

Agenda item:

Regulatory Committee

5

Dorset County Council



Date of Meeting	30 July 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 Footpath 12 to Footpath 15, Bradpole adjacent The Sir John Colfox School
Executive Summary	In response to an application to add a footpath at Bradpole as shown A – B – B1 – C – D – E on Drawing 13/36/1 (Appendix 1) this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.</p> <p>A full consultation exercise was carried out in September 2013, 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.</p> <p>Eleven 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>

	<p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications:</p> <p>None</p>
<p>Recommendation</p>	<p>That the application be refused.</p>
<p>Reason for Recommendations</p>	<p>The available evidence shows, on balance, that the claimed right of way does not subsist nor 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"> • Work in partnership to ensure the good management of our natural and historic environment • Work with partners and communities to maintain cycle paths, rights of way and disabled access • Encourage tourism to our unique county • Support community transport schemes • Ensure good management of our environmental and historic assets and heritage <p>Promoting Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Actively promote physical activity and sport • Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that is conducive to cycling and walking • Improve the provision of, and access to, green, open spaces close to where people live
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 13/36/1 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"> ▪ 1845 Bradpole Tithe plan

	<ul style="list-style-type: none"> ▪ 1910 Finance Act plan ▪ 1910 Finance Act Field Book entries – Hereditaments 395 & 396 ▪ Aerial Photographs – 1997 & 2005 <p>4 - User evidence</p> <ul style="list-style-type: none"> • Table summarising user evidence from forms completed in 2007 • 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/T465).</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/T465, 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 Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add a footpath as shown between points A – B – B1 – C – D – E on Drawing 13/36/1 (Appendix 1) was made by Miss S Porter on 7 July 2007.
- 1.2 The route claimed commences at point A, a 5 metre wide gateway at its junction with Footpath 12, Bradpole and then proceeds in a generally northerly direction along the eastern margin of a pasture field to point B. At the time of the survey, 2013, the way was easily discernible due to the 'well worn' nature of the path. However, whether this was due to the movement of stock in addition to any members of the public who may have been using it, is open to speculation.
- 1.3 At point B there is a hedge and bank with a well-worn path passing through a gap in the hedge. On the southern side of the hedge there is evidence of a stock fence consisting of wire netting, posts and a sheep hurdle. The fence is 'broken' down in the gap. On the northern side of the hedge at point B there is an electrified stock fence.
- 1.4 The path continues in a north north easterly direction along the eastern margin of a pasture field alongside an electric stock fence and hedge to point B1. At this point the electric fence and hedge turn sharply eastward for several metres before turning to run north north easterly once more. However, the claimed route deviates from the hedgeline and continues from point B1 in a north north easterly direction, cutting the corner of the field and on towards point C.
- 1.5 At point C the path turns to follow a north easterly direction across a pasture field towards a hedge at point D. Here there is an electric stock fence and a well-worn gap through the hedge. From point D the path continues in a north easterly direction towards its termination point at its junction with Footpath 15, Bradpole, shown as point E.
- 1.6 As the route passes through pasture fields it is, for the majority of its length, undefined although a well-worn route is visible on the ground, the width of which varies from approximately 0.5 to 1 metre. The gateway at point A is 5 metres in width. However, between points A – B – B1 the route follows the headland of a pasture field and between points B1 – C – D – E it follows a cross-field route.
- 1.7 The land shown between points A and B is registered to Mr E T Colfox and Mr P J Colfox, Bristol. The remainder of the land as shown between points B and E is unregistered but is presently occupied and believed to be owned by Mr D Cooper, Pymore, Bridport.

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/T465)
- 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/T465)
- 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/T465)
- 5.1 No additional evidence has been submitted in support of this application.
- 6 **Evidence opposing the application** (copies available in the case file RW/T465)
- 6.1 Four letters were received as a result of the consultation.

Name	Comments
Martin Stones, Chair of Governors The Sir John Colfox School	8 October 2013 - Objects to the proposal on the grounds that the route is located on the boundary of the school grounds and has concerns in respect of child protection issues.
Mr R Hutchinson	23 April 2014 - States that he has repaired the fence at point B for the landowner on a number of occasions. On each occasion the fence has been broken down again by walkers.
B and I Clapham	28 April 2014 - Do not support the application as there is already a footpath in adjacent field. Concerned as to potential risk to livestock and security of adjacent property.
Mr D Cooper (Landowner)	29 April 2014 - States that for the past 25 years he has spoken to users, informing them that the route was not public. Has repaired gaps in fence including when the wire has been cut. Reported that the post and wire fence defining Footpath 15 had been stolen and the incident reported to the police on 6 April 2005.
The Sir John Colfox School B and I Clapham	Raise issues such as: - <ul style="list-style-type: none"> • Safety – child protection issues • Security to premises • Disruption to residents, wildlife and the natural environment

- 7 **Other submissions received** (copies available in the case file RW/T465)
- 7.1 A further five submissions have been received, which are summarised below.

