



Dorset
Council

Report to the Executive Director of Place

Application for a definitive map and statement order to upgrade bridleway 12, Tarrant Gunville and add a byway, Chettle

Local Member: Local Member for Hill Forts & Upper Tarrants Ward -
Cllr Sherry Jespersen

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

Executive Summary:

In response to an application to upgrade Bridleway 12, Tarrant Gunville Parish to a byway open to all traffic and to add a byway open to all traffic in Chettle Parish, 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 the application be accepted and:

- (a) An order be made to upgrade Bridleway 12, Tarrant Gunville Parish to a byway open to all traffic between points A – B – C – D – E on Drawing 18/18/1
- (b) An order be made to add a byway open to all traffic in Chettle Parish along the route of the unclassified county road D32504 between points E – F – G – H on Drawing 18/18/1

- (c) If the order is unopposed, or if all objections are withdrawn, it be confirmed by the Council

Reasons for Recommendation:

- (a) The available evidence shows, on balance, that a highway shown on the definitive map and statement as a bridleway ought to be shown as a byway open to all traffic.
- (b) That part of the application route from Point E – Point H is already recorded on the list of streets as a publicly maintainable highway and should be recorded on the definitive map as a byway open to all traffic.

The evidence shows, on balance, that the route claimed A – B – C – D – E – F – G – H on Drawing 18/18/1 subsists as a byway open to all traffic as described, and two exceptions to the Natural Environment and Rural Communities Act 2006 are engaged. Accordingly, the route should be recorded as such and 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 his application, and some user evidence.

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

Full consultation exercises were carried out in Mar 2006, January 2010 and August 2018, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The then County Councillor for Hambledon, Cllr Deborah Croney, was consulted and the current Councillor for Hill Forts & Upper Tarrant, Cllr Sherry Jespersen has been informed. In addition, notices explaining the application were erected on site.

43 user evidence forms from users of the claimed route were submitted during the investigation and previous applications / investigations. Any relevant evidence provided has been discussed in this report.

Appendices:

1. a) Drawing 18/18/1

- b) Drawing 06/10

N.B. All points referred to in this report refer to the above Drawing 18/18/1. Other submissions quoted in this report which used a different lettering system have been translated into points on Drawing 18/18/1

2. Law

3. Documentary evidence - extracts from key documents:

- Finance Act Plans (1910)
- Map of Cranborne Chase (1618)
- Disfranchisement Award for Cranborne Chase (1828 – 1829)
- Tarrant Gunville Tithe Map (1840)
- Chettle Tithe Map (1839)
- Ordnance Survey Map First Edition (1:2500 scale) (1884 - 1886)
- Bartholomew's Revised Half Inch Map (1943)
- First Definitive Map (1966 – 1997)
- Dorset Council List of Streets (2019)

4. User evidence - Charts to show periods and level of use

Background papers:

The case file of the Executive Director of Place (ref. RW/T350).

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/T350, which will be available to view at County Hall during office hours.

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Background

Applicant and details of application

- 1.1 An application was made by Friends of Dorset Rights of Way (FoDRoW) on 21 December 2004 to:
 - upgrade to a Byway Open to All Traffic Bridleway 12, Tarrant Gunville as shown A – B – C – D – E on Drawing 18/18/1 (Appendix 1a)
 - add a Byway Open to All Traffic along the route of the unclassified road D32504, Chettle as shown E – F – G – H on Drawing 18/18/1 (Appendix 1a)
- 1.2 On 4 October 2010 the Trail Riders Fellowship (TRF) took on the application on behalf of Friends of Dorset Rights of Way.
- 1.3 A full consultation was carried out in March 2006 using Drawing 06/10 (Appendix 1b) but the case was not investigated at the time, so a further consultation was carried out in January 2010.
- 1.4 On 7 October 2010 this application was one of five that the County Council considered, and 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.
- 1.5 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 subsequently disagreed and decided that the applications were properly made.
- 1.6 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.
- 1.7 A new consultation was carried out between August and October 2018 using Drawing 18/18/1, 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).
- 1.8 Confirmation was sought from the Supreme Court in 2019 that the Declaration provided in 2015 did mean that this application was deemed fully compliant with paragraph 1 of the Act, this was confirmed.
- 1.9 As a result, it is considered that any pre-existing public vehicular rights can be recorded and retained (as appropriate)(See Appendix 2).

Description of the route

- 1.10 At point A the application route leaves the adopted highway D32404 and heads in an easterly direction. There is a "Bridleway" fingerpost pointing along the route. In the 10 metres between points A and B the surface is tarmacked and approximately 7 metres wide, with grass and high hedge boundaries.
- 1.11 At point B there is a locked field gate, approximately 5.4metres wide, heavily overgrown, with a gap of 1.6 metres to the south.
- 1.12 From point B to B1 the route heads in an east north-easterly direction uphill, and is a sunken track between high banks and hedges. There is a sign on a tree to the north of the route reading "Farm Livestock, dogs must be kept on a lead." The surface is grassy and overgrown. Width is 3.5 metres between the base of the banks. At point B1 there is an open field gate in the southern boundary.
- 1.13 From point B1 to C the route continues in an east north-easterly direction initially, then generally turns easterly. It widens to a maximum of 9 metres available width between mature, deep hedges. The surface is grass.
- 1.14 At point C the route crosses a well-used stony farm track (Tarrant Gunville Footpath 14) and there are open gates (4.6 metres wide) on the route, each side of the track.
- 1.15 Between points C and D the route continues in a generally easterly direction and is between 4.5 and 7 metres wide, between a deep hedge and trees to the north, and either a fence or hedge and trees to the south. The surface is grassy, and partly mown. There are two open but overgrown field openings, one to the north and one to the south, approximately halfway between point C and D.
- 1.16 At point D there is a locked gate, 4.3 metres wide with a 1.4 metre wide gap to the south.
- 1.17 Between points D and E the application route runs through woodland and is bounded by fences on both sides. At point E (the parish boundary) it is 9.8 metres wide between the fences. The surface is bare earth and grass. There is nothing to signify a change of status from bridleway to unclassified road.
- 1.18 From point E to point F the application route follows the adopted road D32504 and continues to follow this highway to point H. It is approximately 4.6 metres wide between mature hedges and continues in a generally easterly direction. The surface begins as a grassy track but east of two field entrances (one to the north and one to the south) it is a stony track, with a grassy centre. There is a sign on a tree to the north of the route reading "Farm Livestock, dogs must be kept on a lead."

- 1.19 At point F a 4.3 metre wide track branches off to the north.
- 1.20 From points F to G the application route continues easterly as a well-worn stony track with some grass down the centre. It runs mostly between mature, deep hedges and trees with some short sections of fence and verge. The width from front of hedge to front of hedge is 4.2 metres.
- 1.21 At point G a gated track branches to the north signed with a "Bridleway" fingerpost, and another track branches to the south-west, leading to a barn and continuing as a gated track. There is also a "Bridleway" fingerpost on this branch.
- 1.22 From points G to H the application route continues in an easterly direction as a stony track. The available width is 4.5 metres mostly between mature, deep hedges, with some newer hedging to the north.
- 1.23 At point G the application route diverges into two stony tracks and each emerges onto the tarmacked adopted road, D32502. There are no signs pointing along the application route, but a fingerpost indicates a bridleway branching off to the north.
- 1.24 That part of the application route from point A to point E is registered with Land Registry as two separate titles; DT390243 and DT292779. That part of the application route from point E to point H is unregistered.

2 **Law**

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

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 the claimed public rights subsist over that section already recorded (A – E), or are reasonably alleged to subsist over that part which is un-recorded (E-H), 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 have 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.

4 Documentary evidence and analysis (Appendix 3) (copies available in the case file RW/T350)

- 4.1 A table of all the documentary evidence considered during this investigation is contained within the case file T350. Extracts from the key documents are attached (Appendix 3).

Finance Act 1910

Finance Act Plans 1910

- 4.2 The plans produced for the Finance Act 1910 show that the entire application route was excluded from valuation.

4.3 Officer Comment

The fact that the whole application route, as shown from point A to point H, was excluded from valuation provides a strong indication that it was considered to be a public highway. Vehicular roads were typically depicted in this way, suggesting that the application route might have been regarded as a public carriageway at that time. However, this evidence alone cannot be used to determine public carriageway status.

Depositions for Cranborne Chase to Exchequer: Kings Remembrancer (1618)

- 4.4 The application route lies within the area historically known as Cranborne Chase. The Chase, as a hunting estate, was in Crown ownership from 1461 – 1616 when it was granted to the Earl of Salisbury. Depositions as to the boundaries of the Chase dated 1618 are held by National Archives but are not available to public view, but the associated map is available and is considered below.

