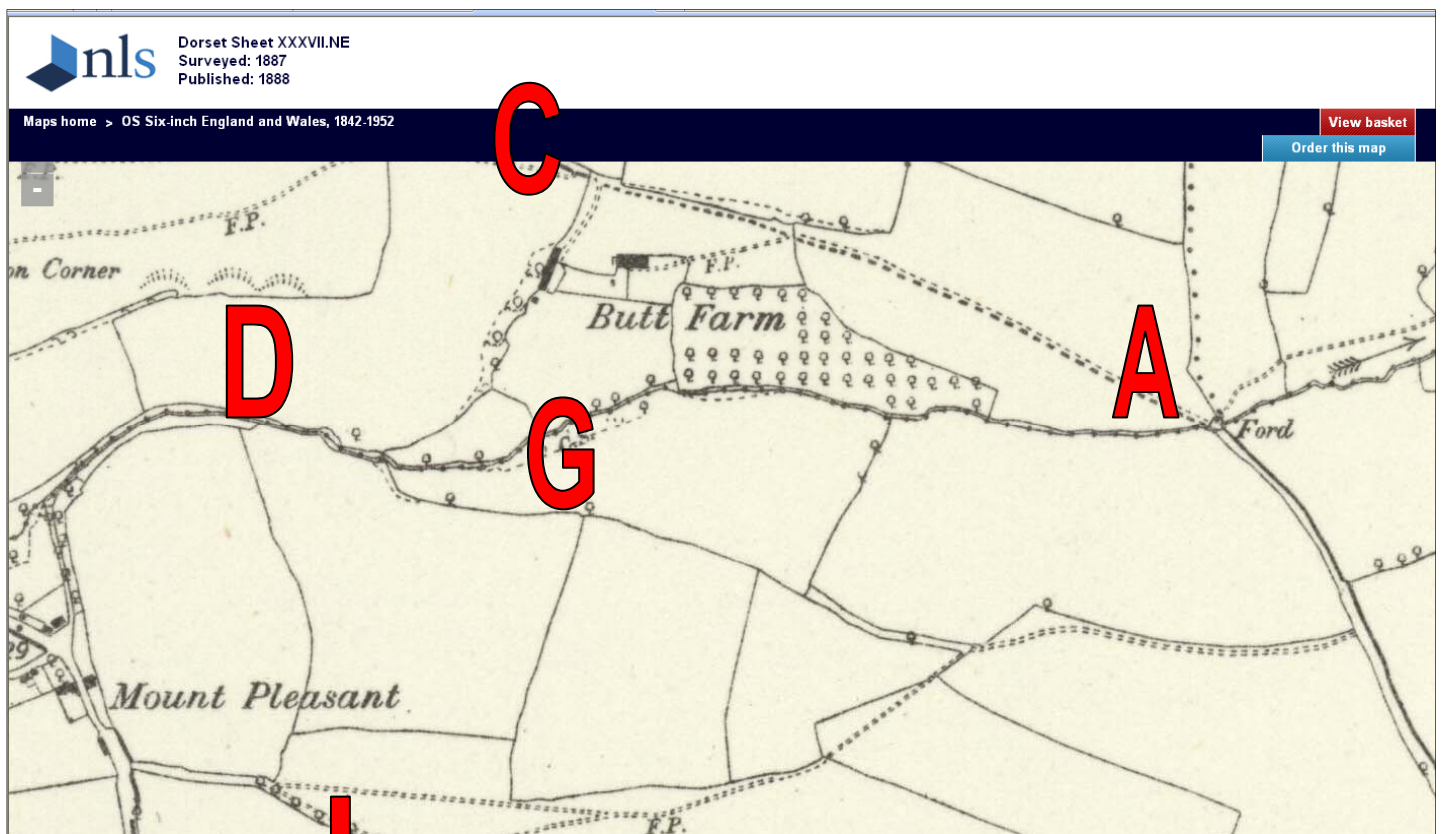
(A - B; C - D - E - G - H - I - J; G - F - K - L; E - F Hereditaments 88 and 141)