Name	Comments
Mrs C Shoopman, British Horse Society	6 October 2013- No evidence for consideration.
Bradpole Parish Council	10 October 2013 - Raises concerns for the safety and security of the pupils.
Symondsburry Estate	30 September 2013 - The Estate Office advises that they have no interest in the land.
Western Power Distribution	30 September 2013 - They have overhead apparatus in the area but have no objection to the proposal.
Dorset County Council (Archaeology)	6 November 2013 - No objections, no cause for concern.

8 Analysis of documentary evidence

Tithe Apportionment and Plan

8.1 The **1845 Bradpole Tithe Apportionment Plan** depicts the fields through which the application route passes. The apportionments are numbered 567 (A to B), 548 (B to D) and 549 (D to E). Footpath 12, Bradpole appears to be delineated by means of a faint dotted line, although there is no accompanying key to confirm this. However, there is no indication of a path or way corresponding to that of the application route shown on the plan.

- This evidence provides no support to the application.

Parish Map and Numerical Survey

8.2 The **1837 Parish Map of Bradpole** may be a draft of the 1845 Tithe Map as they are very similar in content. The land over which the claimed route passes is shown on the plan although the route itself is not depicted. The parcels of land are numbered the same as on the Tithe Map and there are many dashed lines drawn on the plan. These may indicate the presence of paths and at least two of them generally correspond to the recorded positions of Footpaths 12 and 15, Bradpole.

8.3 There is no accompanying key but a reference book entitled "**Bradpole Numerical Survey 1838**" is believed to be associated with this plan. The book identifies each parcel of land, the occupier, proprietor, area and also has a section for notes. **Parcel 567** is identified as '**Great Dodham Nap**' occupied by Richard Seymour and within the notes it refers to 2 paths. **Parcel 548** is identified as '**Horse Piddle**' which is crossed through and '**Hospital**' has been written alongside. Despite the fact that a pecked line passes through this parcel there is no reference to a path within the accompanying notes. **Parcel 549** is identified as 'Hooks Hill' and the accompanying notes are difficult to read but may describe it as either "**thin to keep path**", "**thin, steep path**" or "**thin, sheep path**" suggesting that it may have been affected by a path of some description.

- Despite the depiction of paths on the Tithe map and reference to paths in the accompanying survey there is no corresponding key to confirm this or evidence that would help in determining their status, if any. As a consequence this evidence provides little, if any, support to the application.

1910 Finance Act

- 8.4 The **1910 Finance Act** plan, which uses an Ordnance Survey 1:2500 (25 inches:1 mile) scale base map, shows that the field through which that part of the application route from point A to B passes was recorded as **Hereditament 396** and that part from B to E falls within a detached part of **Hereditament 395**, which consisted of three separate parcels. No path or way corresponding to that of the claim is depicted upon the plan.
- 8.5 The accompanying **Field Book** describes **Hereditament 395** as including land and premises. Under the heading **Fixed Charges, Easements, Common Rights and Restrictions**, “public footpath” is recorded. However, within the list of deductions there is no deduction recorded in respect of **Public Rights of Way and User**.
- 8.6 **Hereditament 396** consists of one parcel of land and is described within the Field Book as “land”. Under the heading **Fixed Charges, Easements, Common Rights and Restrictions**, “footpath across field” is recorded. Within the list of deductions a deduction of £35 was recorded in respect of **Public Rights of Way and User**. An existing public right of way, **Footpath 12, Bradpole**, is recorded on the current definitive map and statement as crossing this parcel of land.
- In respect of **Hereditament 395**, as no deductions for public rights of way were recorded it appears reasonable, without evidence to the contrary, to assume that it was determined that either the public footpath claimed did not exist or it was not regarded as being public but perhaps treated as an easement or other restriction. If the latter, as there is no deduction for any easements or other restrictions on the land, it suggests that it had no effect on the value of the land.
 - In respect of **Hereditament 396**, there is a deduction of £35 for a footpath across the land. Without any evidence to the contrary it seems reasonable to assume that this sum can be attributed to the footpath shown on the map with double pecked lines and ‘F.P.’ alongside and which is now recorded as Footpath 12, Bradpole. Although £35 appears to be a very generous allowance there is no evidence to suggest that any other rights of way existed across this parcel of land.
 - It should also be borne in mind that there were no penalties for not acknowledging the existence of a public right of way. Conversely, a landowner deliberately attempting to reduce their potential tax liability by falsely claiming that a right of way existed over their land faced severe penalties.
 - This evidence provides nothing in support of or against the application and is considered as being neutral in this instance.

