

Officer Delegated Decision

An application for a definitive map and statement order to upgrade part of Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and upgrade Bridleway 59 Leigh.

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| Date: 05/102020 |
| Decision: <ul style="list-style-type: none">a) An order be made to modify the definitive map and statement of rights of way by recording Bailey Drove as shown between points A – B – C – D – D1 – E on Drawing 18/07 (Appendix 1) as a byway open to all traffic. b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council. |
| Key Decision: <p style="text-align: center;">No</p> Please see definition below. |
| Reason(s) for Decisions: <ul style="list-style-type: none">a) The available evidence shows, on balance, that the application route (Bailey Drove) between points C – D – D1 – E on Drawing 18/07 was dedicated as a public carriageway in the Leigh Inclosure Award of 1804. That part of Bailey Drove between points A – B – C was a pre-existing highway of carriageway status. As the application was submitted before 20 January 2005, the public vehicular rights remain unaffected by the Natural Environment and Rural Communities Act 2006. b) The evidence shows, on balance, that the whole application route between points A – B – C – D – D1 – E on Drawing 18/07 should be recorded as a byway open to all traffic. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate. |
| Decision Maker (Name and Title): Vanessa Penny (Definitive Map Team Manager) |

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| <p>Alternative options considered and rejected:</p> <p>None</p> |
| <p>Any conflict of interest declared by any member consulted:</p> <p>None</p> |
| <p>Any dispensation granted in respect of any declared conflict of interest:</p> <p>None</p> |

Definition of Key Decisions

Key decisions are defined in the Constitution as decisions of the Cabinet which are likely to -

- "(a) result in Dorset Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making he decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms



Report to the Executive Director of Place

Application for a definitive map and statement order to upgrade part of Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and upgrade Bridleway 59 Leigh.

Lead Member: Cllr Mary Penfold, Member for Yetminster Ward

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary:

In response to an application to upgrade part of Footpath 11, Batcombe Parish to a byway open to all traffic, add a byway open to all traffic from Footpath 11, to Bridleway 59, Leigh Parish, and upgrade Bridleway 59 to a byway open to all traffic, this report considers the evidence relating to the status of the route.

Equalities Impact Assessment:

An Equalities Impact Assessment is not a material consideration in considering this application.

Budget:

Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.

Risk Assessment:

As the subject matter of this report is the determination of a definitive map modification order application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications:

None

Recommendation:

That:

- a) The application be accepted and an order made to modify the definitive map and statement of rights of way by recording Bailey Drove as shown between points A – B – C – D – D1 – E on Drawing 18/07 (Appendix 1) as a byway open to all traffic.
- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

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Reasons for Recommendations:

- (a) The available evidence shows, on balance, that the application route (Bailey Drove) between points C – D – D1 – E on Drawing 18/07 was dedicated as a public carriageway in the Leigh Inclosure Award of 1804. That part of Bailey Drove between points A – B – C was a pre-existing highway of carriageway status. As the application was submitted before 20 January 2005, the public vehicular rights remain unaffected by the Natural Environment and Rural Communities Act 2006.
- (b) The evidence shows, on balance, that the whole application route between points A – B – C – D – D1 – E on Drawing 18/07 should be recorded as a byway open to all traffic. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

Use of Evidence:

The applicant submitted documentary evidence in support of the application.

Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.

A full consultation exercise was carried out in July / August 2005 and again in July / August 2018. These included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. The Councillor for Yetminster Ward, Mary Penfold, was also consulted. In addition, notices explaining the application were erected on site. Any relevant evidence provided has been discussed in this report.

Appendices:

1. Drawing 18/07, consultation 2018 and report plan
2. Drawing 05/36, consultation 2005 plan
3. Law
4. Documentary evidence
 - Table of documentary evidence
 - Extracts from key documents
 - Leigh Inclosure 1804
 - Finance Act Plans 1910
 - Tithe Map Batcombe 1838
 - Tithe Map of Chapelry of Leigh in the Parish of Yetminster 1840
 - Sherborne Highway Board Map 1869
 - Ordnance Survey Drawing 1808 – 09
 - Ordnance Survey First Edition Map 1inch: 1mile 1816
 - Ordnance Survey First Edition Map 25inch: 1mile 1887
 - Ordnance Survey Boundary Sketch Map Batcombe 1885
 - Greenwood's Map 1826
 - Ministry of Transport Map 1923

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- Bartholomews half inch: 1mile map 1942
- Map of the Sandwich Estate, Mapperton 1858
- Batcombe Parish Survey (1950's)
- Leigh Parish Survey (1950's)
- First definitive map 1966 – 67
- Revised Draft Map 1974
- Current definitive map 1989
- Aerial Photograph 1947
- Aerial Photograph 2014

5. Dorset County Council Report to the Roads and Rights of Way Committee 15 September 2005.

6. Dorset County Council Committee Minute 188, Roads & Rights of Way Committee 15 September 2005.

Background papers:

The case file of the Executive Director of Place (ref. RW/T338).

Most of the original historic maps and documents referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.

Copies (or photographs) of the documentary evidence can be found on the case file RW/T338, which will be available to view at County Hall during office hours.

Officer Contact:

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- 4 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

1 **Background**

- 1.1 An application was made by Friends of Dorset Rights of Way (FoDRoW) on 14 July 2004 to:
 - upgrade to a Byway Open to All Traffic part of Footpath 11, Batcombe
 - upgrade to a Byway Open to All Traffic Bridleway 59, Leigh
 - add a Byway Open to All Traffic between the two, as shown on Drawing 18/07 (Appendix 1)
- 1.2 A full consultation in respect of the application was conducted during July / August 2005 using Drawing 05/36 (Appendix 2)
- 1.3 A report considering the application was made to the Roads and Rights of Way Committee in September 2005. The Committee accepted the application and decided to make an Order to add the route as a byway open to all traffic (BOAT)(Appendix 6).
- 1.4 Before the order was made, an objection was received from High Stoy Parish Council and Leigh Parish Council on 2 April 2006. A second objection was received from Green Lanes Protection Group on 5 May 2006. Both subsequently provided further evidence.
- 1.5 A member of the Trail Riders Fellowship provided supporting evidence in 13 September 2006 and 18 October 2006.
- 1.6 On 4 October 2010 the Trail Riders Fellowship took on the application on behalf of Friends of Dorset Rights of Way.
- 1.7 On 7 October 2010 this application was one of five that the County Council again considered. The Committee resolved that applications supported by “computer generated enlarged versions of Ordnance Survey maps” were not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981 and therefore this application was refused.
- 1.8 The Trail Riders Fellowship (TRF) and Mr Tilbury applied to judicially review the Council’s decision to reject these applications. Although the High Court Judge who considered the matter agreed with the Council’s view, the Court of Appeal disagreed and decided that the applications were properly made.
- 1.9 On 18 March 2015 the Supreme Court dismissed an appeal by the County Council against this decision. The Supreme Court order declared that the application was made in accordance with paragraph 1 of Schedule 14 of the Wildlife and Countryside Act 1981.

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- 1.10 The applications are therefore made in accordance with Schedule 14 of the Wildlife & Countryside Act 1981. The County Council's Regulatory Committee resolved on 12 July 2018 that the applications should be investigated.
- 1.11 A new consultation was undertaken in July / August 2018 and the application examined again in detail, particularly with respect to the strict requirements of the Wildlife and Countryside Act 1981[WCA] (section 53(5) and paragraph 1 of Schedule 14).
- 1.12 Confirmation was sought from the Supreme Court in 2019 that its Declaration of 2015 did mean that this application was deemed fully compliant with paragraph 1 of the Act. This was confirmed.
- 1.13 The application, if successful, would result in the recording of a byway open to all traffic.

Description of the application route

- 1.14 The claimed route starts at point A, where it leaves the county road, just south of Scotley Farm. There is a finger post indicating Footpath 11 Batcombe and a barrier (2.9 metres wide).
- 1.15 From here the claimed route proceeds north-east to point B, where Footpath 11 Batcombe leaves the route to the north. The minimum width from hedge to hedge is approximately 6.5 metres.
- 1.16 From point B the claimed route is initially obstructed for approximately 2 metres by an overgrown barrier. The route continues north-eastwards to point C as a holloway (more than 1.5m deep), overgrown with trees and with signs of water erosion. It is bounded by mature trees and the width from tree boundary to tree boundary is approximately 5 – 8 metres. The estimated useable width, before overgrowth and water erosion would have been approximately 2 metres minimum.
- 1.17 At point C the route crosses the parish boundary and continues in a north-easterly direction. It is approximately 12 metres wide, bounded by mature trees (some coppiced / laid) and fences, there is a drainage ditch along the north-western boundary. The route is mostly flat and is infilled with young trees, mainly ash, and undergrowth.
- 1.18 Just before point D the route turns to a westerly direction and widens further. There are signs that it is crossed by water channels in wetter times. The remains of ancient fishponds can be seen in the field to the north.
- 1.19 At point D the route crosses the River Wriggle. The meandering / branching route of the river gives several potential river crossings, and the drop to the rocky river bed at the lowest point is approximately 0.6 metres. The area is extensively overgrown and there are fallen trees.

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- 1.20 East of point D the claimed route continues up a heavily overgrown bank with fallen trees.
- 1.21 Between the top of the bank and point E the claimed route is a wide flat meadow, approximately 16 metres wide. It is bounded by deep hedges and mature trees. At point D1 there is an opening into the field to the north.
- 1.22 At point E the claimed route is bounded by a hedge before the Wriggle River Lane, and a gate (unlocked). There are no right of way signs at the junction with the road.
- 1.23 None of the route is registered with the Land Registry.

2 **Law**

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

3 **Issue to be decided**

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist (for those parts of the route already recorded) , or are reasonably alleged to subsist (for that part of the route which is currently unrecorded), on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.
- 3.3 Historical documentary evidence and user evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

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4 Documentary evidence (Appendix 4) (copies available in the case file RW/T338)

- 4.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 4. Extracts from the key documents are also attached. An analysis of the documentary evidence is in Section 9.

5 User evidence

- 5.1 No user evidence was submitted with the application, and none was submitted in response to consultation.

6 Additional evidence in support of the application (copies available in the case file RW/T338)

- 6.1 Two submissions were received in support of the application.

TRF = Trail Riders Fellowship, GLPG = Green Lanes Protection Group, NERC = Natural Environment and Rural Communities Act (2006), DCC = Dorset County Council

| Name | Comments |
|------------------|--|
| TRF (06/11/2010) | Copy of an appeal to DEFRA against Dorset County Council committee decision based on scale of map. |
| TRF (31/08/2018) | Claims documentary evidence and map evidence was submitted in July 2004, supports the application. |

7 Evidence opposing the application (copies available in the case file RW/T338)

- 7.1 16 submissions were received before the consultation in 2018 started, and a further 4 as a result of the consultation.

| Name | Comments |
|----------------------------------|--|
| Adjoining landowner (29/04/2005) | (Then) owner of Deansbrook Farm (located to the north of point E), claimed to own half of the route. Said route was gated for at least 12 years thus not available for vehicles. Said route is impassable to tractors in the winter. |
| Member of public (29/07/2005) | Provides a definition of 'drove' and expresses the opinion that it was never the intention that droves be used by wheeled vehicles. |

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| Name | Comments |
|--|---|
| Adjoining landowner (17/08/2005) | Claims the claimed route did not terminate at any other road but was access to fish ponds and was not a right of way for vehicles. Claims there was no evidence the proposed roadway was ever created, that the route has been gated for at least 13 years. |
| Adjoining landowner (25/11/2005) | Claims route would have been impassable for cart / animals due to steep drop to river, it would damage the ecology of the area and may cost a lot to maintain. |
| High Stoy Parish Council & Leigh Parish Council (02/04/2006) | Claims use with vehicles would have been impossible due to steep terrain and lack of bridge over stream. Claims that soil analysis indicated no evidence of surfacing of the route which they suggest means the route was never 'set out' as a public carriageway. Claims there is no proof that the part of the route in Batcombe Parish was a public carriageway. |
| GLPG (05/05/2006) | Supports objection by Leigh & High Stoy PC but also emphasises lack of objectivity in officers' report to committee 15/09/2005. Objection based on lack of bridge / means of crossing at D, no evidence route was ever 'set out', no conclusive evidence provided by applicant, and contrary evidence provided by OS book of names. |
| GLPG, Leigh & High Stoy PCs (15/01/2007) | Addendum to response of 07/09/2006 (not on file). Refers to similar objection to Cheselbourne application. Restates previous evidence and emphasises lack of evidence of a road being set out in Batcombe Parish. Refers to description of Bailey Drove in OS Book of Names, and evidence on OS maps and other maps as not being conclusive. |
| Member of public (24/09/2008) | Requesting maps scales issues be decided by RoW Committee ,not referred to PINS |
| Member of public (10/12/2008) | Indication that judicial review may be sought if a particular decision is made |
| GLPG (04/07/2009) | Disputing DCC decision on scale of maps. |
| Member of public (11/07/2008) (03/08/2008) | Further discussion of map scales issues. |
| GLPG, Leigh & High Stoy PCs (27/08/2009) | Refers to previous submissions. Acknowledges that Bailey Drove was 'set out' as part of inclosure award 1804, but was not 'formed' or signed off with a Justices Declaration. States map scales argument. |
| GLPG (05/10/2010) | Questions "Winchester" compliance of case with respect to submission of evidence. |

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| Name | Comments |
|---|---|
| GLPG (05/11/2010) | Argues that appeal of decision on 07/10/2010 is not permissible under the reasons given and that true reasoning should have been that the application was valid but that NERC exemptions did not apply. |
| GLPG (06/11/2010) | Discusses legal detail of difference between 'invalid' application and non NERC compliant application. |
| GLPG, Leigh & High Stoy PCs (25/03/2014) | Request for opportunity to submit further evidence when matter is reconsidered following Supreme Court decision and claim that application is invalid with respect to submission of evidence by applicant, in light of 'Winchester' case law. |
| GLPG (14/08/2018) | Objects to application based on evidence not being attached, and evidence submitted too late to qualify for NERC exemption. |
| GLPG (16/08/2018) | Questions the recording of the application date on the DMMO register. |
| GLPG, Leigh & High Stoy PCs (31/08/2018) | Questions date of application on DMMO register. Claims that some evidence was submitted too late for the application to qualify for NERC exemption. |
| Member of public (31/08/2018) | Not seen route used for 11 years, route is gated and impassable due to trees, bushes and river crossing. Unlikely that route would have been created as a cul-de-sac. Vehicular use would damage wildlife. |

8 Other submissions received (copies available in the case file RW/T338)

8.1 A further seven submissions were received.

| Name | Comments |
|---------------------------------------|---|
| High Stoy Parish Council (14/07/2005) | Seeks clarification on the law under which the application will be considered. |
| DCC Senior Archaeologist (28/07/2005) | Has some reservations if the modification were to lead to an increase in traffic causing greater wear and tear. Route believed to be at least medieval and may be related to a nearby deer park and fish ponds. |
| Dorset Wildlife Trust (09/08/2005) | Has some concerns if the modification were to proceed that ecological damage would occur by use of the route with vehicles. |
| DCC Senior Archaeologist (10/08/2018) | No additional information since 2005. |
| High Stoy PC (26/08/2018) | Seeking advice on how the parish council can register ownership of part of the application route. |

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| Name | Comments |
|------------------------------|---|
| High Stoy RoWLO (01/09/2018) | Provides survey notes of a visit to the route in 2018, with photos. Cites evidence that public have tried to use route but found it impassable. Encloses a copy of the Tithe map 1841. Expresses the opinion that the route was once an ancient cattle drove and watering place and should be reclassified as a footpath. |
| The Ramblers (03/09/2018) | No evidence to support or refute application. |

9 Analysis of documentary evidence

Inclosure Award and Act

- 9.1 The **Leigh Inclosure Award 1804**, under the section “*Public Roads*” describes “.... *One other Public Carriage Road of the Breadth of forty feet as the same is marked and staked out called Maiden Newton Drove branching out of the Main Drove aforesaid between the Allotments Number seven and Number nine hereinafter awarded to Mary Pople and Mary Galpine and extending Westward until the same enters an old Drove leading out of the said Common toward Maiden Newton...*”
- 9.2 The phrase “*enters an old drove*” suggests that this old drove is of similar status, otherwise some suggestion of termination of the new carriageway might be expected.
- 9.3 The **Leigh Inclosure Award Map (no date)** depicts Maiden Newton Drove in the same location as that part of the application route which lies within Leigh Parish (points C – D – D1 – E on Drawing 18/07). It is depicted as open at the eastern end and at the western end it is labelled ‘To Maiden Newton’.
- 9.4 There are no inclosures marked west of the river in this location, yet the drove continues to the parish boundary (point C). It is likely that this continuation of the drove to the west of the river was to link up with the old drove leading to Maiden Newton, creating a through route.
- 9.5 The **Leigh Inclosure Act 1799** was a private act for dividing, allotting and inclosing the land in the parish of Leigh. The Leigh Inclosure Award was made under the provisions of this Act.