1811 Ordnance Survey First Edition scale 1 inch:1 mile



1888 Ordnance Survey First Edition scale 6 inches:1 mile



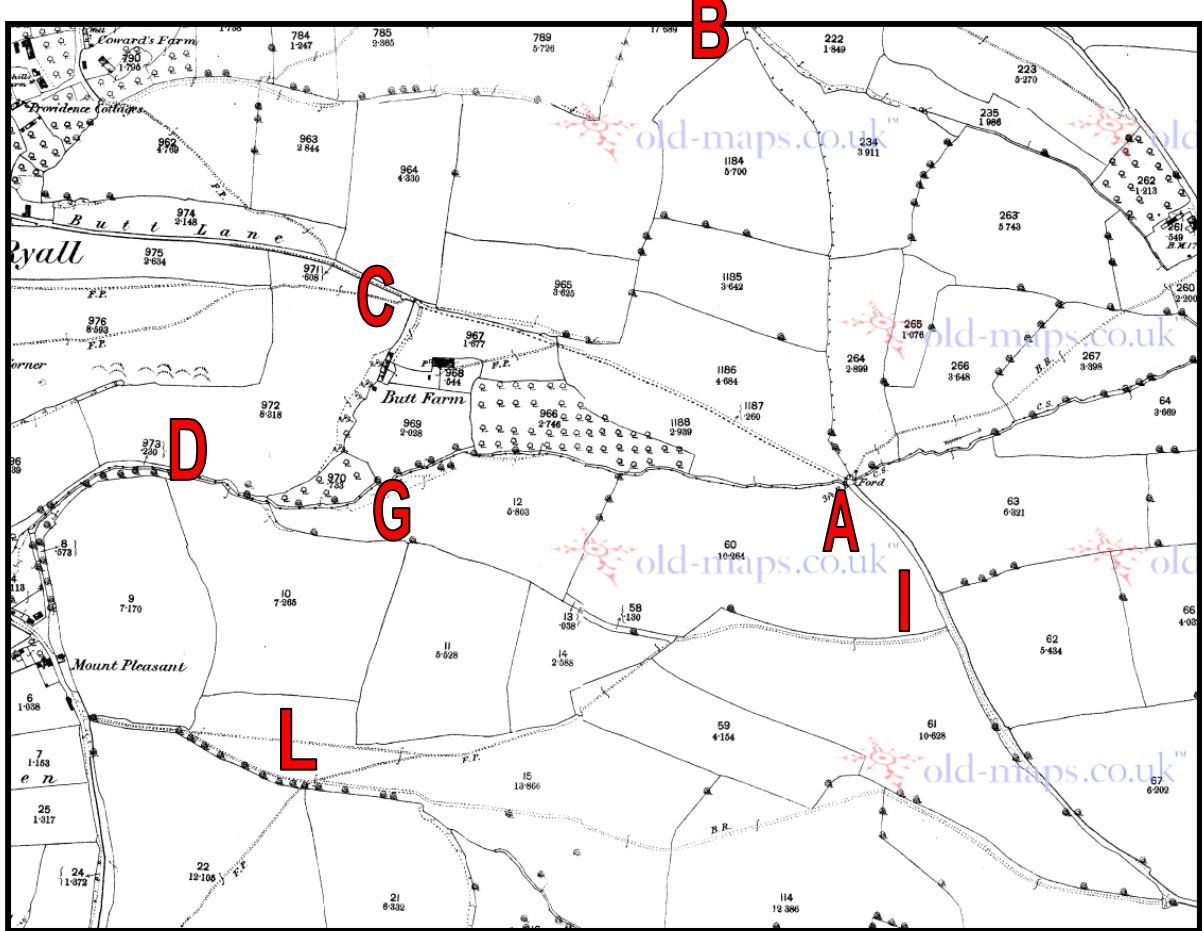
Dorset Sheet XXXVII.NE
Surveyed: 1887
Published: 1888

