

Agenda item:

Regulatory Committee

7

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 Verlands Road to the Osmington Road (A353), Weymouth at Preston
Executive Summary	In response to an application to add a footpath at Preston, Weymouth, this report considers the evidence relating to the status of the route.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: The applicant submitted documentary and user evidence in support of his application. Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives. A full consultation exercise was carried out in November and December 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. 84 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: Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment: As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications: None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application be accepted and an order made to modify the definitive map and statement of rights of way by adding the footpath from Verlands Road to Osmington Road, Weymouth at Preston as shown A – A1 – A2 – B – C – D on Drawing 14/16/1; and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist;</p> <p>(b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications 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

	<ul style="list-style-type: none"> • 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 Ref:14/16/1 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"> ▪ Ordnance Survey Maps (not to scale) <ul style="list-style-type: none"> – 1958 – 1963 ▪ Site photographs <ul style="list-style-type: none"> – 13 January 2004 (and enlarged) – 26 April 2006 – 22 August 2009 – 24 September 2009 – 2 November 2009 – 25 January 2010 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/T494).</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/T494, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add a footpath as shown A – A1 – A2 – B – C – D on Drawing 14/16/1 (Appendix 1) was made by Mr David McCune on the 12 October 2009.
- 1.2 The route claimed commences at point A at its junction with the eastern end of the public road known as Verlands Road, heading in an easterly direction. The surface of the claimed route is a hard, broken tarmac surface. At point A1 the applicant has displayed the site notice of his application, which can be seen from users approaching from the west. The hard track stops at point B at a field gate, where a notice states “Private Property Please Keep Out”. The claimed route then enters a field, continuing east, following the fenceline to the south and with open grassland to the north, the surface is grass. At point C the claimed route is crossed by stock fencing and enters a large grass field, where a notice again states “Private Property Please Keep Out”. The claimed route then turns east south east, downhill across the field known as Winslow Hill towards point D, at its junction with the Osmington Road (A353) and Footpath 27 where a wooden stile is situated at the top of the steep roadside verge.
- 1.3 Its widest point is 7.8 metres at the gate at point A1 and its narrowest point is 1.2 metres at the stile at point D.
- 1.4 Between points A and A2 the claimed route has no registered owner although the applicant, Mr McCune, is registered as co-owner having a private right of way between these points. Between points A2 and C it is owned by Mr and Mrs Rookes and between points C and D by Mr Broatch.

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/T494)

- 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/T494)

- 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/T494)

- 5.1 The applicant submitted aerial photographs and various Ordnance Survey maps to support his application. In addition, in January 2010 he submitted a timeline of events since his application the previous year, together with site photographs. In February 2015 Mr McCune submitted further photographic evidence. This is analysed with the documentary evidence at paragraph 8.

5.2 Apart from the applicant's evidence (and the user evidence) there were three other submissions made in support of the application following its submission and another as a result of the consultation exercise in November 2014.

Name	Comments
Sutton Poyntz Society	"The Society support your activities in trying to restore the footpath (recently blocked) at the end of Verlands Road to an open public path as suggested in the maps including in our papers of the Weymouth and Portland Local Plan 1993."
Cllr Peter Chapman	He "enclosed copies of the relevant Ordnance Survey Maps for the area from 1889 to 1986..... Whilst the Ordnance Survey Map are not conclusive, part of the claimed track has been in situ since 1929 up [until] the present day.....The remainder of the claimed footpath is shown on the O/S maps between 1958 and 1963 and whilst later editions no longer show the footpath it is difficult to believe that with the construction of the remaining dwellings on Verlands Road and Sutton Park that the footpath would have fallen into disuse, if anything one would expect the use of the same to increase".
John & Rita Stephen	"Over at least 12 years [we] have enjoyed the walk to the top of Verlands Road & then up onto the fields, to the old kissing-gate..... We were really dismayed to see that this much-loved walk has now been obstructed, for no obvious reason that we could discern, and in the most aggressive way, with metal fences and barbed wire."
Ralph Holmes on the behalf of the Open Spaces Society	Supports the claim but provides no evidence.

6 **Evidence opposing the application** (copies available in the case file RW/T494)

6.1 One submission was received following the submission of the application and three letters were received as a result of the consultation.

Name	Comments
Mr & Mrs Rookes (land owner evidence form submitted in December 2009)	<p>At the date of the form, 31 December 2009, they had owned the land for six years and had a tenancy for 14 years prior to their ownership.</p> <ul style="list-style-type: none"> • They state that "it never has been a right of way in all the time the land was rented and since our ownership". • They have been aware of members of the public using the claimed route but on "very few occasions over the years but mainly on carnival day to watch the Red Arrows". • They have never given permission to use the way. • They have locked the gates to keep in grazing animals. • They have told the public not to use the way "since our fences have been cut open ...one or two people have decided to walk their dogs and we have asked them to stop".

Name	Comments
Mr & Mrs Rookes (continued)	<ul style="list-style-type: none"> • They have erected notices or signs stating that the way was not public on many occasions. However, “recently these have been torn down”. • A numbered plan is attached showing the position of the notices. • The notice at point A2 stated “Private property – no right of way. • The gates were “locked to keep grazing horses in safe”. • They state that they have obstructed the way “with Haras fencing as it is the only way to stop people entering our land. Barbed wire and other fencing has been cut down previously.”
Mrs M Chapman	<p>“Verlands Road is adopted up to the point of the end boundary of 28 Verlands Road, and from there onwards it is unadopted and will therefore not be maintained at the expense of the Local Authority. The Title to the property and access way from the point (as stated,) that it becomes PRIVATE and UNADOPTED.</p> <p>I’m sure Mr McCune is aware of this track being private, as on two separate occasions he has reminded myself and my husband.”</p>
Mr & Mrs Rookes January 2015	<p>“We have taken the time to print off all the support forms and highlighted discrepancies on the vast majority of them. Most of the forms have different handwriting on them, this proves that the supporters who have filled in the form have been influenced by others and have therefore not given any truthful answers. A large selection of forms have had certain sections filled in by the same person.”</p> <p>“The highways act of 1980 section 31(1) states for a footpath to be declared a public right of way in most cases it must have been used uninterrupted by the public for over 20 years. Most of the supporters have stated on their forms that they have not been using the footpath for more than 20 years. We have had the ownership & tenancy of this field for over 25 years and it has never been a public right of way therefore anyone who has used this path would have had to climb over locked gates.”</p> <p>Three maps were attached, the Ordnance Survey small scale maps 1952 – 1961, 1973 and current OS map, none of which show the claimed route.</p> <p>“No one has ever been given permission to use the southern boundary of our field as a public footpath and the gates to our knowledge have always been locked.”</p>

Name	Comments
Mike Clarke Mrs M Chapman	Raise issues such as: - <ul style="list-style-type: none"> • Formalising the footpath would increase the number of people walking across their land • Car parking issues in Verlands Road • The footpath could impact any future development • Fly Tipping issues • Dog mess and anti-social behaviour • Increased traffic in Verlands Road/more road repairs needed

7 **Other submissions received** (copies available in the case file RW/T494)

7.1 Another 3 submissions were received in response to the consultation exercise.

Name	Comments
Claire Pinder DCC Senior Archaeologist	No recorded archaeological finds and features or historic buildings on the routes affected by this proposal.
Southern Gas Networks	Plant location information – none in the area of the claimed route.
Kate Gocher on behalf of The Ramblers	No evidence given.

8 **Analysis of documentary evidence**

8.1 The most important documents in this case are those relating to some of the Ordnance Survey maps from 1958 onwards, site photographs and aerial photographs.

Ordnance Survey maps

8.1 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 Weymouth was completed in **1805** but does not show the claimed route.

8.2 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also does not show the claimed route.

8.3 The **1889 First Edition Ordnance Survey Map** at a scale of 25 inches:1 mile (1:2500) does not show the claimed route.

8.4 The **1902 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches:1 mile) is the map used for the Finance Act valuation and depicts a track shown with double pecked lines, indicating that it is fenced or hedged on both sides, along the route of what will later become Verlands Road and part of the claimed route between points A and C. The track terminates at point C. The whole of the field within which this track is shown is annotated 'Allotment Gardens'.