Map of Cranborne Chase (1618)

- 4.5 The entire perimeter of the Chase is shown with a brown colourwash and either parallel solid lines, or parallel pecked lines, and although there is no key, this notation is also used for routes through and around the chase, and these routes largely correspond to public carriageways / byways today.
- 4.6 83% of the original perimeter of the Chase now has public carriageway or byway status and the application route from point A – B – C – D – E represents 12% of the remaining perimeter.
- 4.7 The application route from Point A – Point H is depicted on the Cranborne Chase map with parallel solid lines and a brown colour-wash, indicating that it formed the edge of the chase, and suggesting that in 1618 it was a highway of some description.

4.8 Officer Comments

- a) It is believed this map was drawn for submission by the Earl of Salisbury to the Exchequer: Kings Remembrancer, and as such would have been drawn by one of the foremost cartographers of the day.
- b) The depiction on this map of the application route in its entirety suggests that it was a route of some importance to the Chase and has been in existence for at least 400 years.
- c) It is not possible to deduce the status of the application route from this source, or whether it was used by the public. However, other routes depicted similarly on the map are mostly public carriageways / byways open to all traffic today.

- d) Therefore, it may be considered to offer some support to the application.

Disfranchisement Award for Cranborne Chase (1828 – 1829) and Act for Disfranchising Cranborne Chase (1828)

4.9 This award is similar to an inclosure award and sets out various areas of the Chase to be disfranchised and enclosed. These areas include Chette [Chettle] and Tarrant Gunville, Manor of Stubhampton.

4.10 **Map number 10 ‘Chette’** includes that part of the application route from Points E – F – G – H. The route is shown with parallel pecked lines passing through two enclosed parcels of land; number 20 ‘*Burn Bake (arable)*’ and number 37 ‘*Chettle Down (pasture)*’. There is no key but at this time, parallel pecked lines were commonly used to denote an unfenced track / road. No roads or rights of way are mentioned in the attached Schedule. The route is shown continuing to the west of Point E across ‘*Gunville Main Down*’ which is not included within the disfranchisement, and at Point H the route joins a route leading south (now public carriageway D32502).

4.11 **Map number 18 ‘Tarrant Gunville, Manor of Stubhampton’** includes that part of the application route from Points A – B – C. The route is shown with parallel solid lines between land parcels numbered 71 and 72 to the north, and 74 and 75 to the south. No roads or rights of way are mentioned in the attached Schedule. At Point A the route joins a route leading south (now public carriageway D32404) and at Point C it is shown continuing across ‘*Main Down*’ which is excluded from the disfranchisement.

4.12 Applicant Comment

The applicant refers to these maps as “Inclosure Maps” which was how they were filed in Dorset History Centre at the time. The applicant points out that the route is shown in the same way as other public roads in the area and admits that the precise status of the route cannot be checked as there is no accompanying award.

4.13 Officer Comments

- a) These maps confirm the continued existence of the application route between Points A – B – C and E – F – G - H. The way it is shown suggests the route may have continued as a through route over Main Down (C – E).
- b) The way the route is drawn suggests that it may have been hedged / fenced at the western end and un-bounded at the eastern end.
- c) These documents give no indication of status and so add no support or otherwise to the application.

An Act for Disfranchising Cranborne Chase (1828)

- 4.14 The **Disfranchisement Act** makes no reference to roads or rights of way.

Tithe Maps and Apportionments

- 4.15 The **Tarrant Gunville Tithe Map (1840)** shows the western end of route with solid boundaries, leading from a point corresponding to point A to the edge of Main Down (point C), it has no apportionment number and is uncoloured. Some roads that are today public carriageways are depicted in the same way elsewhere on the map, and some are shown coloured ochre.
- 4.16 No route is shown across Main Down from point C to the parish boundary (point E), the application route would be within apportionment number 99.
- 4.17 **Tarrant Gunville Apportionment 99 (1842)** is described as '*Main Down – Pasture*' and no mention is made of any road or way across it.
- 4.18 **The Chettle Tithe Map (1839)** (uncoloured facsimile copy) shows that part of the application route from point E – G with solid boundaries and no apportionment number.
- 4.19 Between points G – H the application route is not shown and would pass through apportionment number 82. The current public carriageway known as Dunspit Lane is similarly not depicted and would run through a numbered apportionment.
- 4.20 **Chettle Apportionment 82 (1839)** is described as '*Chettle Down – Pasture*' and no mention is made of any road or way across it.
- 4.21 Officer Comments:
- a) It is of some significance that parts of the route were not ascribed an apportionment number, indicating that they were not subject to tithe. This may suggest that they were regarded as a 'public' highway. This applies to sections from point A – C and E - G
 - b) However, other sections of the application route were not depicted and if they were in existence, would have run across land subject to tithe. Known routes that are today public carriageways are similarly not depicted.
 - c) The tithe documents offer some support to sections of the application route but not to the application as a whole.

Ordnance Survey maps

- 4.22 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Chettle and Tarrant Gunville parishes was completed in 1806-7 and shows only that part of the claimed route between Points A – B – C. It is drawn as two parallel solid lines, suggesting that it was fenced or hedged throughout its length and is shown in exactly the same manner as other public roads in the vicinity.
- 4.23 The fact that the remainder of the application route was not shown suggests that, if it existed, it was considered unsuitable for heavy vehicular traffic.
- 4.24 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also shows the claimed route in a similar manner to the earlier drawing. Although not conclusive to status that part of the claimed route between Points A - B - C is shown in the same way as other routes in the vicinity, many of which are today public carriageways.
- 4.25 The **1884 - 86 First Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) shows the claimed route between points A – B – C bounded by solid parallel lines, with the southern line bolder, and within this a central section bounded by parallel pecked lines and shaded ochre. This was the convention for showing first and second-class carriageways and carriage drives with banks and hedges / fences.
- 4.26 Between Points E – F – G – H the claimed route is shown similarly shaded ochre although between Points E – F the ochre shading fills the whole space between the solid lines indicating that there were no banks.
- 4.27 Between Points G – H the eastern most section (on sheet XV.2) is shown similarly to the western end of the route, however, nearer Point G (on sheet XV.1) the southern boundary of the route is not shown in bold. It is possible this may be an error since it is not replicated on the First Edition 6 inches : 1 mile map.

- 4.28 Between Points A – B – C the land within the lane boundaries is shown as parcel number 267, with an area of 2.055 acres. Between Points C – D – E the land is braced with that of ‘Main Down’. Between Points E – F – G – H the land within the lane boundaries is shown as parcel number 8 with an area of 2.244 acres.
- 4.29 At Point G, the junction with current carriageway D32502, ‘G.P.’ is marked on the map indicating a guide-post or signpost. There are no gates or barriers indicated.
- 4.30 The lane is not marked ‘F.P.’ or ‘B.R.’ and so was considered to be used mainly with vehicles. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 4.31 The **1900 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and shows the claimed route similarly to the 1884- 86 edition, although the route is now bounded by a parallel solid lines throughout its length, and the southern boundary is now bold between Points E – F – G – H but not between Points A – B – C – D – E. This suggests that the whole route is now fenced / hedged and that that the western section is now not suitable as a second class road / carriage drive.
- 4.32 Between Points A – B – C – D - E the land within the lane boundaries is shown as parcel number 50, with an area of 3.303 acres. Between Points E – F – G – H the land within the lane boundaries is shown as parcel number 9 with an area of 2.244 acres.
- 4.33 The ‘G.P.’ mark at the eastern end indicates a guide / sign post. There are no gates or barriers shown.
- 4.34 Applicant Comments
- a) The applicant cites a national expert on historic ordnance survey mapping; Richard Oliver. He has quoted instructions from the Ordnance Survey that “All metalled public roads for wheeled traffic kept in good repair by the highway authority will in future be shaded”.
 - b) The applicant states that Planning Inspectorate Consistency Guidelines indicate that shading of roads “is an indication that the road was a public carriageway where other roads in the area are also shaded”.
 - c) The applicant again quotes R Oliver in relation to Guide Posts on Ordnance Survey Maps “where GP is marked on an OS map it is likely the GP is placed at a junction of 2 or more public roads”.

4.35 Officer Comments

- a) The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route capable of accommodating vehicular traffic, initially between Points A – B – C, and Points E – F – G - H. The central section between Points C – D – E was initially unfenced / hedged across an area of downland until some point before 1900, when it was fenced / hedged.
- b) Those sections of the application route A – B – C and E – F – G – H have at times been shown in the same manner as 'Good first or second class roads' or 'Private carriage roads'.
- c) The claimed route is shown in the same way as other public carriageways in the area, with hedges or fences on both sides.
- d) None of the Ordnance Survey maps introduced as evidence show the route with any labelling such as 'B.R.' or 'F.P.', which suggests that if it were considered to be a public highway it would be of a higher status than a footpath or bridleway.
- e) The numbering and areas of land parcels forming the application route suggest that since before 1900, the lane has been considered separate from the surrounding fields either in terms of ownership and / or use.
- f) The presence of a guide-post or signpost at point H may indicate that this was a junction of public interest and the application route is the only candidate for a potential through route leading off the D32502 county road at that time.
- g) The absence of gates or barriers on the application route suggest that it would have been available for public access.
- h) Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the survey.