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9.6 Page 10 of the Act states that the "*Commissioners are hereby authorised and required, before making any Allotment or Allotments by virtue of this Act, to set out and appoint such public Highways and Carriage Roads....to be made in, over, upon and through said Tract or Piece of Commonable Land*".

9.7 Officer Comments

- a) These documents provide strong evidence that the part of the application route which lies within Leigh Parish (from points C – D – D1 – E) was set out as a public carriage road to the satisfaction of the Commissioners.
- b) No evidence has been found to suggest these rights have been extinguished or diverted.
- c) The Inclosure Award and Map provide support for the continuation of this as a through route in a south westerly direction, towards Maiden Newton.

Finance Act 1910

Finance Act Plans 1910

9.8 The base map used in compiling the Finance Act was Ordnance Survey Second Edition 25 inch: 1 mile sheet, number Dorset XXI.12 (1902).

9.9 Bailey Drove, as shown between points A and E on Drawing 18/07, is shown on the Finance Act Plans to have been excluded from valuation, this being defined by the colour wash to either side, thereby excluding it from adjacent hereditaments. The resulting parcel lacks any hereditament number. The route is named 'Bailey Drove' and is all within Finance Act sheet IR125/2/198.

9.10 Officer Comments

- a) The fact that the route, as shown from A to E was excluded from valuation provides a strong indication that it was considered to be a public highway.
- b) Vehicular roads were typically depicted in this manner, suggesting that they may have been regarded as a public carriageway at that time.

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Finance Act Field Books

- 9.11 The application route shown is bounded to the north by **Herediments** numbered **Batcombe 31** and **Leigh 334, 124 and 174** and to the south by **Herediments** numbered **Batcombe 24** and **Leigh 174**.
- 9.12 The Field Book entries for these **Herediments** do not record that any deductions were allowed in respect of 'public rights of way or user' and there is no mention of access to or from Bailey Drove.
- 9.13 Officer Comment
- a) The Finance Act Field books do not provide any evidence to support or refute the application.

Tithe Maps

- 9.14 The **Batcombe Tithe Map of 1838** depicts a route corresponding to the application route as shown between points A and E on Drawing 18/07, it is annotated '**Bailey's Drove**'. The drove is bounded on both sides by solid lines, suggesting that it was fenced or hedged, and is coloured white, in the same manner as other roads in the locality, many of which are recorded as carriageways today. It has no apportionment number and is not described in any of the adjoining apportionments. Where the drove crosses the river at point D no bridge is indicated but the river is shown as having several branches with at least two crossing points.
- 9.15 The **1840 Tithe Map for the Chapelry of Leigh in the Parish of Yetminster** depicts a route corresponding to the application route as shown between points C and E on Drawing 18/07, it is not named. The drove is bounded on both sides by solid lines, suggesting that it was fenced or hedged, and is coloured yellow, in the same manner as other roads in the locality, many of which are recorded as public carriageways today. It has no apportionment number and is not described in any of the adjoining apportionments.
- 9.16 Officer Comments
- a) Tithe documents, in isolation, 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 and, in this case, the tithe map confirms that the inclosure route (described above) was indeed set out.

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- b) It is of some significance that the drove was not ascribed an apportionment number, indicating that it was not subject to tithe, which may suggest that it was regarded as a 'public' highway.

Other documents

Highway Board Maps

9.17 The **Sherborne Highway Board Map (1869)** depicts '*Highways*' in yellow, '*Halterpaths*' in green and '*Turnpike roads*' in red. The application route, along with some other roads in the area, which are today public carriageways, (e.g. part of Wriggle River Lane) are depicted uncoloured. The application route is annotated '*From Bubb Down*'.

9.18 Officer Comments

- a) It is not clear why some roads in the area which were almost certainly public carriageways at the time are not depicted as such on this map.
- b) This provides no support or otherwise for the claim.

Ordnance Survey maps

Drawings

9.19 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition 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.

9.20 The drawing that includes the area of Batcombe and Leigh parishes was completed in **1808-9** and clearly depicts Bailey Drove throughout its length as shown between points A to E on Drawing 18/07. It is defined by two parallel solid lines, suggesting that it was fenced or hedged throughout its length, and is depicted in exactly the same manner as other public roads in the vicinity. It is shown crossing a stream but these drawings tended not to depict bridges.

9.21 Officer Comment

- a) This evidence confirms the existence of Bailey Drove in 1808 and, although not indicative of any status, it does suggest that the route was capable of accommodating vehicular traffic at that time.

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One Inch Series

- 9.22 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch: 1 mile also depicts the route of Bailey Drove as shown between points A and E. It is defined in the same manner as the earlier drawing, suggesting that it was bounded by fences or hedges. It is shown in the same way as other roads in the area which are today public carriageways. The river crossing is not depicted as a bridge or as a ford.
- 9.23 The **1898 Revised New Series Ordnance Survey Map** at a scale of 1 inch: 1 mile depicts Bailey Drove as shown from point A to E. Although similar to the earlier 1 inch scale map it shows the river crossing as a ford, with the river not exceeding 15 feet in width.
- 9.24 The **1945 New Popular Series Ordnance Survey Map** at a scale of 1 inch: 1 mile depicts Bailey Drove between points D and E with parallel solid lines, uncoloured, indicating a drive or unmetalled road. Between points A and D it is depicted with a single pecked line indicating a footpath or bridlepath.
- 9.25 The **1960 7th Series Ordnance Survey Map** at a scale of 1 inch: 1 mile depicts Bailey Drove between points A – B and D – E with parallel solid lines, uncoloured, indicating an untarred road with under 14 feet of metalling. Between points B and D it is depicted with a single pecked line indicating a footpath or track.

Six Inch Series (1:10560)

- 9.26 The **1888 First Edition Ordnance Survey Map, surveyed in 1887** at a scale of 6 inches: 1 mile (1:10560) shows Bailey Drove from point A to point E, defined by two parallel solid lines indicating that it was fenced or hedged to both sides. It is annotated 'Bailey Drove' and is not shaded, although the roads at either end are. There is no indication of any gates or barriers. The route is not annotated 'F.P.' or 'B.R.', but a path labelled 'F.P.' is shown branching off (at point B on Drawing 18/07).

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25 Inch Series (1:2500)

- 9.27 The **1889 First Edition Ordnance Survey Map (surveyed in 1887)** at a scale of 25 inches: 1 mile (1:2500), depicts Bailey Drove (uncoloured), as shown between points A and E, in a similar way to the 1888 six inch scale map. In addition, between point A and B parallel pecked lines are marked within the drove, and where this notation branches off to the north at point B it is annotated 'FP'. The drove is assigned two separate land parcel numbers, one within Leigh parish and another within Batcombe parish.
- 9.28 The **1978 Ordnance Survey Plan** at a scale of 1:2500 annotates the lane as 'Bailey Drove (Track)', depicting it in a similar manner to the earlier maps. At point D on Drawing 18/07 the entrance to ancient fish ponds is shown, this may account for the complex river crossing noted on the Batcombe Tithe map of 1838 (discussed above).
- 9.29 Officer Comments
- a) Although not conclusive as to status, Ordnance Survey maps do provide evidence as to the physical existence of ways on the ground at the time of the survey. In respect of Bailey Drove, the Ordnance Survey maps demonstrate that a route, as shown from point A to point E on Drawing 18/07, has existed from at least 1808.
- b) These maps suggest that prior to 1898 the route was capable of use with vehicles, but at some time after this, and before 1945, the central section ceased to be used by vehicles, possibly suggesting that the river crossing was impassable by this means.

Ordnance Survey Boundary Sketch Map, Boundary Remark Book and Object Names Book

The **1885 Ordnance Survey Boundary Sketch Map for Batcombe** at a scale of 12 chains : 1 inch (792:1) shows the application route with parallel solid lines from point C – B - A and continuing over Batcombe Hill to the southern boundary of the parish. This is one of three routes depicted across the parish.

9.30 Officer Comment

- a) This suggests the route was considered to be of some importance within the parish, at the time.

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- 9.31 The **1885 Ordnance Survey Boundary Sketch Map for Leigh** at a scale of 12 chains : 1 inch (792:1) shows the application route with parallel solid lines from point C – D – D1 – E where it is shown joining the road corresponding to Wriggle River Lane.
- 9.32 **The 1884 Ordnance Survey Boundary Remark Book** between Leigh and Batcombe includes a sketch of the parish boundary and depicts the application route crossing the boundary at point C. There is no annotation on this route in common with other roads that are today public carriageways.
- 9.33 **The 1901 Ordnance Survey Object Names Book** lists '*Bailey Drove*' and describes it as "*Applies to an occupation road extending from the crossroads north east of the New Inn in a N easterly direction to Wriggle River Lane.*" The crossroads described corresponds to point A.
- 9.34 Officer Comments
- a) These documents confirm the existence of the application route at the relevant dates.
 - b) The earlier boundary sketch maps suggest the route was of some importance as a through route.
 - c) The later object names book suggests that by 1901 the route was considered an occupation road and as such would be subject to private vehicular rights but may have public rights in addition. The purpose of the Ordnance Survey was not to establish status but record characteristics.

Commercial and Other maps

- 9.35 **Taylor's maps of Dorset (1765) and (1796)** do not depict a route that would generally correspond to that of Bailey Drove.
- 9.36 **Greenwoods' Map of Dorset (1826)** depicts a route corresponding to that of Bailey Drove, it is uncoloured and defined by parallel solid lines and reference to the accompanying key defines it as a 'Cross road'. Other roads in the area which are today public carriageways are similarly depicted.
- 9.37 **The Ministry of Transport Map (1923)** depicts the whole of the application route as an uncoloured route bounded with parallel solid lines and crossing a river. The key describes this as 'Other road'.
- 9.38 **Hardings Map (1924)** depicts a route corresponding to Bailey Drove as an 'Other road'.

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9.39 **Johnston's Map (no date but believed to be first half 20th Century)** depicts Bailey Drove as a minor road.

9.40 **Bartholomews Revised Map (1942)** at a scale of Half inch : 1 mile depicts Bailey Drove as a 'Footpath / Bridlepath'.

9.41 Officer Comments

- a) Whilst the evidence from these maps provides nothing conclusive as to the status of Bailey Drove, they do provide evidence as to its physical existence at the time. The manner in which is shown and described suggests that it may have been considered to be a highway since at least 1826.
- b) Annotation on these maps would suggest that initially the route was considered suitable for use with vehicles, but around the middle of the 20th Century, it may only have been suitable as a through route, as a bridle path / footpath.

Estate Maps

9.42 The **Map of the Sandwich Estate, Mapperton (1858)** appears similar to a tithe map with roads coloured yellow and land parcels numbered. '*Bailey's Drove*' is shown, coloured yellow and annotated with its name, it does not have a parcel number. Two river crossings are depicted.

Sales Documents

9.43 The **Sale Plan for the Sale of Newlands Farm (1868)** shows land coloured green and land parcels numbered, routes crossing the farm are depicted coloured sienna and not numbered. All routes that are today public carriageways are coloured sienna, and in addition, the application route between points A - D is coloured sienna and is not numbered. It is bounded on the south and partly on the north by numbered land parcels. That part of the application route D – E falls outside the area to be sold.

9.44 A hand-drawn plan accompanying the **Sale of Newlands Farm (1868-70)** shows some roads and fields in the area. The application route between points C – E is shown and annotated '*To M. Newton*'.

9.45 The **Sale Plan for the Sale of Calfhay Farm (1910)** depicts public carriageways in Leigh Parish coloured sienna, and the land to be sold shaded pink or green. The application route is coloured sienna and named '*Bailey Drove*'. Land to the north of C – D is included in the sale, as is part of the land north of D – E.

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9.46 The **Sale Particulars for the Sale of Redford Farm (1918)** describes the supply of water to the lots: *'by means of a service main passing through the land of said D. Crocker under the roadway known as Bailey Drove and thence through portions of Lot...'*. Under *Conditions* it goes on to specify *'Mr D Crocker...shall keep the Reservoir and all service pipes up to Bailey Drove in good working order.'* *'The Purchaser or other the owner of the three lots shall at their joint expense keep in good working order the remainder of the main system of pipes from and under the said roadway known as Bailey Drove.'*

9.47 Officer Comment

- a) Although these documents do not confer or confirm any status for Bailey Drove, they do consistently confirm its existence as a route between the dates 1858 and 1918 and there is no suggestion that the route was considered to be in private ownership of the farms. Indeed, they imply that at the time, Bailey Drove was considered to be of the same status as other local minor roads, most of which are today public carriageways.

National Parks and Access to the Countryside Act 1949

Parish Surveys

9.48 The **Batcombe Parish Survey Map (1950's)** does not claim any part of Bailey Drove as a right of way or as a road. However, Footpath 11 was claimed, branching out to the north of Bailey Drove from point B.

9.49 The **Batcombe Parish Survey Statement (1951)** describes FP11 *'From Bailey Drove through gateway into Parish of Leigh.'*

9.50 The **Leigh Parish Survey Map (1950's)** does not claim any part of Bailey Drove as a right of way or as a road. However, Footpath 31 (the extension of Batcombe Footpath 11) was claimed. In addition, that section of the footpath within Batcombe parish was marked, and continuing from point B to point A was annotated *'Add'*. At point D the river crossing was ringed and annotated *'Impassable here'*.

9.51 Officer Comments

- a) The Batcome Parish Survey suggests that Bailey Drove, at least between points A – B was considered to have higher status than a footpath, bridleway or road used as a public path since it was not claimed, but access along it would be needed to use Footpath 11.

- 19 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- b) The Leigh Parish Survey suggests that between points A – B the application route was considered to have the status of footpath although this fell outside the parish. The annotation at point D might suggest that the state of the river crossing had some bearing on the lack of claimed rights along Bailey Drove within the parish.

Draft map

- 9.52 The **Draft map for the Batcombe & Leigh area 1959** shows FP11 Batcombe from point A – B and then continuing north and into Leigh Parish. The remainder of Bailey Drove is shown with no status as a public right of way.

Provisional map

- 9.53 The **Provisional map of 1964** shows the same situation as the Draft Map, and the statement confirms that FP11 Batcombe extended from '*Bailey Drove through gateway to the Parish of Leigh.*'

First definitive map

- 9.54 The **First definitive map of 1966 - 7** replicates the provisional map for this area: Batcombe and Leigh.

Revised draft map

In **1973** a **Special Review** Committee considered the status of Bailey Drove to determine how the route should be shown on the revised draft map.

- 9.55 **A letter** to the Council dated January **1972** describes a Batcombe parish meeting at which it was proposed, seconded and carried that '*Bailey Drove be classed as a footpath*'. The letter has a hand-written note on it '*All claims withdrawn 29/2/72*'.
- 9.56 Leigh Parish Council claimed Bailey Drove from Wriggle River Lane to Batcombe Parish (point E to point C) as a bridleway and supplied one user evidence form. Claim RW/N18(9).
- 9.57 Another claim was made for a bridleway along Bailey Drove from Wriggle River Lane to the field boundary at the river crossing (point E to point D). This was based largely on historic evidence. Claim RW/N18(7). The claim also suggested that Batcombe Parish would claim the western section as a bridleway, although there is no record of this actually occurring.

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9.58 The **Special Review Committee (04 September 1973)** upheld the claim to add Bailey Drove from Wriggle River Lane to Batcombe Parish as a bridleway.

9.59 The **1974 Revised draft map** shows that part of Bailey Drove from point A to point B as Footpath 11 Batcombe, and that part from point C to point E as a Bridleway 59 Leigh. That part from point B to point C is shown as having no status.

9.60 The accompanying **statement** describes FP11 Batcombe in the same terms as previously. BR 59 Leigh is described as '*from Wriggle River Lane via Bailey Drove (40 ft wide to river) to Parish Boundary.*'

9.61 **One objection to the Revised Draft Map** was received (08/09/1980) by the Department of the Environment, relating to the application route. The objection describes '*Maiden Newton Drove*' as a '*possible omission*' and quotes from the Leigh Inclosure.

