

Agenda item:

Roads and Rights of Way Committee

7

Dorset County Council



Date of meeting	14 May 2012
Officer	Director for Environment
Subject of report	Application for a definitive map and statement modification order to upgrade Bridleway 7, Puddletown (Blind Lane) to byway open to all traffic
Executive summary	In response to an application to upgrade Bridleway 7, Puddletown 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 December 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. One user evidence form from a user of the claimed route was submitted during the investigation. Any relevant evidence provided has been discussed in this report.

	<p>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.</p>
Recommendations	<p>That:</p> <p>(a) The application be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record Bridleway 7, Puddletown (Blind Lane) as shown A – B on Drawing 11/64/1 as a restricted byway; and</p> <p>(c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
Reasons for Recommendations	<p>(a) Subject to (b) below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist;</p> <p>(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 way. 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</p> <p>(c) The evidence shows, on balance, that 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.</p>
Appendices	<p>1 - Drawing 11/64/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ Finance Act map 1910 ▪ Puddletown Tithe map 1842 ▪ Estate maps <ul style="list-style-type: none"> - Manor of Puddletown 1857 - Bladen Estate 1929 ▪ Ordnance Survey First Edition map 1888

Background Papers	<p>The file of the Director for Environment (ref. RW/T382)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T382, which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 221562</p> <p>email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade Bridleway 7, Puddletown (Blind Lane), to a byway open to all traffic as shown A – B on Drawing 11/64/1 was made on behalf of the Trail Riders Fellowship by Mr D Oickle on 31 August 2005.
- 1.2 The route claimed commences at point A, its junction with the A354 on Basan Hill, following the route of Bridleway 7, Puddletown in a westerly direction to point B, its junction with the unclassified road D20666. With the exception of the first few metres, which is tarmac, the surface comprises of grass. The width of the route is approximately 4 metres at point A, however, due to encroaching vegetation this gradually narrows to a width of approximately 3 metres, continuing as such through to point B. The route is bounded by hedges to both the northern and southern sides throughout its length and there is a gate post, with the remains of a gate alongside at point C, indicating that it may have been located across the route. This also marks the route's junction with Footpath 4, Puddletown.
- 1.3 The land affected is owned or occupied by Mrs L Mason and Mrs M Ensom, Burleston Farm House, Burleston, Dorchester.

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. It should be noted that no Inclosure Award has been discovered for the parish of Puddletown.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T382.
- 3.3 In summary, the applicant states "There is a weight of evidence to indicate it is more likely that this route carries public carriageway rights rather than any lesser rights. Therefore, we believe there is sufficient evidence to support our claim that this road carries vehicular rights".

4 User evidence (Appendix 4)

- 4.1 Only one user evidence form was submitted by the applicant, which is analysed at paragraph 9 of this report.

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/T382)

6.1 A total of six submissions were received as a result of the consultation, of which one from the Ramblers' Association and one from the Puddletown Area Parish Council objected to the application. 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
- Dangerous junctions
- Disruption and damage to the historical environment

7 **Other submissions received** (copies available in the case file RW/T381)

7.1 The other four submissions offered no evidence, including those from the British Horse Society and Natural England.

8 **Analysis of documentary evidence**

Finance Act 1910

8.1 These documents reveal that the claimed route was excluded from valuation throughout its length from point A to point B. The claimed route is depicted in the same manner as other public carriageways to which it connects, namely by a broken brace across the route. Without evidence to the contrary the exclusion of a route from valuation provides strong evidence towards the conclusion that it was a public carriageway.

Tithe Apportionments and Plans

8.2 The **Puddletown Tithe Apportionment and Plan of 1842** clearly demonstrate that the claimed route was not apportioned, having no apportionment number and defined as being excluded from the adjacent numbered apportionments. The route is coloured and shown in exactly the same manner as the public carriageways to which it connects at points A and B. Although tithe apportionments were not concerned with identifying public highways, public highways can often be identified as they form the boundaries to apportionments. In many cases, particularly in the case of footpaths and bridleways, public highways were included within apportionments as a crop, such as hay, could be taken from the surface.

- (a) As in this instance the route is clearly un-apportioned and is indistinguishable from the other public carriageways that can be clearly identified upon it, the tithe apportionment and plan provide good supporting evidence to the claimed public rights.

