

Agenda item:

# Roads and Rights of Way Committee

10

**Dorset County Council**



Date of meeting	16 January 2012
Officer	Director for Environment
Subject of report	<b>Application for a definitive map and statement modification order to upgrade Bridleway 3, Godmanstone to byway open to all traffic</b>
Executive summary	In response to an application to upgrade Bridleway 3, Godmanstone to a public 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 during September 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.

<p>Recommendations</p>	<p>That:</p> <p>(a) The application for a public byway open to all traffic between points A – C as shown on Drawing 11/51/1 be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to:</p> <p>(i) Upgrade Bridleway 3, Godmanstone to a restricted byway as shown A – B on Drawing 11/51/1; and</p> <p>(ii) Add a restricted byway as shown B – C on Drawing 11/51/1.</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(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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>
<p>Reasons for Recommendations</p>	<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 the claimed right of way subsists or is reasonably alleged to subsist in respect of the part of the claimed route as shown A – B – C on Drawing 11/51/1. 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 mechanically propelled 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, 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>
<p>Appendices</p>	<p>1 - Drawing Number 11/51/1</p> <p>2 - Law</p> <p>3 - Documentary Evidence</p> <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ Godmanstone Inclosure Award and Plan 1838</li> <li>▪ Godmanstone Tithe Map and Apportionment 1839</li> <li>▪ Pre-Inclosure plan of Godmanstone Common (undated)</li> <li>▪ Godmanstone Parish Survey 1951</li> <li>▪ Godmanstone Estate Sale map 1865</li> <li>▪ Ordnance Survey maps – <ul style="list-style-type: none"> <li>First Edition 1811 1 inch:1 mile</li> <li>First Edition 1887 6 inches:1 mile</li> <li>Second Edition 1902 25 inches:1 mile</li> <li>Second Edition 1903 6 inches:1 mile</li> </ul> </li> </ul> </li> </ul>

Background Papers	<p>The file of the Director for Environment (ref. RW/T384). Most of the 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/T384, which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Phil Hobson Rights of Way Officer Tel: (01305) 221562 email: <a href="mailto:p.c.hobson@dorsetcc.gov.uk">p.c.hobson@dorsetcc.gov.uk</a></p>

## 1 **Background**

- 1.1 An application to upgrade Bridleway 3, Godmanstone as shown A – B – C on Drawing 11/51/1 to a byway open to all traffic was made by Mr S Teuber on behalf of the Trail Riders Fellowship on 1 July 2005.
- 1.2 The route claimed commences from Bridleway 5, Godmanstone at point A on Drawing 11/51/1. It follows the route of Bridleway 3, Godmanstone in an easterly direction to point B. It then continues in an easterly direction to its junction and termination point with the Unclassified County Road the D20717, known as Fry's Lane, Godmanstone and shown as point C on Drawing 11/51/1 (Appendix 1). The route is hedged on both sides throughout its length with a hard gravelled surface.

## 2 **Law**

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

## 3 **Documentary evidence (Appendix 3)**

- 3.1 A list of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

## 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 the application.

## 6 **Evidence opposing the application** (copies available in the case file RW/T384)

- 6.1 Three letters of objection were received in 2005 in response to the application from Mr T Mills, Mr P Thomas and the Cerne Valley Parish Council, the latter being accompanied by a petition signed by 122 residents from within Godmanstone Parish.
  - (a) The petition states "An application has been made by a Motor Cycle club to enable them to ride their motor cycles up and down Fry's Lane. This would also enable other traffic such as cars, 4 x 4 vehicles etc. to do likewise. We, the following residents of Godmanstone, oppose this application."
- 6.2 In response to the consultation in September 2011 a total of nine submissions opposing the application were received.
- 6.3 The initial objections from 2005, including the petition, and four of the objections in response to the consultation relate to issues of desirability, suitability or safety and consequently cannot be taken into consideration in determining this application.

7 **Other submissions received** (copies available in the case file RW/T384)

7.1 Two other submissions were received from the Senior Archaeologist, Dorset County Council and Natural England.

8 **Analysis of Documentary Evidence**

**Inclosure Award**

8.1 The **Godmanstone Inclosure Award and Plan 1838** reveal that both the claimed route and part of Fry's Lane was an awarded public carriageway, The Cowdrove Road as shown A – B – C – D on Drawing 11/51/1. Reference to the description of the awarded carriageway reveals that it commenced from Cowleaze Lane Gate and continued westerly to the awarded public carriageway, The Highway Road. The approximate position of Cowleaze Lane Gate is shown at point D.