9.62 **A letter from Dorset County Council to the Department of the Environment (22/09/1980)** states that the Inclosure Award was already taken into account during the County Council's Review in 1973, and that Maiden Newton Drove should be shown as BR59, it being unsuitable for vehicular use.

9.63 Officer Comments

- a) At this time, under the Countryside Act 1968, suitability was a factor to be considered in establishing status. Suitability is no longer a criterion for status and any previous reclassification on this basis did not extinguish higher rights (Kind v SoS for Environment Food & Rural Affairs (2005), Appendix 3).

Current definitive map

9.64 The current **Definitive map and Statement (sealed in 1989)** replicates what is shown on the Revised draft map and statement.

9.65 Officer Comments

- a) Although Bailey Drove is recorded on the definitive map as a public footpath, public bridleway and no public right of way along parts of its length, this is not prejudicial to the existence of any public rights over it.

- 21 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- b) The status of part of Bailey Drove was raised in 1980 as part of the Special Review of the Definitive Map. At this point a decision was made, despite inclosure evidence, to record that part of the route from point C – E as a bridleway, based on its unsuitability for vehicular use. This was in line with the legislation at the time; the Countryside Act 1968.
- c) Subsequently the Wildlife and Countryside Act 1981 removed the consideration of suitability.

Dorset Council List of Streets

- 9.66 The **Map Accompanying the List of Streets (1974)** did not show any part of the application route as highway maintainable at public expense.

The current working copy of the map of **Adopted Highway (2019)** similarly does not show any part of the application route as highway maintainable at public expense.

Parish Council Minutes

- 9.67 The **Minutes of Public Meeting re the Definitive Map of Rights of Way in Leigh Parish**, 02 November 1971 records that it was “*necessary to decide if the people concerned were in agreement with the County Council’s proposals for reclassification*”. Bailey Drove was considered and recorded as “*Council wants: no mention made, Suggested: Bridleway throughout*”.

9.68 Officer Comments

- a) It is not clear why the County Council were apparently seeking reclassification but in 1971 it may have been related to the Special Review of the Definitive Map.
- b) It is not stated what status was currently considered to apply, but it might be presumed to be a higher status than footpath or bridleway since Bailey Drove, at that time, was not recorded on the Definitive Map.

Land Registry

- 9.69 The whole application route from point A – point E is un-registered with Land Registry.
- 9.70 Between point A and point D, land to the north and to the south of the application route is registered as Scotley Farm. No relevant rights are described involving Bailey Drove.

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- 9.71 Between point D and point E, land to the south of the application route is registered as Newlands Farm. No relevant rights are described involving Bailey Drove.
- 9.72 Between point D and point E, land to the north of the application route is registered as Deansbrook Farm. The proprietors claimed in 1992 that the part of their land to the north of Bailey Drove and between points D and D1 has the benefit of a right of way with or without vehicles over Bailey Drove between point D and E. This is not mentioned in the title documents.
- 9.73 Officer Comment
- a) Private rights do not preclude the existence of any public rights.

Aerial Photographs

The aerial photographs from 1947 onwards confirm the existence of Bailey Drove as a well delineated route with hedge boundaries. They suggest that during this time it received little use as judged by lack of wear on the ground, and during this time it became more overgrown in the central section.

Summary of Documentary Evidence

- 9.74 The **Leigh Inclosure Award of 1804** and **Leigh Inclosure Act of 1799** provide strong evidence that the application route from point C – D – D1 – E was set out as a public carriage road. No evidence has been found that such rights have been stopped up. The award document also suggests that the remainder of the route C – B – A was regarded as a continuation of the route with similar rights.
- 9.75 Evidence that provides some support to the vehicular status of the application route includes:
- a) the **Finance Act plans of 1910** which showed the application route excluded from valuation;
- b) the **Batcombe Tithe Map 1838** and the **Tithe Map for the Chapelry of Leigh in the Parish of Yetminster 1840** which showed the relevant sections of the application route as not subject to tithe;
- c) the **Ordnance Survey drawing of 1808** and **Ordnance Survey maps from 1811 – 1902 (surveyed 1887)** which confirm the physical existence of the route and confirm its suitability for vehicular traffic, though without giving evidence of status;

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- d) the **1884 Ordnance Survey Boundary Remark Book**, and **1885 Ordnance Survey Boundary Sketch Maps for Batcombe and Leigh** all of which depict the application route as a through route, and the **Batcombe Boundary Sketch Map** suggests it was of some importance;
- e) the commercial maps; **Greenwoods' Map of Dorset (1826)**; **Ministry of Transport Map (1923)**; **Hardings Map (1924)** and **Johnston's Map (no date but believed to be first half 20th Century)** which all depict the application route as a through route;
- f) the **Sale Plans for the Sale of Newlands Farm (1868)** and **(1868 – 1870)**, the **Sale Plan for the Sale of Calfhay Farm (1910)** and the **Sale Particulars for the Sale of Redford Farm (1918)** which depict the application route as excluded from sale, and in the same manner as other public roads. The latter also describes Bailey Drove as a 'roadway'. These suggest that Bailey Drove was considered to be of the same status as other local minor roads, most of which are today public carriageways.
- g) the **Batcombe Parish Survey Map** (no date), **Batcombe Parish Survey Statement (1951)** and **Leigh Parish Survey Map** (no date) which did not claim a footpath / bridleway / road used as a public path along Bailey Drove, but claimed a footpath which led off it, suggesting higher rights than the rights of way required to be recorded on these documents;
- h) the minutes of the **Leigh Parish Public Meeting (02/11/1971)** which suggested changing the status of Bailey Drove to Bridleway. Prior to this it was not recorded as a footpath / bridleway / byway open to all traffic, so the implication is that its status was previously greater than any of these rights of way;
- i) the **letter from Dorset County Council to the Department of the Environment (22/09/1980)** which stated that despite evidence from the Inclosure Award (1804) that section of the application route from C – D – D1 – E should be shown as a bridleway because it was unsuitable for vehicles;
- j) **Land Registry** - the whole application route from point A – point E is un-registered with Land Registry.

9.76 Evidence opposing the vehicular status of the application includes:

- a) more recent **Ordnance Survey maps** and **Bartholomews Revised Map (1942)** which suggest that at some point after 1902 and before 1942 the central section of the application route became unsuitable for vehicles;

- 24 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- b) the **Ordnance Survey Book of Names 1901** which describes Bailey Drove as ‘an occupation road’.

Conclusion of Documentary Evidence

- 9.77 The documentary evidence, in particular that provided by the **Leigh Inclosure Award** and **Map of 1804** and accompanying **Leigh Inclosure Act of 1799** is sufficient to demonstrate, on balance, that the application route as shown between points C – D – D1 – E on Drawing 18/07, was set out and dedicated as a public carriageway under this Act.
- 9.78 The **Leigh Inclosure Award** additionally suggests that the application route from points A – B – C was already dedicated as a carriageway at common law, before 1804.
- 9.79 Further supporting evidence for the existence of public rights along the whole route from point A – B – C – D – D1 – E is provided by many other documents listed in paragraph 9.75 above.
- 9.80 **Land Registry** - the whole application route from point A – point E is un-registered with Land Registry.
- 9.81 The only documents opposing the public vehicular status of the application route are **Ordnance Survey** and **Bartholomews** maps since 1902, and the **Ordnance Survey Book of Names (1901)**.
- 9.82 On balance the documentary evidence is sufficient to suggest that the whole application route from A – B – C – D – E was dedicated as a public carriageway.

10 Analysis of user evidence supporting the application

- 10.1 No user evidence was provided with the application and none has been submitted in response to consultation.

11 Analysis of other evidence in support of the application

- 11.1 Three written submissions were received supporting the application.
- 11.2 One submission from Trail Riders Fellowship was concerning the scale of the maps supplied with the application, and this matter was settled by the Supreme Court Decision R (Trail Riders Fellowship and other) v Dorset County Council 18 March 2015.

- 25 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- 11.3 Another submission from Dorset Trail Riders Fellowship Group re-affirms the evidence submitted with the original application and states that the group supports the application as a Byway Open to All Traffic but to be used in a sustainable way.
- 11.4 The submission from the High Stoy RoW Liaison Officer, draws attention to rights of way problem reports as evidence of recent attempts of public use. He includes a detailed description of the route from a visit in 2018 (with photographs) and encloses a copy of the Batcombe Tithe Map of 1841. He expresses the opinion that the application route appears to be an ancient drove and would ideally be 're-classified as a Footpath'
- 11.5 Officer Comment
- a) The issues raised, and documents referred to have all been discussed within the main body of the report.
- 12 Analysis of evidence opposing the application**
- 12.1 17 submissions opposing the application were received prior to the consultation in 2018 and a further four submissions were sent in as response to the most recent consultation.
- 12.2 An adjoining landowner, claimed to own approximately half of the application route and to know another farmer who owned the remainder of the route. He claimed that the route has been gated at point E since at least 1993, rendering it '*not open to motor vehicles*'. He had heard that both ends had been gated since at least 1965. He suggested there may be problems with flooding if the route were '*opened*' and stated that during the winter it was impassable to tractors.
- 12.3 Subsequently the same landowner claimed that Bailey Drove '*never terminated at any other road or byway....therefore it can never have been a right of way for vehicles*'. He admitted to it having rights of way on foot. He also claimed there was a drop of 12 feet to the river making it impassable for a carriage / cart / herd of cows.
- 12.4 The same person also expressed views about a perceived bias in the officers involved in the case at the time, and in the Dorset County Council report of 15 September 2005 (Appendix 5).

- 26 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

12.5 Officer Comments

- a) None of the route has any registered owners, and sales documents for surrounding farms from 1868 – 1910 did not include Bailey Drove. There is though a rebuttable presumption that adjoining owners own up to the centre line of a highway.
- b) The route is currently gated but not locked.
- c) Suitability of the route for vehicles is not a factor that can be considered in establishing status.
- d) Evidence that Bailey Drove has been a through route for over 200 years is discussed in Section 8, Documentary Evidence.
- e) A detailed description of the route is given at the start of this report.
- f) The report of 2005 (Appendix 5) has not been considered here, but original evidence has been used to reach a conclusion.
- g) It has not been possible to contact the adjoining landowner for clarification because he has now moved away.

12.6 One member of the public, a qualified historian, provides a definition of the term ‘*drove*’ and expresses the opinion that it was never the intention that droves should be used by wheeled vehicles. No evidence is provided relating directly to Bailey Drove.

12.7 High Stoy Parish Council and Leigh Parish Council objected based on the opinion that the route would never have been useable by horse-drawn vehicles owing to the drop of 12 feet at point D, to the stream. They claim there was no evidence of an incline or bridge, but there was evidence of stonework which formed the sluice gates to control flow to the old fish ponds.

12.8 The Parish Council objection also questioned whether the application route had ever been ‘set out’ or ‘dedicated and accepted’. They arranged for a soil survey to be conducted to determine the nature of the surface and sub-surface soil. They concluded that clay subsoil with no evidence of hardcore made it highly unlikely that ‘setting out’ ever took place in a way which would have been needed for wheeled vehicles.

12.9 The Parish Council objection notes that Bailey Drove is shown as a through route on various maps, they conclude that it was a Drove used for moving cattle, and that it may also have been used as a footpath or bridleway, although not designated as such.

- 27 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

12.10 Officer Comments

- a) The conditions of the river crossing today cannot be taken as an indication of the situation when the route was set out over 200 years ago.
- b) There is no indication there has ever been a bridge but the drop to the stream crossing could have been of a suitable incline for wheeled vehicles. Subsequent scouring by the river may have made access more difficult.
- c) Sluices to control water flow to the former fish ponds could originally have dissipated river water over a greater area (as depicted in the Batcombe Tithe Map), making it easier to cross and less likely to scour out the banks. Greater erosion may have occurred since the sluices fell into disuse.
- d) The Leigh Inclosure Award of 1804 was made under the Leigh Inclosure Act of 1799 which required carriageways to be set out before allotments could be made, as discussed in Section 9. The surface may not have been metalled and its primary use may well have been as a drove, despite its status as a carriageway.
- e) The nature of the soil, deterioration of the river crossing and increasing weight of vehicles may have been contributory factors in the route falling into dis-use.

12.11 Green Lanes Protection Group (GLPG) supported High Stoy and Leigh Councils in their objection but also submitted an independent objection addressing mostly the same concerns (see above). In addition, it is claimed that none of the documentary evidence is definitive, that the applicant did not provide evidence of the existence of a highway. There is also criticism of the conclusions of the report to Committee 15 September 2005.

12.12 A representative of GLPG sent a response indicating that he believed the application would not satisfy any of the exemptions from the Natural Environment and Rural Communities Act 2006, thus any public vehicular rights would have been extinguished.

12.13 GLPG and High Stoy and Leigh Parish Councils also suggested that Bailey Drove did not meet the definition of a highway maintainable by the parish because it had not been 'made up'. There is also a claim that the application was not 'Winchester compliant' because the scale of the map was incorrect, and some evidence was submitted too late. These and other matters raised have already been discussed in the main body of the report.

- 28 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

12.14 Officer Comments

- a) Whilst no one piece of evidence is conclusive, the evidence has been considered as a whole in reaching a conclusion.
- b) The application met the requirements of a modification order application.
- c) The evidence has been assessed independently of the report from 2005.
- d) The 'making up' of a highway before it became maintainable by the parish was a requirement of the General Inclosure Act of 1801, but the Leigh Inclosure Award was made under the Leigh Inclosure Act of 1799 which stated that: "*Commissioners are hereby authorised and required, before making any Allotment or Allotments by virtue of this Act, to set out and appoint such public Highways and Carriage Roads....to be made in, over, upon and through said Tract or Piece of Commonable Land*".
- e) The scale of maps question was decided in the Supreme Court and the question of Winchester compliance is dealt with in paragraphs 1.8 – 1.11.
- f) Consideration of whether the application is valid as a Byway Open to All Traffic claim is considered in paragraph 1.12 - 1.13.

12.15 Two members of the public purchased land adjoining the route after the application was made. They objected stating that the route had not been used since they owned the adjoining land, the route was gated and impassable due to trees, bushes and a river crossing and was unlikely to have been created as a cul-de-sac. They were concerned that vehicular use would damage wildlife.

12.16 Officer Comment

None of these factors is relevant to the status of the application route prior to the application in 2005.

12.17 All other objections are dealt with elsewhere in this report.

Summary of Evidence Opposing the Application

Four principle areas of objection were raised:

- 29 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

12.18 The first area of objection was that the application was not made in strict accordance with the statutory requirements because not all the documentary evidence was submitted with the application, and therefore it does not satisfy the requirements for an exemption under the Natural Environment and Rural Communities Act 2006 for extinguishment of rights for mechanically propelled vehicles.

12.19 Officer Comment

- a) This objection is not considered correct as discussed in paragraph 1.9 and 1.12. The Supreme Court declared that the application was made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

12.20 The second area of objection was that the application did not satisfy the Natural Environment and Rural Communities Act 2006 because the map submitted with the application was not 'drawn to' the correct scale.

12.21 Officer Comment

- b) This objection is considered invalid as discussed in paragraph 1.9 and 1.12. The Supreme Court declared that the application was made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.

12.22 The third area of objection was that part of the application route was never 'set out' or 'dedicated and accepted' following the Leigh Inclosure Award of 1804.

12.23 Officer Comment

- a) This award was made under the Leigh Inclosure Act of 1799 which required the roads to be set out and appointed before the allotments could be made, as detailed in the Inclosure Award 1804. As the allotments described in the Award have clearly been made it is to be taken that the roads were set out to the satisfaction of the commissioners as described in Section 8 above. This conclusion is supported by the tithe maps and the earlier Ordnance Survey Maps.

12.24 The fourth area of objection was that the current condition of the route indicates that it would never have been suitable for use with vehicles.

- 30 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

12.25 Officer Comment

- a) The current condition of the route is not suitable for use with vehicles but this cannot be taken as an indication of the original condition. Overgrowth with trees and erosion of the river crossing could have affected the route extensively over decades of lack of use and maintenance.
- b) Suitability is not a consideration in determining the existence of public rights, as discussed in paragraph 9.64.

13 Analysis of other submissions

A further six submissions were received which did not contain any evidence which can be taken into consideration.