Ordnance Survey Boundary Sketch Maps and Boundary Remark Books

- 4.36 The **Ordnance Survey Boundary Remark Book (1884)** shows the application route at point E, where it crosses the parish boundary. It is not labelled. This suggests that it was not considered to be an occupation road (private) at the time as these were typically labelled as such.
- 4.37 The **Ordnance Survey Boundary Sketch Map Chettle (1885)** and the **Ordnance Survey Boundary Sketch Map Tarrant Gunville (1885)** both show the application route in its entirety and show it joining at both ends with routes that are today public carriageways. This suggests that at the time it was considered a through route of some importance.

Commercial maps

- 4.38 The applicant makes reference to a number of small scale maps of Dorset held at the Dorset History Centre and has provided extracts from a variety of Bartholomew and other commercial maps in support of the application.
- 4.39 The various small scale maps show a route on, or in the general location of, the application route either completely or partially. Where it is shown, it is depicted in the same manner as other roads in the vicinity, which are known to be public carriageways.
- 4.40 **Bartholomew's maps** are based on Ordnance Survey data and were extremely popular and widely referred to by the public. They provided information on first, second and 'indifferent' classes of roads as well as 'uncoloured roads', footpaths and bridleways. They cover a period from 1911 to 1951 and depict the route as an uncoloured road. Reference to the accompanying map keys indicates that the route was designated as 'inferior and not to be recommended to cyclists' (1911), 'inferior and not to be recommended' (1920), and either 'serviceable road' or 'other road' (1943 and 1951).
- 4.41 The extracts from the **Small Scale Maps of Dorset** submitted in evidence by the applicant are mainly of a commercial nature and in all probability derive their data from other surveys such as the Ordnance Survey. Very few, if any, are wholly independent surveys and several have no accompanying key. However, they do all show the route clearly and prominently. Consequently, it is considered that this evidence does support the claim, whilst providing nothing conclusive, so no significant weight has been attached to them.
- 4.42 In addition, three older maps of repute are available; **Taylor's Map (1765)**, **Taylor's Map (1796)** and **Greenwood's Map (1826)**. None showed the application route as a through route. The maps from 1765 and 1826 each appeared to show part of the route, but not the section over downland. Whilst the map from 1796 did not depict any of the route.
- 4.43 Officer Comments
- a) These older maps would suggest that between 1765 and 1826 the application route was not considered to be a road of any importance.
 - b) The commercial maps from the 1900s suggest that the application route was available for public use although its condition was not always suitable for it to be a recommended route for cyclists.

Parish Survey and Council rights of way maps and records

4.44 The **Chettle Parish Survey** of rights of way (1950's) shows that none of the application route within the parish was claimed as a public right of way.

4.45 The **Tarrant Gunville Parish Survey** of rights of way (1950's) shows that none of the application route within the parish was claimed as a public right of way.

4.46 Officer Comment

These documents suggest that, if the application route were considered to have public rights, these were higher than right of way status (footpath or bridleway).

4.47 The **draft map** (1959), **provisional map** (1964) and **first definitive map** (1966 / 7) show the claimed route within Chettle Parish either partly or wholly coloured brown / brown dashed indicating that it had carriageway rights.

4.48 The **draft map** (1959), **provisional map** 1964 and **first definitive map** 1966 / 7 all show the claimed route within Tarrant Gunville Parish uncoloured indicating that it was not believed to have public rights as a footpath or bridleway.

4.49 In 1971 an application was received from The Ramblers Association Wessex Group claiming that the part of the application route from point A – point E on Drawing 18/18/1, lying within Tarrant Gunville Parish, should have been recorded on the Definitive Map as a RUPP (road used as a public path) and was now being claimed as a byway open to all traffic (BOAT). Evidence was based on user evidence; 4 user forms and a letter accompanying the application. (These are considered in Section 4 – User Evidence).

4.50 Officer Comment

RUPP was a term used in the National Parks and Access to the Countryside Act 1949. It encompassed the earlier non-legal term of 'Carriage Road used mainly on Foot'. It is no longer a classification of highway but equates with a byway open to all traffic.

- 4.51 Two submissions were received from the Tarrant Gunville Parish Council; one, dated 22 Jun 1973, expressing “concern at the interest shewn by “foreign” motor sports clubs in getting paths upgraded to BOATs, presumably so that these can be used for rallies etc. This would be a cause for much disturbance, and a hazard to walkers and horses enjoying the pleasures of the countryside.”. The other, un-dated but related to the Special Review in 1973, confirmed that the application route is “a *B.P.* only” and disagrees with the statement of evidence supporting the claim for upgrading to BOAT. The Parish Council states the “*B.P.* is unsuitable for vehicle; is impassable at certain times of the year; and there is no necessity for vehicular traffic.”
- 4.52 In **1973** a **Special Review** Committee considered the status of the claimed route to decide how the route should be shown on the revised draft map. It was decided to uphold the claim in part, and record that part of the application route between points A – E as a bridleway. This decision was based on “evidence that this way falls into the definition of a road used as a public path, but bearing in mind the Parish Council’s comments on the physical state of the path it would be unsuitable for use by the public in vehicles.”
- 4.53 Officer Comment
- 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 did not extinguish higher rights (Kind v SoS for Environment Food & Rural Affairs (2005), Appendix 2).
- 4.54 The **1974 revised draft map** therefore shows the claimed route between points A – E as a bridleway, and from E – H as having carriageway rights (although this was not the purpose of the map).
- 4.55 An **Objection to the revised draft map** was received in 1977 by Dorset County Council, expressing the view that the section of the route between points A – E should be recorded as byway.
- 4.56 A **site visit note** from 16 February 1981 describes the route from point A – E as having “a mixture of grass and gravel surface...deeply rutted and unsuitable for vehicular use.” It goes on to state “No field gates along route but apparently improvised fence / gate..... used to control cattle”.
- 4.57 **Committee Decision on the Objection** was recorded as “Overruled for the reason: No evidence of public use”.

4.58 Officer Comments

- a) The section of the claimed route from point A – point E is recorded on the **current definitive map** (sealed **1989**) as a bridleway and this is conclusive evidence as to the existence of these rights, however, it is not prejudicial to the existence of any higher public rights over the route.
- b) The view of the Special Review Committee in 1973 was that the route between points A and E had the characteristics of a road used as a public path but this was not recorded because of suitability. This would suggest that today the route should be recorded as a byway open to all traffic since suitability can no longer be taken into consideration.
- c) The site visit notes confirm that in 1981 the route between point A and point E had no permanent gates along it suggesting that the whole route was available for public vehicular use.
- d) The objection to the Revised Draft Map was overruled because of lack of evidence of user, but the evidence submitted to the Special Review Committee had been considered sufficient (see above).
- e) These points provide some support for the application.

**Communications with Dorset County Council concerning
Bridleway 12, Tarrant Gunville**

- 4.59 A letter from Eastbury Estates to Dorset County Council in 1986 requested permission to erect a “gate with an openable access to one side” at point B. The reason given was to control stock. This was duly authorised in August 1986 by the County Surveyor.
- 4.60 In 1991 and again in 1993 a member of the public sent letters to the County Surveyor reporting obstruction of Bridleway 12 at point C by barbed wire, pig netting and wire.
- 4.61 In 1997 a member of public reported that Bridleway 12 was obstructed “with grass and bushes with the odd young tree”. The rights of way officer recorded that the landowner had been persuaded to clear the bridleway using a tractor.
- 4.62 In 2002 Dorset County Council recorded that gates were present at point C on the application route.
- 4.63 Officer comment:

Authorisations for gates were made with the proviso that should higher rights subsequently be established the authorisation could be rescinded.

List of Streets (1974)

- 4.64 That section of the claimed route from point E – H on Drawing 18/18/1 is recorded on the list of streets as an unpaved, unclassified road. This means it is highway maintainable at public expense.
- 4.65 Officer comments:
- a) The list of streets does not provide conclusive evidence of the status of the route. It is very strong evidence that the route is publicly maintained highway and most routes on the list of streets have public vehicular rights.
 - b) There is no logical explanation why the application route should change status at the parish boundary; there is no feature of public interest which would justify publicly maintained highway with possible vehicular access from one direction but not the other.
 - c) This provides strong support to the application between Point E and Point H and some support for the application between Point A and Point E.

Landowner Deposits under section 31 of the Highways Act

- 4.66 Landowner Deposits for land over which the application route runs between points A – E were deposited in 2015 declaring that that part of the application route was a bridleway and no other rights were acknowledged.
- 4.67 Officer Comment:
- a) The deposits have no effect on any rights that pre-existed them.