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 Bradpole parish was completed in **1806** and does not depict any part of the claimed route.
- 8.8 Neither the **1811 First Edition Ordnance Survey map** nor the **1898 Revised Ordnance Survey map**, both at a scale of 1 inch:1 mile, shows the claimed route.
- 8.9 Neither the **1888 First Edition map** nor the **1903 Second Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) depicts any part of the claimed route although **Footpaths 12 and 15, Bradpole**, are clearly shown on both.
- 8.10 Neither the **1889 First Edition map** nor the **1902 Second Edition Ordnance Survey map** at a scale of 1:2500 (25 inches: 1 mile) depicts the claimed route.
- The **Ordnance Survey Maps** provide evidence as to the physical characteristics on the ground at the date of the map. However, in this instance they provide no support to the claim.

Commercial maps

- 8.11 A number of commercial maps have been examined but due to their relatively small scale none were found to depict the claimed route.
- It is therefore considered that they provide no evidence in support of the application.

Parish Survey and County Council rights of way maps and records

- 8.12 The **Bradpole Parish Survey** of rights of way was completed in **1952**. The application route was not included amongst those claimed by the parish to be public rights of way at that time.
- 8.13 Neither the **1953 draft map** for the west area, the **1964 provisional map** nor the **1966 first definitive map** records any part of the claimed route.
- 8.14 The route was not considered during the **1973 Special Review** and therefore was not recorded on the **1974 revised draft map** or upon the **current definitive map** (sealed **1989**).
- This evidence suggests that the route does not appear to have been the subject of any formal investigation as to whether it may hold public rights since the implementation of the **National Parks and Access to the Countryside Act 1949**.

Aerial photographs

- 8.15 Aerial photographs from the years **1947, 1972, 1997, 2002, 2005** and **2009** have been examined.
- 8.16 The **1947** photograph depicts the course of the claimed route very clearly. The hedges adjacent the route appear well maintained. The gateway at point A is discernible and there is evidence of use that appears to be vehicular and associated with the management of the land. However, there is no visible evidence of use that could be attributed to the application route.
- 8.17 The **1972** photograph depicts a similar situation to that of 1947 with no visible evidence of use.
- 8.18 The photograph from **1997** depicts a similar situation to the earlier photographs. The adjacent hedgerows do not appear to be as well maintained and there is a gap in the hedge at point D, but once again whether this is due to public use or the movement of stock is open to speculation. With regard to the rest of the route there is no visible evidence of use.
- 8.19 The **2002** photograph may show some signs of use that generally corresponds to the route as shown between points C and D although there appears to be a number of tracks within these fields. In particular the route of Footpath 15, Bradpole is shown very clearly.
- 8.20 The later photographs from **2005** and **2009** clearly depict a route corresponding with that of the claim that appears to be well used.
- The aerial photographs from 1947 to 2002 provide little, if any, support to the application.
 - The later photographs from 2005 and 2009 do show that by this time the route had become well established and appears to be well used.

9 Analysis of user evidence supporting the application

- 9.1 A total of 11 forms of user evidence were submitted with the application in 2007, involving 12 witnesses in total. No further user or supporting evidence was received in response to the consultation that commenced in September 2013.
- 9.2 One witness, Mr Homewood, has used the route continuously from 1955 to 2007. Mr Homewood is the only user to have provided evidence of use prior to 1988. All of the witnesses have provided plans, in addition to their written statements, with the route they claim to have used annotated upon them. All of the witnesses claim to have used the same route.
- 9.3 All of the witnesses state that they used the application route on foot for pleasure and all state that they had observed other users on foot. One witness, Mr Gregory, claims to have observed users in cars. However, it should be noted that at the time of the site visit it would not have been possible to use the claimed route in a car.

- 9.4 The earliest date of use on foot is from 1955 and the latest date of use is 2007, this encompasses a period of 53 years. The number of users per year varies from one between 1955 and 1987 to 10 in 2005/06. Frequency of use varies from every day to once a month and the majority of the witnesses used the route on a daily or weekly basis.
- 9.5 The majority of witnesses state that they were never challenged when using the route. None of the witnesses were aware of any locked gates or other obstructions, which would have prevented their use of the route, nor to 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 state that they assumed the way was already public.
- 9.6 One witness, Mrs Stork, did not specify the dates when she used the route. A further six witnesses have used the route only for a short period of time commencing in 2003, four years prior to the date of the application in 2007.
- 9.7 In her statement of 7 July 2007 Miss S Porter, the applicant, stated that she had assumed access was permitted. Miss Porter stated in her form of evidence that a notice stating 'No Trespassing' was in place on the route from 6 May 2007 and that the path was obstructed by a crop of maize. She was contacted by telephone on 15 May 2015 in order to clarify her statement.
- Miss Porter was able to explain that by this she meant that permission was not required.
 - Three other witnesses, Mr and Mrs Cavanagh and Mrs Blake, corroborate Miss Porter's statement that the route was obstructed by a crop on 6 May 2007.
- (a) Miss Porter also mentioned that during her period of use (1988-2007) she became aware of obstructions only when sheep were in the field and an electric fence erected around the perimeter. This occurred for four or five weeks, perhaps twice annually and during these periods she would either use a different route or, more often, turn back.
- Other users also mentioned the presence of electric fences at times.
- 9.8 Several other witnesses were also contacted in order to clarify their statements, not all of whom have responded. Mr Gregory, who claimed to have used the route for three years from 2003 to 2006, confirmed that he had stopped using the route in 2010 and was unlikely to use it again. In Mr Gregory's evidence form he stated that he had seen other users on foot and in a car. He also referred to there being fences obstructing the route but these were damaged all the time and that the route was now blocked off by old trees. Mr Gregory also claimed to have received a letter from Dorset County Council a few weeks after he had completed his evidence form stating that the application had been rejected.
- Mr Gregory's evidence appears a little contradictory. He completed his evidence form in July 2007 claiming that he had used the route for 3 years ending in 2006 but during his telephone conversation stated that he had last used the route in 2010.