- 13.1 High Stoy Parish Council sought clarification of the legal position.
- 13.2 Dorset County Council Senior Archaeologist expressed the opinion that Bailey Drove probably dates from at least medieval times and may have formed part of the boundary of a deer park. The medieval fish ponds to the north may also have been associated. There would be concern if any modification resulted in greater traffic and wear and tear. However, as the features are not scheduled monuments these concerns do not constitute a constraint.
- 13.3 Dorset Wildlife Trust expressed concern that, should the application be granted, features of ecological interest would be likely to be damaged by use of the route with vehicles. Such information is irrelevant to the legal process.
- 13.4 North Dorset Group of the Ramblers had no evidence to support or refute the use of the route as a Byway Open to All Traffic.
- 13.5 Officer Comment
 - a) None of these other submissions contained or were accompanied by any evidence which can be taken into consideration.

14 Conclusions

- 14.1 That part of the application route from point B – C is not recorded with public rights so it is necessary to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

- 31 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- 14.2 As those parts of the route from point A - B and C - D - D1 - E are currently recorded as footpath and bridleway respectively, it is necessary to decide whether, on the balance of probability, the highway shown in the map and statement ought to be shown as a highway of a different description.
- 14.3 The documentary evidence, in particular that provided by the **Leigh Inclosure Award and Map of 1804** and accompanying **Leigh Inclosure Act of 1799** is sufficient to demonstrate, on balance, that the application route as shown between points C – D – D1 – E on Drawing 18/07, was set out and dedicated as a public carriageway under this Act.
- 14.4 The **Leigh Inclosure Award** additionally suggests that the application route from points A – B – C was already dedicated as a carriageway at common law, before 1804.
- 14.5 Further supporting evidence for the existence of public rights along the whole route from point A – B – C – D – D1 – E is provided by the **Finance Act plans (1910)**, the **Batcombe Tithe Map (1838)**, the **Tithe Map for the Chapelry of Leigh in the Parish of Yetminster (1840)**, the **Ordnance Survey drawing (1808)**, **Ordnance Survey maps (1811 – 1902)** the **Ordnance Survey Boundary Remark Book (1884)**, the **Ordnance Survey Boundary Sketch Maps for Batcombe and Leigh (1885)**, **Greenwoods' Map of Dorset (1826)**, **Ministry of Transport Map (1923)**, **Hardings Map (1924)**, **Johnston's Map (no date but believed to be first half 20th Century)**, the **Sale Plans for the Sale of Newlands Farm (1868) and (1868 – 1870)**, the **Sale Plan for the Sale of Calfhay Farm (1910)** and the **Sale Particulars for the Sale of Redford Farm (1918)**, the **Batcombe Parish Survey Map (1950's)**, the **Batcombe Parish Survey Statement (1951)**, the **Leigh Parish Survey Map (no date)**, the **Leigh Parish Public Meeting Minutes (02 November 1971)** ,the **letter from Dorset County Council to the Department of the Environment and Land Registry documents**.
- 14.6 The Supreme Court ruling of 2015 declared that the application did comply strictly with the requirements of the Wildlife and Countryside Act 1981[WCA] (section 53(5) and paragraph 1 of Schedule 14). This was confirmed by the Supreme Court in 2019.

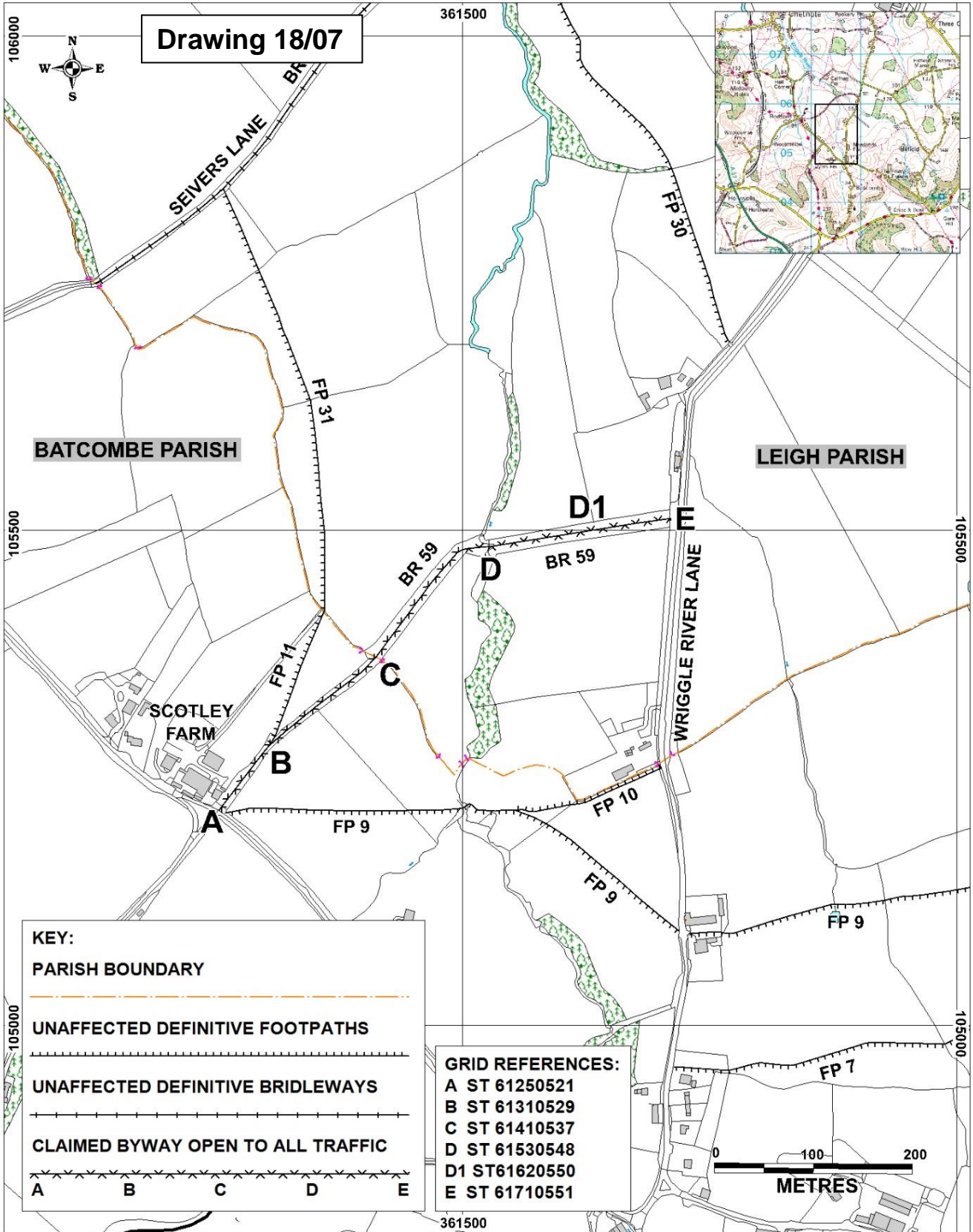
- 32 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.
- 14.7 Therefore, this application can engage the exception in Section 67 of the Natural Environment and Rural Communities Act 2006 and these unrecorded public mechanically propelled vehicular rights have not been extinguished.
- 14.8 It is therefore recommended that an order be made to record Bailey Drove as shown between points A – E on Drawing 18/07 as a byway open to all traffic.
- 14.9 If there are no objections to a modification order, Dorset Council can itself confirm the order if the criterion for confirmation has been met. An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist. It is considered that the evidence is sufficient to satisfy this test.

April 2020

33 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

APPENDIX 1

Drawing 18/07



KEY:
PARISH BOUNDARY

UNAFFECTED DEFINITIVE FOOTPATHS

UNAFFECTED DEFINITIVE BRIDLEWAYS

CLAIMED BYWAY OPEN TO ALL TRAFFIC

A B C D E

GRID REFERENCES:

- A ST 61250521
- B ST 61310529
- C ST 61410537
- D ST 61530548
- D1 ST61620550
- E ST 61710551

WILDLIFE AND COUNTRYSIDE ACT 1981

**CLAIM TO RECORD A BYWAY OPEN TO ALL TRAFFIC
 BAILEY DROVE, BATCOMBE & LEIGH PARISHES T338**

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 18/07

Date: 25/04/2018

Scale 1:5000

Drawn By: EB

Cent X: 361525

Cent Y: 105411

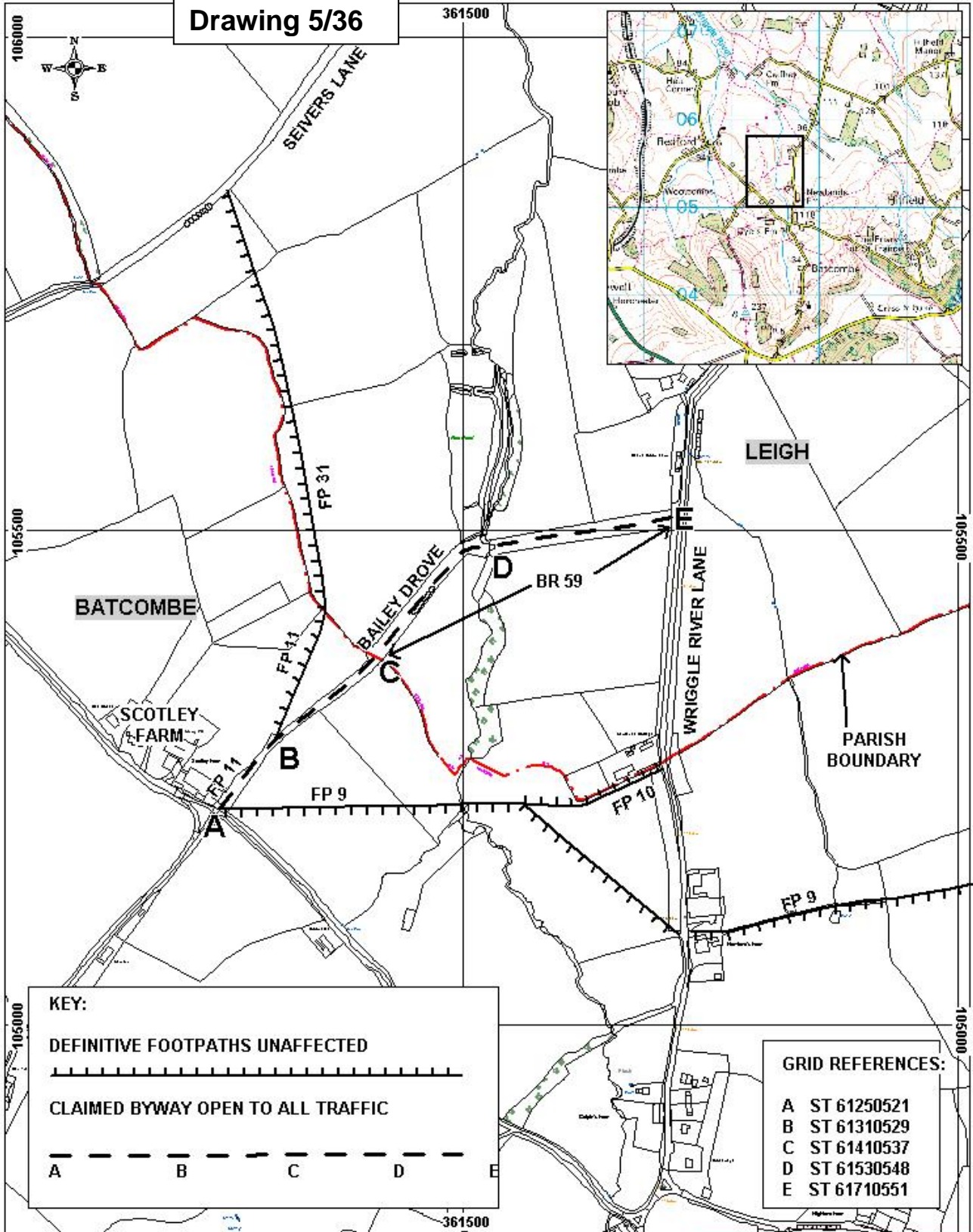


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 Aerial Photography © UK Perspectives 2002 & © Getmapping 2005, 2009 & 2014
 Getmapping Plc and Bluesky International Limited [2017]

- 34 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

APPENDIX 2

Drawing 5/36



WILDLIFE AND COUNTRYSIDE ACT 1981
 CLAIM TO RECORD A BYWAY - BAILEY DROVE,
 BATCOMBE/LEIGH

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 05/36

Date: 18/07/2005
 Scale 1:5000
 Drawn By: JLC
 Cent X: 361525
 Cent Y: 105411

GEOGRAPHICAL INFORMATION SYSTEMS



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 Dorset County Council 2004. Use for any number: 1000/9350

- 35 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

| |
|-------------------|
| APPENDIX 3 |
|-------------------|

LAW

General

Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the 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 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 Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
 - 1.4.1 that a right of way subsists or
 - 1.4.2 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 to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.
- 1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of

- 36 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

the evidence shows that the new route exists and the existing route should be recorded with a different status.

- 1.9 Where an objection has been made to an order, the 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 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 in to question.

- 2.1.1 'As of right' in this context means without force, without secrecy and without obtaining permission.

- 2.1.2 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.

- 2.1.3 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 Section 31(3) of the Highways Act 1980 says that where a land owner 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.

- 2.3 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map, statement and declaration 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 20 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.

37 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

- 2.4 Section 32 of the Highways Act 1980 says that the Council 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.
- 2.5 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.

3 Human Rights Act 1998

- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

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

- 38 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

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.

6 Natural Environment and Rural Communities Act 2006

- 6.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. DEFRA guidance states that where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.
- 6.2 One of the exceptions to section 67 is that an application had been made before 20 January 2005 to record a byway open to all traffic. The Courts have held that for this exception to apply, the application must comply with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. Those requirements are that the application is made on the prescribed form and is accompanied by a) a map to the prescribed scale showing the route and b) copies of the evidence in support. The Courts have further held that any departures from these requirements other than relatively minor ones correctly quickly will prevent the exception from applying.
- 6.3 This application was rejected by the County Council on 7 October 2010 on the basis that the application map did not comply with the statutory requirements. The TRF judicially reviewed this decision and ultimately the Supreme Court found that the map did meet the statutory requirements.
- 6.4 The Supreme Court’s Order went further and stated that the applications complied with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act.

- 39 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Case specific case law

7 Kind v SoS for Environment Food and Rural Affairs, EWHC [2005]
("Kind")

- 7.1 This case tested whether any public vehicular rights which had existed over a way prior to its reclassification under the Countryside Act 1968, had been extinguished. It was decided that public vehicular rights had not been extinguished.

R on the application of the Warden and Fellows of Winchester College and Humphrey Feeds Ltd v SoS for Environment Food and Rural Affairs [2008] EWCA Civ 431. ("Winchester")

- 7.2 This case tested whether applications under the Wildlife and Countryside Act 1981 for a modification order to record public vehicular rights could trigger an exception to the Natural Environment and Rural Communities Act 2006 if they were not in strict compliance with the 1981 Act.

- 7.3 It was decided that, in order to trigger an exception to the Natural Environment and Rural Communities Act extinguishment of vehicular rights, an application under the Wildlife and Countryside Act must comply strictly with the requirements of schedule 14, paragraph 1 of that Act. Thus, it must be made in the prescribed form and shall be accompanied by: a) a map drawn to the prescribed scale.... b) copies of any documentary evidence which the applicant wishes to adduce in support of the application.

R on the application of Trail Riders Fellowship v Dorset County Council [2015] UKSC ("Supreme Court Decision")

- 7.4 The court decided that the maps supplied in this application complied with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.
- 7.5 The court also declared that this application was made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981 i.e. that it was duly made in all respects. This was confirmed by the Supreme Court in November 2019. Thus, the application can be considered to trigger an exception to the Natural Environment and Rural Communities Act.