Estate Maps

- 8.3 The plan of the **Manor of Puddletown 1857** postdates the **Puddletown Tithe Apportionment and Plan** by 15 years. The parcels of land on one map generally correspond with those on the other, although it is apparent that some small changes have taken place since the apportionment was completed. The western end of the claimed route can be seen towards the north east corner of the plan and is shown in the same manner as other public carriageways shown on it, including the one from which it commences at point B. The 'road' network appears to have remained much the same as it was at the time of the tithe apportionment. The land parcels on the Manor plan are colour coded, denoting the owner or occupier, but the roads passing through them are uncoloured and clearly defined by solid parallel lines, which strongly suggests that they were not part of the adjacent parcels of land. Although not conclusive as to status this evidence provides some support to the application.
- 8.4 Two plans of the **Bladen Estate 1929** clearly depict the claimed route throughout its length. On both plans the claimed route is shaded brown and shown in the same manner as the public carriage road to which it connects at point B. At point A it connects to another public carriageway, which is shaded red. Reference to the accompanying keys reveal that it is designated as a second class road on both plans, the same status as the public carriageway at point B. The road shaded red at point A is designated as a first class road and corresponds to the A354.
- 8.5 The **Bladen Estate** plans include a second key that relates to the various farms and other land held by the Bladen Estate, which is also colour coded, for example, West Bagber Farm is shaded green. The majority of the roads identified on the plans, including the claimed route, do not pass through any of the land held by the Estate and would therefore not appear to belong to the Estate. However, they do correspond with many recorded public carriageways, which may suggest they were included in order to provide information on available routes between the various farms. Although not conclusive as to status as these roads were not the property of the Estate it appears reasonable to assume that they were probably public roads and consequently this evidence provides further support to the application.

Conveyance Plan

- 8.6 A **Conveyance Plan** dated June 1861 depicts a number of landholdings in the area of Puddletown. The plan also depicts a number of roads, all of which are coloured brown and several of which are annotated with their destinations, e.g. Wimborne. One of these routes is clearly identified, being annotated as the Turnpike Road. The western end of the claimed route (point B) is also shown on the plan, being depicted in exactly the same manner as the other roads shown on it. Although not conclusive as to the status of the claimed route this document suggests that the route holds the same status as the route to which it connects and therefore provides further supporting evidence towards the claimed rights.

Commons Registration Act 1965

- 8.7 On 6 February 1970 an application to register Blind Lane as common land was made by Mrs R Colyer (Ramblers' Association) under the Commons Registration Act 1965. In March 1973 the owners of the land submitted objections to the proposed registration, stating that the land was not common land. In July 1973 Mrs Colyer wrote to the County Council noting that Bridleway 7, Puddletown had been recorded to the south of Blind Lane and querying whether Blind Lane itself ought to be recorded as an unclassified road.
- (a) At the time, Bridleway 7 was recorded on the first definitive map along Blind Lane.
 - (b) The County Surveyor and Divisional Survey were consulted as to the possible status of the way. The Divisional Surveyor advised the County Surveyor that the lane was hedged each side but was now completely grown in. The County Surveyor responded to the Clerk of the County Council in August 1973 suggesting that the best solution may be to record the route to the south of Blind Lane as the Bridleway and Blind Lane itself as common land. However, on 11 December 1973 the Clerk advised all interested parties that the proposed registration had been cancelled.
- 8.8 This evidence is considered as being neutral as it provides nothing conclusive as to the status of the claimed route. However, it suggests that at that time there had been some confusion as to its status, which none of the interested parties had been able to resolve satisfactorily.

Analysis of Other Supporting documents

Parish Survey

- 8.9 The **Puddletown Parish Survey** of rights of way originally recorded a bridleway, the route of which was shown on the survey map as being located immediately to the south of the southern boundary of the claimed route. The accompanying schedule describes it as "B.R. Blind Lane" commencing from "Basin Hill" to "Dewlish Road" and it was given the number 42 as a means of identification. The annotation "F.G" at either end would suggest the presence of field gates. The Parish survey was completed by March 1951.
- (a) Although the route is shown on the Parish Survey map as being to the south of the southern boundary of Blind Lane, the description of the route within the accompanying schedule as being Blind Lane would suggest that this was indeed the intended route. It has been suggested that the line was shown here due to the fact that Blind lane was overgrown and impassable at the time.
 - (b) In a revised schedule, which was sent to the Parish Council from Dorset County Council, it was noted that bridleway 42 was to be numbered 34 on the draft map.

Draft, provisional and first definitive map

- 8.10 Bridleway 34 was not recorded on the **draft map of 1954** but, like others on the map, was later marked with crosses and given a number (34), possibly as a result of the public consultation. It was recorded on both the **provisional map 1964** and the **first definitive map 1967** as Bridleway 7. Despite an extensive search no evidence has come to light to explain the omission of the path on the draft map and its subsequent inclusion on the provisional map.