- In his evidence form of 2007 Mr Gregory states that he saw a user in a car on the route. This seems highly unlikely, indeed not possible, unless he has seen the farmer/ landowner tending his stock or has confused this route with another.
- Mr Gregory also provides evidence to the fact that a fence was erected but damaged throughout his period of use, which commenced in 2003, suggesting that users may have used force in order to gain access to the route.

10 Analysis of evidence opposing the application

- 10.1 Mr D Cooper, one of the landowners affected by the proposal, made a submission that was received on 29 April 2014. Mr Cooper states that for some 25 years he has challenged people walking in the field containing the route of the proposed footpath, advising them where the public footpath was located and requesting that they stick to it. In addition he states that he has had to repair fences, including a barbed wire fence that had been cut, although he cannot recall and did not at that time realise that it may have been expedient to note the dates when these incidents had taken place.
- (a) On 15 March 2005 he met with the Area Rights of Way Officer at the time in order to define the route of Footpath 15, Bradpole where it crossed over his land (the claimed route connects with Footpath 15 at point E). A post and wire fence was erected from 'stile to stile' across the field (from point E west towards the Pymore Inn) and signs stating "keep to the path" were attached to it. The following month the posts and wire were stolen, the incident being reported to the police. A copy of what Mr Cooper states is the police response to that incident has been provided, which is dated 6 April 2005.
- The police response dated 6 April 2005 confirms that Mr Cooper had been the victim of a crime at Cooks Hill, Watford Farm, but contains no other information such as the details of the actual crime that took place.
 - The police were asked if they could provide these details but their response stated that they no longer held the records.
 - Whilst this evidence cannot be corroborated the dates of the alleged offence and the police response to it are consistent. Mr Hutchinson also reported that fences were being broken down during the same period (see paragraph 10.2 below) and consequently, without any evidence to the contrary, it appears reasonable to conclude that the incident to which Mr Cooper refers did take place. As such it is considered that this evidence may indicate a challenge to the use of the route.
- 10.2 On 23 April 2014 Mr R Hutchinson submitted a response in which he explained that he was a friend of Mr Cooper and had conducted repairs to the fences for a number of years. The repaired fences were subsequently pulled down again, something he attributes to people walking their dogs.

- Mr Hutchinson was interviewed on 29 April 2015 when he confirmed that the fence to which he was referring was located at point B as shown on Drawing 13/36/1. He also confirmed that he began repairing the fence in May or June 2005 and estimated that he had repaired it perhaps 40 or 50 times during the last ten years.
- Mr Hutchinson's account provides further evidence that fences erected by the landowner were being broken down, suggesting that access to the route was obtained through force.

10.3 Mr and Mrs B Clapham own and manage the Pymore Inn, Pymore, which borders land containing part of the claimed route. They note that, whilst very few people use the field to exercise their pets, many of those that do so use it indiscriminately and with dogs off their leads, even when stock is present in the field. They do not support the proposal and note that adequate footpaths on adjacent land already exist.

- As members will be aware, issues in respect of security, safety or desirability are not matters that can be taken into consideration when determining the application.

10.4 Mr Stone of The Sir John Colfox School noted that the application route ran along the boundary of the school and raised concerns in respect of child protection/safety.

- Again, issues in respect of security, safety or desirability are not matters that can be taken into consideration when determining the application.

11 **Analysis of other submissions**

11.1 None of the other submissions contain any evidence that can be taken into consideration when determining the application.

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 evidence of a challenge to public use of the route in or around March 2005 when the fence erected by the landowner at point E was broken down. This fence was erected during March 2005 and its theft was reported to the police, who responded on 6 April 2005.

12.3 Mr R Hutchinson has provided evidence of his on-going repairs to the fence at point B, which commenced in May or June 2005. Mr Hutchinson states that the fence was repaired and then broken down by walkers, a situation that continued for ten years.