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APPENDIX 4

Table of documentary evidence

BL = British Library, **DCC** = Dorset County Council, **DHC** = Dorset History Centre, **NA** = National Archives, **NLS** = National Library of Scotland

| Evidence Type & date | Location and Ref no. | Summary of evidence |
|---|----------------------|---|
| Leigh Inclosure Act (1799) | DHC, I72 | Sets out the legal basis for enclosing the area of land known as Leigh Common in the Parish of Yetminster: |
| Leigh Inclosure Award Map (not dated) | DHC, I72 | Depicts the eastern part of the route within Leigh Parish. Only the section east of the river is affected by enclosure. The route is depicted with parallel solid lines between enclosed land and is annotated 'Maiden Newton Drove'. The continuation of the route west of the river is labelled 'To Maiden Newton'. No gates or barriers are shown. |
| Leigh Inclosure Award (1804) | DHC, I72 | Describes the setting out of 'Maiden Newton Drove' to a breadth of 40 feet and extending westwards until it enters an old drove leading out of the common towards Maiden Newton. Describes the adjoining allotments in relation to Maiden Newton Drove. |
| Ordnance Survey Drawings, 2": 1mile (1808 – 1809) | BL, Sherborne Area | Depicts whole application route with parallel solid lines, and a river crossing the route at point D. |
| Ordnance Survey 1" : 1 mile Map, First Ed (1811) | DCC, electronic copy | Depicts whole application route with parallel solid lines, and the route crossing the river at point D. |
| Greenwood's Map (1826) | DCC | Depicts whole application route with parallel solid lines, uncoloured, in the same way as other minor public roads in the area. |
| Batcombe Parish Tithe Map (1838) | DHC, T-BAT | Depicts the whole route (including the section through the Parish of Leigh) with solid boundaries, as an uncoloured 'road' annotated 'Bailey Drove', with no gates or barriers. It has no apportionment number. Where it crosses the river, 2 branches of the river are shown crossing the route, no bridges are shown. |
| Batcombe Tithe Apportionment (1841) | DHC, T-BAT | Describes each of the apportioned plots either side of the route, but no mention of the route itself. Roads are not listed at the back of the tithe apportionment. |

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| Evidence Type & date | Location and Ref no. | Summary of evidence |
|--|--|--|
| Chapelry of Leigh Tithe Map (1840) | DHC, T-LEI | Depicts that part of the route which is in the Parish of Leigh with solid boundaries and coloured yellow, the same as public roads depicted. There are no gates or barriers shown and it has no apportionment number. The river is shown, but is not depicted crossing the route. |
| Chapelry of Leigh Tithe Apportionment (1841) | DHC, T-LEI | Describes each of the apportioned plots either side of the route, but no mention of the route itself. Roads are not listed at the back of the tithe apportionment. |
| Map of the Sandwich Estate, Mapperton (1858) | DHC, D-MAP/E/138 | Depicts Bailey's Drove (named), coloured yellow as other routes which are today public carriageways, the river is shown crossing as a double crossing. |
| Sherborne Highway Board Map (1869) | DHC, BH/SHR/1/1 (previously copied but now mislaid at DHC) | Depicts the part of application route that lies in Leigh Parish as an uncoloured road, key does not list this but lists turnpike roads as red, highways as yellow and halter paths as green. It is not numbered. Wriggle River Lane is also uncoloured. At its western end it is labelled 'from Bubb Down' |
| Sales details and plan of Newlands Farm (1870) | DHC, D-FFO/14/29 | Application route depicted on one printed plan and one hand-drawn plan. On the printed plan it is coloured ochre, the same as public roads in the area. It is not mentioned in the sales particulars. |
| Ordnance Survey Boundary Remark Book – Batcombe / Leigh (1884) | NA, OS26/2977 | Includes sketch map of the boundary at point C and shows the application route crossing the boundary, without annotation. |
| Ordnance Survey Boundary Sketch Map for Batcombe (1885) | NA, OS27/1393 | Shows the application route with parallel solid lines from point C – B - A and continuing over Batcombe Hill to the southern boundary of the parish. This is one of three routes depicted across the parish. |
| Ordnance Survey 6": 1mile First Ed Map (1888) | NLS, Dorset XXI.SE | Depicts the application route with parallel solid lines throughout (no shading), in some parts it is wider than the adjoining public roads which are shaded. It is annotated 'Bailey Drove' and no gates / barriers are shown. At point D the river is shown crossing the route. |

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| Evidence Type & date | Location and Ref no. | Summary of evidence |
|---|----------------------|--|
| Ordnance Survey 25": 1mile First Ed Map (1889) | NLS, Dorset XXI.12 | The entire application route is shown bounded by solid lines with individual trees. It is ascribed two separate parcel numbers; one in Batcombe Parish, and one in Leigh Parish. At point D the river is shown crossing the route. Between points A - B the centre of the route is depicted with parallel pecked lines indicating a track on the ground and at B these continue north and are annotated 'F.P.'. The remainder of the route from B – E has no track marked. None of the route is coloured sienna to indicate a road, but the whole route is annotated 'Bailey Drove'. |
| 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. |
| Ordnance Survey 1": 1mile Revised New Series Map (1898) | NLS, Sheet 312 | Depicts the whole application route with narrow parallel solid lines (no shading) indicating an Unmetalled Road. At D the river is shown crossing the road. |
| Ordnance Survey Object Name Book, Leigh (1901) | NA, OS35/1938 | Lists 'Bailey Drove' and describes it as " <i>Applies to an occupation road extending from the crossroads north east of the New Inn in a N easterly direction to Wriggle River Lane.</i> " |
| Ordnance Survey 25": 1mile Second Ed Map (1902) | NLS, Dorset XXI.12 | Depicts the application route in exactly the same manner as the 1 st edition map, but one this edition, roads are no longer coloured sienna, but are shaded on one side. Bailey Drove is not shaded. |
| Ordnance Survey 6": 1mile Second Ed Map (1903) | NLS, Dorset XXI.SE | Depicts the application route with parallel solid lines throughout (no shading), in some parts it is wider than the adjoining public roads which are shaded. It is annotated 'Bailey Drove' and no gates / barriers are shown. At point D the river is shown crossing the route. |
| Finance Act Plan (1910) | NA, IR125/2/198 | Bailey Drove is shown edged in red and has no hereditament number, thus it appears to be excluded from valuation. However, the notation is a little unusual at both the Wriggle River Lane end and the Redford road end. It is bounded by Hereditaments number: Batcombe 24 and 31, and Beer Hackett 124, 174, and 334 |

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| Evidence Type & date | Location and Ref no. | Summary of evidence |
|--|--|--|
| Finance Act Hereditament, Beer Hackett 124 (1910) | NA, IR58/27732 | No mention of Bailey Drove, or access. |
| Finance Act Hereditament, Beer Hackett 174 (1910) | NA, IR58/27732 | No mention of Bailey Drove, or access. |
| Finance Act Hereditament, Beer Hackett 334 (1910) | NA, IR58/27734 | No mention of Bailey Drove, or access. |
| Finance Act Hereditament, Batcombe 24 (1910) | NA, IR58/57720 | No mention of Bailey Drove, or access. |
| Finance Act Hereditament, Batcombe 31 (1910) | NA, IR58/57720 | No mention of Bailey Drove, or access. No RoW claimed, even for current FP11. |
| Sales particulars for Calfhay Farm (1910) | DHC, D-HDS/SP/1910/4 | Plan shows Bailey Drove coloured ochre, the same as other roads in the area which are public carriageways today. Some of the land for sale can only be accessed using either Bailey Drove or Seiver's Lane to the north, but these access routes are not mentioned in the details for the plots or the special conditions. |
| 1912 | NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912. | |
| Sales particulars for Redford Farm (1918) | DHC, D- HDS/SP/1918/3 | No plan available but details refer to water pipes passing under the 'roadway known as Bailey Drove' to reach the land to be sold, and purchasers being responsible for maintaining the pipes under Bailey Drove. The Drove was not included in the sale, and no owner of the Drove was mentioned. |
| Harding's Map of the District of Dorchester (1924) | DCC | Depicts the whole application route with parallel solid lines, uncoloured, in the same way as other minor public roads in the area. The key describes these as 'Other Roads' |
| Ordnance Survey 6": 1mile Map (Rev 1901, Pub 1937) | NLS, Dorset XXI.SE | Depicted in exactly the same way as the 1903 2 nd edition. |

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| Evidence Type & date | Location and Ref no. | Summary of evidence |
|---|---|---|
| Johnston's 3miles : 1 inch Map of England (no date) | DHC, DC-BTR/R/5 | Depicts the whole application route with parallel solid lines, uncoloured, in the same way as other public roads in the area. There is no key. |
| Bartholomew's Revised Half Inch : 1 Mile Map (1942) | DCC | Depicts the whole application route with a single pecked line which the key indicates is a 'Footpath or Bridlepath'. |
| Ordnance Survey 1" : 1 mile New Popular Series (1945) | NLS, Sheet 178 | Depicts the route from A – D with a single pecked line, indicating Footpath or Bridle Path, and from D – E with narrow parallel solid lines indicating a Drive or Unmetalled Road. |
| 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. | |
| Batcombe Parish Survey (no date) | DCC | None of Bailey Drove is claimed as a right of way, but footpath 11 is claimed, leading out of Bailey Drove to the north (current FP 11 Batcombe). Bailey Drove is not coloured, but public roads in the area are coloured red. |
| Leigh Parish Survey (no date) | DCC | None of Bailey Drove within Leigh Parish is claimed as a right of way, but footpath 31 is claimed (extension of Batcombe footpath 11) and on the Batcombe side of the parish boundary FP11 and that part of Baily Drove from its junction westward to the public road is coloured and labelled 'Add'. The remainder of Bailey Drove is not coloured, but public roads in the area are coloured red. At point D Bailey Drove is ringed and labelled 'impassable here'. The whole of Bailey Drove is also ringed in pencil. |
| 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.) | |

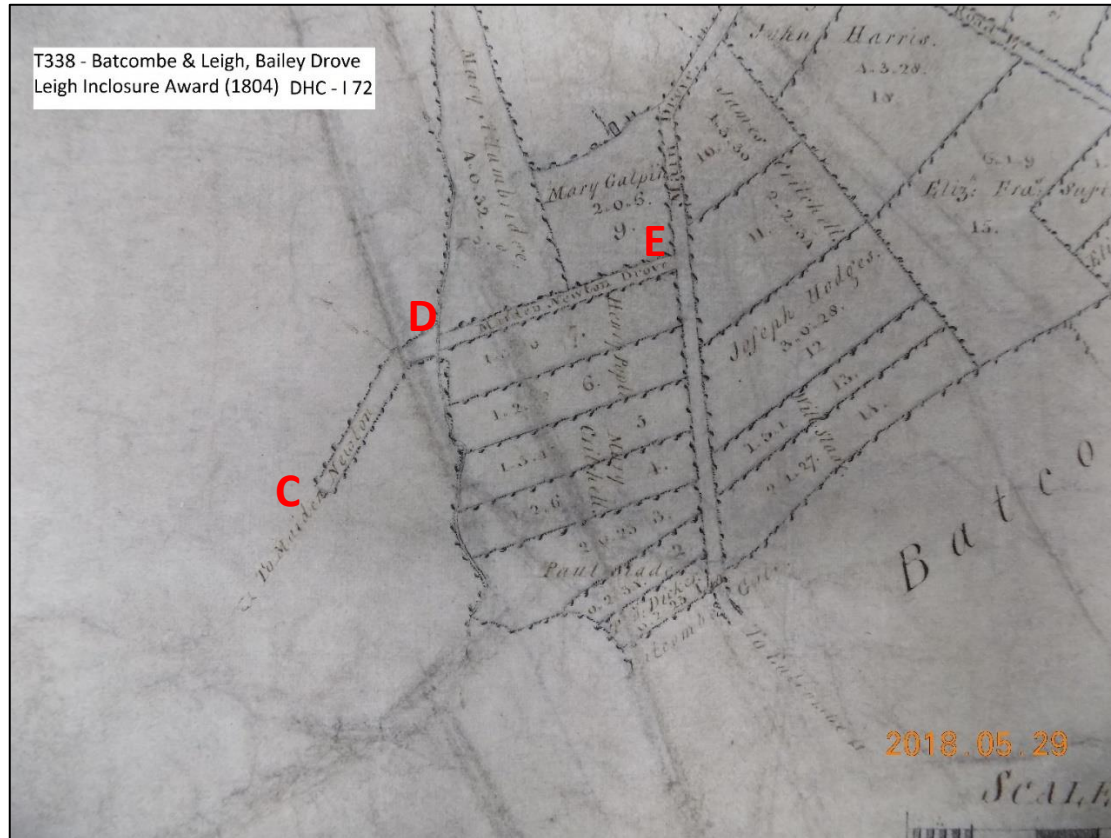
- 45 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

| Evidence Type & date | Location and Ref no. | Summary of evidence |
|--|----------------------|--|
| Ordnance Survey 1: 25,000 Map (1958) | NLS, Sheet ST60 | Depicts the application route between A – B and D – E with parallel black lines indicating an 'Other road, poor or unmetalled'. Between B – D it is depicted with parallel grey lines and annotated 'FP' indicating a fenced footpath. I line across the end at E may indicate a gate / barrier. |
| Draft Map (1959) | DCC | The application route from A – B is depicted as footpath 11 Batcombe. The remainder of the route is not marked as a right of way but it is annotated 'FP' on the basemap (unknown edition). Minor roads on the Draft Map are coloured brown, but the application route is not coloured. |
| Ordnance Survey 1inch : 1 mile 7 th Series (1960) | NLS, Sheet 178 | Depicts the route from A – B, and from D – E with narrow parallel solid lines indicating a Drive or Unmetalled Road. The route from B – D is depicted with a single pecked line, indicating Footpath or Bridle Path. |
| Provisional Map (1964) | DCC | Depicts the similar situation to the Draft Map (different base map) |
| First Definitive Map (1966 – 67) | DCC | Depicts the same as the Draft and Provisional Maps – Batcombe FP 11 from A – B, remainder no status. |
| Minutes Leigh Parish Public Meeting (1971) | DHC PC-LEI/1/5 | Describes a decision to reclassify Bailey Drove as a Bridleway. |
| DCC List of Streets (1974) | DCC | Route not listed |
| Revised Draft Map (1974) | DCC | Application route from A – B shown as Batcombe FP 11, C- E shown as Leigh BR 59. B – C shown with no status. |
| Ordnance Survey Map 25":1mile plan (1978) | Old-maps.co.uk | Depicts and names the whole of Bailey Drove (track). |
| Current Definitive Map (sealed 1989) | DCC | Application route from A – B shown as Batcombe FP 11, C- E shown as Leigh BW 59. B – C shown with no status. |

- 46 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Extracts from key documents
(See the Executive Director of Place's file RW/T338
for copies of other documents mentioned)

Leigh Inclosure Award Map (1804)



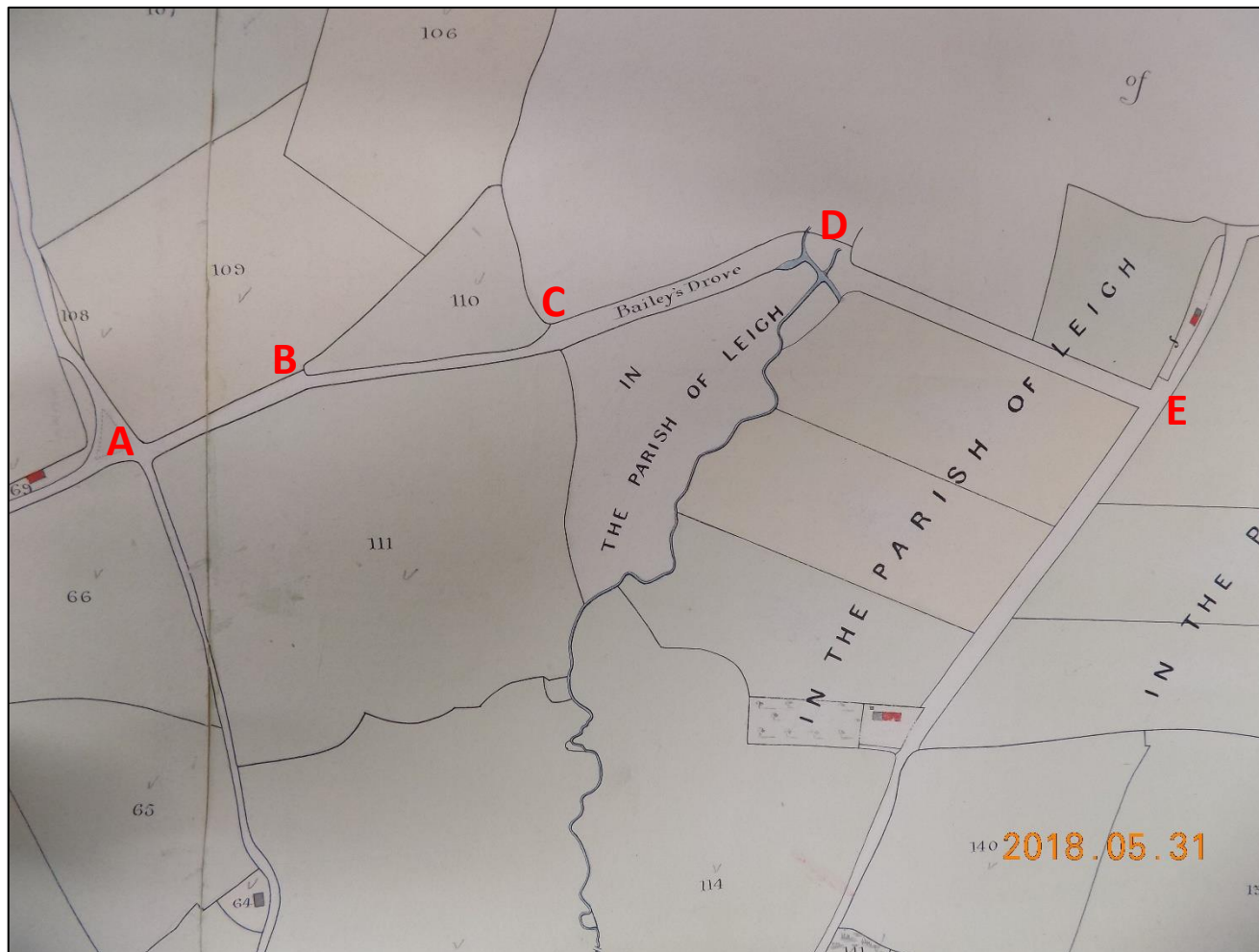
- 47 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Finance Act Plan (1910)