Maps home > OS Six-inch England and Wales, 1842-1952

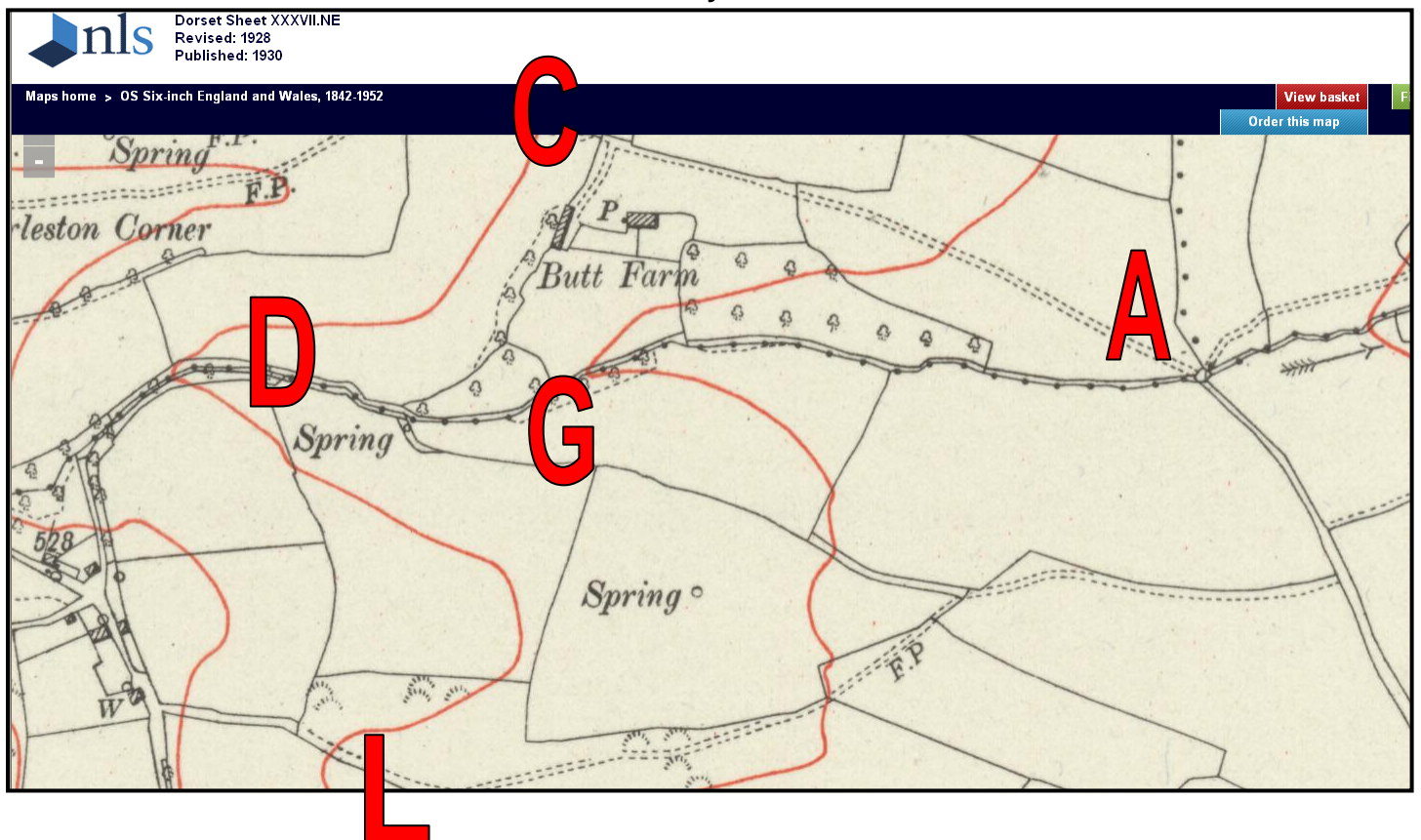
View basket

