Page 1 Application for a definitive map and statement modification order to upgrade Bridleway 57, Corscombe (Ford Lane) to byway open to all traffic

Agenda item:

Roads and Rights of Way Committee

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Dorset County Council



Date of meeting	9 March 2012
Officer	Director for Environment
Subject of report	Application for a definitive map and statement modification order to upgrade Bridleway 57, Corscombe (Ford Lane) to byway open to all traffic
Executive summary	In response to an application to upgrade Bridleway 57, Corscombe to a byway open to all traffic, this report considers the evidence relating to the status of the route
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: The applicant submitted documentary evidence in support of his application. Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.
	A full consultation exercise was carried out in September and October 2011, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site. Any relevant evidence provided has been discussed in
	this report. Budget/risk implications: Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.

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Deserves an detions	
Recommendations	That:
	(a) The application be refused;
	(b) An order be made to modify the definitive map and
	statement of rights of way to record Bridleway 57,
	Corscombe as shown $A - B - C - D$ on Drawing
	11/49/1 as a restricted byway; and
	(c) If the Order is unopposed, or if any objections are
	withdrawn, it be confirmed by the County Council
	without further reference to this Committee.
Reasons for	(a) Subject to (b) below the byway open to all traffic
Recommendations	claimed does not subsist nor can be reasonably
recommendations	alleged to subsist;
	(b) 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
	public vehicular highway. As the application was
	submitted after 20 January 2005, and no other
	exceptions apply, the provisions of the Natural
	Environment and Rural Communities Act 2006
	extinguished the public rights for motor powered
	vehicles and therefore an order should be made for
	a restricted byway over the claimed route; and
	(c) The evidence shows that, on balance, the route
	claimed is a restricted byway. Accordingly, in the
	absence of objections the County Council can itself
	confirm the Order without submission to the
	Planning Inspectorate.
Appendices	1 - Drawing 11/49/1
Appendices	2 - Law
	5
	Table of documentary evidence
	Extracts from key documents:
	 Corscombe Tithe map 1840
	 Ordnance Survey maps:
	 Ordnance Survey maps:
	 Ordnance Survey maps: 1811 First Edition map scale 1 inch:1 mile
	 Ordnance Survey maps: 1811 First Edition map scale 1 inch:1 mile 1888 First Edition map scale 6 inches:1mile
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1 Background

- 1.1 An application to upgrade Bridleway 57, Corscombe to byway open to all traffic was made by the Trail Riders Fellowship on 1 July 2005.
- 1.2 The claimed route commences at point A on Drawing 11/49/1 (Appendix 1) and runs south to point B along a defined track, hedged on both sides. From point B it continues south south east and south east, with a natural surface as a well defined track with high banks on both sides, to its junction with Catsley Lane at point D. The length of the claimed route is approximately 700 metres. The width of the claimed route varies from 7.30 metres to 5 metres.
- 1.3 Two landowners have been identified, the owners of Urless Farm and New House Farm, Catsley Lane, Corscombe.

2 **Law**

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

3 **Documentary evidence (Appendix 3)**

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T379.
- 3.3 In summary, the applicant states that "there is a weight of evidence to indicate it is more likely that this route carries public carriageway rights rather than any lesser rights".

4 User evidence

4.1 No user evidence has been submitted.

5 Additional evidence in support of the application

- 5.1 No additional evidence has been submitted in support of this application.
- 6 **Evidence opposing the application** (copies available in the case file RW/T379)
- 6.1 In total, 23 submissions were received before the consultation exercise was started and 13 letters received subsequently. These cited many reasons for opposing upgrading the bridleway. Issues were raised such as: -
 - Safety
 - Damage to the surface
 - Disruption to residents, wildlife and the natural environment
 - Noise
 - Pollution
 - Suitability