Revised draft map and current definitive map

- 8.11 Both the **revised draft map, 1974**, and the **current definitive map, 1989**, record the claimed route as Bridleway 7, Puddletown.
- 8.12 Although the fact that the whole of the claimed route is recorded upon the current definitive map as a public bridleway is regarded as conclusive evidence as to the existence of these rights, it is not regarded as being prejudicial to the existence of any higher public rights over the route.

Ordnance Survey Maps

- 8.13 The **Ordnance Survey Drawings**, which were made in preparation for the publication of the first edition of the one inch 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 Puddletown parish was completed in **1805** and clearly depicts the route claimed throughout its length from A to B. It is defined by two parallel solid lines, suggesting that it was fenced or hedged throughout its length and is depicted in exactly the same manner as other public roads in the vicinity.
- 8.14 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also depicts the claimed route throughout its length between points A and B. It is defined in the same manner as the earlier drawing, suggesting that for the whole of its length it was bounded by hedges or fences. The route is shown to be open at either end and throughout its length with no indication of the presence of any gates or other barriers. Although not conclusive to status it is shown in a similar manner as other routes in the vicinity that are known to be public carriageways.
- 8.15 The **1888 First Edition Ordnance Survey Map and the 1902 Second Edition Map** at a scale of 6 inches:1 mile (1:10560) show a very similar picture to the earlier 1811 map. The claimed route is clearly depicted, being defined by two solid parallel lines that suggest the presence of hedges or fences to both sides. The 1888 edition shows the route as being open at either end and throughout its length with no evidence of any gates or barriers. On the 1902 edition either end of the route has a solid line across it, suggesting that at this time gates or barriers may have been in place. Both maps are annotated with the road name "Blind Lane" and the route is shown in the same manner as the public carriageways to which it connects at either end.
- 8.16 The **1902 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches:1 mile) depicts the same or a very similar situation as the Ordnance Survey 6 inch:1 mile scale maps of 1902, although being to a larger scale there is more detail.

- 8.17 The applicant also provided extracts from several other Ordnance Survey maps in support of the application: -
- (a) The **Reduced Ordnance Survey Around Wimborne map** scale 1 inch:1 mile produced by G Richmond, Birmingham, circa late 1800s, has no key but depicts the claimed route quite prominently, defining it with two parallel solid lines throughout its length. It is shown in the same manner as other public roads in the vicinity and reference to the key suggests that it was regarded as a third class road.
 - (b) The **Ordnance Survey Coloured Map (circa 1906), Ordnance Survey maps 1892 and 1912, Ordnance Survey Contoured Road Map 1919** and the **Ordnance Survey map of Dorchester, 1945** are all to a scale of 1 inch:1 mile and all show the route in a similar manner to other public carriageways depicted in the vicinity. Reference to the accompanying keys shows it to be designated as an un-metalled road or minor road.
 - (c) The **Ministry of Transport Road Map 1923** was produced for the Ministry by the Ordnance Survey as a result of the classification of roads in Great Britain undertaken by the Minister of Transport under Section 17(2) of the Ministry of Transport Act 1919. These maps were produced to provide general information as to the classification system for roads, which was dictated by the value of a road as a means of through communication, but did not guarantee the condition of any given road. Roads were classified as Class1, Class 2 and "all other roads. This map depicts the claimed route throughout its length in exactly the same manner as many other public roads in the vicinity. The accompanying key designates the route as an 'other road'. ". Other roads were not numbered and were uncoloured. The fact that a road was uncoloured did not necessarily mean that it was inferior, many being described as 'excellent', but being less important channels of communication were not classified.
- 8.18 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route quite capable of accommodating vehicular traffic. The claimed route is consistently shown in the same manner as other public carriageways in the vicinity, being clearly defined for the majority of its length by hedges or fences. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation 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. It is also clearly annotated with its name 'Blind lane', which may also suggest the public nature of the route. 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.

Commercial Maps

- 8.19 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.