12.4 One witness recalls that a fence was "damaged" throughout his period of use that commenced in 2003.

- 12.5 Several users recall that they were prevented from using the route due to a crop of maize in the field on 6 May 2007, when signs were also erected advising "No Trespassing".
- 12.6 The aerial photographs provide no evidence of any or any significant use prior to 2005.
- 12.7 The application was made on 7 July 2007 and is a further date of bringing the use of the route into question.
- 12.8 It is considered that the earliest evidence of a date of a challenge to public use of the claimed routes as shown between points A – B – B1 – C – D – E is as a result of the challenge made to the public by means of the erection of a post and wire fence by the landowner in March 2005.

13 **Conclusions**

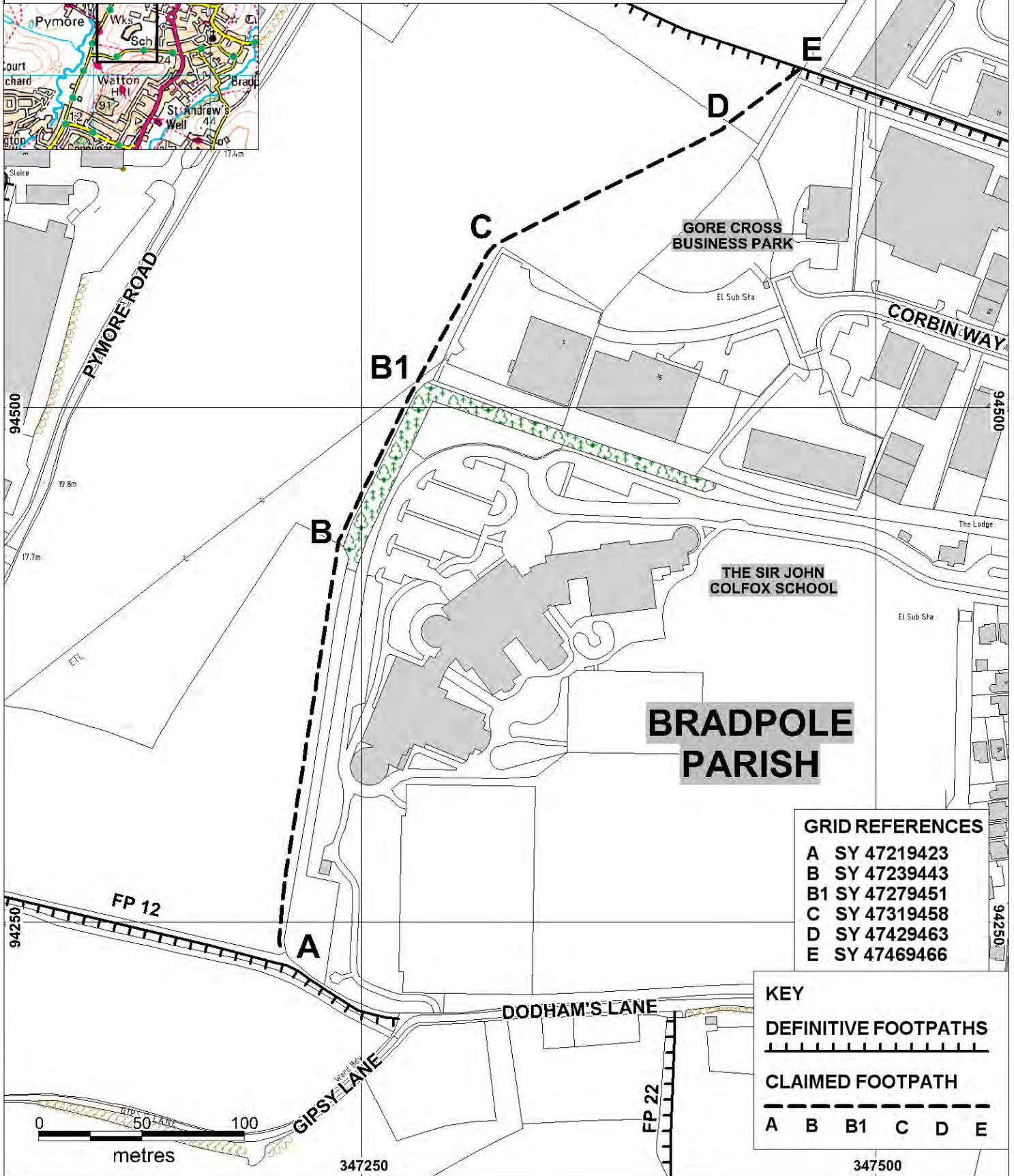
- 13.1 As no part of the claimed route as shown between points A – B – B1 – C – D – E on Drawing 13/36/1 is currently recorded as a public right of way it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 13.2 None of the documentary evidence examined provides any support to the application and is therefore insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route
- 13.3 If members are satisfied that the documentary evidence does not show, on balance, that a public right on foot exists they should consider 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 the claimed route the relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980 is taken to be 20 years or more prior to the erection of the post and wire fence by the landowner in March 2005.
- 13.5 There was only one user in 1985, rising to four users in 1998. In 2005, the date of challenge, the number of users had increased to ten, six of whom had only used the route from 2003. Consequently, the user evidence is considered as being weak and, on balance, insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.
- 13.6 In light of the positive action taken by the landowner in 2005 and since that date, it is considered that the evidence does not support an inferred dedication under common law.
- 13.7 Therefore it is recommended that the application be refused.