- 48 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Batcombe Tithe Map (1838)



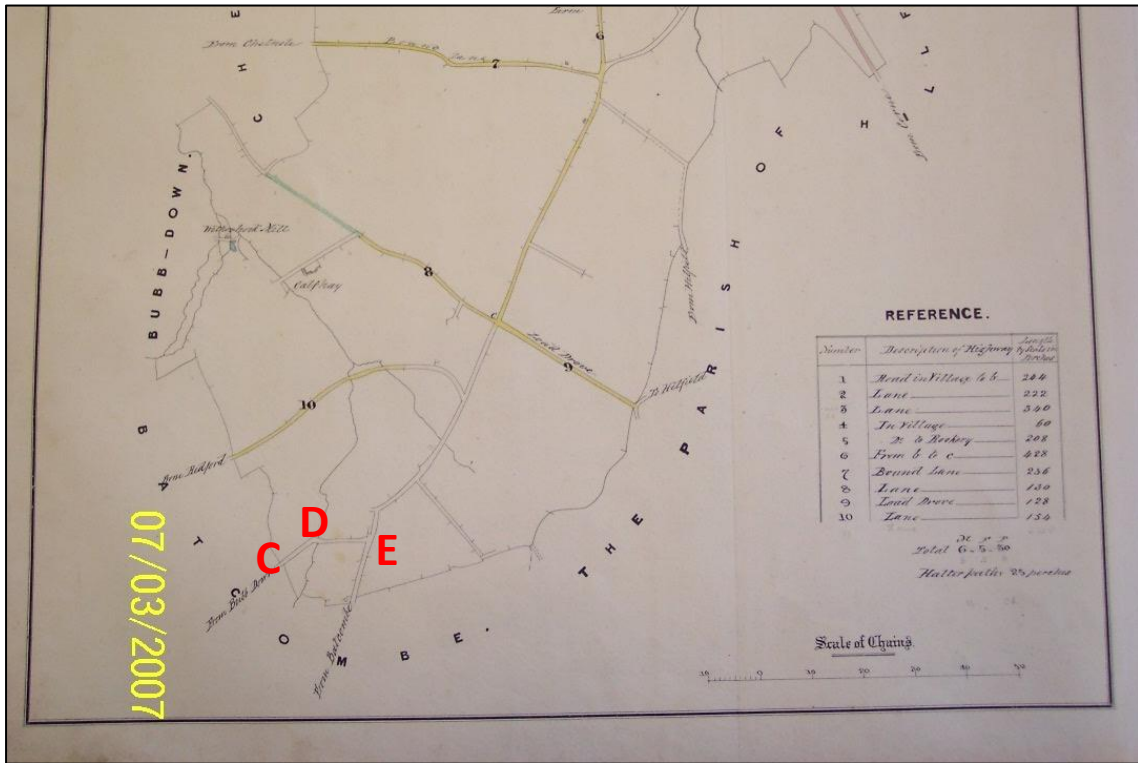
- 49 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Tithe Map for the Chapelry of Leigh in the Parish of Yetminster (1840)



- 50 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Sherborne Highway Board Map (1869)



14 | NETHER COMPTON. | 2

N. B. THE HIGHWAYS are colored **YELLOW**.

" HALTER PATHS " **GREEN**.

" TURNPIKE ROADS " **RED**.

CONTAIN THE LENGTHS OF THE ROADS AS SCALED

07/03/2007

- 51 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Ordnance Survey Drawing 2 inches : 1 mile scale (1808-9)



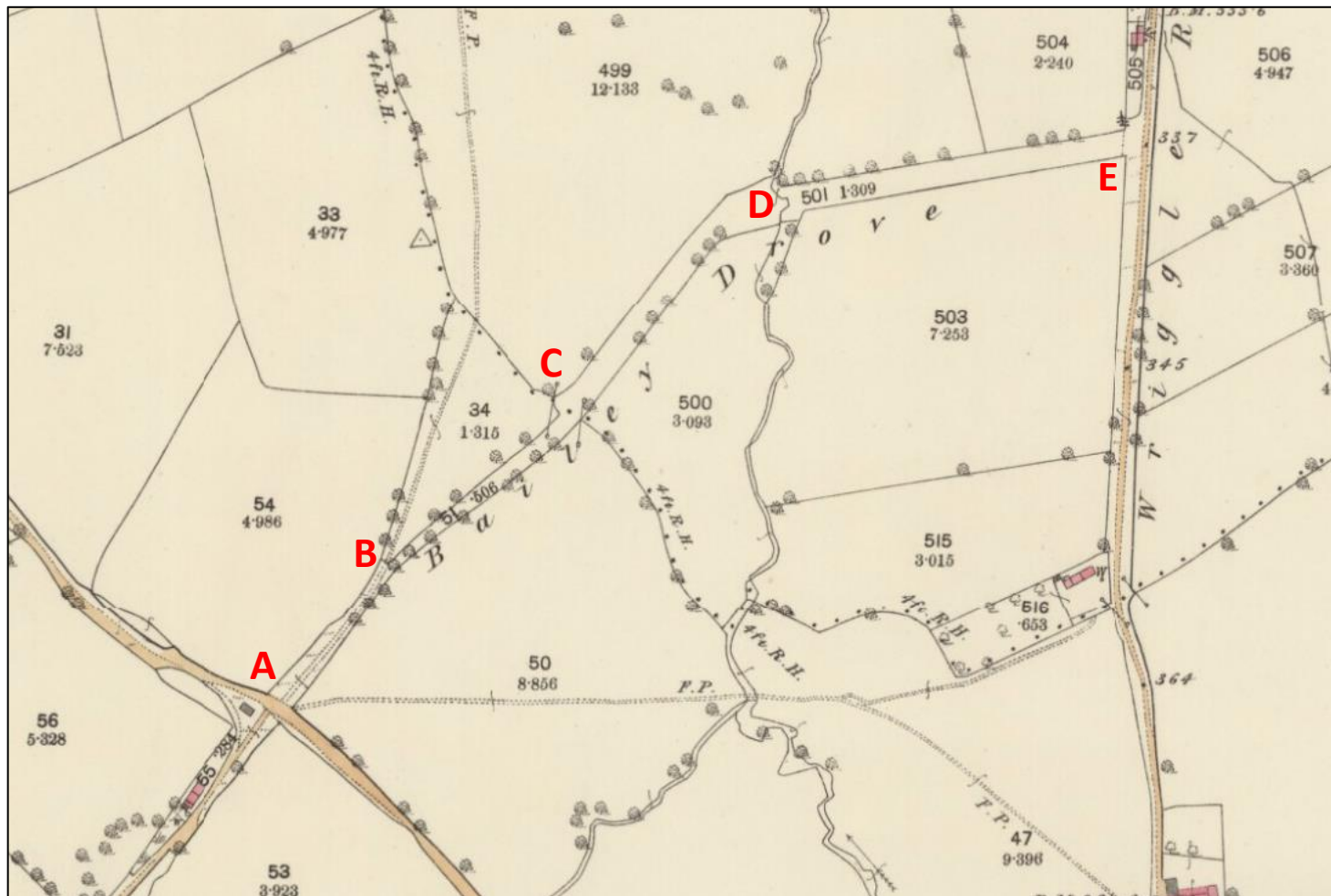
- 52 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Ordnance Survey First Edition Map 1 inch : 1 mile scale (1811)



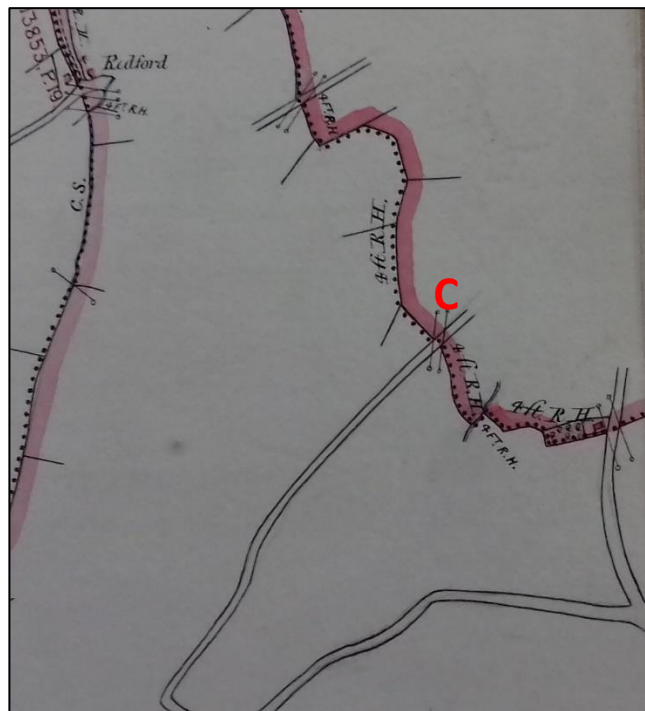
- 53 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Ordnance Survey First Edition 25 inch : 1 mile scale Map (1887)



- 54 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Ordnance Survey Boundary Sketch Map of Batcombe Parish (1885)

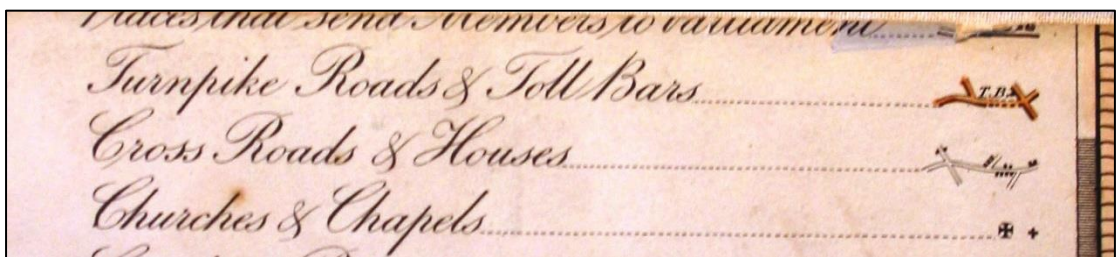


- 55 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Greenwood's Map (1826)



Key



- 56 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Ministry of Transport Road Map (1923)

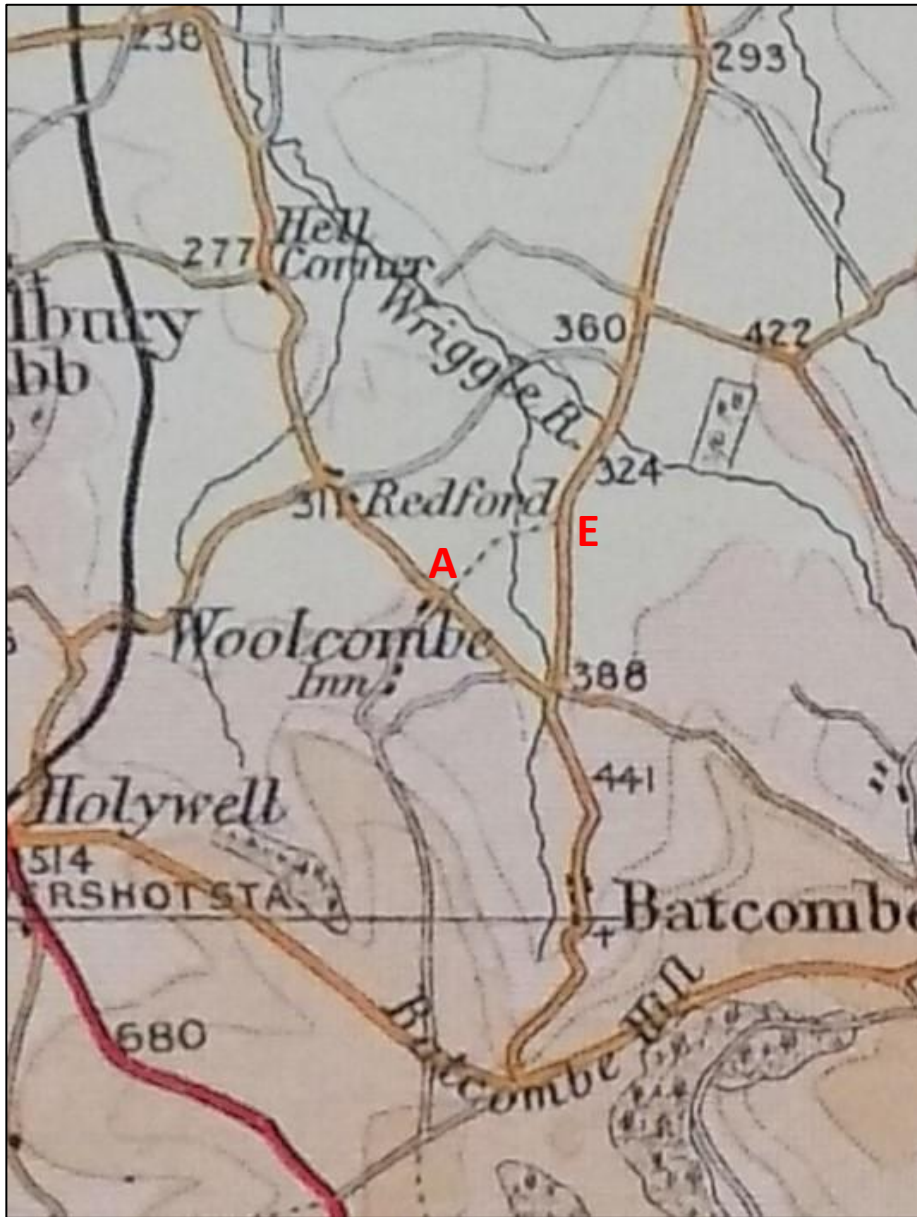


Key

| | | |
|-------------------|------|----------------|
| Roads; Class I | 376 | (Altitude) 211 |
| " Class II | 3162 | |
| Other Roads | | |
| Railways | | Station |
| Bridges | | over |
| County Boundaries | | under |