- 8.20 **Taylor's Map of Dorset 1765** depicts a route that would generally correspond with that of the claim and reference to the accompanying key suggests it was designated as a "road enclosed with hedges". **Taylor's Map of 1796** also shows the route quite distinctly and, although it has no key, the route is shown in the same manner as other roads known to be public carriageways in the vicinity.
- 8.21 **J Bayly's Map of Dorset 1773, C Smith's Map of Dorset 1801** both **J Stockdale's 1805** all depict the claimed route throughout its length, the accompanying keys designating it as a 'cross road'.
- 8.22 **Bacon's Geographical Map of Dorset** and **Revised Map of Dorset** (dates unknown) depict the route clearly, the accompanying keys respectively defining it under the designations of "Main & Cross Roads" and "other roads". **G Philip & Sons Botanical and Geological Maps of Dorset, Johnston's Map of Dorset** and **E Weller's Map of Dorset** (dates unknown), depict the claimed route in the same manner as other public roads but have no accompanying keys. **Greenwoods' map of Dorset 1826, Pigot & Co Map of Dorset** (undated), **Harding's Guide Map to the District of Dorchester 1924** and the **Geographia Road Map of Dorset, c1940** all depict the route clearly, the accompanying keys respectively defining it under the designations of "Cross Road", "Cross Road", "other roads" and "other road".
- 8.23 There is no definition for the historic use of the term 'cross road', although the modern definition would be the point where two roads cross. Historically, the term cross road used in an old map or document may have applied to a highway running between and joining other highways. However, this does not necessarily mean that it was a public highway and may only be an indication as to what the author believed at that time. In considering such evidence regard must be given to the purpose and reliability of the document alongside all other relevant evidence.
- 8.24 **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 footpaths and bridleways. The extracts from the **Bartholomew Maps** submitted in support of the application cover a period from 1911 to 1951 and depict the route quite prominently in exactly the same manner as other public roads in the area. Reference to the accompanying map keys indicates that the route was designated as an 'inferior', 'indifferent' or 'serviceable' road.
- 8.25 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 and consequently it is considered that this evidence, whilst providing nothing conclusive, supports the claim, although no significant weight has been attached to it.

Aerial photographs

- 8.26 The **Aerial photographs** spanning 1947 to 2009 do not provide any conclusive evidence as to the status of the route. However, they do provide evidence as to the existence of the route throughout this period. The route is shown in a consistent manner with mature hedges to both boundaries. The 1947 photograph shows a route adjacent the southern boundary, which would correspond to the route of the bridleway originally claimed by the Parish Council that was subsequently changed to that which is the subject of the present claim.

9 Analysis of user evidence supporting the application

- 9.1 Only one user evidence form has been submitted, from the applicant. He states that he has used the route claimed (shown A to B on Drawing 11/64/1) and that this use was on a motorcycle and that other people used the route on horseback and on motorcycles.
- 9.2 The earliest date of use is 1988 and 2005 is the last date of use.
- 9.3 His reason for using the route was for pleasure, it forming a circular route from his home. He has never obtained permission and there were no locked gates or other barriers to use. He has never seen any notices, other than public bridleway signs, the effect of which would have suggested that the use of the route with vehicles was being challenged and was never stopped or challenged by the landowner or any other person.
- 9.4 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.
- (a) There is no evidence of bringing the use of the route with vehicles into question prior to the application. The application was made on 31 August 2005 and due to the lack of any recorded challenge this is taken as the date of bringing that use into question. However, at 18 years the period of use is insufficient to satisfy the requirements of Section 31 of the Highways Act 1980 and as there is only one user it is considered this would not satisfy use by the 'public'.

10 Analysis of evidence opposing the application

- 10.1 The objections made by the Puddletown Area Parish Council and the Ramblers' Association relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.
- 10.2 The other submissions contain no evidence to be considered.

11 Analysis of other submissions

- 11.1 No other submissions have been received.