Other documents

“The Old Roads of Dorset” by Prof. Ronald D Good (1966)

- 4.68 In his description of the Mediaeval road system Prof. Good describes a road “...running to Stubhampton Down and thence on across Main Down to Farnham...” He provides a sketch map which, when overlaid on a modern map corresponds to the route in question from point A – B – C – D – E – F – G - H on Drawing 18/18/1.
- 4.69 Officer comment:

This is suggestive of an historic route existing in the area but precise location and status is unclear. Prof. Good does not reference the sources of his information in this book. This provides no support or otherwise to the application.

Summary of documentary evidence

4.70 Documents providing some support for the whole application route from point A – B – C – D – E – F – G – H include:

- The Finance Act plans (1910).
- The map accompanying the Deposition for Cranborne Chase to Exchequer (1618).
- The Ordnance Survey maps (various dates).
- The Ordnance Survey Boundary Sketch Maps (1885).
- Various commercial maps from the 1900s.
- The List of Streets records E – F – G – H as an unpaved, unclassified road and there is no reason for the road to terminate at E

4.71 The following documents provide some support for parts of the application route:

- Tithe maps (1840 and 1842) A – B – C and E – F – G.
- Ordnance Survey Boundary Remark Book (1884) at point E.
- The Draft Map (1959), Provisional Map (1964) and First Definitive Map (1966-7) E – F – G - H.
- Special Review Committee considered A – B – C – D – E met the description of a Road Used as a Public Path.

5 **User evidence and analysis (Appendix 4)** (copies available in the case file RW/T350)

5.1 A table of user evidence summarised from witness evidence forms together with charts showing their periods and level of use are within the case file T350. A summary is presented in Appendix 4.

Analysis of user evidence supporting the application

5.2 User evidence was first submitted as part of the Special Review of the Definitive Map in 1971 in a claim for a BOAT. The claim was limited to that part of the application route from point A to the parish boundary (point E) although the grid reference quoted corresponds to Point D (on Drawing 18/18/1). That part of the application route from the parish boundary to Point H was not claimed, presumably because it was recorded as a county road.

5.3 Four users submitted evidence that the route was used by the public with traps, horse drawn vans, horse and combination, and carts.

5.4 Officer comment:

This type of usage at the time would lead to acquisition of all vehicle rights including motor vehicles.

5.5 Users described the route as '*Carriageway*' '*Road used as a public path*' or '*Road (carriageway)*'. All said that others regarded the route as public.

5.6 Use spanned the period 1909 to 1971 and frequency of use from each user ranged from twice per year to twice daily.

5.7 Officer comments:

The evidence discussed in paragraphs 5.2 – 5.6 was considered strong enough at the time to support recording of a BOAT.

5.8 Four user evidence forms were received soon after the application in 2005 and a further form was submitted in 2010. These claimed use of the whole route from point A – point H and usage spanned the period from 1988 – 2010. All this use was with motorcycles.

5.9 Frequency of use per user ranged from 2 to 10 times per year

5.10 Officer Comment:

The evidence in paragraphs 5.8 and 5.9 supports the claim for vehicular rights along the whole application route from Point A to Point H.

5.11 Thirty-three user evidence forms or submissions were received in response to consultation in 2018. Six of these described use by right and were not counted as public use. A further two did not specify which part of the route, if any, was being claimed and were also discounted.

5.12 Only one of these users claimed use with a motor vehicle and this was along that section between point H – point F to access his house adjoining the application route.

5.13 Officer comments relating to paragraphs 5.11 and 5.12:

a) Such use to access property would be by private right if the route did not already have public vehicular rights so was discounted.

b) The witnesses responding to consultation in 2018 provide no supporting evidence for the claim for public vehicular rights. However, their evidence may be of relevance in terms of the presence of gates / notices etc.

- 5.14 The earliest date of claimed public use with vehicles is 1909 and 2004 is the last date of use which can be considered to contribute to acquisition of public vehicular rights because this is the date when use of the route was brought into question (see section 8).
- 5.15 All but one users of the route whose use included dates since 1971 describe gates being present on the route. Estimated dates when the gates were first encountered ranged from 'after WWII' 'early 1950s' 'early 1970s' '1980'. None of the witnesses whose use all predated 1971 recalled gates.
- 5.16 The location of gates was most commonly described as in the region of Point A and either Point D or Point E. Some witnesses also described gates at Point C as temporary gates to control stock (see also paragraphs 4.59 - 4.62).
- 5.17 All witnesses except one who said the gates were locked said that the locking commenced during the 1980s. One witness thought the gates were locked in 1968. None of the witnesses found the locked gates prevented their use because there was a gap to the side allowing access.
- 5.18 When a County Council officer visited that part of the route within Tarrant Gunville Parish in 1981 no field gates were present.
- 5.19 This evidence is corroborated by Eastbury Estates who declared that locked gates were erected in the region of Points A and D in 1986, of these only the gate near point A is recorded to have been authorised (see paragraph 4.59).
- 5.20 Only four witnesses reported any notices on the route, three of these reported "Bridleway" signs and one reported "Keep dogs on leads and stick to bridleway" signs. One further witness said he had heard reports that there used to be signs.
- 5.21 Officer comments relating to paragraphs 5.15 – 5.20:
- a) The majority of evidence suggests that the route was not gated prior to the 1986.
 - b) The locked gates did not prevent use of the route by motorbikes due to gaps beside the gates but would have prevented use with larger motor vehicles.
 - c) There is no evidence that signage has ever been displayed along the route by the landowner indicating that the route was not available for public vehicular use. Public bridleway signs have been displayed at Point A since the route was recorded on the definitive map as a bridleway in 1973.

6 **Additional evidence in support of the application and analysis**
(copies available in the case file RW/T350)

- 6.1 One submission referred to information dealt with elsewhere in this report, and another expressed support for the application but gave no evidence.
- 6.2 One person claimed to have seen the route being used by motor vehicles since 1959 but that “more recently” this had stopped due to the presence of a gate which is sometimes locked. No further details were given so very little weight can be given to this evidence.

6 **Evidence opposing the application and analysis** (copies available in the case file RW/T350)

- 6.1 Seven individuals or organisations made submissions opposing the application.
- 6.2 Three of these questioned the validity of the application with respect to the scale of the map, the provision of documentary evidence relied upon to support the application and various procedural matters.

6.3 Officer Comment:

All these matters are dealt with elsewhere in this report (Section 1).

- 6.4 Five responders reported that the route had been gated and locked for many years and the approximate date of this obstruction to motor vehicles was 1986. Three people reported that there was a gate at point D, one of these reported there was also a gate in the region of point A, the others did not give a location. Some reported that a gap had been left to the side of the gate(s) to accommodate walkers and horse-riders.

6.5 Officer Comment:

Gates are dealt with in section 5.

Landowner Correspondence

- 6.6 Mr Cheal, acting on behalf of one of the landowners over which the application route passes, sent some evidence that the land had been held in settlement / mortgaged / subject to tenancy since 1871 and he suggested that this meant there was no-one with the capacity to dedicate a right of way.

6.7 Officer comments:

- a) For a highway to be dedicated, only a break of a very short time between settlements needs to occur. Under common law it is not necessary for an owner to have the capacity throughout the whole period of user, or for any owner or owners along the application route to have capacity to dedicate throughout the whole relevant period.
- b) Some strict settlements prior to 1926, but not all, may have meant there was no-one with capacity to dedicate. The settlement would need to be in terms that the trustees needed all the beneficiaries to consent to disposals and potential beneficiaries were unborn or infants.
- c) We disagree that there was no-one with capacity to dedicate, during periods where the land was mortgaged or tenanted. Clearly, albeit subject to the strict settlement issue, the owner, tenant and mortgagee would have had capacity to dedicate.
- d) The documents relating to the mortgage situation since 1955 are also unclear
- e) It is for the objector to substantiate their claim that no-one had capacity to dedicate. Pratt and Mackenzie (Law of Highways 17th edition (1923)) put the onus of proof on the person who seeks to deny that dedication was possible, at common law.
- f) No such proof has been supplied. In particular, no evidence of lack of capacity to dedicate has been provided for the period prior to 1895 and since 1955. Therefore, it cannot be presumed that rights could not have been dedicated.
- g) Mr Cheal does not assert that there has always been strict settlement, only since 1871. Some documentary evidence e.g. Map of Cranborne Chase (1618), Tithe Maps (1839 and 1840) suggest that dedication could have taken place prior to this date.

6.8 Mr Cheal raised questions relating to the arguments put forward by the applicant with respect to the Eyre v New Forest Highway Board (1892) case, cul-de-sac routes and the status of route listed as 'unclassified county roads'.