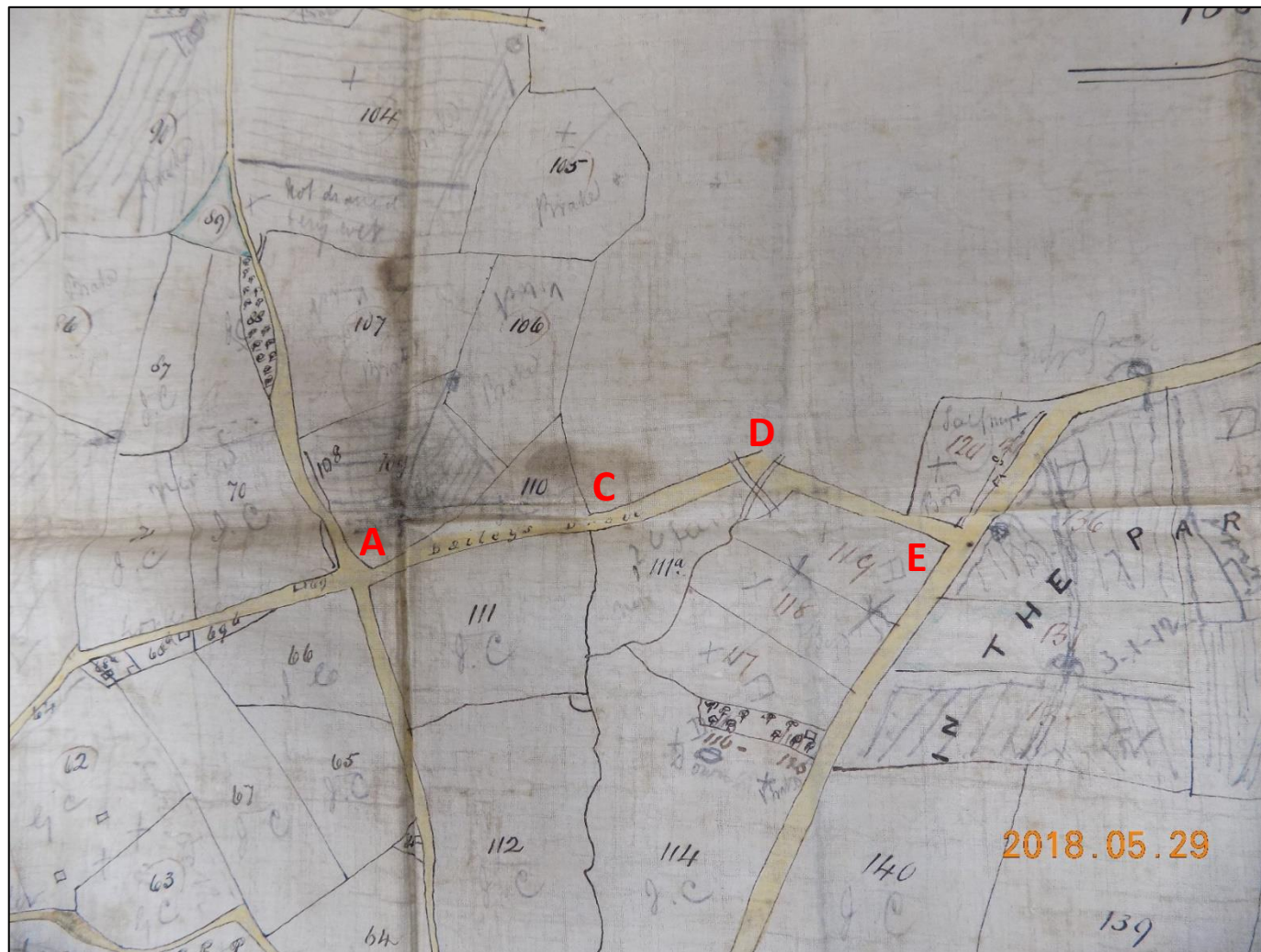
- 57 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Bartholomew's Half inch : 1 mile Map (1942)

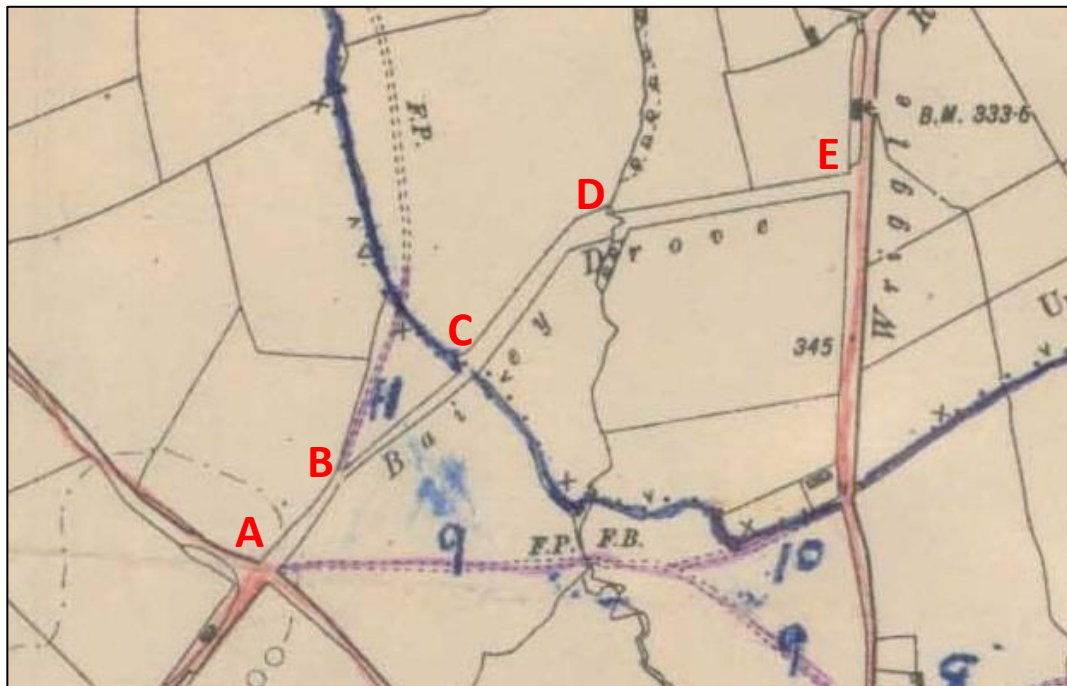


- 58 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

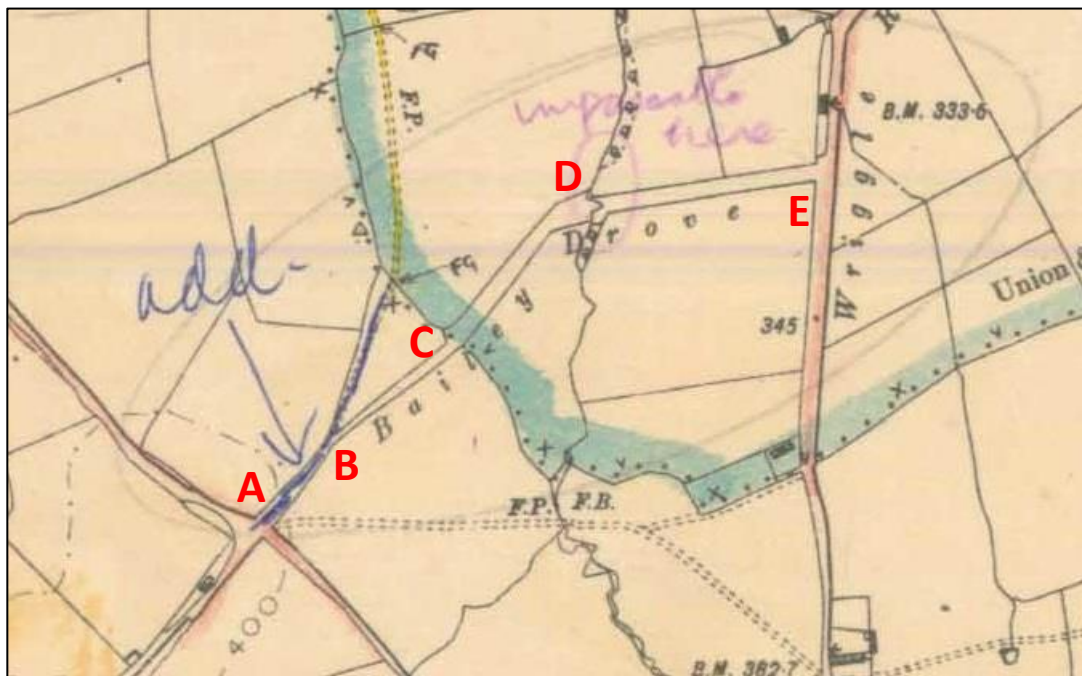
Map of the Sandwich Estate, Mapperton (1858)



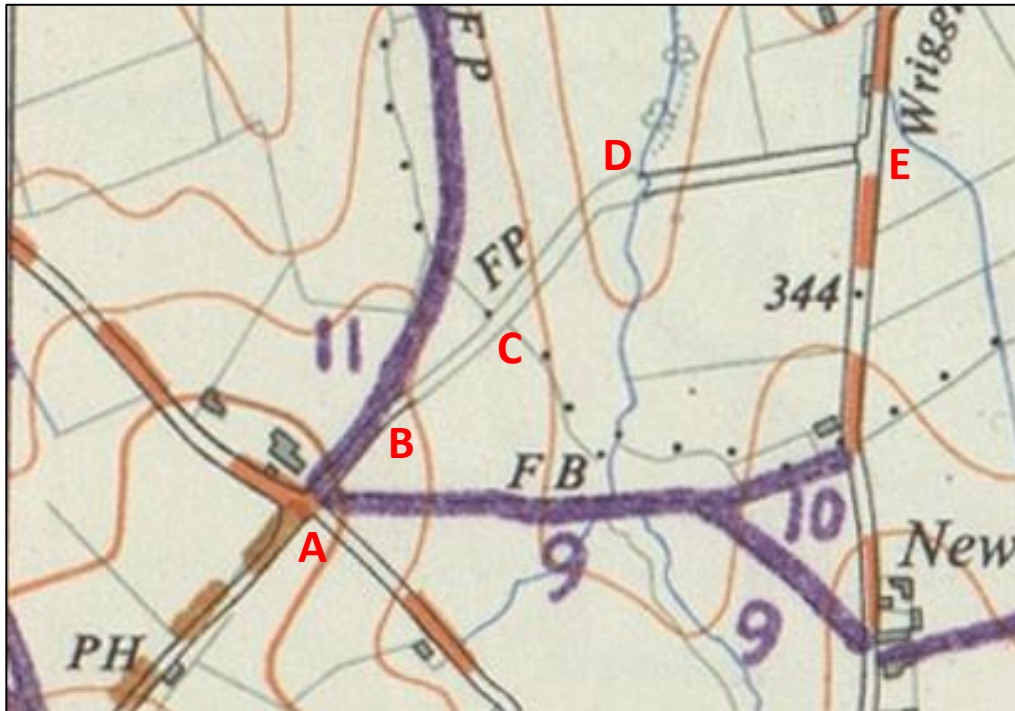
Batcombe Parish Survey (1950's)



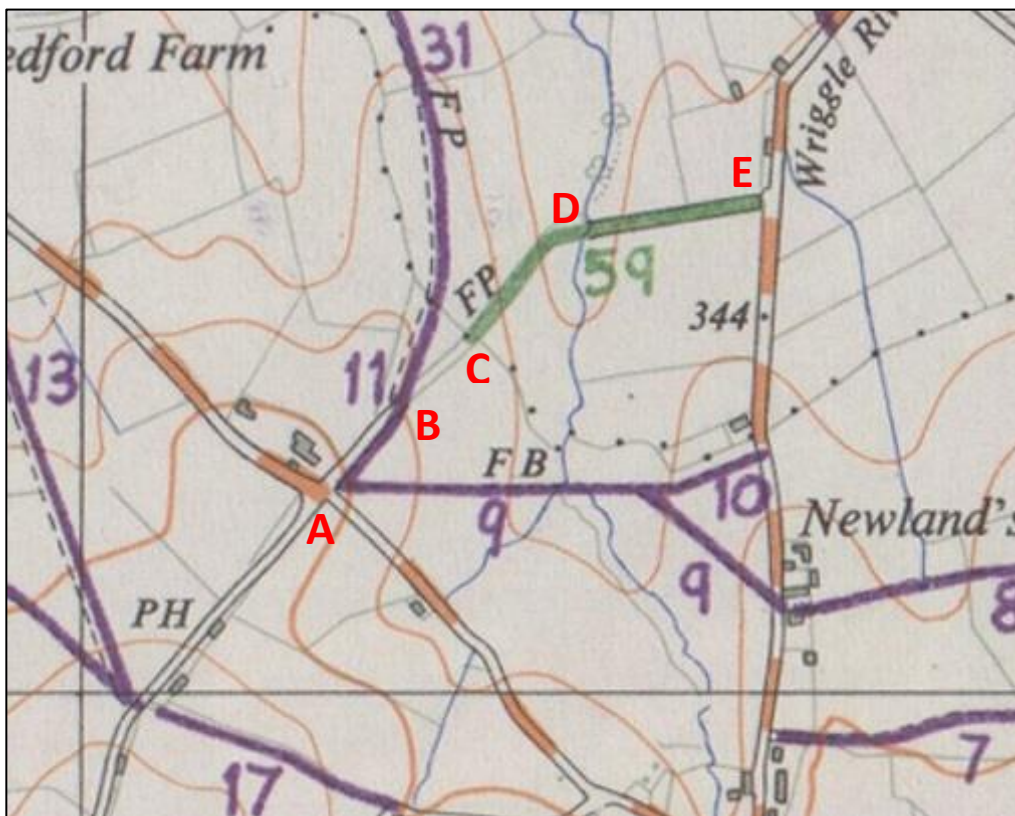
Leigh Parish Survey (1950's)



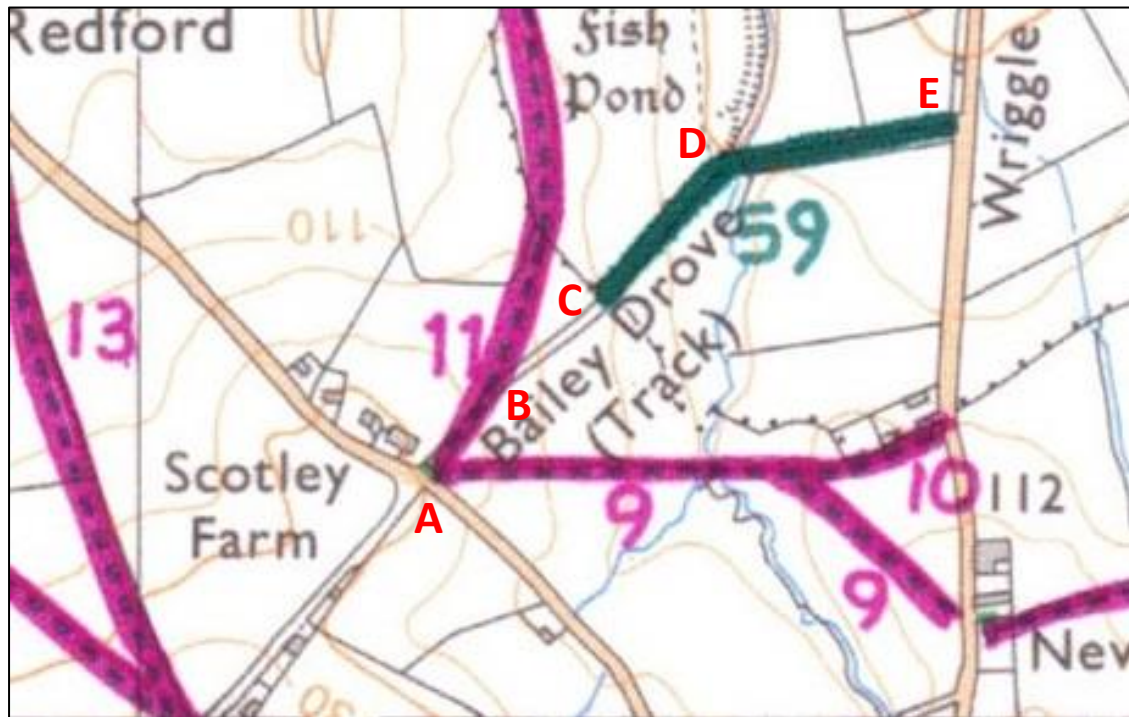
First Definitive Map (1966-7)



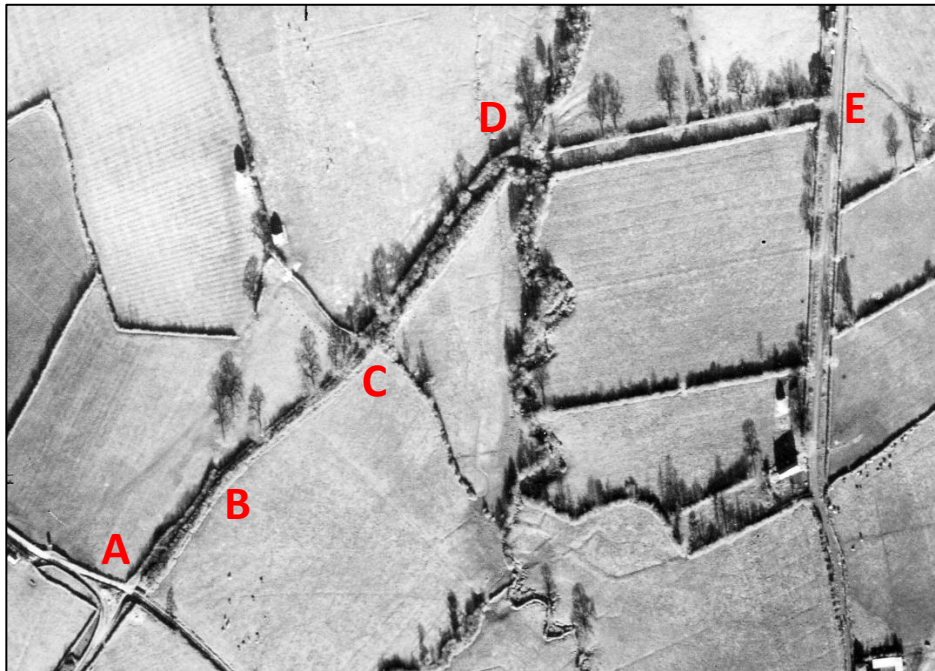
Revised Draft Map (1974)



Current Definitive Map (sealed 1989)



Aerial Photo (1947)



Aerial Photo (2014)

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

| | | |
|--|---|---|
| T338 Batcombe-Leigh, Bailey Drove VAP 2014 | Ref: Date: 03/05/2018 Scale 1:2500 Drawn By: Cent X: 361486 Cent Y: 105406 | GEOGRAPHICAL INFORMATION SYSTEMS Dorset County Council <small>© Crown copyright and database right 2018. Ordnance Survey 1000165750 You are permitted to use this data in any way for internal use, provided you do not reproduce it with the original data. This data is provided as a service. You are not permitted to copy, distribute, create derivative works or any other data to third parties in any form. All rights reserved. © Dorset County Council 2018. © Dorset County Council 2018 & 2014.</small> |
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APPENDIX 5

Roads and Rights of Way Committee – 15 September 2005

Application for a Definitive Map and Statement Modification Order –
Byway Open to All Traffic at Bailey Drove, Batcombe / Leigh

Report of the Director of Environmental Services

Service Head: Andrew Price, Head of Planning

1. Purpose of Report

1.1 To consider an application to modify the definitive map and statement of rights of way by: -

- (a) upgrading to byway the part of Footpath 11, Batcombe forming part of Bailey Drove and shown A – B;**
- (b) adding as byway the part of Bailey Drove from point B to the parish boundary at point C; and**
- (c) upgrading to byway the whole of Bridleway 59, Leigh shown C – D – E**

as shown on Drawing No. 05/36 attached as an Appendix.