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- Dangerous junctions
- Spread of disease
- Necessity
- Security risk
- 6.2 A letter dated 31 August 2005 was received from Mr David Anstey, soon after the application was made, objecting to the upgrading of the bridleway.
 - (a) He states that the lane "has been metalled (stones laid to make a surface) in the past" and shows "signs of rough hole filling done... by the farmers who use the adjacent fields".
 - (b) He notes that the route is shown on the 1962 Ordnance Survey 6 inches:1 mile scale map as "Other Roads (not classified by Ministry of Transport). Fenced." It is also shown as a road on the 1811 1 inch:1 mile scale map (see paragraph 8.10).
 - (c) He continues "Clearly then this Bridle way or Unclassified Other Road was used by horse drawn vehicles, carts etc" and was "maintained by local people of this parish, as were roads in the other parishes of Dorset".
 - (d) The "new situation" relating to the current use of motor vehicles in the countryside is his concern and therefore he objects to the application.
- 6.3 An email received on 5 October 2011 from the Clerk to the Corscombe, Halstock and District Parish Council states that the claimed route is shown "on the Tithe map of 1840, OS maps etc etc. None of these designate a status".
- 6.4 An email received on 31 October 2011 from Oliver Hemsley states that he has owned land "to the west of Ford Lane since 1998 and the east since 2005. During this time I have not seen the bridleway used by mechanically propelled vehicles. However, the bridleway is used by horse riders, walkers and people in horse drawn carts…".
- 7 **Other submissions received** (copies available in the case file RW/T379)
- 7.1 A memorandum dated 20 September 2011 from Dorset County Council's Senior Archaeologist states "We have no information in the Historic Environment Record about Ford Lane".
- 7.2 Two other submissions from Natural England and the British Horse Society offered no evidence.

8 Analysis of documentary evidence

8.1 There is no Inclosure map or award for this part of Corscombe.

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Finance Act

- 8.2 The evidence from the **Finance Act** documents reveals that the whole of the claimed route was excluded from valuation; the route is clearly shown with solid lines, indicating fencing both sides, on the Ordnance Survey 1903 base maps (sheets 20.12 and 20.16) at a scale of 1:2500, which were used for valuation purposes.
- 8.3 Public roads that were fenced were generally excluded from the valuation and this evidence indicates that it is very likely the routes enjoyed public highway rights.
- 8.4 With respect to that part of the route between points A to C, the route passes through Hereditament 43. The bracing symbols across the route are broken where they cross Ford Lane in two places. This clearly indicates that the route was not considered to be part of that parcel of land and therefore not part of the valuation. At points A and C the boundary of the hereditament is a broken line.
- 8.5 The remainder of the route C D is shown excluded from the valuation by coloured lines between hereditaments. This is strong evidence that the whole of the route was considered to be vested in the highway authority at that time and was subject to public carriageway rights.

Corscombe Tithe Apportionment and Map

- 8.6 The **1840 Corscombe Tithe map shows** the claimed route in the same manner and coloured as other routes on the map that are public roads today. The route is unapportioned and therefore there was no tithe payable.
- 8.7 Tithe maps were not drawn for the purposes of establishing or recording rights of way and although the map gives no indication of the status of the route it does provide evidence as to its existence at that time.
- 8.8 The apportionments make no reference to any rights of access along the lane, indicating that it was considered a public route and no additional private access rights to apportionments were required.

Ordnance Survey maps

- 8.9 Although **Ordnance Survey maps** are not conclusive of public status they do show the physical characteristics on the ground at the date of the map.
- 8.10 The **First Edition Ordnance Survey map of 1811** at a scale of 1":1 mile, which was produced for military purposes, shows the claimed route.
- 8.11 The **Second Edition Ordnance Survey 1903** at a scale of 25 inches: 1 mile clearly shows the claimed route bounded by solid lines. It is named "Ford Lane". The track is unshaded throughout its length (refer to notes on shading in the table, Appendix 3) and fenced. The map contains the usual disclaimer.

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8.12 The **First Edition 1888** and **Second Edition 1904 Ordnance Survey maps** at a scale of 6 inches:1 mile show the claimed route. No shading is visible on either map. Whilst this could be taken to indicate that the route had no public status it is also the case that the route may have been re-classified as a third class public carriageway for which there was no shading of route boundaries.

Small scale maps

- 8.13 The variously dated **Small Scale Maps of Dorset** submitted by the applicant cover a period from approximately 1811 to 1951.
- 8.14 The route is either partly shown or shown in a different position. Whilst some maps support the existence of a 'significant' route over a substantial period of time, on their own they provide no conclusive evidence as to the status of the route. However, the applicant states that the case of 'Commission for New Towns v J J Gallagher Ltd' gives some weight to Bartholomew's maps as an aid for proving the existence of a public carriageway.
- 8.15 Under the heading 'Background to Selected Documentary Evidence' the applicant expands on the evidence from **Bartholomew's Maps** used for the claim as follows:
 - (a) The maps were produced in conjunction with the Cyclists Touring Club, who supplied information on the condition of the routes.
 - (b) The applicant quotes from the case of 'Commission for New Towns v J J Gallagher Ltd' but a copy of the case was not enclosed with the application.