- 8.5 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the same features as the 1902 edition but with less detail as it is at a smaller scale.
- 8.6 The **1923 Ordnance Survey Ministry of Transport road Map** at a scale of half inch: 1 mile does not show the claimed route.
- 8.7 The **1929 Ordnance Survey Map at a scale of 1:2500** (25 inches: 1 mile) shows the track similar to 1902 Second Edition map terminating at approximately point C but also shows an additional track running north from the east-west route near to point A on the claimed route.
- 8.8 The **1938 Ordnance Survey Provisional Edition Map at a scale of 1:2500** (25 inches: 1 mile) shows the tracks similar to the 1929 map but the east-east section up to point A is named 'Verlands Road' with properties in existence alongside.
- 8.9 The **1943 Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows a similar layout to the 1938 map above.
- 8.10 The **1958 Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) shows the whole of the claimed route A – A1 – A2 – B – C – D. The track between points A and B is shown with double pecked lines and between points B and C has one pecked line to the north indicating it is unfenced and a solid line running along the southern border indicating a fence hedge or bank. From where it crosses the field boundary at point C it is shown heading east south east to the corner of the field to its junction with Footpath 27 and the Preston Road as double pecked lines with 'FP' annotated alongside.
- 8.11 The **1963 Ordnance Survey Map** at a scale of 1:10560 (6 inches: 1 mile) shows the whole of the claimed route similar to the 1958 map above but with less detail as it is at a smaller scale.
- 8.12 The **1969 Ordnance Survey Map** at a scale of 1:25000 (submitted as part of the application) shows the whole of the claimed route similar to the 1963 map with black solid/pecked lines but at an even smaller scale. However, there is no annotation alongside at this scale. Other routes that are recorded as public rights of way at the time are shown with green dashes.
- 8.13 The **1975 Ordnance Survey Map** at a scale of 1:1250 shows only part of the claimed route between points A and C. Between A and B it is shown as pecked lines within a track bounded by solid lines, indicating fences or hedges. Between B and C it continues as a track bounded by solid lines and near point C the track extends to serve a building to the north of the track.
- 8.14 The **1986 Ordnance Survey Map** at a scale of 1:10000 shows part of the claimed route between points A and C as a track.
- 8.15 The evidence provided by the **Ordnance Survey Maps** suggests that the claimed route was in position and used enough for the surveyor to mark the route on the map in the late 1950s/early 1960s. The 1958 and 1963 Ordnance Survey maps depict the route with the annotation 'F.P.', which may suggest the public nature of the route.

- 8.16 Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide sufficient evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

Photographic Evidence

- 8.17 Mr McCune, the applicant, submitted **photographs of the site** that he had taken over six years between 2004 and 2010.
- 8.18 **13 January 2004:** This shows the claimed route from just to the west of point B looking east towards point C. The fence and hedge lines are still in place and in the far distance a stile or kissing gate can be seen at point C. The route looks well worn.
- 8.19 **26 April 2006:** Photograph taken near point A. It shows that the hedge and fence line with additional temporary electric fencing are still in place and also the structure at point C. The gate in the foreground is at A2.
- 8.20 **22 August 2009:** This photograph shows a kissing gate at point C with deer fencing and barbed wire on the eastern side blocking use. There are clear signs of previous use of the track west of point C.
- 8.21 **24 September 2009:** This photograph shows the kissing gate at point C blocked with vegetation and it also shows that the hedge and/or fence line has been removed between points B and C.
- 8.22 **2 November 2009:** This photograph (taken after the date the application was submitted on 12 October 2009) shows a sign at point C stating "NO PUBLIC RIGHT OF WAY DAMAGING THIS FENCE IS A CRIMINAL OFFENCE WE WILL SEEK TO PROSECUTE".
- 8.23 **25 January 2010:** This photograph shows the kissing gate has been completely removed and replaced with fencing.

Aerial Photography

- 8.24 The applicant also submitted **aerial photographs** as part of his evidence. All the images are very unclear between points A and C, therefore the analysis has concentrated on the eastern end of the claimed route across Winslow Hill between points C and D.
- 8.25 The **1947** RAF black and white photograph clearly shows Verlands Road with some properties at the western end and continuing east as a track to point C. It also shows slight wear marks between points C and D, which suggests a line used, but it is possible that this could also be animal tracks and therefore this image adds little evidence.
- 8.26 The **1972** black and white photograph shows further development including the layout of Verlands Close. It clearly shows the track between points A and C and a worn line down the hill across the field between points C and D.
- 8.27 The **1986** black and white photograph shows the track from A to C. However, the continuation into the field links to a circular route around the hill and appears to link up with Footpath 27 north of point C.

- 8.28 The **2002** colour photograph is much clearer and shows the track linking with a circular route as shown on the 1986 photograph. However, there is also a faint line to point D.
- 8.29 The **2005** colour photograph again shows the track to point C. It also clearly shows many routes in the field, the claimed route between points C and D is one of them.
- 8.30 The aerial photographs spanning a period from 1947 to 2005 do not provide any conclusive evidence as to the status of the route. However, they do provide evidence as to the existence and alignment of a route used between 2002 and 2005, which supports the user evidence.

1795 Preston and Sutton Pointz Inclosure Map

- 8.31 The **Parish and Manors of Preston and Sutton Pointz Inclosure map** does not show the claimed route. The map shows the area where the route has been claimed as a field with no features. The Inclosure therefore does not support the application.

1838 Preston and Sutton Poyntz Tithe Map

- 8.32 The **Preston and Sutton Poyntz Tithe map** shows the area as a field and the claimed route is not shown.
- 8.33 By themselves Tithe documents rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment. In this case the Tithe does not support the application.

1910 Finance Act

- 8.34 The evidence from the **1910 Finance Act** documents reveals that no part of the claimed route was excluded from valuation.
- 8.35 The claimed route crosses parts of **Hereditament 191** (between points A to C) and in the accompanying valuation books there are no deductions for public rights of way.
- 8.36 From point C, southeast through the large field to point D, the route claimed passes through **Hereditament 77**. There was a deduction of £75 for rights of way for this hereditament.
- 8.37 Although this deduction represents a significant sum of money, the hereditament was of a considerable size and may have contained a number of public rights of way. Due to the size of Hereditament 77 it is difficult to determine which rights of way the deductions may have related to.
- 8.38 Consequently, in this instance, the documents provide no evidence for or against the claimed status of the route and are therefore considered as being neutral.

Parish Survey and County Council rights of way maps and records

- 8.39 A route was not claimed in this area by the Borough Council during their **Survey of public rights of way** carried out in **1951**. However, the base map used shows the track to point C.
- 8.40 The claimed route is not recorded on the **1954 draft, 1964 provisional or the 1966 first definitive maps** as a public right of way, although each map again shows the track to point C.
- 8.41 The application route was not subject to any investigation or claim during the **1973 Special Review** and therefore is not shown as a public right of way on the **1974 revised draft map** nor is it recorded on the **current definitive map sealed in 1989** although part of the claimed route A – C is shown on the base maps used. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist or may have been created in the area.

Other documents

Conveyance

- 8.42 A **Conveyance plan** dated **27 March 1975** issued by the Land Registry shows the claimed route on the base map as the 1958 Ordnance Survey Map at a scale of 1:2500 (25 inches: 1 mile) (see paragraph 8.10).

Section 31 (6)

- 8.43 Peter Broatch submitted a **Deposit under Section 31(6)** of the Highways Act 1980 on 20 October 2011 for Northdown Farm, Preston, Weymouth. The land within his ownership included points C to D of the claimed route. As the latest date of challenge to this claimed route would be the date that the application was made on 12 October 2009, this Section 31(6) Deposit cannot be used as evidence against this current claim (see Appendix 2 Law paragraph 2.4).

9 Analysis of user evidence supporting the application

- 9.1 All of the witnesses state that they used the route, either individually or with other users, shown between points A – A1 – A2 – B – C – D on Drawing 14/16/1 and that this use was on foot.
- 9.2 83 forms of evidence were received from users of the claimed route.
- 9.3 The earliest date of use is 1940 and 2009 is the last date of use.
- 9.4 Although three of the witnesses' forms state that they had used the claimed route in a private capacity, when telephoned, two, Mr Baldwin and Mr Gibbs, clarified that their use was, in fact, public as they thought it had always been a public right of way. Another user, Miss E Saunders, explained that her family had owned the land over which the claimed route runs from 1925 to 1992. Consequently, any use prior to 1992 would have been in a private capacity and use afterwards was as a member of the public. Therefore Miss Saunders' use prior to 1992 should be disregarded for the purpose of this exercise.

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- 9.5 69 users state that there were no notices or signs on the claimed route. 10 users state that there was a kissing gate on the route. Four users remember a stile before it was replaced by a kissing gate.
- 9.6 The majority of the users state that their use was for pleasure. Mrs Elsam and Mr Richards state that it was for work and business. 66 users state that they were never challenged while using the claimed route. Mrs J Osborne and Mrs E Osborne state that they had seen or spoken to the owner while using the route and Mrs Price states that Mr Rookes (owner of part of the route) saw the public often using the track.
- 9.7 The heaviest amount of use is in 2008 when 82 users state that they used the claimed route.
- 9.8 Mr McCune was told that it was not public when the owner blocked off the kissing gate at point C between August and September 2009.
- 9.9 Many users stated that the owner had locked the gates in August 2009 preventing access.
- 9.10 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) The photograph showing fencing across the kissing gate on 22 August 2009 is evidence of bringing the use of the route into question.
- (b) The application was made on 12 October 2009 and is a further date of bringing that use into question.