Mike Harries

Director for Environment and the Economy

July 2015

Page 14 Application for a definitive map and statement modification order to add a footpath from Footpath 12 to Footpath 15, Bradpole adjacent The Sir John Colfox School and Gore Cross Business Park



GRID REFERENCES

- A SY 47219423
- B SY 47239443
- B1 SY 47279451
- C SY 47319458
- D SY 47429463
- E SY 47469466

KEY

DEFINITIVE FOOTPATHS

CLAIMED FOOTPATH

A B B1 C D E

WILDLIFE AND COUNTYSIDE ACT 1981

APPLICATION TO ADD A FOOTPATH FROM FOOTPATH 12 TO FOOTPATH 15 AT GORE CROSS BUSINESS PARK, BRADPOLE

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/36/1

Date: 23/04/2015

Scale 1:2500

Drawn By: ACWH

Cent X: 347320

Cent Y: 94437

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
1806	Ordnance Survey Drawings	Claimed route not shown.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Claimed route not shown.
1837	Parish Map of Bradpole	Depicts by means of pecked lines what appear to be paths, some of which generally correspond to parts of the claimed route. No key to determine status.
1838	Bradpole Numerical Survey	Refers to paths in parcels of land that contain claimed route but no accompanying key to determine status.
1845	Bradpole Tithe Apportionment and Plan	Claimed route 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	Claimed route 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.	
1889	Ordnance Survey First Edition map scale 25 inches:1 mile (1:2500)	Claimed route not shown.
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	Revised Ordnance Survey map scale 1 inch:1 mile	Claimed route not shown.
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Claimed route not shown.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Claimed route not shown.
1910	Finance Act plan	Claimed route not shown on plan. Accompanying Field Book entries show deductions for rights of way but in all probability these apply to paths currently recorded on the definitive map.

Date	Document	Comment
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1947	Aerial Photograph	No visible evidence of use.
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.	
1952	Parish Survey	Route not claimed.
1953	Draft map for the West area	Route not claimed.
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	Route not claimed.
1966	First definitive map	Claimed route not shown.
1972	Aerial Photograph	No visible evidence of use.
1974	Revised draft map	Route not claimed.
1989	Current definitive map	Claimed route not shown.
1997	Aerial Photograph	No visible evidence of use.
2002	Aerial Photograph	Some sign of use between points C and D.
2005	Aerial Photograph	Shows well- used route as claimed.
2009	Aerial Photograph	Shows well- used route as claimed.

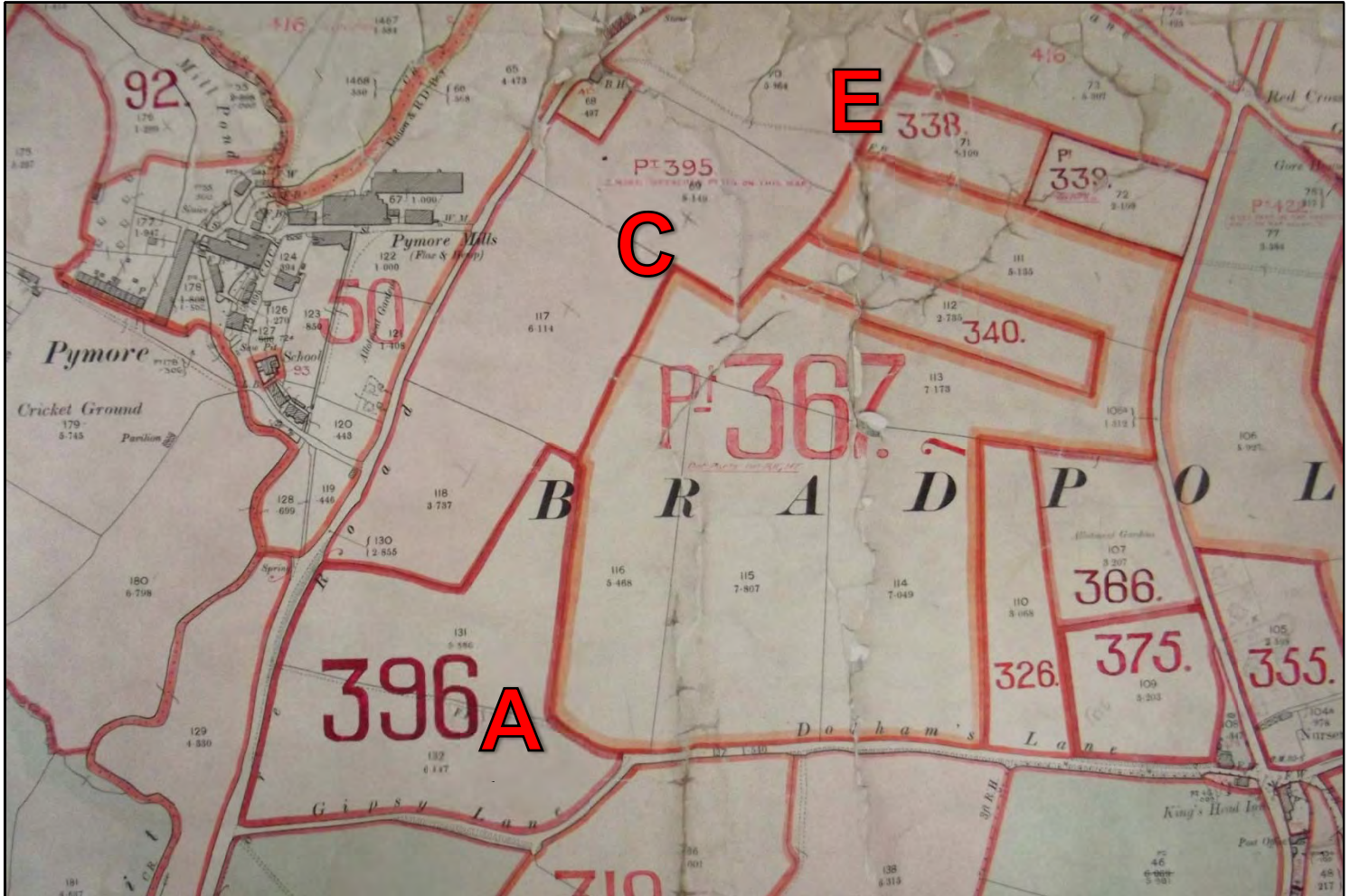
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Extracts from key documents
(See the Director for Environment's file RW/T465
for copies of other documents mentioned)