6.9 Officer comment:

- a) The position with regard to cul-de-sac routes with short sections of missing link was discussed the case of Eyre v New Forest Highway Board (1892) and clarified by the case of Moser v Ambleside Urban District Council (1925) (see Appendix 2).
- b) Point E on Drawing 18/18/1 is a very unlikely terminus point for a county road because it is not, and has never been, a place of public resort.
- c) This would strongly suggest that the application route should have been recorded as a through route with the same rights throughout.
- d) The recording of the application route from Point E – Point H has never been questioned as anything other than an unclassified county road, most likely with full carriageway rights.

6.10 Mr Cheal also raised the issue that no user evidence suggests vehicular use of the application route, and that any vehicular use subsequent to the recording of the route as a bridleway is inadmissible.

6.11 Officer comment:

There is no reason why vehicular use of a bridleway once recorded is inadmissible. User evidence is dealt with in section 5 of this report.

6.12 Other issues raised in objection related to matters such as;

- Safety
- Damage to the surface
- Disruption to residents, wildlife and the natural environment
- Noise
- Pollution
- Suitability
- Needs of current and past users

These cannot be taken into consideration.

7 **Other submissions received** (copies available in the case file RW/T350)

7.1 Other submissions received contained no evidence which can be taken into consideration.

8 **Date public use brought into question**

8.1 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route (in this case, with mechanically propelled vehicles) was brought into question.

8.2 It might be considered that partial obstruction of the application route by locked gates in 1986 could bring into question use of the route with motor vehicles. However, given that sufficient space was left beside each gate which permitted access to horses and motorbikes, it is considered that this act was insufficient to constitute a bringing into question.

8.3 However, erection of locked gates on the route in 1986 could be seen as an indication that the landowner had no intention to dedicate.

8.4 The application was made on 21 December 2004 and this is evidence of bringing the use of the route with motor vehicles into question. There is user evidence for use with motor bikes between 1986 and 2004 but this is insufficient to raise a presumption of dedication under the Highways Act 1980.

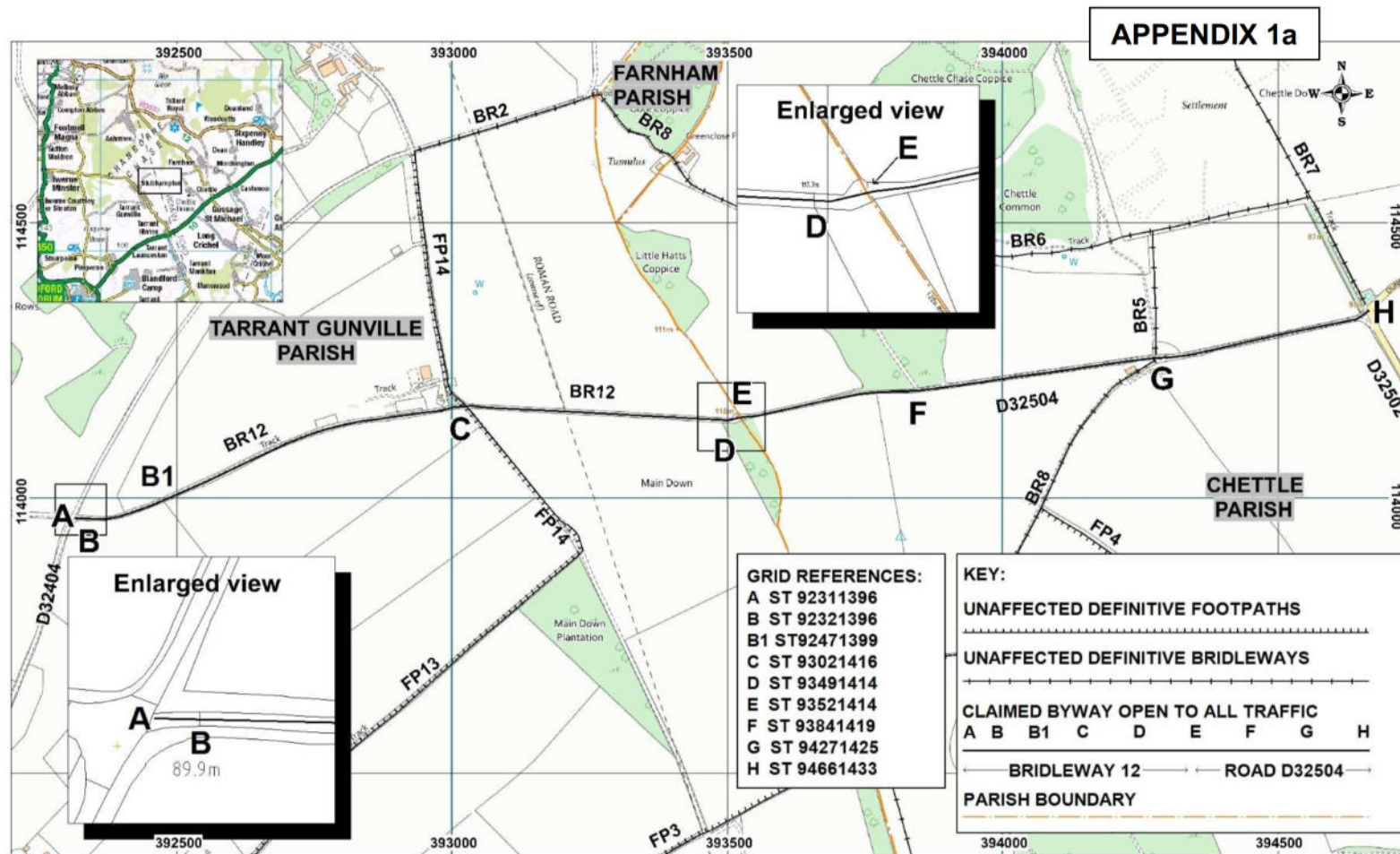
9 **Conclusions**

- 9.1 As the route is currently recorded as a bridleway between Point A and Point E on Drawing 18/18/1, in deciding whether or not it is appropriate to make an order, it must be considered whether the balance of evidence shows that the public rights subsist and the route ought to be recorded with a different status. e.g. byway open to all traffic.
- 9.2 As the route between Point E and Point H is not recorded on the definitive map it must be considered whether the balance of evidence shows that rights subsist or can be reasonably alleged to subsist and that it should be added to the definitive map, and at what status.
- 9.3 The application route between Point E - Point H on Drawing 18/18/1 is recorded on the list of streets as highway maintainable at public expense strongly suggesting it has full carriageway rights.
- 9.4 Documentary evidence suggests the whole application route was in existence hundreds of years ago and the physical characteristic of it as a partly sunken lane between high banks suggests it has received much wear over the years.
- 9.5 None of the documentary evidence individually provides conclusive proof supporting the vehicular status of the application route from point A – point H on Drawing 18/18/1, but taken together, the documentary evidence is sufficient to demonstrate, on balance, that the claimed public rights subsist along the whole route and an order should be made.
- 9.6 The user evidence is considered to be insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, necessary for presumed dedication under Section 31 of the Highways Act 1980, nor would it satisfy the common law requirements to infer a dedication of public vehicular rights. However, it does add support to the documentary evidence for that part of the route between point A – point E.

- 9.7 The application route engages two exceptions in Section 67 of the Natural Environment and Rural Communities Act 2006:
- (a) From point A to point E because the application was made before 20 January 2005 (Section 67(3)(a)).
 - (b) From point E – point H because this part of the route is recorded on the list of streets (Section 67 (2)(b))

So, the existing right of way for mechanically propelled vehicles has not been extinguished.

- 9.8 On balance it is considered that there is sufficient evidence for the test to be met on the balance of probabilities.
- 9.9 Having determined that the way is a public vehicular one, it is necessary to determine if that part of the route from point E - point H which is recorded on the list of streets fits the description of a byway open to all traffic. The statutory description of a BOAT is “a highway over which the public has 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”.
- 9.10 The character of the route being a rough stony track renders it more suited to use by non-motorised traffic, and there has been predominant use on foot / horse in the recent past. Thus, the route from point E – point H fits the description of a BOAT.
- 9.11 Therefore, the recommendation is that an order be made to record the claimed route as a byway open to all traffic between points A – B – C – D – E – F – G – H on Drawing 18/18/1.
- 9.12 If no objections are received the 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.