10 Analysis of evidence in support of the application

10.1 The evidence given is analysed in the table below.

Name	Comments
Sutton Poyntz Society	
Mentions the Weymouth and Portland Local Plan 1993 and includes a small extract from a map showing the claimed route with black pecked line annotated 'F.P. alongside.	The map is undated but must be pre-1993.
Cllr Peter Chapman	
Supplied eight photocopies of Ordnance Survey Maps and came to the conclusion: "whilst later editions no longer show the footpath it is difficult to believe that with the construction of the remaining dwellings on Verlands Road and Sutton park that the footpath would have fallen into disuse, if anything one would expect the use of the same increase".	This may be the case. However, the claimed route was not recorded on the definitive map and statement at that time.

Name	Comments
John & Rita Stephen	
Stated 12 years' use of the claimed path prior to 2010.	This adds to the user evidence given in the witness forms.
David McCune	
Responded to the evidence submitted by Mr and Mrs Rookes	His comments are contained in the table below at paragraph 11.

11 Analysis of evidence opposing the application

11.1 **Mr & Mrs Rookes'** evidence is analysed below. The applicant's comments on their evidence submitted in January 2015 are included, together with the officer's comments.

Mr and Mrs Rookes	David McCune's (Applicant) comments	Officer comments
It never has been a right of way in all the time the land was rented and since our ownership.		This is correct in that there has not been a recorded public right of way over this land. However this application is to investigate unrecorded public rights.
They erected notices and locked gates, which were torn down and/or destroyed and reported this to the Police in 2010.		The application for the claimed route was in 2009. This date (2010) is later and therefore cannot be used as a date of challenge.
A large selection of forms have had certain sections filled in by the same person.		This is certainly true, 34 user evidence forms have two different types of handwriting on their forms. However, the maps and other details on the forms can be seen as applicable details and are relevant. Each form and map is signed by the witness.
They have owned and rented the field for riding and grazing their horse for over 25 years.	"The Rookes family only purchased this piece of land in 2003 and they then allowed the use of the track for access to Winslow Hill until 2009 before locking the access gate halfway up the track.	

Mr and Mrs Rookes	David McCune's (Applicant) comments	Officer comments
Some of the users stated on their forms that they had not been using the footpath for more than 20 years.	"In the Guidance Notes (Supplied with the application pack by Dorset County Council at the time of the application) Section 3 clearly states that the user of the footpath route must have used it for 20 years or more and all my witnesses adhered to these requirements."	The guidance indicates that witnesses should "testify their use to help demonstrate 20 or more years of uninterrupted use...". The user evidence is analysed as a whole over the periods of use by all users. The use of the path has to be "enjoyed by the public as of right and without interruption for a full period of 20 years" rather than by each person using it.
The witnesses had "not given any truthful answers".	All the Evidence Forms have a Declaration Box which had to be signed certifying that the fact [sic] stated in the form are true.	
"Three maps were used the OS 1952 – 1961, 1973 and current OS map not showing the claimed route".	"Regarding OS maps, there is clearly a track marked as 'FP' on the 1958, 1969 OS maps of this area, tracking across all of the route applied for in T494, it is also shown on the Sutton Poyntz Society letter to me supporting the application.... as an extract from the Weymouth & Portland Local Plan 1993 (see file T494).	This is true. However, other maps of a similar age do show a footpath along the claimed route.
The gates to the southern boundary of their field have always been locked.	He does not give dates but it has been already proved that the gate across the track on the southern boundary of their field was not locked until 1 November 2009.	This is after the application was submitted and therefore is not a date of challenge.

11.2 Mrs M Chapman and Mr Clarke's evidence is analysed in the table below.

Name	Comments
Mrs M Chapman	
States that the track from point A is private and unadopted and Mr McCune was aware of this fact.	Many public rights of ways are on private roads and land and this does not mean that unrecorded public rights do not exist.

Mike Clarke, Mrs M Chapman	
Various issues	These submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

12 Analysis of other submissions

12.1 The other letters contain no evidence to be considered.

13 Conclusions

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

13.2 The documentary evidence is insufficient to demonstrate, on balance, that the rights subsist or can be reasonably alleged to subsist along the claimed route as shown A – A1 – A2 – B – C – D, as only the aerial photography, several 1950s and 1960s Ordnance Survey maps and photographic evidence supplied by the applicant show the route.

13.3 If members are satisfied that the documentary evidence does not show, on balance, that a public right on foot can be reasonably alleged to 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 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 a fence on 22 August 2009, which denied access through the kissing gate at point C.

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

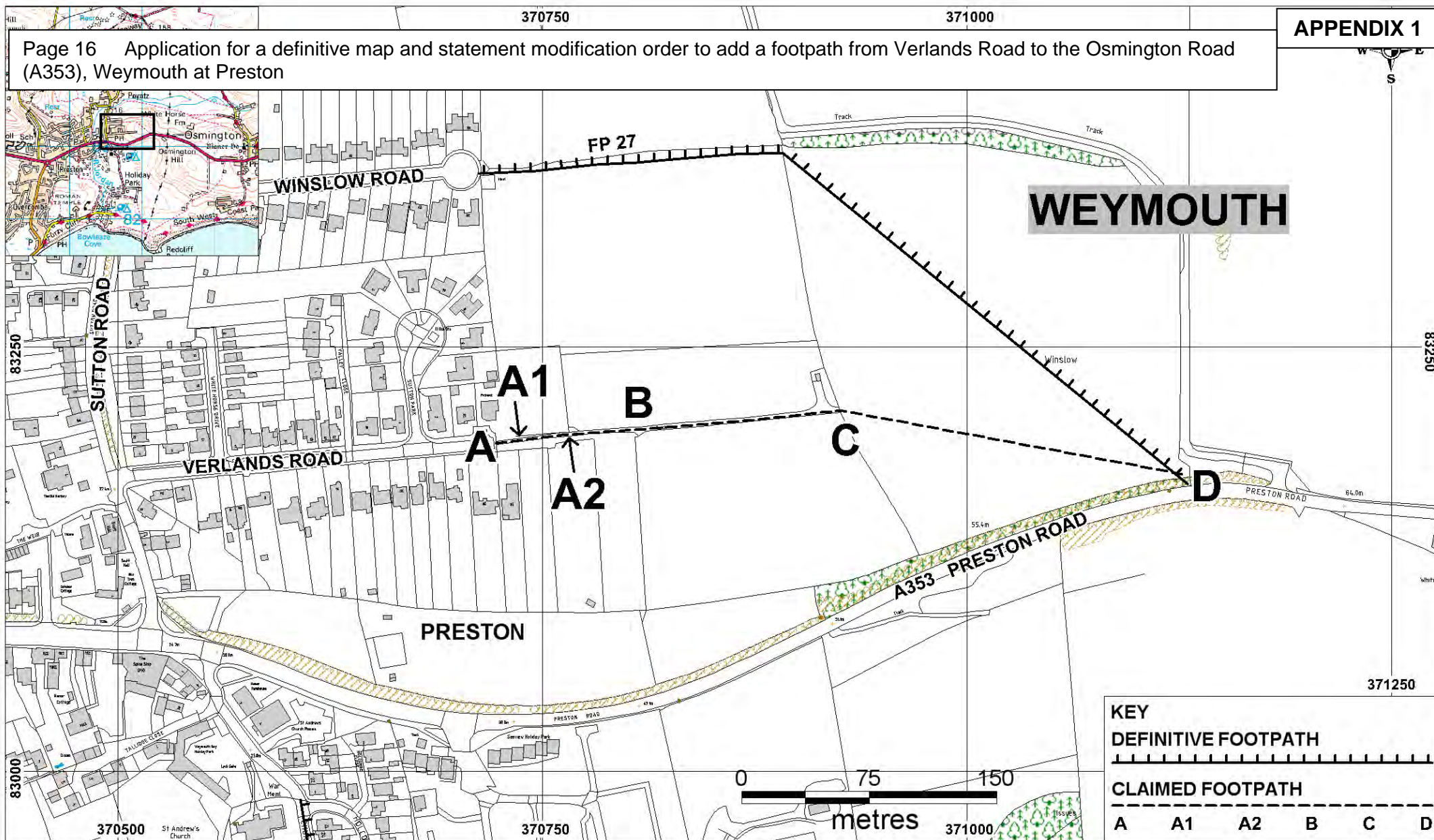
13.6 Therefore it is recommended that an order be made to record the claimed route as shown A – A1 – A2 – B – C – D on Drawing 14/16/1 as a footpath.

13.7 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Mike Harries

Director for Environment and the Economy

July 2015



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A FOOTPATH FROM VERLANDS ROAD TO OSMINGTON ROAD, WEYMOUTH AT PRESTON

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

GRID REFERENCES

- A SY 70728319
- A1 SY 70738319
- A2 SY 70768319
- B SY 70808320
- C SY 70928321
- D SY 71128317

Ref: 14/16/1

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Scale 1:3000

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Cent X: 370857

Cent Y: 83204

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 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 2.5 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act may bring proceedings against the authority under the Act in the appropriate court or tribunal or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.