1845 Bradpole Tithe plan



1910 Finance Act plan



1910 Finance Act Field Book entries – Hereditaments 395 & 396

395

38.2 T
38.6 B.E.H.N.O

Reference No. 395 Map. No. 38.2 T
38.6 B.E.H.N.O

Situation Bradpole Lymore Rd
Description Land & Premises
Extent 41a 1/2 1p

Gross Value { Land £ } £9/15 Rateable Value { Land £ }
 { Buildings } { Buildings } £82¹⁵

Gross Annual Value, Schedule A, £
Occupier Rendall Charles Wm.
Owner Crookshank Harriett Saint Hill East Greenstead
Interest of Owner
Superior interests
Subordinate interests

Occupier's tenancy, Term Yearly from
How determinable
Actual (or Estimated) Rent, £105
Any other Consideration paid
Outgoings—Land Tax, £1:11:11 paid by Owner
Tithe, £13:10:1 paid by Owner
Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance (a) Occupier (b) Owner
Who is liable for repairs Owner
Fixed Charges, Easements, Common Rights and Restrictions

Public Footpath

Former Sales. Dates
Interest
Consideration
Subsequent Expenditure
Owner's Estimate. Gross Value
Full Site Value
Total Value
Assessable Site Value
Site Value Deductions claimed

yes.

Roads and Sewers. Dates of Expenditure
Amounts

	Reference No.....	395
Less Value attributable to Structures, timber, &c. (as before)	GROSS VALUE.....£	2878
	FULL SITE VALUE.....£	350
		<u>2528</u>
Gross Value (as before).....		2878
Less deductions in respect of—		
Fixed Charges, including—		
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£	
Any other perpetual rent or Annuity.....	£	
Tithe or Tithe Rent Charge	£	378
Other Burden or Charge arising by operation of law or under any Act of Parliament	£	
If Copyhold, Estimated Cost of Enfranchisement.....	£	
Public Rights of Way or User	£	
Rights of Common.....	£	
Easements	£	
Restrictions	£	
		<u>£ 378</u>
	TOTAL VALUE.....£	2500
Less Value attributable to Structures, timber, &c. (as before)	£	350
Value directly attributable to—		
Works executed	£	
Capital Expenditure	£	
Appropriation of Land.....	£	
Redemption of Land Tax.....	£	
Redemption of Other Charges.....	£	
Enfranchisement of Copyhold, if enfranchised	£	
Release of Restrictions.....	£	
Goodwill or personal element.....	£	
Expense of Clearing Site.....	£	350
		<u>£ 350</u>
	ASSESSABLE SITE VALUE	2150
If Agricultural land, the value for Agricultural purposes		
including Sporting Rights	£	2480
excluding	£	20
Value of Sporting Rights.....	£	
If Licensed Property, the annual license value.....	£	
Liable to Undeveloped Land Duty as from		
For further reference as to Apportionments &c., see		

396

396

Reference No. 396 Map. No. 3R.G.4

Situation Bradpole Symore Rd.