Order this map

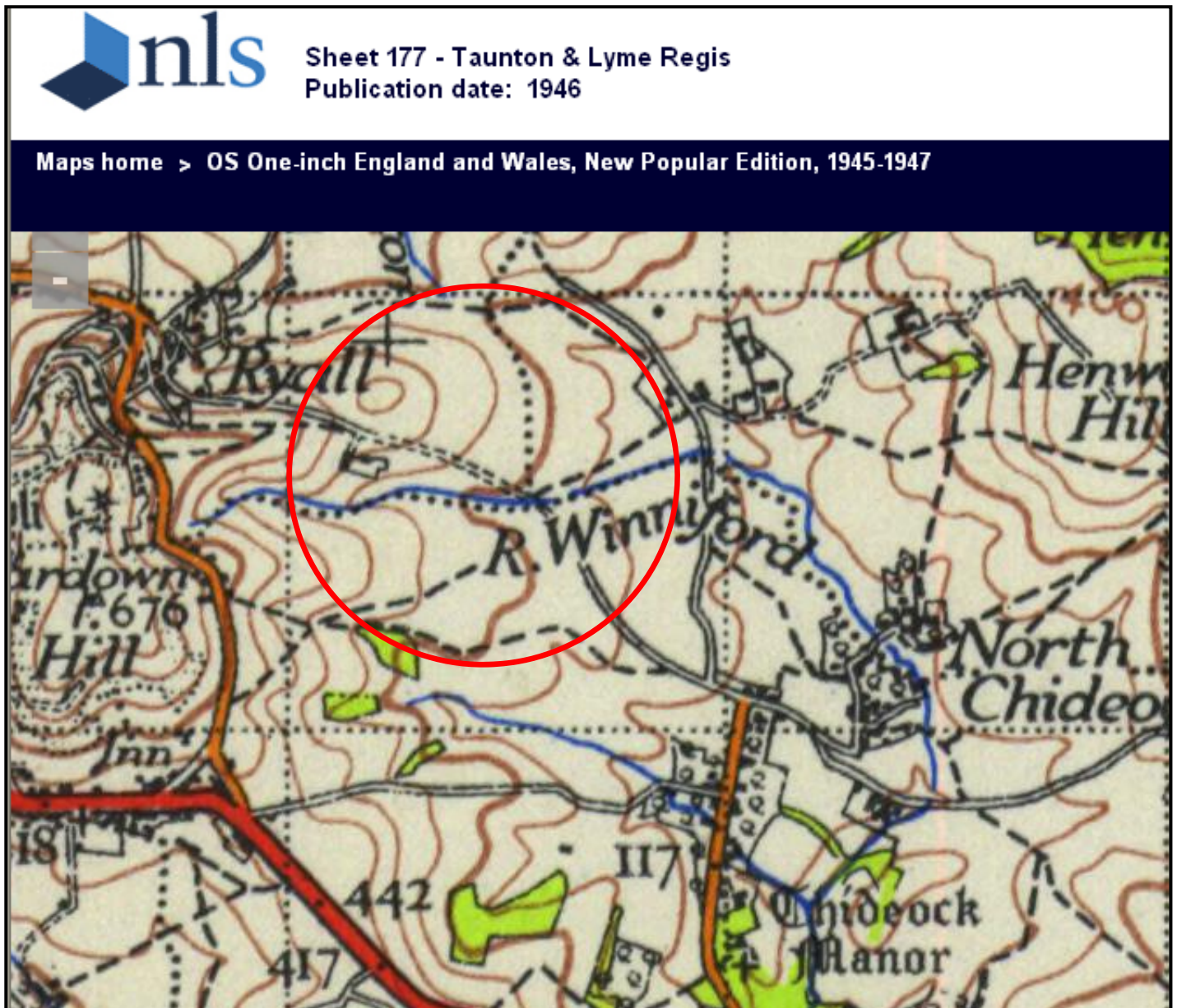
1888 Ordnance Survey scale 25 inches:1 mile