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

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

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

Case specific law

4 Finance Act 1910

- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

- 4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

- 5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

Table of documentary evidence

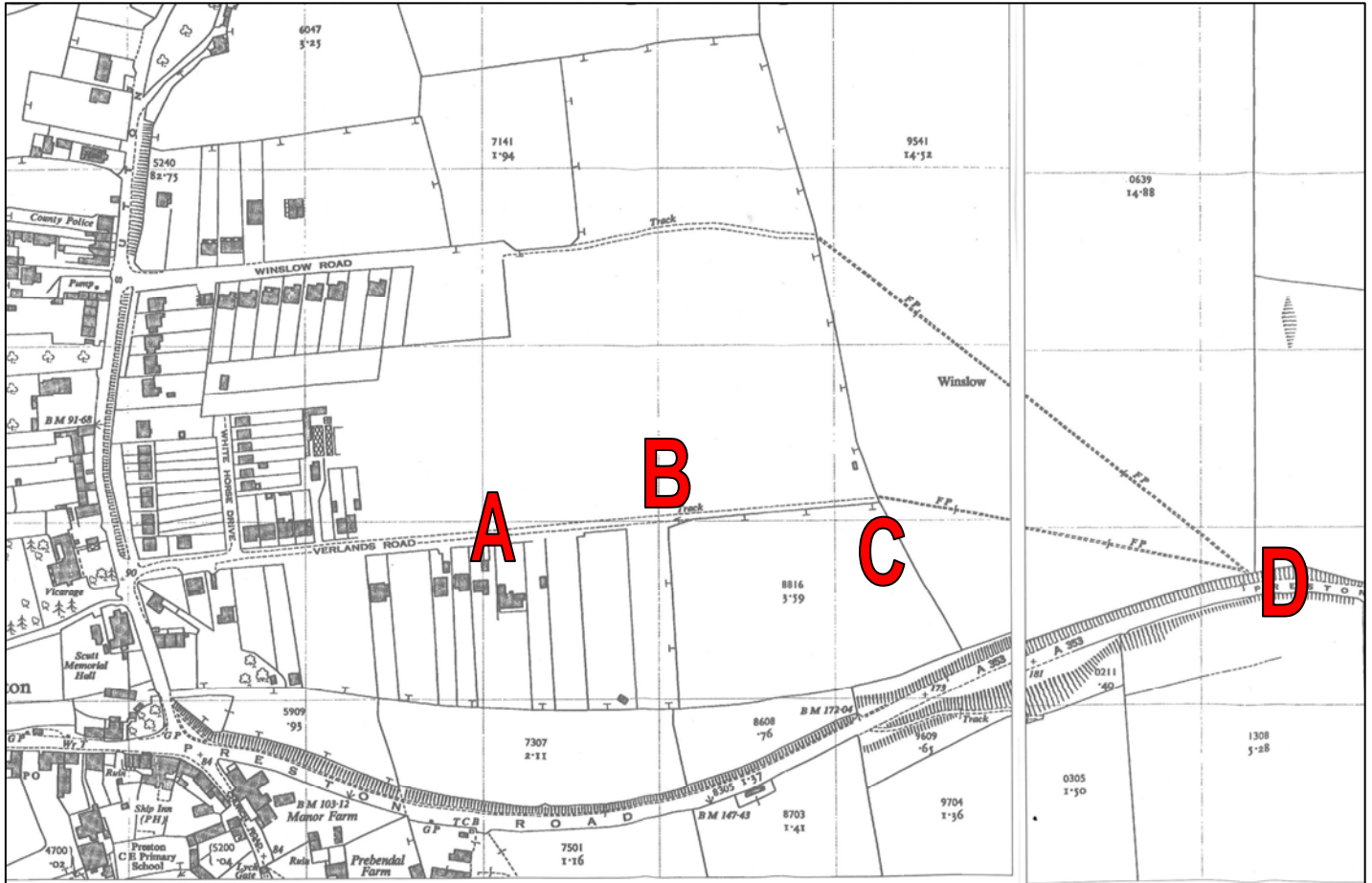
Date	Document	Comment
1795	Parish and Manors of Preston and Sutton Pointz Inclosure map	Claimed route not shown.
1805	Ordnance Survey Drawings	Claimed route not shown.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Claimed route not shown.
1838	Preston and Sutton Poyntz Tithe map	Claimed 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.	
1889	Ordnance Survey First Edition map scale 25 inches:1 mile (1:2500)	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.	
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.	
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows a track along part of the claimed route A – C.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows a track along part of the claimed route A – C.
1910	Finance Act documents	Not shown excluded on map. Some deductions for rights of way in the hereditament for the part C – D but this may not relate to the claimed route.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1923	Ordnance Survey Ministry of Transport road map scale ½ inch:1 mile	Claimed route not shown.
1929	Ordnance Survey Provisional Edition map scale 25 inches:1 mile (1:2500)	Shows a track along part of the claimed route A – C.

Date	Document	Comment
1938	Ordnance Survey Provisional Edition map scale 25 inches:1 mile (1:2500)	Shows a track along part of the claimed route A – C. West of point A named 'Verlands Road'.
1943	Ordnance Survey map scale 6 inches:1 mile	Shows part of claimed route A – C.
1947	Black and white RAF aerial photograph	Shows part of the claimed route, the track A – C and slight wear marks C – D.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1951	Weymouth Borough rights of way Survey	The base map used shows part of the claimed route, the track A – C, but it is not claimed as a public right of way.
1954	Draft map for the south area, Weymouth	Shows part of the claimed route, track A – C but not marked as a public right of way.
1951 - 1961	Ordnance Survey map Scale 1 inch:1 mile	Shows part of the claimed route, track A – C but not marked as a public right of way
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1958	Ordnance Survey map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route. C – D annotated with 'F.P.' alongside.
1963	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route. C – D annotated with 'F.P.' alongside.
1964	Provisional map	Shows part of the claimed route, the track A – C, but not recorded as a public right of way.
1966	First definitive map	Shows part of the claimed route, the track A – C, but not recorded as a public right of way.
1969	Ordnance Survey map scale 1:25000	Shows the whole of the claimed route.
1972	Black and white aerial photograph	Shows the track to point C and its continuation into the field as a worn line C – D.

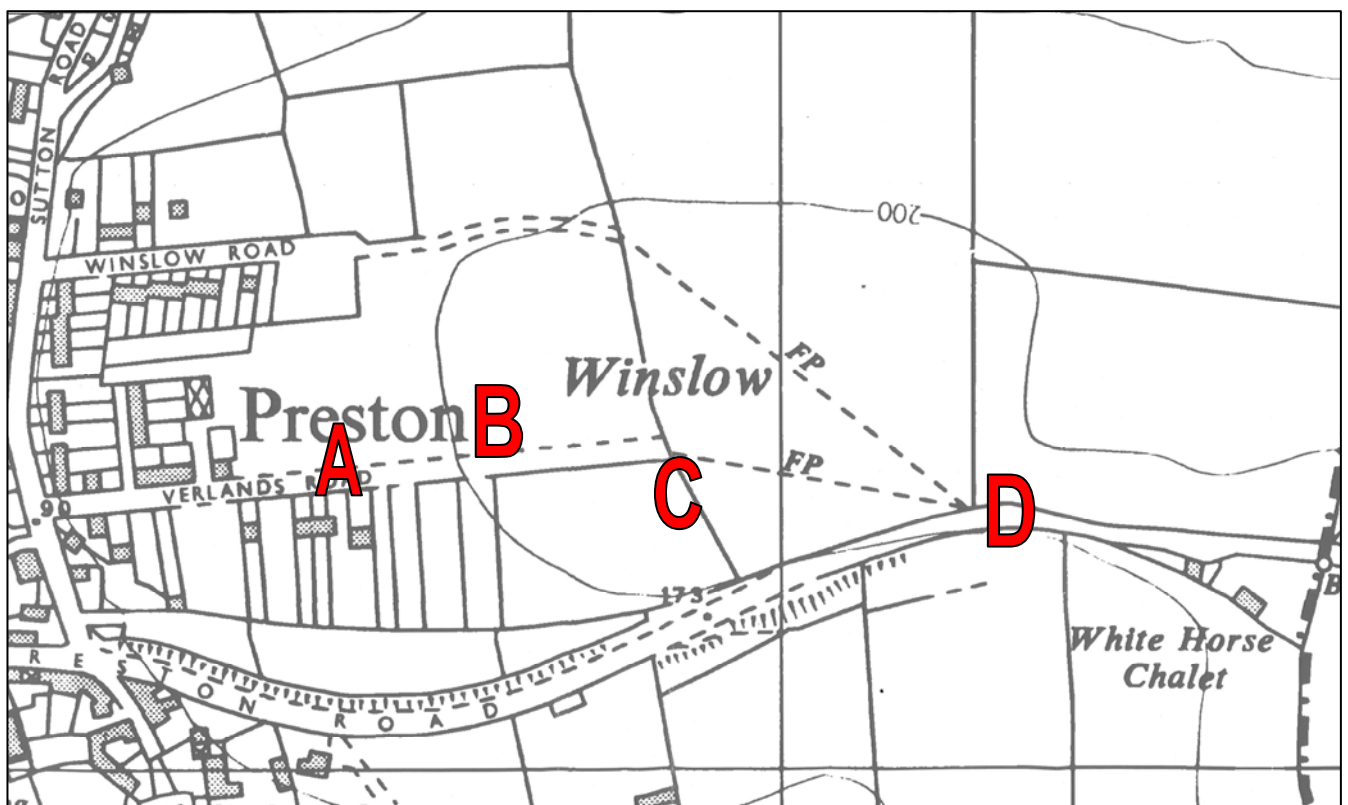
Date	Document	Comment
1973	Ordnance Survey map, small scale	Shows part of the claimed route, the track to point C.
1974	Revised draft map	Shows part of the claimed route, the track A – C, but not recorded as a public right of way.
1975	Ordnance Survey map scale 1:1250	Shows part of the claimed route, the track to point C.
1975	Conveyance	Shows the whole of the claimed route on the Land Registry base map as on the 1958 OS map.
1986	Ordnance Survey map scale 1:10000	Shows part of the claimed route, the track to point C.
1986	Black and white aerial photograph	Not clear but shows part of the claimed route along the track A – C but its continuation into the field linking to a circular route around the hill.
1989	Current definitive map	Shows the whole of the claimed route on the base map used but not recorded as a public right of way.
2002	Colour aerial photograph	Shows the whole of the claimed route – the track to point C linking with the circular route and a faint line continuing C – D.
2005	Colour aerial photograph	Shows the whole of the claimed route – the track to point C, many wear lines in the field east of C, including C – D.
2009	Site photograph 22 August	Kissing gate at point C blocked by fencing.
2009	Site photograph 2 November	Notice erected at point C - NO PUBLIC RIGHT OF WAY DAMAGING THIS FENCE IS A CRIMINAL OFFENCE WE WILL SEEK TO PROSECUTE
2010	Site photograph 25 January	Kissing gate at point C completely removed and replaced with fencing.
2011	Deposits under section 31(6) of the Highways Act 1980 – Northdown Farm	Shows the parcel of land with only Footpath 27, Weymouth (to the north) acknowledged as a public right of way.
Current	Ordnance Survey map scale 1:50000	Shows part of the claimed route, the track to point C, but not marked as a public right of way.