12 Conclusions

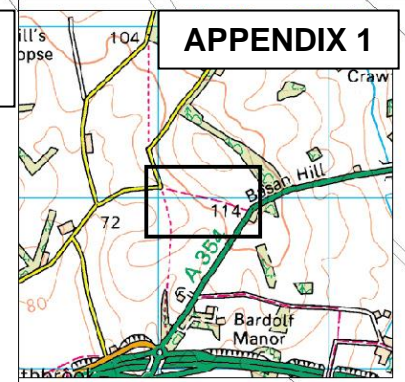
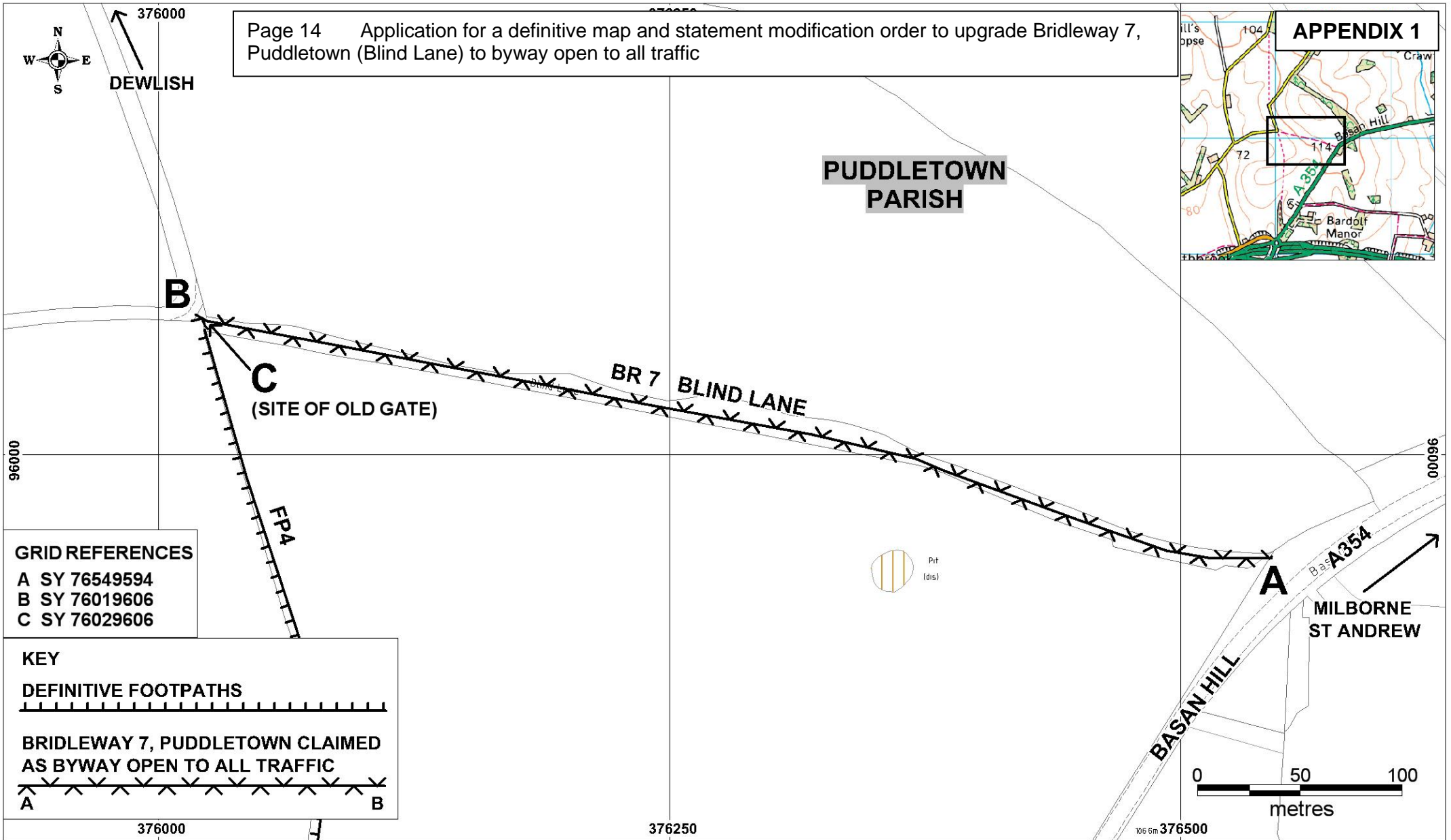
- 12.1 As the route is currently recorded as a bridleway it is necessary for members to decide, whether on the balance of probability, the highway shown in the map and statement as a bridleway ought to be shown as a highway of a different description. If members are not satisfied that the documentary evidence shows, on balance, a public vehicular right they should consider user evidence.
- 12.2 The cumulative weight of the documentary evidence analysed in paragraph 8 provides strong evidence towards the existence of public vehicular rights over the whole of the claimed route as shown between points A and B on Drawing 11/64/1.
- 12.3 It is considered that the most important piece of documentary evidence is that provided from the **Finance Act 1910**. The Finance Act plan shows the route to be excluded from valuation throughout its length. Private roads were not excluded from valuation and consequently, without the discovery of any evidence to the contrary, this would strongly suggest that the claimed route was considered to be a public carriageway.
- 12.4 The conclusion reached in respect of the Finance Act evidence is well supported with the evidence provided by the earlier documents, namely the **Puddletown Tithe Apportionment and Plan 1842** and the **Manor of Puddletown map 1857** and **Conveyance Plan 1861**.
- 12.5 The **Bladen Estate Map 1929** provides further support towards the existence of the claimed rights, and both the **Ordnance Survey Maps** and the **Commercial Maps** may be considered as providing some support to the claim as a whole.
- 12.6 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.
- 12.7 If members are not satisfied that the documentary evidence shows, on balance, that a public vehicular right exists they should consider whether the user evidence constitutes a deemed or inferred dedication.
- 12.8 There is some evidence of use by a member of the public with a vehicle dating from 1988, which is the evidence of use submitted by the applicant. However, it is considered as being 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 presumption.
- 12.9 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.
- 12.10 Therefore it is recommended that an order be made to record the claimed route as a restricted byway.