WILDLIFE AND COUNTRYSIDE ACT 1981
 APPLICATION TO RECORD A BYWAY OPEN TO ALL TRAFFIC, TARRANT GUNVILLE, BRIDLEWAY 12
 AND CHETTLER ROAD D32504

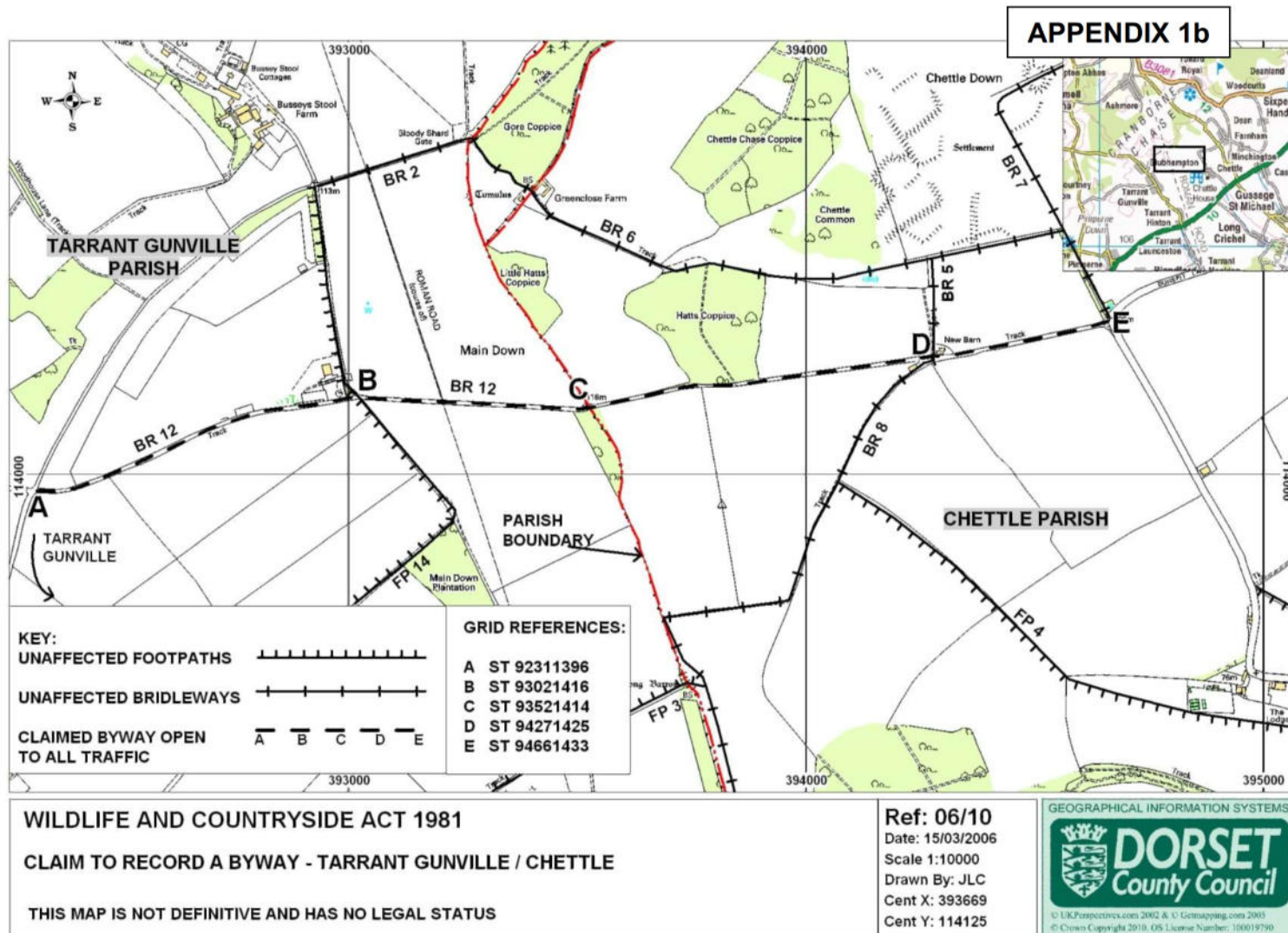
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 18/18/1
Date: 09/07/2019
Scale 1:9000
Drawn By: AB
Cent X: 393469
Cent Y: 114089

Dorset Council

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LAW

APPENDIX 2

General

1 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:

(a) that a right of way subsists or

(b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

1.5 An order 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 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.

- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.

2.3 Section 31(3) of the Highways Act 1980 says that where a 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.

2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 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.

- 2.5 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.

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 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 corrected 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. The Council has received clarification from the Supreme Court that this is the case.

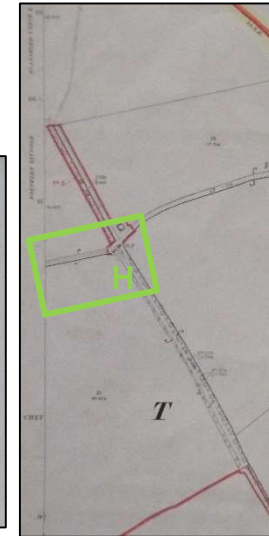
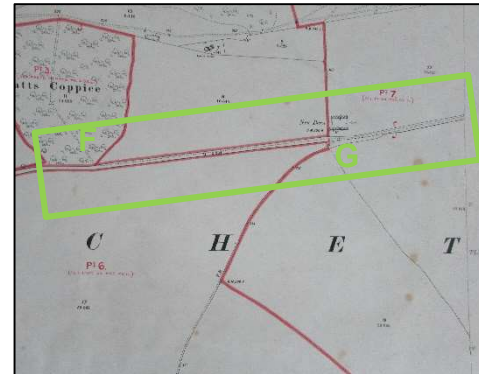
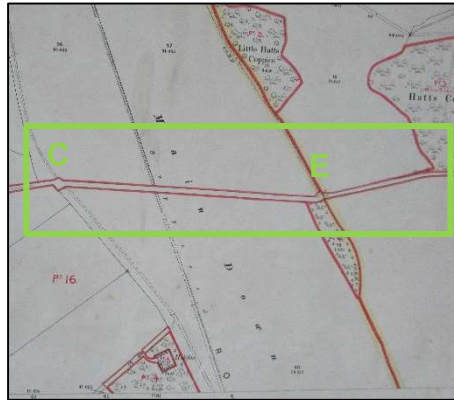
Case specific case law

- 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.
- 8 Eyre v New Forest Highway Board, CA [1892]
 - 8.1 Where a short section of uncertain status exists between cul-de-sac ways, it can be presumed that its status is that of the two highways linked by it. The case was based on user evidence over a long period and evidence of maintenance by the highway authority.
- 9 Moser v Ambleside Urban District Council, CA [1925]
 - 9.1 This case reinforced the principle that a cul-de-sac could be a public highway. Atkin LJ said: "It has been suggested that you cannot have a highway except insofar as it connects two other highways. That seems to me that too wide a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise."

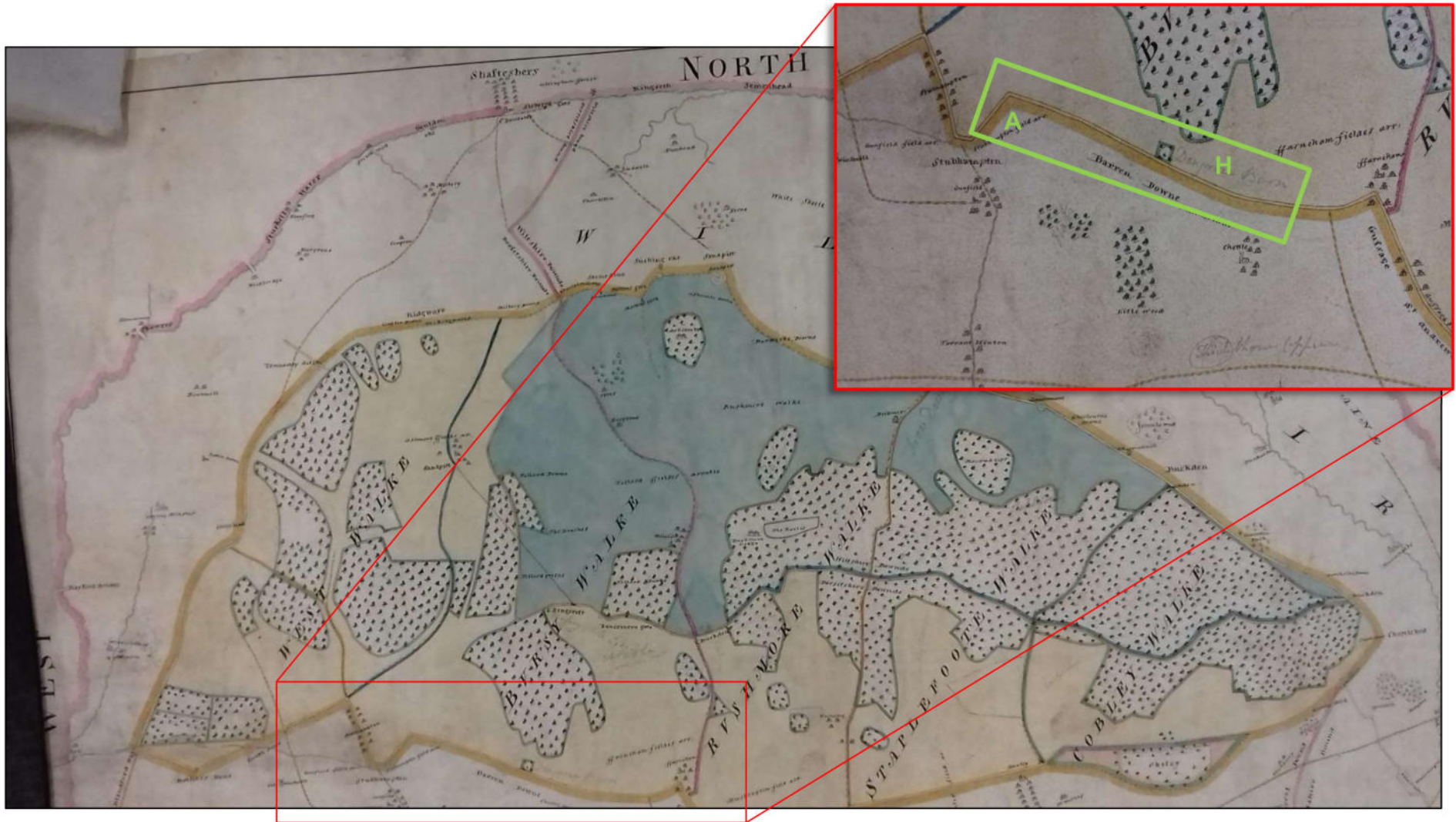
Extracts from key documents
(See the case file RW/T350 for copies of other documents mentioned)