Extracts from key documents
(See the Director for Environment's file RW/T494 for copies of other documents mentioned)

1958 Ordnance Survey Map



1963



Site photographs 13 January 2004

Point B with point C in the distance



Enlarged



26 April 2006 - Near point A (gate at A2)



22 August 2009 – point C



24 September 2009 – point C



2 November 2009 – point C



25 January 2010 – point C



User Evidence
Table summarising user evidence from forms completed in 2009

USER EVIDENCE

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs L M A Anthony	1988 - 2009	10/20 times a year	On foot	Used for pleasure to walks on White Horse Hill. Others also used the route on foot. Gates were unlocked. No stiles, notices or other obstructions. Never challenged. Route approx 2 metres wide.
Mr J A Arkell	1997 - 2009	80 times a year	On foot	Used for pleasure from Verlands Road to Winslow Hill. Others also used the route on foot. Gates were not locked. No stiles, notices or other obstructions. Never challenged. Gate and track were maintained at times. The path was about 2 metres wide with a barbed wire fence on both sides.
Ms J M Backwell	1974 - 2009	12 times a year	On foot	Used for pleasure from Sutton Poyntz and back, dog walking. Others also used the route on foot. Path now runs several yards away from original due to hedge being removed. Stile repaired in past, gates not locked and no notices on route. Hedge overgrown. Never challenged. Many dog walkers regularly use the path. 2-3 metres wide.
Mr R T Backwell *2 different types of handwriting on form	1980 - 2009	Very little before 1999, 50 times a year approx since 1999	On foot	Used for pleasure, circular walk. Others also used the route on foot. Fencing on the north side of what was a distinctive path has been taken down – walkers now have to cross the field. Gates on route were not locked. No notices, stiles or other obstructions. Never challenged. 2-3 metres wide
Mr R F Baldwin *2 different types of handwriting on form	1990 - 2009	12 times a year	On foot	Used for pleasure, circular walk. Others also used the route on foot. Stile replaced by kissing gate, unlocked gates, no notices or other obstructions. Never challenged. See Paragraph 9.4.
Mrs D Bennett *2 different types of handwriting on form	2007 - 2009	24 times a year approx	On foot	Used for pleasure, from Verlands Road across field and back. Others also used the route on foot. Unlocked gates, no stiles, notices or other obstructions. Never challenged. Use was clear, apparent and very frequent.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mr I Bennett	2007 - 2009	24 times a year approx	On foot	Used for pleasure, from Verlands Road across fields to home. Others also used the route on foot. Gates present. No stiles, notices or other obstructions. Never challenged. Use was clear, frequent and obvious.
Ms J M Biggs	2008 - 2009	2 - 3 times a year	On foot	Used for pleasure on a circular walk from home. Others also used the route on foot. Gates present, now locked. No stiles, notices or other obstructions. Never challenged.
Mr B Boone *2 different types of handwriting on form	Since 1991 (form completed in 2009)	Daily, less frequently when at Uni	On foot	Used for pleasure, from Sutton Road circular walk via White Horse with dog. Others also used the route on foot and horseback. A fence was removed and a hedge was allowed to overgrow, pushing walkers into field c1998. Locked gate present. No stiles, notices or other obstructions. Never challenged. Width 4'.
Mr C A Bratchell	1999 onwards (form completed in 2009)	More than 50 times a year	On foot	Used for pleasure from home to Preston. Others also used the route on foot. Fence on one side of path has now been removed. Gates at top and bottom, never locked or wired closed until recently (dated 2009). No stiles, notices or other obstructions. Never challenged. Path was fenced both sides. Width approx 2 metres wide, when fenced. Used by many other people who have stayed at White Horse Holiday Park (south east of path across A353) since they took over the business in 1999.
Mr D Brierley	1982 to present time(form completed in 2009)	50 (approx)	On foot	Used for pleasure to and from his home in Sutton Poyntz. Others also used the route on foot. Stile present on path between Verlands Road and Preston Road. Gate replaced stile and was locked 17 August 2009. A large gate was installed at the entrance at the top of Verlands Road about two years ago but was subsequently left open. About 2 metres wide. Never challenged.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs I Brierley	1982 to present (form completed in 2009)	Weekly or more often	On foot	Used for pleasure, from home and back. Others also used the route on foot. Stile replaced by a gate at C. On 17 August 2009 this gate was wired and padlocked. No notices. Fence bordering path was removed and a gate put across it at B. Never challenged. Path was between 2 fences until 2 years ago.
Mr A R Bugler	From 1987 onwards (form completed in 2009)	Approx 50 times a year	On foot	Used for pleasure from Sutton Poyntz to Verlands Road via Winslow Hill. Others used the route on foot. Unlocked gates present. No stiles, notices or other obstructions. Never challenged. About 2 metres wide. Route is a footpath of long held tradition, the only means of accessing Verlands Road from Winslow Hill.
Mrs A Burgess *2 different types of handwriting on form	Last 10 years (form completed in 2009)	12 times a year	On foot	Used for pleasure, walking the dog. Others also used the route on foot. No stiles, notices or other obstructions. Gates on route now locked to prevent walkers. Never challenged.
Mr D J Caddy *2 different types of handwriting on form	2007 - 2009	25 - 30 times a year	On foot	Used for pleasure from Millers Close on circular route, dog walking. Others also used the route on foot. No stiles, notices or other obstructions. Gates on route not locked. Never challenged. First 100m is track approx 6m wide, remainder is approx 0.75m wide. Believes owner or occupier was aware as Mr Rookes was often in the area concerned.
Mrs G Caddy *2 different types of handwriting on form	2007 - 2009	About 25 times	On foot	Used for pleasure from home and back, walking dogs. Others also used the route on foot. Gates on route not locked. Never challenged. No stiles, notices or other obstructions. Track is approx 8-9 feet up to gateway, remainder is approx 2 feet wide.
Mr M Drake	1985 – present (form completed in 2009)	1985 - 1988 100 times per year. 1988 – 2006 150 times per year. 2006 – 2009 50 times per year.	On foot	Used for pleasure as circular walk. Others also used the route on foot. Also used by vehicles for horse boxes and business use. Kissing gate but not locked. No stiles, notices or other obstructions. Never challenged. Approx 4' wide.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs M A Drake *2 different types of handwriting on form	1985 - 2009 (form completed in 2009)	1985 - 1988 150 times per year. 1988 - 2006 365 times per year. 2006 - present 50 times per year.	On foot	Used for pleasure. Others also used the route on foot, with horseboxes and vehicles for business use. Gates on route but unlocked. No stiles or notices. Never challenged. 4ft Width approx.
Mrs A C Dye *2 different types of handwriting on form	2008 - 2009	45 times a year	On foot	Used for pleasure, Verlands Road to corner of field. Others also used the route on foot. Unlocked gates until recently. No stiles, notices or other obstructions. Never challenged or stopped and does not know of anyone else who has been stopped or prevented from using it until this time. Used frequently by many people on a regular basis. Width about 2½ metres.
Mrs C Elsam *2 different types of handwriting on form	2005 - 2008	Weekly	Horseback	Used from field to stables and back for work. Others also used the route on foot and horseback. Gates sometimes locked and notices saying to ask Mr Rookes about access. Worked at Hillside Stables, which kept horses there during 2008. Never challenged.
Mr A Every	1996 - 2009	50 times a year	On foot	Used for pleasure, circular walk. Others also used the route on foot, horseback and vehicle. Gates present. No stiles, notices or other obstructions. Never challenged. Has walked this path for over 13 years for fun, fitness and the views of Weymouth.
Mrs T J Every *2 different types of handwriting on form	1996 - 2009	50 times a year	On foot	Used for pleasure. Others also used the route on foot, horseback and vehicle. Gates present. No stiles, notices or other obstructions. Never challenged. Has always enjoyed walking over this land.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mr P Fancy	1965 – current (form completed in 2009)	1965 - 1970 3 times a year 1970 - 1973 150 - 200 times a year 1974 - 2004 3 times a year 2004 30 - 50 times a year	On foot	Used for pleasure. Others also used the route on foot. Stile at eastern end of field where kissing gate now situated. Gate not locked. No notices or other obstructions. About 200 metres long by 2 metres wide. Believes owner/occupier was aware of public using the way as it was fenced off and there was a well defined path – eroded vegetation.
Ms D V G Fearnley	1957 – present (form completed in 2009)	Frequently	On foot	Used for pleasure. Others also used the route on foot. Kissing gate unlocked. No stiles, notices or other obstructions. Never challenged. Length of track approx 200 metres long by 2 metres wide.
Mr J W Fiatt *2 different types of handwriting on form	Not stated	Recently 40-50 times a year, in past about 12 times a year	On foot	Used for pleasure, dog walking. Others also used the route on foot. Gate wired on 18/08/09, cannot remember stiles or notices. No other obstructions. Never challenged. Horse owners in the field saw him using the route regularly.
Mrs P Field *2 different types of handwriting on form	1972/3 - current (form completed in 2009)	3 - 24 times a year	On foot	Used for pleasure from home to Sutton Poyntz village and back. Others also used the route on foot. Stile at eastern end of field where kissing gate now situated (open). No notices or other obstructions. Never challenged. Approx 2 metres wide. Regularly used by walkers without interference.
Mr D F Gibbs *2 different types of handwriting on form	2002 - 2009	360 times a year	On foot	Used for pleasure. Others also used the route on foot. Route was slightly diverted when farmer's fence fell down and was removed, track became part of his field. Gates present normally unlocked and kissing gate. No notices, stiles or other obstructions. On 21 August both gates were locked and paint/axel grease spread on top of both gates. Width of path in 2002 approx 2 metres wide. See Paragraph 9.4.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs R D Gibbs *2 different types of handwriting on form	2002 - 2009	365 days a year	On foot	Used for pleasure from home to Sutton Poyntz and back. Others also used the route on foot, horse and vehicle. Fence was removed from side of track so had to walk in field up to kissing gate. Gate locked from 20 August 2009. No stiles, notices. Never challenged. 2 metres wide.
Mrs A J Hackford *2 different types of handwriting on form	1975 - 2009	1975 - 1988 336 times a year 1989 - 2009 (no number given)	On foot	Used for pleasure to exercise dogs. Others also used the route on foot. Kissing gate, no stiles, notices or other obstructions. Never challenged. Track approx 2 metres wide.
Major J B Hackford	1975 - 2009	200 - 300 times a year	On foot	Used for pleasure, dog walking. Others also used the route on foot. Path has been blocked last 2 years (form completed in 2009) so walked up the side of the field alongside. Kissing gate always open. No stiles or notices. Never challenged. Approx 8 feet wide path, obstacle-free entrance at the top of Verlands Road going eastwards to a kissing gate into top field – fenced both sides.
Mr M Haine	1977 – present (form completed in 2009)	3 or 4 times a year	On foot	Used route to get to Scutt Hall, Preston. Others used the route on foot. Unlocked gate. No stiles, notices or other obstructions. Never challenged. The Weymouth East Scout Group has enjoyed the use of this path to the top of Winslow Hill for the last 32 years. Path was until recently fenced on both sides approx 1.5 metres wide.
Mr A D Heathershaw *2 different types of handwriting on form	1992 - present (form completed in 2009)	15 times a year (average)	On foot	Used for pleasure, circular walk. Others also used the route on foot. Unlocked kissing gate SE corner of field at boundary with Winslow Hill. No notices. Recently obstructed by owner – residents of Verlands Road and others have been prevented from using route. Path is used by residents of area around Verlands Road and Winslow Road plus walkers from Sutton Poyntz and Preston.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs A E Heathershaw	1992 - present (form completed in 2009)	12 times a year approx	On foot	Used for pleasure, circular walk. Others also used the route on foot. Well worn path. Unlocked kissing gate. No stiles or notices. Last year gate at bottom of path locked - could not negotiate path. Never challenged. Approx 6 feet wide.