Page 13 Application for a definitive map and statement modification order to upgrade Bridleway 7, Puddletown (Blind Lane) to byway open to all traffic

12.11 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

February 2021



GRID REFERENCES

- A SY 76549594
- B SY 76019606
- C SY 76029606

KEY

DEFINITIVE FOOTPATHS

BRIDLEWAY 7, PUDDLETOWN CLAIMED AS BYWAY OPEN TO ALL TRAFFIC

A B

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 7, PUDDLETOWN (BLIND LANE) TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 11/64/1

Date: 4/04/2012

Scale 1:2500

Drawn By: ACH

Cent X: 376277

Cent Y: 96016

GEOGRAPHICAL INFORMATION SYSTEMS



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LAW

General

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a 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 Highways Act 1980

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

- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

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

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

Case specific law

4 Finance Act 1910

- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of “all land in the United Kingdom” and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.
- 4.2 Public ‘fenced’ roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

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

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.

Table of documentary evidence

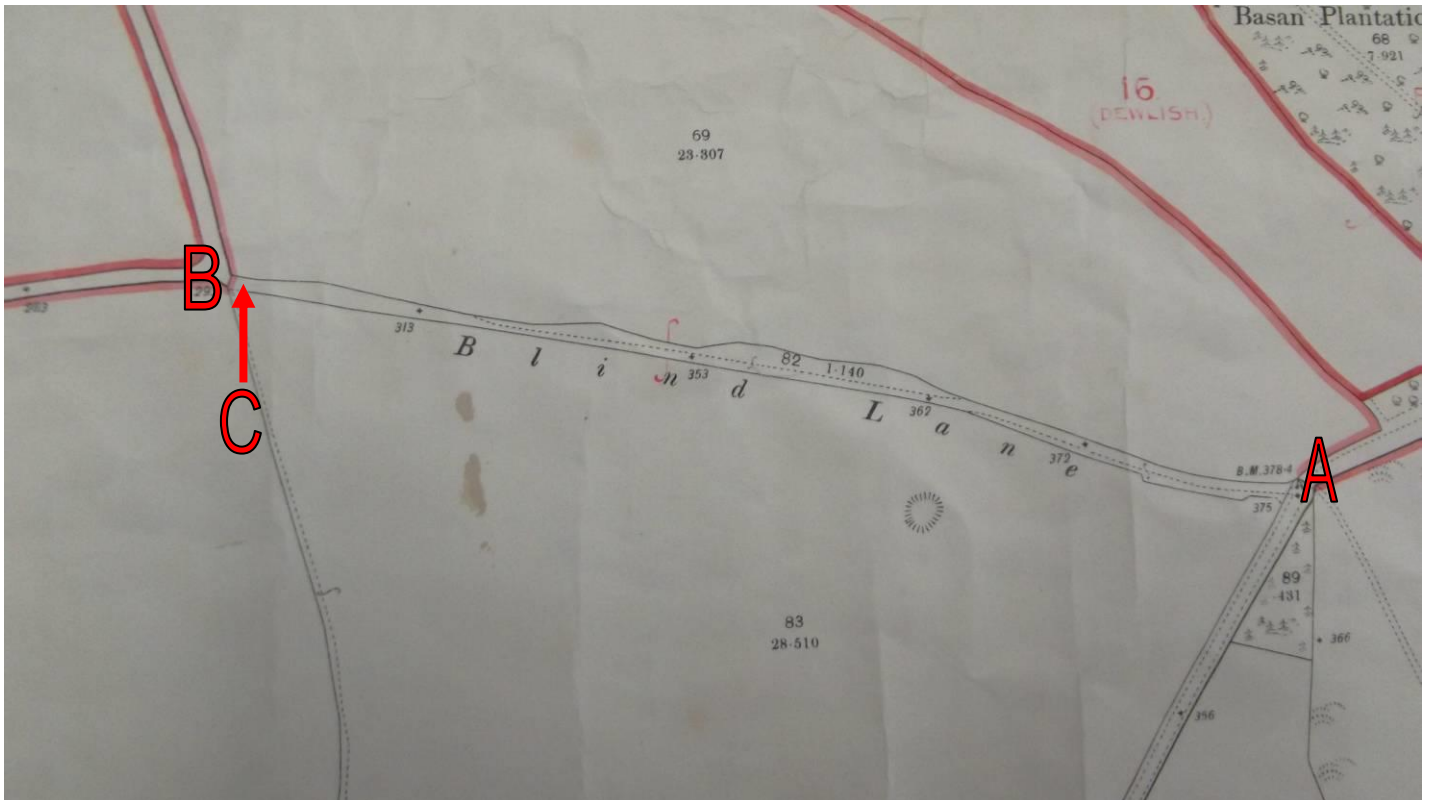
Date	Document	Comment
1765	Taylor's Map of Dorset	Shows whole of claimed route – key defines route as road enclosed with hedges
1773	Bayly's Map of Dorset	Shows claimed whole of route – defined as a Cross Road
1796	Taylor's Map of Dorset	Shows whole of claimed route
1801	Smith's Map of Dorset	Shows claimed whole of route – defined as a Cross Road
1805	Stockdale's Map of Dorset	Shows whole of claimed route – defined as a Cross Road
1805	Ordnance Survey Drawing 2":1 mile	Shows claimed route from point A to point B
1811	Ordnance Survey 1":1 mile	Shows whole of claimed route
1825-26	Greenwoods' Map of Dorset	Shows whole of claimed route. Key defines route as a 'Cross Road'
1842	Puddletown Tithe Apportionment and Plan	Route shown as being excluded from Tithe assessment
1857	Plan of Manor of Puddletown	Shows western end of claimed route, route uncoloured as are other roads shown on it.