Corscombe Parish Survey of rights of way

- 8.16 The **Corscombe Parish Survey map c1952** has a key that says "Bridle Paths – purple" and "Footpaths – red" but the claimed route is shown with purple dashes and annotated alongside "CRB 59" (Cart or Carriage Road used as a Bridleway). The designation C.R.B. shows that the parish, at that time, thought that Ford Lane had a higher public status than that of footpath or bridleway.
- 8.17 The accompanying handwritten schedule notes that the route is a C.R.B but maintained as a "Halter Path", overgrown and obstructed with barbed wire "at Ford Entrance" and "Tree across lane" but also remarks that it is a "short cut to Catsley Farm" and "was the original carriageway but is not now required".
- 8.18 The Survey supports the claimed route having a higher status than that of bridleway.

Dorset County Council rights of way records

- 8.19 The **1953 draft map** again shows the claimed route with green dashes as CRB 59.
- 8.20 The **provisional map 1964** and **first definitive map 1967** both show the claimed route as Bridleway 57. The depiction on the rights of way maps as CRBs had been abandoned in 1958 (please refer to Appendix 3, Table of documentary evidence).

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- 8.21 A special **Corscombe Parish Meeting** was held on 13 May 1971 to review routes within the parish for the **Special Review** process.
- 8.22 One of the routes considered was Bridleway 57. Notes attached to a letter from the Parish Council following the meeting state:
 - "The original Parish Survey and Draft map show as Carriage Road/ Bridleway 59 what is now bridleway 57.
 - The section extends from a lane south of the church at 522045 via Ford Lane to Catsley Lane at 525038.
 - The section constitutes part of an old through road, although part of it is overgrown and boggy and is seldom used by vehicular traffic.
 - The section has been entered on the Survey map as a byeway as it forms a link between county Road D17(10) and D17 (9)
 - The Parish Meeting have suggested it should remain a bridleway due to the prevalence of springs throughout its length."
- 8.23 The Parish Council uses terms like "old through road" and "carriageway" and confirms that the route is still being used by vehicular traffic at that time. The local knowledge that Ford Lane was a "cut through" is good supporting evidence that the claimed route carries public rights higher than that as a bridleway.
- 8.24 The County Council's Special Review Committee discussed the Parish Council's claim on 20 June 1973. A note on the claim sheet under the question regarding suitability is answered "No. Springs all the way, Should be a bridleway." The Committee's decision was "Retain as bridleway – unsuitable for byway open to all traffic".
 - (a) Suitability is not a relevant factor to this application. However, under the legislation at the time, the Countryside Act 1968, one of the tests to be taken into account for claims under the Special Review was whether the way was "suitable for vehicular traffic, having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil".
- 8.25 The **1974 revised draft map** and the **1989 current definitive map** show the claimed route as Bridleway 57.

9 Analysis of evidence opposing the application

- 9.1 The majority of the submissions opposing the application relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.
- 9.2 Mr Anstey mentions that the route was metalled, shown on old maps and used and maintained by local people. This is evidence supporting the claimed route having higher public rights. However, his objection to use of routes by motor vehicles in the countryside is not relevant.

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- 9.3 The Parish Clerk dismisses the Tithe map and Ordnance Survey map evidence as the status of the route is not shown. However, taken together with the rest of the documentary evidence, particularly the Finance Act map, which excludes the claimed route, these maps do provide support to the claim.
- 9.4 Mr Oliver Hemsley mentions use by horse and cart. This supports the claimed route having a status of restricted byway (which includes use by horse and cart).

10 Analysis of other submissions

10.1 The submissions contain no relevant evidence.

11 Conclusions

- 11.1 As the route is currently recorded as a bridleway, it is necessary for members to decide whether, on the balance of probability, the highway shown in the map and statement as a public bridleway ought to be shown as a highway of a different description.
- 11.2 From the **1811 Ordnance survey map**, the **1840 Corscombe Tithe map** through to the **small scale maps** this route has been shown similar to the other public carriageways within Corscombe. The **1910 Finance Act Map** is the strongest evidence that the claimed route had vehicular rights as it was excluded from taxation at that time. The **1952 Corscombe Parish Survey map** also adds to the evidence that at that time vehicular rights existed. This is supported by the Parish Meeting notes for the **Special review** (paragraph 8.22) and by evidence submitted during the consultation exercise that the route has been used by horse and cart in the past (paragraphs 6.2 and 6.4).
- 11.3 The documentary evidence is sufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route and an order should be made.
- 11.4 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.
- 11.5 Therefore it is recommended that an order be made to record the claimed route as shown A B C D on Drawing 11/49/1 as a restricted byway.
- 11.6 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation have been met.