Mr L A Jolliffe	1956 onwards (form completed in 2009)	Several times a year	On foot	Used for pleasure to Preston Road. Others also used the route on foot and horseback. Stile on route (marked kissing gate on his map) and gates, unlocked. No notices or other obstructions. Never challenged. Approx 2 metres wide.
Mrs R Jolliffe	1941 onwards (form completed in 2009)	Numerous times a year	On foot	Used for pleasure. Others also used the route on foot and horseback. Stiles on route, no gates, notices or other obstructions. Never challenged. Approx 2 metres wide.
Mrs M R Jones	1974 - 2009	200 times a year (approx)	On foot	Used for dog walking. Others used the route on foot. Gates on route but not locked when sheep grazed in field at top of Winslow Hill. No stiles, notices or other obstructions. Gate barred and wired 12 August 2009. Husband told 13 August 2009 by Mr Rookes that route was not public
Mr P A W Jones	1974 - 2009	300 plus times a year	On foot	Used for pleasure dog walking. Others also used the route on foot – could see them clearly from his garden. Gates not locked. No notices, stiles or other obstructions. Gate barred and wired since circa 12 August 2009. Was approached by Mr Rookes and told the route was not public on or about 13 August. Approx width 2 metres. Until recently path was enclosed on both sides by barbed wire fencing. In 2008 northern most fence fell into disrepair with fence posts and barbed wire lying on path, in consequence walkers then encroached a little further into the fields to avoid the barbed wire hidden in the grass. During early 2009 fence was removed.
Mrs F Julian	1990 – present (form completed in 2009)	Used frequently	On foot	Used for pleasure. Others also used the route on foot. Stile at end of pathway and an unlocked kissing gate. No notices or other obstructions. Never challenged. Length of track approx 200 metres long by 2 metres wide.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs D Lake *2 different types of handwriting on form	2002 - 2009	20 times a year	On foot	Used for pleasure. Others also used the route on foot. Kissing gate at Winslow Hill not locked, gate at lower entrance normally open. No stiles, notices or other obstructions. Never challenged. Kissing gate is old and path is well established wide enough for a single person.
Mr P Lake *2 different types of handwriting on form	2002 - 2009	40 times a year	On foot	Used for pleasure walking the local area. Others also used the route on foot. Kissing gate at Winslow Hill not locked, gates at lower entrance normally open. No stiles or notices. Never challenged. Path well defined. Kissing gate is old and has been there a long time. Well used path. Wide enough for a single person.
Mrs L Leake *2 different types of handwriting on form	6 (form completed in 2009)	Once/twice a day	On foot	Used for pleasure. Others also used the route on foot. Unlocked gates. No stiles, notices or other obstructions. Never challenged. Pathway well worn. 2 metres wide.
Mr S Leake	6 (form completed in 2009)	Once/twice a day	On foot	Used for pleasure to Sutton Poyntz and back. Others also used the route on foot. Gate was unlocked, owner locked gate to prevent access. No stiles, notices or other obstructions on route. Never challenged. 2 metres wide.
Miss N Lloyd	1997 to present (form completed in 2009)	Every day	On foot	Used for pleasure. Others also used the route on foot. Gate halfway along track and locked. Stiles at Winslow Hill. Kissing gate blocked off. No notices. Never challenged. Trackway approx 200 metres long and 2 metres wide. In constant public use.
Ms R McCreedy *2 different types of handwriting on form	12 years (form completed in 2009)	At Least 120 times a year	On foot	Used for leisure, walking and bird watching to Osmington and back. Used by others on foot. Kissing gates on entrance. No notices or other obstructions. Never challenged. Access has always been available.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mr D S A McCune (Applicant)	1985 - 2009	40/50 times a year	On foot	Used for pleasure to Sutton Poyntz, White Horse Hill from home. Others also used the route on foot. Stile changed to kissing gate in early 90's [point C]. Kissing gate blocked off by earth bank. Gate locked [point B]. No notices. Was told route not public by owner when he blocked off kissing gate. Enjoys private right of way along the south side of own property for first 126 feet. Approx 400 metres long (first 200 metres along track) approx 2.5 metres wide.
Mrs J L McCune	1985 – present (form completed in 2009)	250 times a year	On foot	Used for pleasure via Winslow Hill and Sutton Poyntz. Others also used the route on foot. Stile at top of track/Winslow Hill (now kissing gate). Gate locked recently. No notices or other obstructions. Never challenged. Enjoys a private right alongside own land over the first 126 feet of route. Overall length of track approx 200 metres x 2.5 metres wide.
Mrs M Morris *2 different types of handwriting on form	1994 - 2009	8 times a year	On foot	Used for pleasure. Others also used the route on foot. Gates on route. No stiles, notices or other obstructions. Never challenged.
Mrs C Nairn	Since 1968 (form completed in 2009)	14 - 16 times a year	On foot	Used for recreation. Others also used the route on foot. Fence on side of path removed so path is now part of field. Stiles at top of path previously. Unlocked gate at top of field, locked gate on path. Recent locked gate near bottom of path. Well used path, approx 2 metres wide.
Dr D Nairn	1968 onwards (form completed in 2009)	Various, perhaps 20 times a year	On foot	Used for pleasure to Sutton Poyntz village and Osmington. Others also used the route on foot. Recently left side of fence has been removed, making part of path now part of field edge. A gate with chained lock now bars the way up to the original path. Stiles at top of path now a swing gate. Locked gate recently installed on path. No notices or other obstructions. Has been told by owner that status of path is being reviewed. Approx 2 metres wide.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mr D Osborne *2 different types of handwriting on form	1979 - 2009	400 times a year between 2001 - 2009	On foot	Used for pleasure, circular walk. Others also used the route on foot. Gates never locked until now. No stiles, notices or other obstructions. Land owner removed fence identifying the way and prevented access. Before fence was removed the width was approx 2 metres.
Mrs J Osborne *2 different types of handwriting on form	Last 15 years (form completed in 2009)	Weekly	On foot	Used for pleasure to village. Others also used the route on foot. Unlocked gate present. No stiles, notices or other obstructions. Has spoken to the owner. Has never been refused entry.
Mrs E Osborne *2 different types of handwriting on form	2000 - present (form completed in 2009)	500 times approx per year (twice a day)	On foot	Used for pleasure. Others also used the route on foot, cycle and horseback. Gates never locked until now. No stiles, notices or other obstructions. Seen owner whilst using route. Never challenged. It has always been accessible. Route is used by walkers to get into the village as it avoids the busy Sutton Road. This path was always separated from the field up to the kissing gate. Kissing gate has only recently been removed. 2 metres width.
Miss S E Osborne	2000 - present (form completed in 2009)	Weekly	On foot	Used for pleasure. Others also used the route on foot and horseback. No stiles, gates, notices or other obstructions. Never challenged. About 2.5 metres wide.
Mrs M Peain	1996 to present (form completed in 2009)	Weekly	On foot	Used for pleasure from Winslow Hill to Verlands Road. Others also used the route on foot. Stile on Winslow Hill, Gate halfway along track was locked. Kissing gate blocked. No notices on route. Never challenged. Track is about 2 metres wide and about 200 metres long.
Mr R Peain	1996 - present (form completed in 2009)	Daily	On foot	Used for pleasure from Winslow Road. Others also used the route on foot. Gate halfway along track locked. Stile at Winslow Hill. Kissing gate locked. No notices. Owner has seen walkers using track. Never challenged. Track is about 2 metres wide and 200 metres long.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs E Pegrum *2 different types of handwriting on form	1982 to present (form completed in 2009)	50 + times since 2001	On foot	Used for pleasure from Sutton Poyntz to White Horse Farm, Osmington. Others also used the route on foot. Stile at top of Verlands Road [point C]. Gates not locked. Kissing gate replaced stile [at point C] another at point D. No notices or other obstructions. Never challenged. A wide path, easy to walk along. Constant public use.
Mr T A Pegrum	2003 - 2009	20 times a year	On foot	Used for pleasure to White Horse Farm and Sutton Poyntz. Others also used the route on foot. Gates now chained. No notices or other obstructions. Never challenged. Track used regularly by walkers from Sutton Poyntz and surrounding areas. Approx 1 metre wide
Mrs C Penny *2 different types of handwriting on form	1989 to present (form completed in 2009)	100 times this year	On foot	Used for pleasure. Others also used the route on foot. Kissing gate, not locked, at top end of path. No stiles, notices or other obstructions. Path was open onto Verlands Road until very recently when a gate was installed. On Friday 21 August 2009 two gates were padlocked into lower field. Path is always busy during summer and winter – grass/nettles flattened. Path was defined by wire/barbed wire fences on both sides, approx 2 metres wide.
Mr D E Penny	1989 to present (form completed in 2009)	100 times a year in the last few years	On foot	Used for pleasure, dog walking. Others also used the route, mostly on foot. Route used to run between two fences until two years ago. A kissing gate at the east end, never locked. The gate at the west end appeared in the last couple of years. No stiles, notices or other obstructions. Never challenged. 1.5 metres width when between the fences.
Mrs E Potter	2003 - 2008	Occasional	On foot	Used for pleasure, walking dog. Others also used the route on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr K D Potter *2 different types of handwriting on form	2003 - 2008	Occasional	On foot	Used for pleasure, walking dog. Others also used the route on foot. No stiles, gates, notices or other obstructions. Never challenged.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs C N Price	Since 1998 (form completed in 2009)	Many times a year	On foot	Used for pleasure. Others also used the route on foot. Kissing gate at Winslow Hill. Unlocked gates. No notices or other obstructions. Mr Rookes saw public using track often. Approx 2 metres wide.
Mr M E Pye	36 years (form completed in 2009)	Varied - as of 10 years ago 50 times a year	On foot	Used for pleasure. Others also used the route on foot. Stiles at top, recent. No gates or notices. Access recently blocked and existing footpath taken out. Public land, always open. Existing fence was taken down one year ago, never reinstated – was assured it would be replaced but owner extended his land over an existing footpath. Approx 2 metres wide
Mrs N Pye	Last 10 years (form completed in 2009)	Every month	On foot	Used for pleasure from Verlands Road to other fields.. Others also used the route on foot. Stile at the top. No gates, notices or other obstructions. Dog walkers use it all the time. Never challenged. Two metres wide.
Mr J C Reynolds	1997 to date (form completed in 2009)	c100 times a year	On foot	Used for pleasure. Others also used the route on foot. Stile and unlocked gates on route. No notices or other obstructions. Owner tried to prevent use by locking gates. Never challenged. Northern boundary line of the footpath has always been defined by a wire fence from Verlands Road to the stile at Winslow Hill until it was removed in part (two thirds approx).
Mrs M S Reynolds	1983 to present (form completed in 2009)	1983-95 2-3 times a week 1995-to date 5 times a week	On foot	Used for pleasure as circular route. Others also used the route on foot. Stiles and unlocked gates on route. No notices or other obstructions. 18.8.09 owner obstructed both ends of the track by padlock and barbed wire. Always a track running along the south edge of field, roughly 2 yards wide.