1861	Conveyance Plan	Shows western end of claimed route, route coloured and defined in same manner as other roads shown on it.
Undated	Bacon's Geographical Map of Dorset	Shows whole of claimed route – key defines route as a Main or Cross Road
Undated	Johnston's Map 1":3 miles	Shows claimed route from point A to point B
Undated	Bacon's Revised Map of Dorset	Shows whole of claimed route – key defines route as other road
Undated	Weller Map of Dorset	Shows whole of claimed route
Undated	Philip & Son Botanical map of Dorset	Shows claimed route from point A to point B
Undated	Philip & Son Geological map of Dorset	Shows whole of claimed route
Undated	Pigot & Co Map of Dorset	Shows whole of claimed route. Key defines route as 'cross road'
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1888	Ordnance Survey First Edition map sheet 41NW 6":1 mile	Shows whole of claimed route annotated as "Blind Lane"
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.	

1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1902	Ordnance Survey Second Edition map sheet 41NW 6":1 mile	Shows whole of claimed route annotated as "Blind Lane"
1902	Ordnance Survey Second Edition map sheet 41.2 25":1 mile	Shows whole of claimed route annotated as "Blind Lane"
1910	Finance Act map sheet 41.2	Shows whole of claimed route excluded from valuation
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1923	Ministry of Transport Road Map	Route shown designated in key as 'other road'
1924	Hardings' Guide District of Dorchester Half inch to Mile	Shows whole of claimed route. Key defines route as 'other road'
1929	Bladen Estate Plans	Route shown as Second Class Road
1953	Parish Survey map and schedule	Map shows Blind Lane with bridleway 7 drawn parallel to the south of it.
1954	Draft map	Route shown as unrecorded
1964	Provisional map	Route recorded as public bridleway
1967	First definitive Map	Route recorded as public bridleway
1970	Commons Registration documents	Discusses the route but provides nothing conclusive as to status
1974	Revised draft Map	Route recorded as public bridleway
1989	Current definitive Map	Route recorded as public bridleway

**Extracts from key documents
(the letters used relate to the points on Drawing 11/64/1)**

(See the Director for Environment's file RW/T382
for copies of other documents mentioned)