Description Land

Extent 12.033

Gross Value { Land £ 30 Rateable Value { Land £ 28.00
 Buildings £ Buildings £

Gross Annual Value, Schedule A, £

Occupier Rendall Charles William

Owner Colfox Thomas Alfred Coneygar Brampston

Interest of Owner

Superior interests

Subordinate interests Included in allington 6448 19/23 Rose Lane.

Occupier's tenancy, Term from

How determinable

Actual (or Estimated) Rent, £

Any other Consideration paid

Outgoings—Land Tax, £ paid by

Tithe, £ 4.8.0 paid by

Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance

Who is liable for repairs

Fixed Charges, Easements, Common Rights and Restrictions
Footpath across field.

Former Sales. Dates

Interest

Consideration

Subsequent Expenditure

Owner's Estimate. Gross Value

Full Site Value

Total Value

Assessable Site Value

Site Value Deductions claimed

Roads and Sewers. Dates of Expenditure

Amounts

12.033

8423/10

135

705

12.033

725

60165

24066

84231

870

135

35

	Reference No.....	396
	GROSS VALUE.....£	895
Less Value attributable to Structures, timber, &c. (as before)	£	25
	FULL SITE VALUE.....£	<u>870</u>
Gross Value (as before).....	£	895
Less deductions in respect of—		
Fixed Charges, including—		
Fee Farm Rent, rent seck, quit rent, chief rents, rent of Assize	£	
Any other perpetual rent or Annuity.....	£	
Tithe or Tithe Rent Charge	£	110
Other Burden or Charge arising by operation of law or under any Act of Parliament	£	
If Copyhold, Estimated Cost of Enfranchisement.....	£	
Public Rights of Way or User	£	35
Rights of Common.....	£	
Easements	£	
Restrictions	£	
	£	<u>145</u>
	TOTAL VALUE.....£	<u>750</u>
Less Value attributable to Structures, timber, &c. (as before)	£	25
Value directly attributable to—		
Works executed	£	
Capital Expenditure	£	
Appropriation of Land.....	£	
Redemption of Land Tax.....	£	
Redemption of Other Charges.....	£	
Enfranchisement of Copyhold, if enfranchised	£	
Release of Restrictions.....	£	
Goodwill or personal element.....	£	
Expense of Clearing Site.....	£	25
	£	<u>725</u>
	ASSESSABLE SITE VALUE	£
If Agricultural land, the value for Agricultural purposes ^{including} _{excluding} Sporting Rights	£	
Value of Sporting Rights.....	£	
If Licensed Property, the annual license value.....	£	
Liable to Undeveloped Land Duty as from	£	
For further reference as to Apportionments &c., see		

Aerial Photographs - 1997



2005



User Evidence
Table summarising user evidence from forms completed in 2007

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs L Blake	2004 - 2007	Everyday	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles, notices or other obstructions on the route. Vegetation blocking two fields in May 2007. Always thought it was public.
Mr and Mrs Cavanagh	2004 - 2007	30 – 60 times a year	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles, notices or other obstructions on the route. Assumed it was public as it was used by many people. Route was also well worn. No signs prohibiting use.
Mr J Gregory	2003 - 2006	35 – 45 times a year	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles or notices. There was a fence obstructing the route but it was damaged, now blocked by trees. Many people use it. Approx. ½ - 1 metre wide. Well-worn path.
Mrs J Hedges	2005 - 2007	Most days	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles, notices or other obstructions. Approx. 1 metre wide.
Mr B Homewood	1955 - 2007	52 times a year	On foot	Used for pleasure. Others also used the route on foot. No stiles on route. Not seen notices preventing access until now (form completed in 2007).
Miss P Meeman	1999 – 2007 (last 8 years, form completed in 2007)	365 times a year	On foot	Used for pleasure. Other people also used the route on foot. No gates, stiles, notices or other obstructions. Always thought it was public.
Miss S Porter	1988 - 2007	365 times a year	On foot	Used for pleasure. Others also used the route on foot. "No Trespass" post on 6 May (form completed in 2007). Route blocked when maize was being produced on 6 May 2007. Always assumed use was permitted. Level walk approx. 1 metre wide.

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NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr G Sheed	2005 to present (form completed in 2007)	730 times a year	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles or notices. Always assumed it was public right of way, easy access and a level walk, approx 1 metre wide.
Mr B Smart	1990 - 2006	6 - 8 times a year	On foot	Used for pleasure. Others also used the route on foot. No gates, stiles, notices or other obstructions.
Ms B Stork (2 different types of handwriting)	Unknown	Unknown	On foot	Used for pleasure. Others also used the route on foot. No gates or notices on route, one stile. Route approx. 1 metre wide and level.
Mr P J Wilson	1989 to now (form completed in 2007)	6 - 12 times a year	On foot	Used for pleasure. Other people also used the route on foot. No gates, stiles or notices. Path now blocked with bushes. Fairly level route.