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mr W F Richards	1994 to present (form completed in 2009)	Between 10 to 100 times a year	On foot	Used for pleasure, dog walking and business. Others also used the route on foot. Stiles on route. Kissing gate east end of track. Gates were not locked. No notices or other obstructions. On various occasions pathway was cleared and a lot of people use the path at all times. Pathway was fenced to a width of approximately 1.5 metres all the way to Winslow Hill. Part of the fence has fallen into disrepair and is now an open footpath, unfenced. Never challenged.
Mrs C Roberts *2 different types of handwriting on form	1985 to present (form completed in 2009)	Weekly	On foot	Used for pleasure via Winslow Hill to various countryside walks. Others also used the route on foot. Unlocked gates. No stiles, notices or other obstructions. About 2 metres wide. Well worn path and in frequent use.
Mr R Roberts	1985 to present (form completed in 2009)	Weekly from 1985 - 2001, daily from 2001	On foot	Used for pleasure, circular walk via Sutton Poyntz. Others also used the route on foot. Unlocked kissing gate, metal gate open. No stiles, notices or other obstructions. Owner was aware people were using it as well-worn and number using it. Until recent years the path was defined by two parallel post and wire fences spaced approx 1.5 metres apart. The north side fence was removed 3 to 4 years ago.
Mr D L Saunders *2 different types of handwriting on form	1940 to present (form completed in 2009)	Most days	On foot	Used for pleasure. Others also used the route on foot. Gates half way along track and locked. Kissing gate blocked. No notices. Never challenged. Footpath 200yds long and 6ft wide.
Miss E Saunders	1940 -1980 1992 onwards (form completed in 2009)	1940 – 1980 Occasionally Since 1992, once a month	On foot and by car	Used for pleasure and work. Others also used the route on foot. The fence on the north side of track has been removed. On one occasion there was a lock on the gate, which she climbed over. No stiles, notices or other obstructions. Never challenged. The track was wide enough for a car or horse and cart. Her father drove a car up the track during 1970-1980 to repair the fence in the adjoining field Winslow to prevent the horses coming through. See Paragraph 9.4.