(a) No evidence has been discovered to suggest that the Cowdrove Road has ever been stopped up or diverted and consequently the inclusion of the claimed route as a public carriageway within a valid Inclosure Award provides very strong evidence as to its status.

**Tithe Apportionment**

8.2 The **Godmanstone Tithe Map and Apportionment of 1839** clearly depicts the claimed route throughout its length from point A to point C. The tithe apportionments are uncoloured and numbered whereas the claimed route and other routes, including the recorded public carriageway from Cerne Abbas to Dorchester, are all shown in the same manner being clearly defined, uncoloured and unnumbered.

8.3 Whilst tithe awards do not provide conclusive evidence as to the status of the ways shown upon them they can, when studied alongside other available evidence, provide supporting evidence as to their status. In this particular case it is considered that this evidence would provide supporting evidence towards the existence of the claimed rights.

**Pre-Inclosure Plan of Godmanstone Common (undated)**

8.4 The pre-inclosure plan of Godmanstone Common demonstrates that the claimed route may not have existed prior to inclosure. However, it does depict Fry's Lane, which is shown coloured brown in the same manner as the Cerne Abbas to Dorchester public carriageway. Although not conclusive as to the status of the claimed route it does provide evidence to the fact that the claimed route was probably formed and set out at or immediately following the Godmanstone Inclosure Award and may therefore be considered as providing supporting evidence towards both the application and the validity of the Godmanstone Inclosure itself.

## **National Parks and Access to the Countryside Act 1949**

### **Parish survey and draft, provisional and first definitive maps**

- 8.5 The evidence provided by the **Godmanstone parish survey in 1951** indicates that, at that time of their survey, the Parish Council recorded both the claimed route as shown A – B – C and Fry's Lane, with which the route connects at point C, as a CRB.
- (a) The Open Spaces Society provided guidance to parish councils at the time of the survey, which made it clear that any route used by the public mainly on foot or horseback but which was also known to be used by the public in vehicles should be recorded either as a CRF (Cart or Carriage Road mainly used as a Footpath) or a CRB (Cart or Carriage Road mainly used as a Bridleway). Therefore, marking the claimed route as a CRB would suggest that the Parish Council, with their local knowledge, was aware that although the route may have been used mainly by the public on foot or horseback, it was also to some extent used by the public in vehicles.
- 8.6 The claimed route was also recorded as "CRB 12" on the **draft map** for the south area in **1954** and was shown to connect with Fry's Lane at point C, which was now recorded as a County Road.
- 8.7 It should be noted that the **National Parks Sub Committee** met on 23 June 1958 to discuss the recording of CRFs and CRBs. The Sub-Committee determined that the National Parks and Access to the Countryside Act 1949 (NPACA) required the County Council to establish public rights on footpaths and bridleways only and that references to any other uses should be omitted. As a consequence of this decision the designation of certain rights of way as CRFs or CRBs would be abandoned and in future these ways would be shown as either footpaths or bridleways.
- (a) The National Parks Sub-Committee's decision was incorrect as Section 27 of the NPACA also required the surveying authority to show those ways which were, or were reasonably alleged to be, Roads Used as Public Paths (RUPPs). The designation of CRFs and CRBs, although used by several authorities has no legal significance. At the time the correct term for this type of right of way would have been a RUPP.
- (b) Consideration should therefore be given to the fact that, in accordance with the advice provided by the Open Spaces Society, CRBs and CRFs (RUPPs) were claimed by parish councils throughout the county and therefore they would have been aware of them being used by the public mainly on foot or horse but also in vehicles. The County Council's decision was not based on the consideration of any evidential material submitted or discovered.
- 8.8 As a consequence of the County Council's decision in 1958 the claimed route was recorded as Bridleway 3 on both the **provisional map** in **1964** and the **first definitive map** in 1967 with Fry's Lane being recorded as an Unclassified County Road (UCR).

- (a) It should be noted that on the first definitive map Fry's Lane is depicted by a broken line that does not connect directly with Bridleway 3. This anomaly was repeated on the current definitive map which has resulted in a small length of the route (C – D) that, as a result, is presently unrecorded as a public highway of any description.