APPENDIX 3

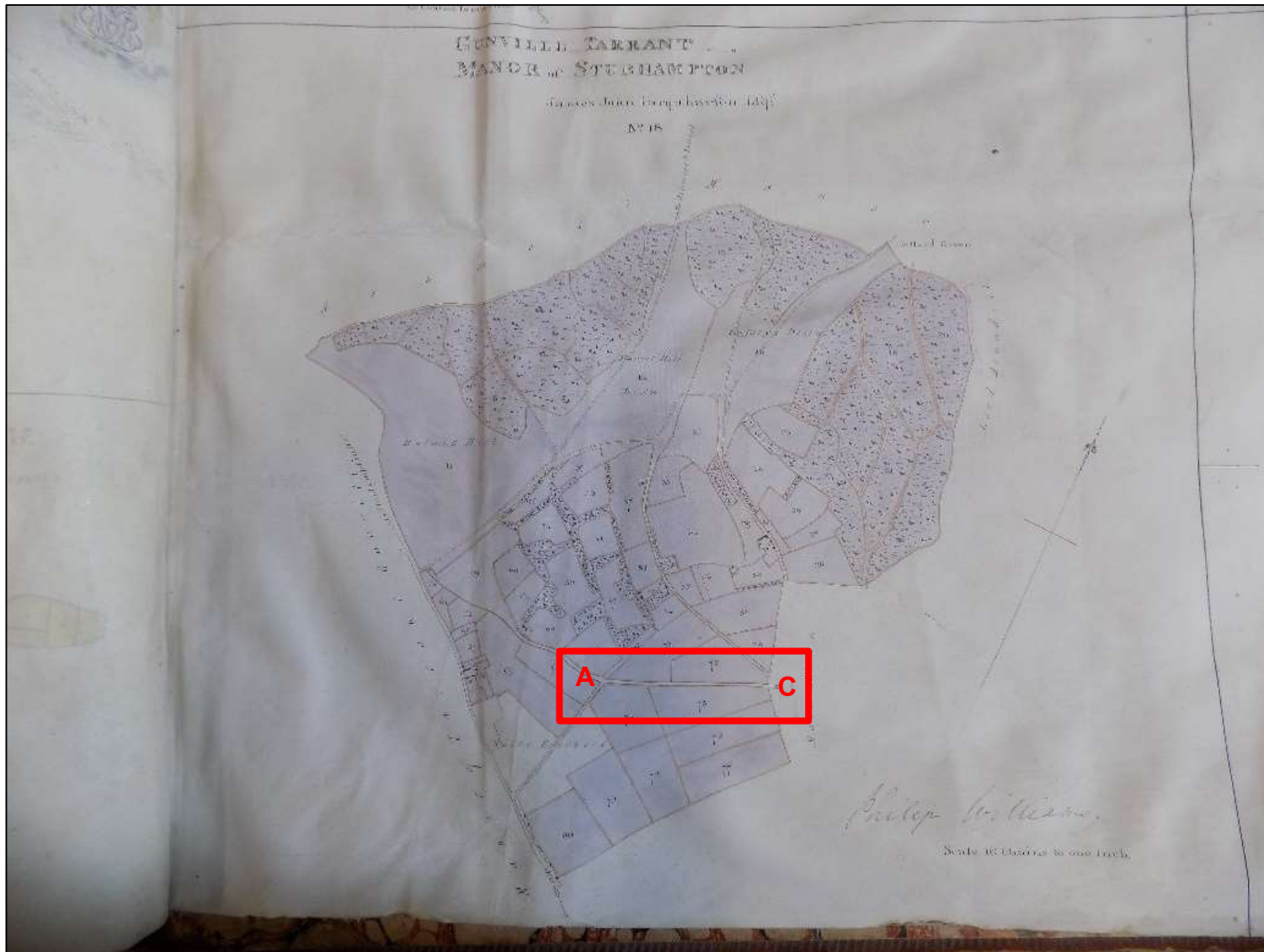
Finance Act Plans (1910)



Map of Cranborne Chase (1618)



Disfranchisement Award for Cranborne Chase (1828 – 1829), 'Gunville Tarrant, Manor of Stubhampton'



Disfranchisement Award for Cranborne Chase (1828 – 1829), 'Chette'



Tarrant Gunville Tithe Map (1840)



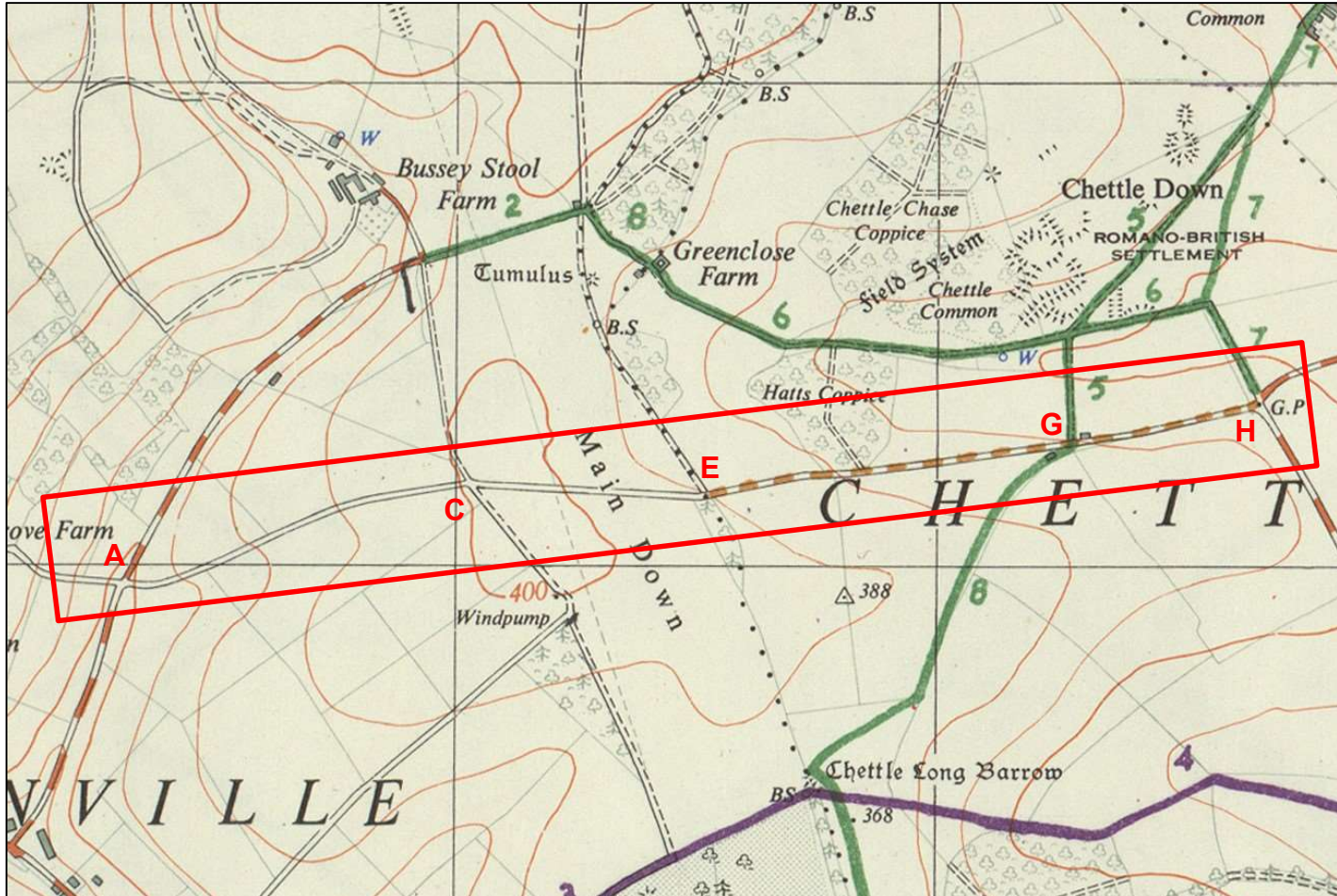
Chettle Tithe Map (1839)