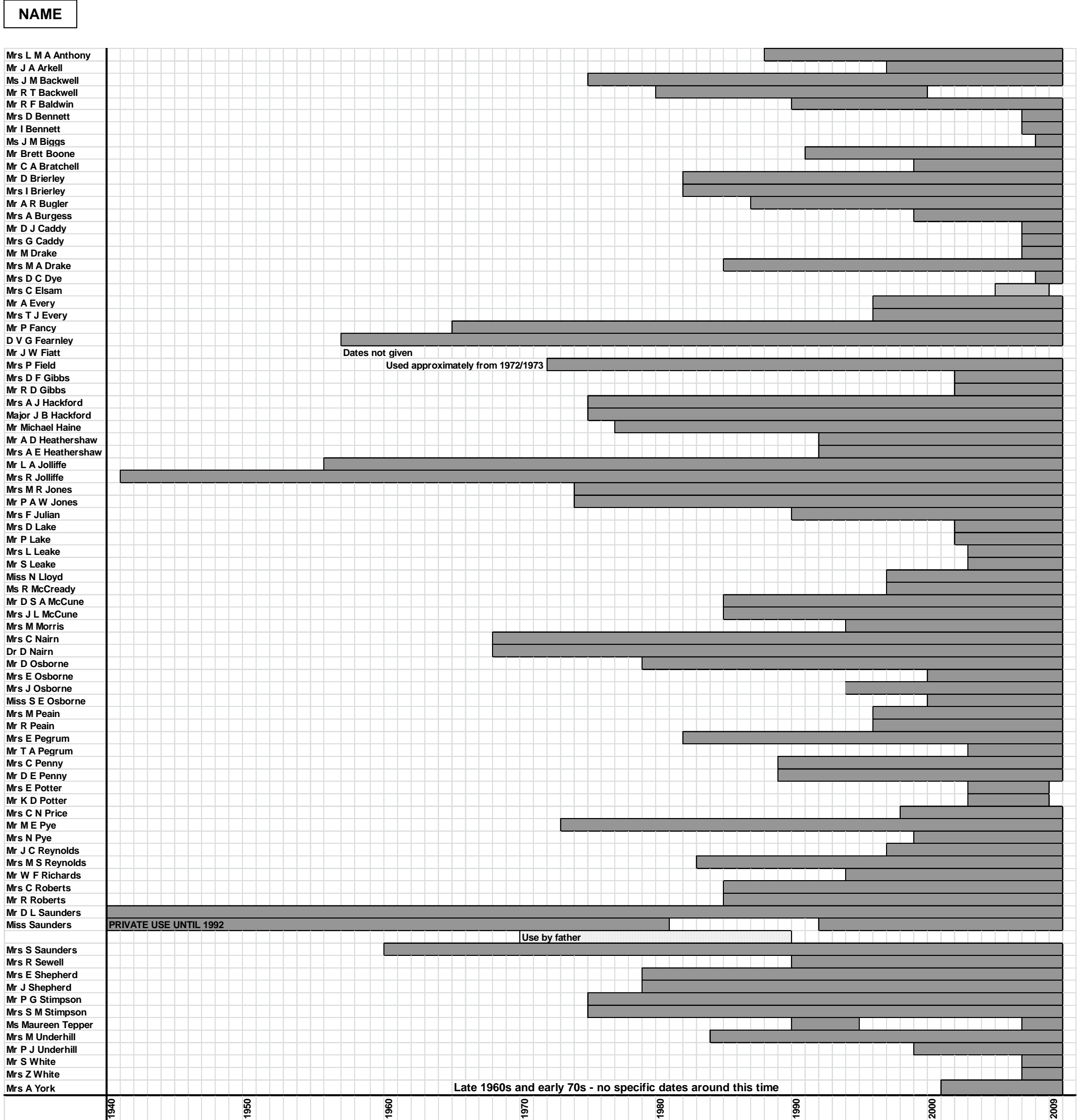
Name	Dates	Frequency Of use	Type of use	Details of use / comments
Mrs S Saunders	1960 to present (form completed in 2009)	Several times a year	On foot	Used for pleasure. Others also used the route on foot and horseback. Locked gate halfway now, no notices. Kissing gate now blocked off. Never challenged, in constant public use. Trackway 200yds long 6ft wide.
Mrs R Sewell	1990 to present (form completed in 2009)	Every day	Unknown	Used for pleasure. Others also used the route on foot. Gate halfway along track and locked, kissing gate blocked off. No notices. Never challenged, in constant public use. Trackway approx 200 metres long and 2 metres wide.
Mrs E Shepherd	1979 - 2009	1984-1990 daily now weekly	On foot	Used for pleasure from Sutton Park to fields. Others also used the route on foot, horseback and vehicles. Gates not locked. No stiles, notices or obstructions. Never challenged. Many people use the pathway all through the day. Approx 1.5 metres wide.
Mr J Shepherd	1979 - 2009	1984 -1990 daily, otherwise 12-20 times a year	On foot	Used for pleasure from Sutton Park to field above. Others also used the route on foot. No gates, stiles, notices or other obstructions. Never challenged. Width - depending on the spread of the bushes - 1.5 metres.
Mr P G Stimpson	1975 to date (form completed in 2009)	20 times a year	On foot	Used for pleasure to Sutton Poyntz. Others also used the route on foot. Stile at top of track continuing from Verlands Road. No notices. Gates present. Barbed wire across entry. Never challenged. Width: 3'-4' along south boundary of field.
Mrs S M Stimpson	1975 to date (form completed in 2009)	20 times a year on average	On foot	Used for pleasure to Sutton Poyntz and return. Others also used the route on foot but she has seen horses and vehicles. New landowner has removed fence over section from Verlands Road cart track. In July 2009 new land owner installed locked gates, placed barbed wire on top of gates, bulldozed earth against foot gate at top of field and excavated a trench across pathway for electricity. Some gates open, some locked. Stiles present. Never challenged. 3-4 feet along fenced field (south fence removed in July 2009).

Name	Dates	Frequency Of use	Type of use	Details of use / comments
Ms M Tepper *2 different types of handwriting on form	1990 - 1994 2007 - 2009	2 - 3 times a year	On foot	Used for pleasure from Sutton Road to White Horse Garage and back. Others also used the route on foot. Stiles at Winslow Hill, top Verlands Road. Gate recently locked. No notices or other obstructions. Footpath in regular use. Standard footpath width.
Mrs M Underhill *2 different types of handwriting on form	Since 1984 (form completed in 2009)	Regularly (weekly on average)	On foot	Used it to walk dog. Used by others on foot. Gates. Gate was locked for a short period in 2008 when fence removed so had to climb over. No stiles, notices or other obstructions. Owner has seen many walkers. Never challenged. Width approx 2.5 metres.
Mr P J Underhill *2 different types of handwriting on form	1999 to now (form completed in 2009)	1 - 2 times a week	On foot	Used it to walk dog. Used by others on foot. Stiles at end of field, unlocked gates. Owner shut off field for a short period. No notices. Never challenged. Route is in constant use by the public.
Mr S White	2007 to present (form completed in 2009)	5/6 times a week	On foot	Used for pleasure, dog walking. Others also used the route on foot. No stiles, notices or other obstructions. Gate on route, unlocked. Never challenged. Owner locked gate to prevent public use.
Mrs Z White *2 different types of handwriting on form	2007 - 2009	150 times a year (3 times a week)	On foot	Used for pleasure from home to Winslow Hill to Sutton Poyntz. Others also used the route on foot. Unlocked gates, no stiles, notices or other obstructions. Many walkers. Never challenged.
Mrs A York	Late 1960s and early 70s then from 2001 (form completed in 2009)	1960s several times a year Since 2001, monthly	On foot	Used for pleasure. Others also used the route on foot. Stile at entry to Winslow hill and onto A road. Gates at top of Verlands Road and one other always open. One gate locked in 2009. No notices or other obstructions. Path 10' wide, narrowing to 5ft footpath. Route is commonly known in the locality.

Other submissions

John and Rita Stephen – letter dated 7 February 2010. Stated 12 years' use prior to 2010 (see paragraph 10)

Chart of user evidence to show periods of use



YEARS OF USE

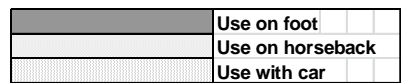


Chart to show level of use