Finance Act 1910 map sheet 41.2



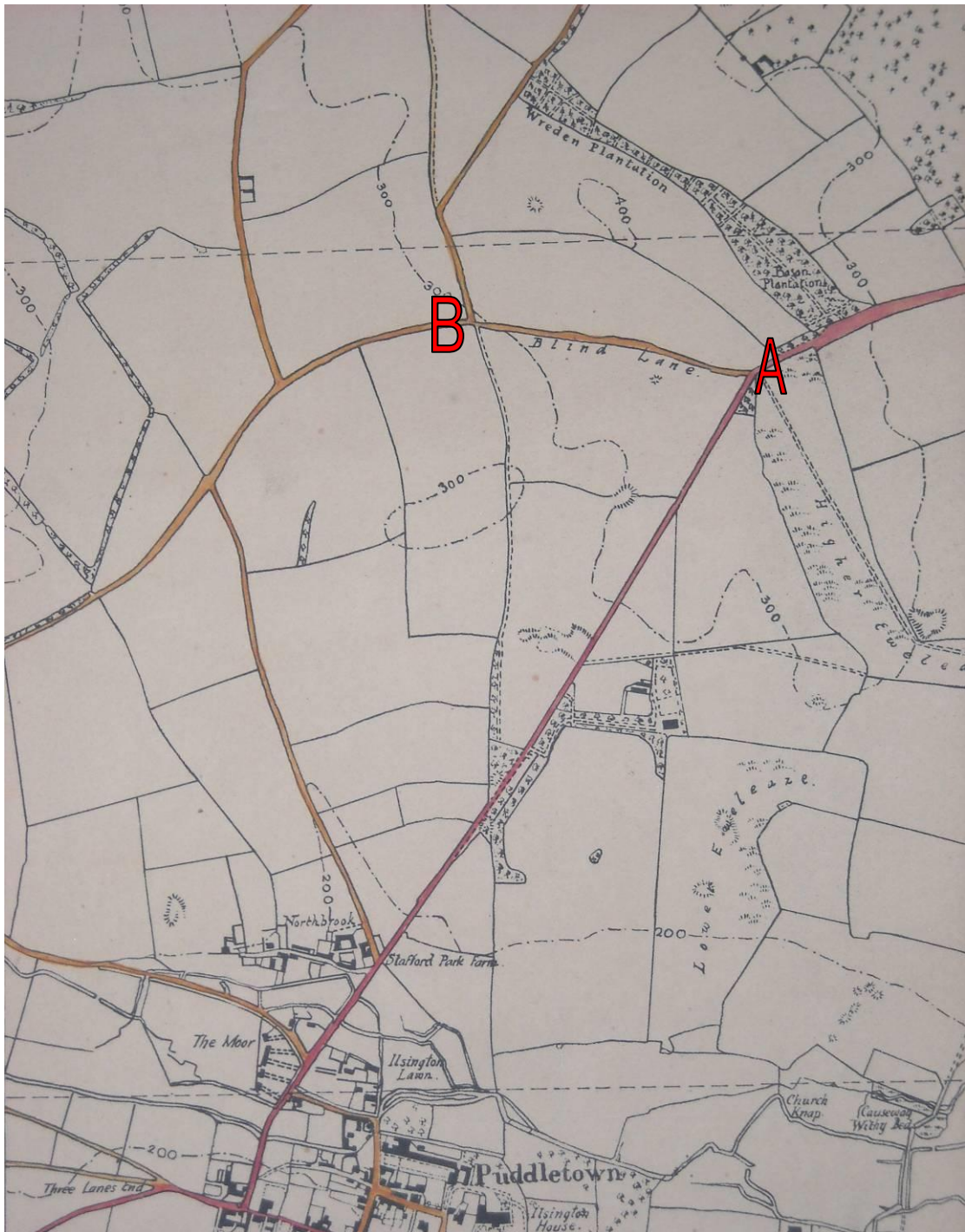
Puddletown Tithe map 1842

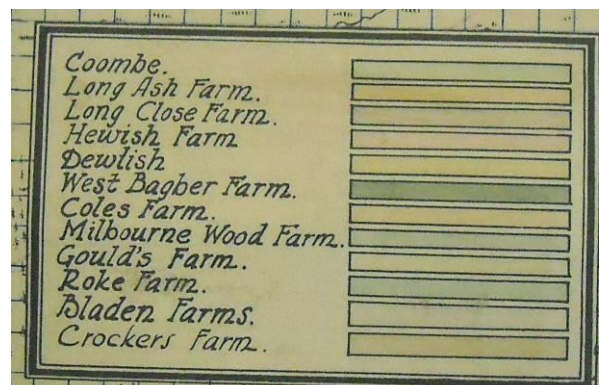


Estate maps
Manor of Puddletown 1857



Bladen Estate 1929





Ordnance Survey First Edition map 1888