### **Revised Draft Map and Special Review**

- 8.9 During the Special Review the evidence from the Inclosure Award was considered for Bridleway 3, Godmanstone. The notes record that "as it had no exit except to a bridleway at the western end there seems no justification for raising its status" and it was entered on the revised draft map as its existing status of bridleway. The National Parks Sub-Committee decision was to "Retain as a bridleway – no present day evidence that this way which is a R.U.P.P. as defined in the 1949 National Parks and Access to the Countryside Act is used other than as a bridleway".
- 8.10 Following the publication of the revised draft map an objection was made to the omission of the awarded width of 30 feet from the accompanying definitive map statement. A local Public Inquiry in 1982 determined that the awarded width should be shown in the statement.

### **Current Definitive Map**

- 8.11 The current definitive map, sealed in 1989, records the part of the claimed route shown between points A – B as Bridleway 3, Godmanstone. Reference to the plan accompanying the List of Streets shows that the UCR known as Fry's Lane (D20717) terminates at point C, leaving an anomaly between points B and C. There is no legal reason for the creation of this anomaly and the most likely cause is through a drafting error.

### **List of Streets**

- 8.12 Although the **List of Streets** does not provide any conclusive evidence as to the status of the claimed route it does confirm that at point C it connects to a public carriageway, Fry's Lane (UCR) that is recorded upon the list of streets.

### **Estate Sales Maps**

- 8.13 **The Godmanstone Estate Sale Map 1865** has a striking resemblance to the map accompanying the Godmanstone Tithe award 1839 and could well be based upon it. Although it does not provide any conclusive evidence as to the status of the claimed route it may be considered as of some significance that the claimed route and all the additional roads shown upon the plan are excluded from the sale.
- (a) This indicates that the Estate made no claim upon these routes despite the fact that they would have been required in order to gain access to various parts of the estate. It appears reasonable to suggest that, should they have been 'private routes', reference to them would have been included within the sale documents. Therefore, it is considered that this document provides additional evidence in support of the claim.

### Ordnance Survey Maps

8.14 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.

- (a) The **First Edition Ordnance Survey map of 1811** at a scale of 1 inch:1 mile, which was produced for military purposes, shows a route corresponding with the claimed route. The southern boundary is defined by an unbroken line whilst the northern boundary is defined by a broken line. Its depiction upon the map would suggest that it was a route of some significance and, in all probability, capable of the passage of carriages and carts.
- (b) The **First Edition Ordnance Survey map 1887** at a scale of 6 inches:1 mile indicates that the Ordnance Survey system of road classification was being used at the time of publication. The entire route (A to D) and the adjoining UCR (Fry's Lane) are shaded along the southern boundary, suggesting that the whole of this route was probably regarded as a second class public carriageway, being both metalled and well maintained.
- (c) The **Second Edition Ordnance Survey 1902 map** at a scale of 25 inches:1 mile and the **Second Edition Ordnance Survey map 1903 map** at a scale of 6 inches:1 mile map both concur with the First Edition 6 inch map, showing the southern boundary of the entire route, including Fry's lane, shaded, suggesting that it was considered to be a second class public carriageway.
- (d) The shading system used by the Ordnance Survey to define public roads was in preparation for the publication of the new series 1 inch map upon which public roads were to be more clearly identified. Although the shading of roads on the large scale Ordnance Survey maps could be indicative of a public road it could also suggest the presence of a private road and without reference to other supporting documents they cannot be regarded on their own as conclusive evidence of any public status. However, as there are other documents that would indicate the status of a public carriageway it is considered in this instance that these maps provide good supporting evidence towards the claim.
- (e) The **Ordnance Survey maps** scale 1 inch:1 mile covering the period from 1892 to 1945, whilst not providing conclusive evidence as to the status of the way, may nevertheless be considered as providing some support towards the claimed rights. In particular the 1906 edition uses the Ordnance Survey road classification system and the claimed route is clearly shown. Although the southern boundaries are not shaded reference to the key would indicate that it may have been regarded as a third class metalled road and consequently these maps would also provide supporting evidence towards the claim.