Bartholomew's Revised Half-Inch Map (1943)



First Definitive Map (1966-67)



Dorset Council Working Copy of List of Streets 2019

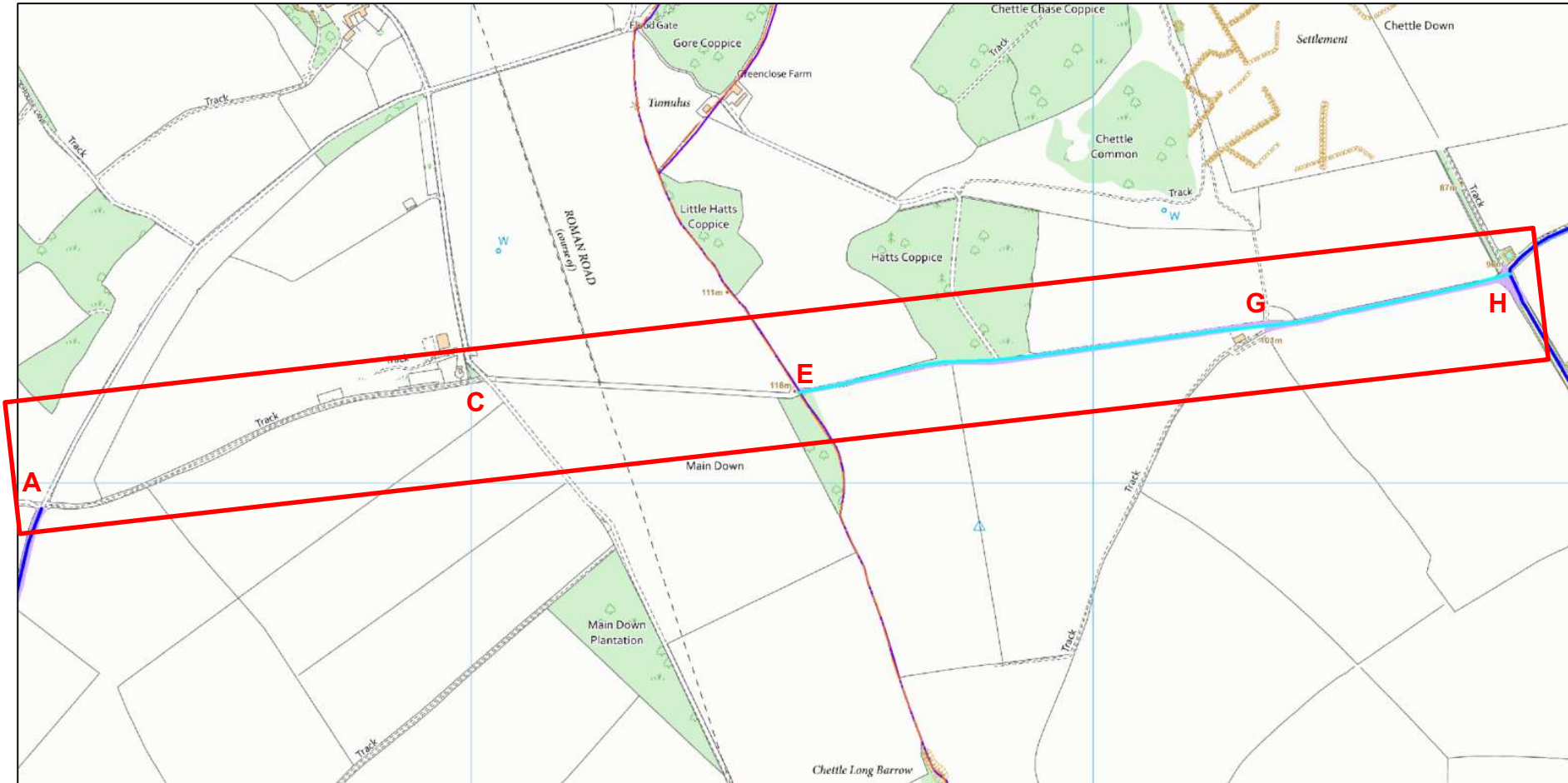
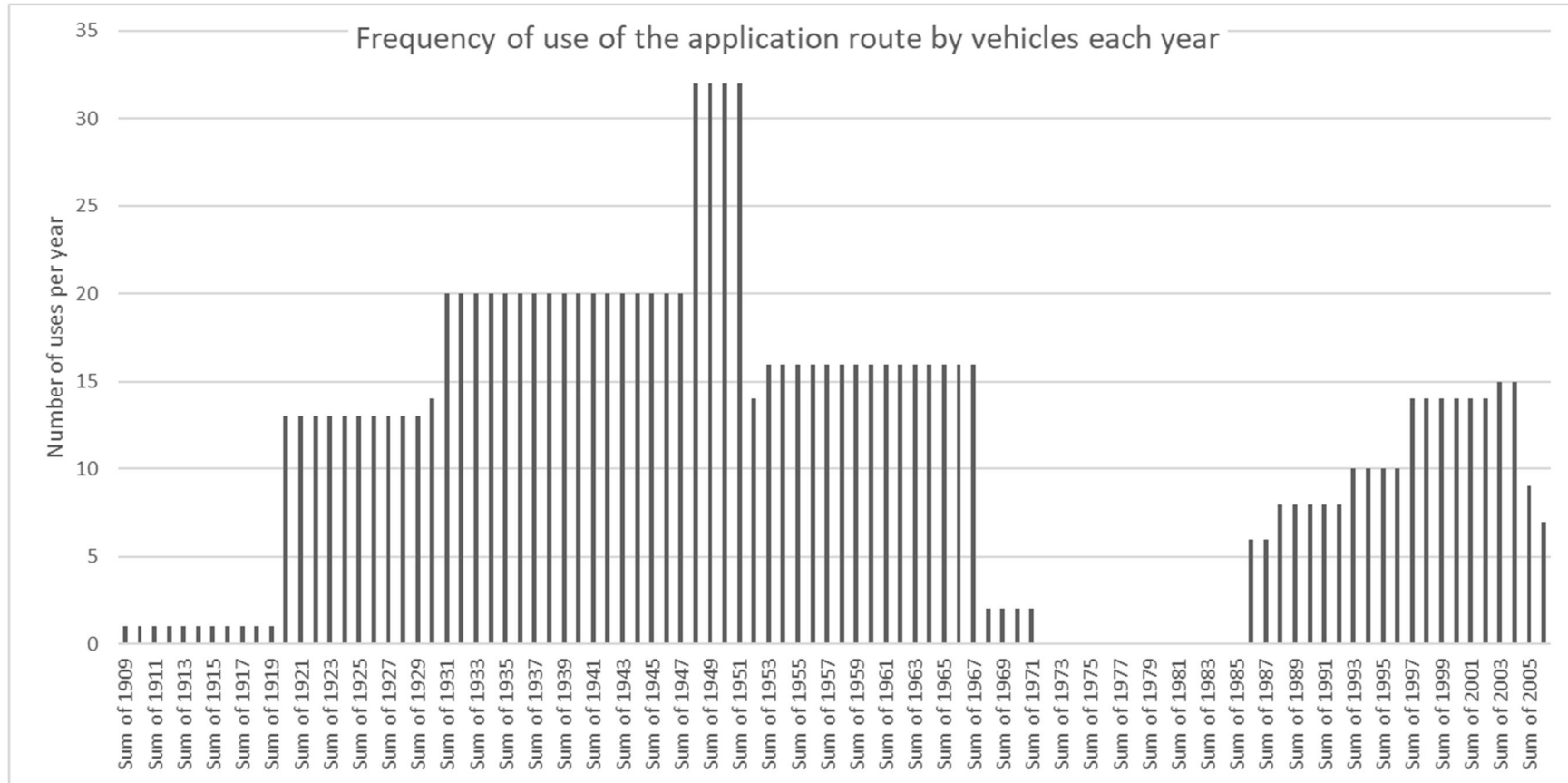


Chart of user evidence to show frequency of use with vehicles



Recommendations accepted:

Signed:

SIGNED

Date: 02 March 2022

Vanessa Penny
Definitive Map Team Manager
Spatial Planning