1930 Ordnance Survey scale 6 inches:1 mile



1946 Ordnance Survey scale 1 inch:1 mile



User Evidence
Table summarising user evidence from forms completed in 2006

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs R Chelton	1983 - 2001	156 or more times a year	On foot	Used all routes for pleasure. Others also used the route on foot. Stiles, unlocked gates and notices saying "please shut the gate" on route. There were also waymarkers. No other obstructions. Never challenged.
Mr R Eteen C – D only	2005 - 2006	6 times a year	On foot	Used C to D and then via a different route, not subject to this application, to Ryall road. Unlocked gates on route. No notices or other obstructions. Never challenged.
Mrs M Harding	3 years (form completed in 2006)	Lots and still walking the route	On foot	Used all routes for pleasure, on foot and dog walking. Others also used the route on foot and with cycles. Stiles at North Chideock, gates were unlocked, no notices or other obstructions. Never challenged but knows of a challenge by gamekeeper to Mrs Macdermott on 28 June 2006.
Mr S Huggins	1994 – 2006 and onwards	200 times a year	On foot	Used all routes for pleasure. Others also used the route on foot. Stiles and unlocked gates on route. No notices or other obstructions (just waymarkers). Challenged - game keepers told dog walkers not to use the route 2005-2006.
Mrs A Macdermott	1983 to present (form completed in 2006)	150 – 200 times a year	On foot	Used all routes for pleasure. Others also used the route on foot, horse, cycle and scramble bikes. Stile towards north Chideock. Unlocked gates, waymarkers and notice "Farmland please shut the gate". On 28 June 2006 challenged by game keeper. Well defined tracks, stiles have been there for many years. Tenants have placed blue plastic tube covering electric fence so people can climb over.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Miss A Martin All routes except A – B and I – J	1999 to present (form completed in 2006)	15 – 20 times a year	On foot	Used all routes except A to B and I to J for pleasure. Others also used the route on foot and horseback. Notice “Farmland please shut the gate”. Stiles, gates and waymarkers on route. Never challenged but aware that applicant was challenged on 28 June 2006.
Mr D G Martin C – D – E – G – H – I only	1999 - 2006	3 or 4 times a year	On foot	Used route C – D – E – G – H – I for pleasure. Others also used the route on foot. Stiles, unlocked gates, some waymarks but no other obstructions. Never challenged but aware that applicant was recently stopped (2006). No notices.

**Chart of user evidence to show periods of use
(from forms completed in 2006)**

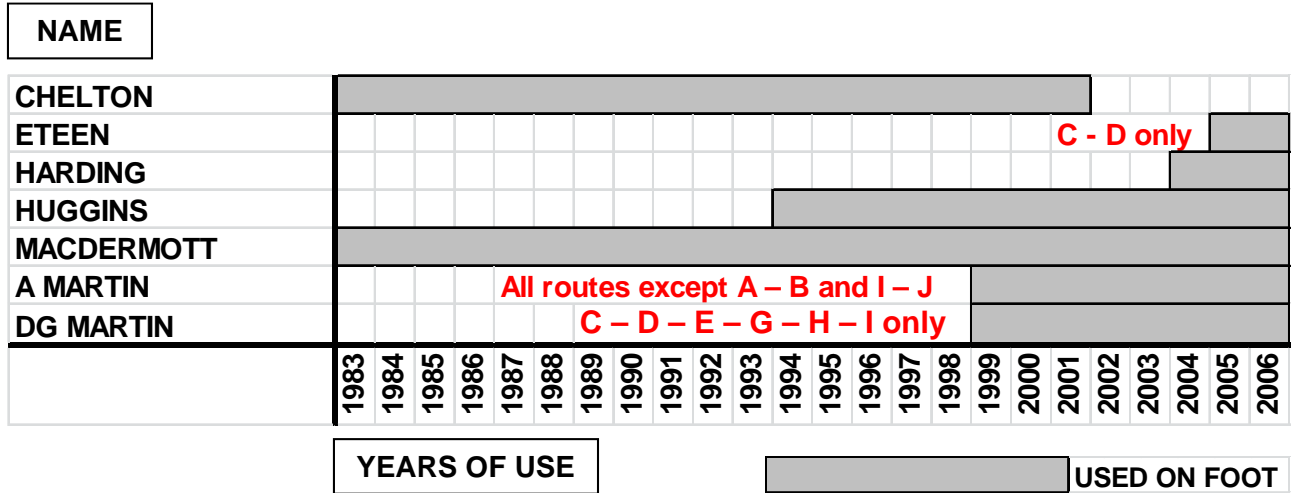


Chart to show level of use

Chart to show level of use