2. Recommendations

2.1 That the application be accepted and an Order made to add the route shown A – B – C – D – E on Drawing No. 05/36 as a byway open to all traffic on the definitive map and statement of rights of way.

2.2 That if the Order is unopposed or, if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.

3. Reason for recommendations

3.1 The evidence shows that this route should properly be recorded as a byway open to all traffic.

4. Information

- 4.1 The part of the route shown A – B on Drawing No. 05/36 runs down a grassy track with an approximate overall width of 8 metres. There are wheel tracks. This section is recorded as a footpath on the definitive map.
- 4.2 The section from B – C is impenetrable on foot from B but it is possible to get about halfway from C. This section is a sunken lane, damp and very overgrown. It is a little narrower here but still comparable in width to local roads. This section is unrecorded on the definitive map.
- 4.3 From C – D the route is wider, about 14 metres, and has saplings growing within it. A shallow ditch crosses near the bend.
- 4.4 At point D the meandering tributary of the Wriggle River crosses the way between muddy banks. There is no bridge but an ancient stone structure, possibly the remains of a sluice to control the flow of water to the former fish pond downstream, affords a shallow crossing point for pedestrians.
- 4.5 From D to E is a meadow 13 metres wide that has recently been mown.
- 4.6 The section C – D – E is recorded as a bridleway on the definitive map.
- 4.7 The applicant recognises that the route is probably unsuitable for use by public vehicles, but is anxious that it be recorded as a continuous through route of one status. He is willing to discuss sustainable use and maintenance of the route and legal measures to prevent its use by vehicles.

5. Law

- 5.1 There is an established legal maxim ‘once a highway, always a highway’.
- 5.2 Section 53 of the Wildlife and Countryside Act 1981 gives the County Council as surveying authority a duty to keep the definitive map and statement under continuous review and consider applications to modify them as soon as reasonably practicable.
 - 5.2.1 It must make an order upon the discovery by the authority of evidence which (when considered with all other available evidence) shows that a right of way which is not shown on the definitive map and statement subsists or is reasonably alleged to subsist. The test for the latter is less than for the former.
- 5.3 The Finance Act 1910 introduced taxes based on the value of land. All land had to be surveyed for the Inland Revenue in order to establish its value at that time. If a footpath or a bridleway crossed the land there was a reduction in the value and, therefore, the tax to be paid. Public roads were deemed to be vested in the Rating Authority and were exempt from the proposed taxes. They were shown in a different way on the valuation maps.

- 5.4 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality and shall give it such weight as is justified by the circumstances, including the antiquity of the document, the status of the person by whom and the purpose for which it was made, and the custody in which it has been kept and from which it is produced.
- 5.5 Section 66 of the Wildlife and Countryside Act 1981 defines a “byway open to all traffic” as “a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used”.
- 5.5.1 This definition has been explored in the Court of Appeal when Lord Justice Roch said: “What was being defined was the concept or character of such a way. Parliament did not intend that highways over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horse riders than by vehicles
- 5.6 Part of the route is shown as a bridleway because of a decision by the County Council’s Special Review Committee in 1973 that it was unsuitable for public vehicular use. The ‘suitability’ test under the Countryside Act 1968 was dropped from later legislation as it was too subjective.
- 5.6.1 The recent case of *Kind v Secretary of State for Environment, Food and Rural Affairs* (2005) in the Administrative Court made it clear that a decision to show a vehicular route as a bridleway at a Special Review under the Countryside Act 1968 did not extinguish public vehicular rights.

6. Evidence to be considered

- 6.1 The Leigh Inclosure Map of 1804 shows the section D – E as Maiden Newton Drove. The map shows the route continuing to the parish boundary at point C and labelled “To Maiden Newton” with an indication that the route continued to the south west.
- 6.1.1 The Inclosure Award describes Maiden Newton Drove as “One other public carriage road of the breadth of forty feet as the same is marked and staked out called Maiden Newton Drove branching out of the main road aforesaidand extending westwards until the same enters an old drove leading out of the said common towards Maiden Newton”.
- 6.2 The section of the route within Batcombe did not cross common and so there was no Inclosure Award for that part of the parish.
- 6.3 The route is shown on the 1st edition of the Ordnance Survey 1811 at a scale of 1” to a mile in the same way that other roads in the area known to be public are shown, but there is no key.

- 6.4 Greenwoods 1” Map of 1826 shows the route in a similar way but there is a key showing that it was a ‘cross road’ as distinguished from a turnpike. A turnpike road could be used only on payment of a toll, and cross roads formed the remainder of the highway network.
- 6.5 The Batcombe Tithe Map of 1838 not only covered the area up to the present parish boundary but also included the first fields to the right and left of Bailey Drove entering from point E.
 - 6.5.1 The apportioned land is in numbered plots and is coloured. Bailey Drove is not numbered and not coloured except for the blue stream crossing it. The words ‘Bailey’s Drove’ are written within the C – D section (in Leigh parish).
 - 6.5.2 The shape is very similar to that shown on modern maps. It was open all the way through. No gates or barriers appear as are shown across highways elsewhere on the map.
- 6.6 The Leigh Tithe Map of 1840 and Apportionment shows roads tinted yellow and plots of land subject to tithes tinted green or hatched brown. Bailey Drove is shown from E – C and was open each end with no barriers or gates shown. Elsewhere on the map, where there was a gate across a way it was pictured.
 - 6.6.1 Bailey Drove was not assessed for tithes in the Apportionment, but elsewhere there is a yellow route that is numbered, described as a 40’ drove and was assessed for the tithe.
- 6.7 The Finance Act 1910 map shows that Bailey Drove was not assessed for the proposed new taxes, a strong indication that it was thought to be a public road. It is shown in the same way as the adjoining roads that are known to be public.
- 6.8 The Batcombe Parish Survey of rights of way following the National Parks and Access to the Countryside Act 1949 shows that Footpath 11 leading from Bailey Drove at point B was claimed, but there was no claim on Bailey Drove. This suggests that the Parish regarded it as already a public road, not needing to be shown on the map.
- 6.9 The Leigh Parish Survey also does not mention Bailey Drove at all. A Dorset County Council officer annotated the survey map by circling the stream crossing at D and noting ‘impassable here’.
- 6.10 Following the publication of the first edition of the definitive map in 1967 and the Countryside Act 1968, there was a Review of rights of way together with a Special Review of routes that should possibly have been recorded as Roads Used as Public Paths.
 - 6.10.1 In 1971 Leigh Parish Council claimed the section in their parish, C – E, as a bridleway under the Review and noted that Batcombe Parish had been consulted and were to claim a bridleway also, although they did not eventually do so. The route was described as not suitable as a bridleway because it was overgrown and there was barbed wire. They submitted an evidence form from

a Mr Notley who had known the Drove for 50 years and ridden it for 30. He said “This Drove was always used as a way through to Batcombe Inn from Leigh Common”. The Special Review Committee upheld the claim as there was sufficient evidence of bridleway use.

6.10.2 On the same occasion the Special Review Committee considered the Inclosure Award evidence in relation to D – E. They decided to show it as a bridleway on the definitive map as it was unsuitable for vehicular traffic and would link with the bridleway claimed by the Parish Council.

7. Financial implications

7.1 Any financial implications arising from this application are not material considerations and should not be taken into account in determining the application. Acceptance or refusal of the application have similar financial implications and may result in a local inquiry process.

8. Conclusion

8.1 The Inclosure Award is conclusive evidence that the section D – E is a public carriageway and, as it is extremely unlikely that the Inclosure Commissioners intended to create a cul de sac, is strong evidence that the continuation to point A had the same status.

8.2 The small scale early 19th century maps show that the route had been enclosed and was similar to other cross roads at that time.

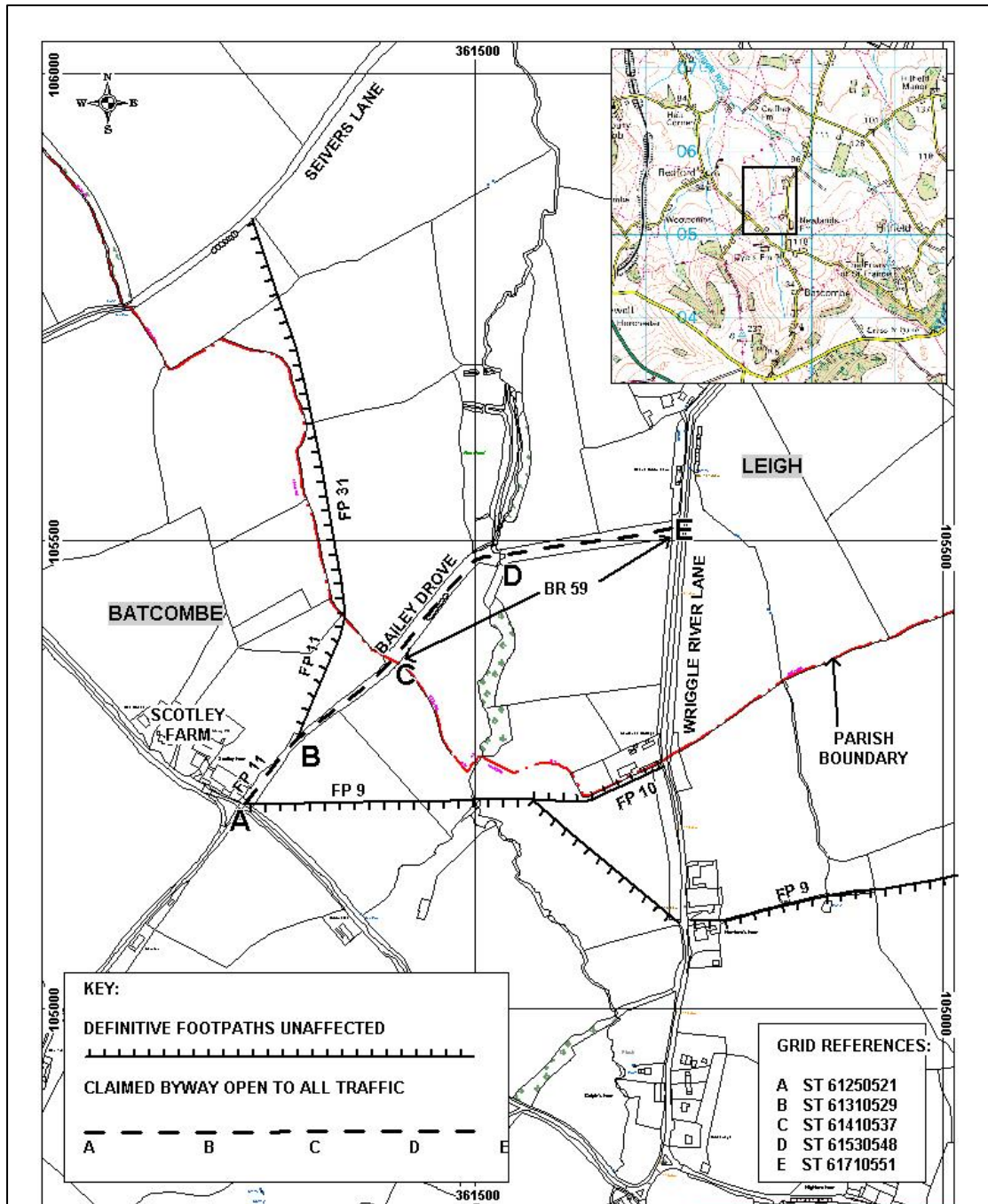
8.3 The Tithe and Finance Act documents were concerned primarily with taxation rather than status. Nevertheless they provide useful supporting evidence of byway status.

8.4 The Survey and Review evidence shows that the route had largely fallen into disuse by that stage.


8.5 Taken together the evidence shows that the claimed route exists and meets the definition of byway open to all traffic and so it should be recorded as such on the definitive map.


Miles Butler

Director of Environmental Services
September 2005



KEY:

DEFINITIVE FOOTPATHS UNAFFECTED


CLAIMED BYWAY OPEN TO ALL TRAFFIC


A B C D E

GRID REFERENCES:


A ST 61250521
 B ST 61310529
 C ST 61410537
 D ST 61530548
 E ST 61710551

WILDLIFE AND COUNTRYSIDE ACT 1981
 CLAIM TO RECORD A BYWAY - BAILEY DROVE,
 BATCOMBE/LEIGH

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 05/36
 Date: 18/07/2005
 Scale 1:5000
 Drawn By: JLC
 Cent X: 361525
 Cent Y: 105411

GEOGRAPHICAL INFORMATION SYSTEMS



DORSET
 County Council

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ROADS AND RIGHTS OF WAY COMMITTEE

Minutes of meeting held on 15 September 2005

The Roads and Rights of Way Committee met at County Hall, Colliton Park, Dorchester on 15 September 2005.

Application for a Definitive Map and Statement Modification Order - Byway Open to All Traffic at Bailey Drove, Batcombe/Leigh

186.1 The Committee considered a report by the Director on an application to modify the definitive map and statement of rights of way by upgrading to byway the part of Footpath 11, Batcombe forming part of Bailey Drove and shown A-B; adding as a byway the part of Bailey Drove from point B to the parish boundary at point C; and upgrading to byway the whole of bridleway 59, Leigh shown C-D-E, all on drawing 05/36 attached as an appendix to the report.

186.2 Officers explained that the route under application was currently shown to be three different types of path and the applicant was seeking to unify them. Historical evidence was varied but the Leigh enclosure award of 1804 showed the route as a highway and an Ordinance Survey map of 1811 showed the route as continuous. Officers acknowledged that although the route was now unusable, there was an established legal maxim, 'once a highway, always a highway'.

186.3 Officers notified members that the applicant recognised that the route was probably unsuitable for use by public vehicles but was anxious that it be recorded as a continuous through route of one status. The applicant was willing to discuss sustainable use and maintenance of the route and legal measures to prevent its use by vehicles.

186.4 Having considered the available evidence, the Committee:

Resolved

187.1 That the application be accepted and an Order made to add the route shown A-B-C-D-E on drawing 05/36 attached to the report as a byway open to all traffic on the definitive map and statement of rights of way.

187.2 That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.

Reason for Decisions

188. The evidence shows that this route should be properly recorded as a byway open to all traffic.

Page 70 Application for a definitive map and statement modification order to upgrade Footpath 11 Batcombe, add a byway from Footpath 11 Batcombe to Bridleway 59 Leigh, and to upgrade Bridleway 59 Leigh.

Recommendations accepted:

Signed: **REDACTED**
REDACTED **Date:** 05 October 2020

Vanessa Penny
Definitive Map Team Manager
Spatial Planning