Miles Butler Director for Environment

Director for Environmen February 2012



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LAW

General

- 1 <u>Wildlife and Countryside Act 1981</u>
- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
- 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 The County Council must make a modification order to alter the status of a route on the definitive map and statement if the balance of evidence shows that a highway shown in the map and statement ought to be shown as a highway of a different description.
- 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

2 <u>Highways Act 1980</u>

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
 - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

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- (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 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
 - (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
 - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
 - (b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Page 12 Application for a definitive map and statement modification order to upgrade Bridleway 57, Corscombe (Ford Lane) to byway open to all traffic

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. Where it is found that a route was historically a public vehicular route before NERC, that route may be recorded as a restricted byway rather than a byway open to all traffic.

APPENDIX 3

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Date	Document	Comment	
1811	First Edition Ordnance Survey scale 1 inch:1 mile	Shows Claimed Route as a Road	
1826	Greenwoods' map	Shows Claimed Route	
1830s	Thomas Moule	Shows a road close to the claimed route	
1840	Corscombe Tithe map and apportionment	Shows the claimed route	
Late 1800s	George Richmond	Does not show claimed route	
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.		
1888	First Edition Ordnance Survey scale 6 inches:1 mile (1:10560) sheet 20 SE	Shows the claimed route	
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.		
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.		
1903	Second Edition Ordnance Survey maps scale 1:2500 sheets 20.12 and 20.16	Shows claimed route and names the track as "Ford Lane"	
1904	Second Edition Ordnance Survey scale 6 inches:1 mile sheet 20 SE	Shows the claimed route	
1906	Second Edition Ordnance Survey scale 1 inch:1 mile (coloured)	Shows the claimed route	
1910	Finance Act maps – sheets 20.12 and 20.16	Claimed route excluded from taxation	
1911	Bartholomew's map	Shows claimed route as an 'inferior road'	
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.		
1919	Ordnance Survey scale 1 inch:1 mile Sheet 130	Shows claimed route as a 'minor road'	
1920	Bartholomew's map	Shows claimed route as a 'indifferent road'	
Mid 1920s	Harding's map scale ½ inch:1 mile	Shows claimed route as 'other roads'	
1944	Bartholomew's map	Shows claimed route as a 'Serviceable road'	

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1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.		
1951	Bartholomew's map	Shows claimed route as a 'serviceable road'	
Undated	Pigot & Son map	Shows the claimed route	
Undated	British Gazetteer map	Shows the claimed route	
Undated	Despatch Atlas Edward Weller	Shows the claimed route	
Undated	Dorset Botanical map	Shows the claimed route	
Undated	Dorset Geological map	Shows the claimed route	
Undated	Bacon's map revised by the new Ordnance Survey	Shows the claimed route	
Undated	W & A K Johnston	Shows the claimed route	
1952	Parish Survey Map	Shown as CRB 59 (Carriage or Cart Road used as a Bridleway)	
1952	Parish Survey notes	Described as a CRB and also states "Was the original carriageway but is not now required"	
1953	Draft Map	Shown as CRB 59	
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)		
1964	Provisional map	Shown as Bridleway 57	
1967	First Definitive map	Shown as Bridleway 57	
1971	Parish comments on Special review	"Part of an old through road Seldom used by vehicular traffic suggested it should remain a bridleway."	
1973	Special Review Committee decision	"Remain as bridleway – unsuitable for byway open to all traffic"	
1974	Revised Draft map	Shown as Bridleway 57	
1989	Current Definitive map	Shown as Bridleway 57	

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Extracts from key documents

(See the Director for Environment's file RW/T379 for copies of other documents mentioned)

Corscombe Tithe map 1840

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Ordnance Survey maps: 1811 First Edition map scale 1 inch:1 mile

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1888 First Edition map scale 6 inches:1mile

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1904 Second Edition map scale 6 inches:1 mile

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1910 Finance Act maps – Sheet 20.12



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1952 Corscombe Parish Survey map