### Commercial Maps

- 8.15 The commercial maps produced by **Taylor, Bayly, Cary and Greenwoods** may be considered as providing support towards the claim. They all depict the route and reference to the keys would show that both **Bayly** and **Greenwoods** describe the route as a 'cross road'. **J Stockdale's map of 1805** does not show the claimed route.
- (a) 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. Whilst this would not necessarily mean that it was a 'public' highway and may only be an indication as to what the author believed, reference to the other evidence such as the Inclosure Award would suggest in this instance that the author was in fact referring to a public carriageway.
- 8.16 The **Small Scale Maps of Dorset** referred to 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.
- (a) The maps produced by **Pigot** and the **British Gazetteer**, both of which are undated, do not show the claimed route.
- (b) The maps produced by **Weller, George Philip & Son (Botanical and Geological)** and also that by **Bacon (Revised)**, all of which are undated, do show the claimed route quite clearly.
- (c) The small scale maps provide conflicting evidence as several do show the route quite clearly and support the claim whilst others do not appear to show it at all and consequently provide no support. This evidence, whilst providing nothing conclusive does add some support to the claim although no significant weight has been attached to it.
- 8.17 **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.
- (a) The extracts supplied cover the period 1911 to 1951, over which time the claimed route is shown clearly as a road. It is initially described as an 'inferior' or 'indifferent road' and latterly as a 'serviceable road', which may suggest that its standard of repair or maintenance improved over time. Although, these maps do not provide any conclusive evidence as to the status of the route they suggest that a route of more significance than a footpath or bridleway existed throughout this period.

- 8.18 The **Ministry of Transport road map of Weymouth, Yeovil and Taunton** was produced 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 Class 1, Class 2 and “all other roads”. 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.
- (a) Reference to the Ministry of Transport road map key indicates that the claimed route was considered as an ‘other road’, which suggests that the road was considered to be a public carriageway.
- (b) Although this map provides no conclusive evidence as to the claimed routes status, consideration ought to be given to the authority under which the map was produced, namely the Ministry of Transport. However, it should also be noted that the map does carry the usual disclaimer that “the representation upon this map of a Road, Track or Footpath, is no evidence of the existence of a right of way”.

### **Finance Act**

- 8.19 The evidence from the **Finance Act 1910** documents reveals that no part of the claimed route was excluded from valuation. Whilst convention dictates that public roads would normally be excluded for valuation purposes, it is not unique or unusual for public roads to be included and deductions made separately. This is borne out by the fact that reference to the map reveals that parts of the Dorchester to Cerne Abbas road, an important local public carriageway, were also not excluded for the purpose of valuation.
- (a) **Hereditament 341** forms a large hereditament and reference to the valuation book reveals that there was a deduction of £325 (equivalent to £28,000 in 2010) for the landowner in respect of public rights of way or user. Because of the large size of Hereditament 341 and the fact that there are no descriptions as to the location of the rights of way for which deductions were made, it would be difficult to determine that the claimed route was one for which tax relief was given.

### **Aerial Photographs**

- 8.20 It is considered that the **aerial photographs** from 1947 onwards provide clear evidence as to the existence of the route at the time, it being a very prominent, linear feature.

- (a) The later photographs provide a clear picture as to the development of the area such as the change in land use, removal/replacement of hedges, new fences, etc, although they provide no conclusive evidence as to the status of the route. However, what they do demonstrate is that the claimed route has, over a long period of time, remained a very prominent feature that appears to have been extremely well used.

## 9 Analysis of Evidence Supporting the Application

- 9.1 No user evidence has been submitted in support of the application.

## 10 Analysis of Submissions Opposing the Application

- 10.1 Mr R Mills has made two submissions in respect of this application. The first of these was made on 31 October 2011 when Mr Mills raised the issue of the application being made after the provisions of the Natural Environment and Rural Communities Act 2006 (the NERC Act) extinguished (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles and in order for this application to succeed one of the exceptions would need to apply (refer to the Law in paragraph 6 of Appendix 2). Mr Mills does not dispute that the route was awarded in the Godmanstone Inclosure Award but suggests that its name the 'Cowdrove Road' describes its historical use and can see no evidence to justify an upgrade. The final paragraph of Mr Mill's letter relates to issues of desirability, suitability and safety and is therefore not relevant and cannot be taken into consideration in determining this application.

- Mr Mills is correct in his assertion that in order for any unrecorded public vehicular rights to survive one of the exceptions to presumed extinguishment under the NERC Act would need to apply.
- Mr Mills has identified one of the primary sources of evidence that, on its own, may justify consideration of the application, namely the Godmanstone Inclosure Award. The name 'Cowdrove Road' no doubt indicates one of a number of uses the route may have been used for in addition to use by pedestrians, horse and rider and also carriage and cart. However, its name does not indicate the status of the route, which was clearly identified as a public carriage road in the award.

- 10.2 Mr Mills' second submission dated 16 November 2011 makes reference to the width of the route, which had been awarded at 30 feet. Mr Mills has taken measurements of the route, which demonstrates that the present usable width is between 24 to 16 feet and therefore would not comply with the requirements of the inclosure. Mr Mills also believes that the gradient on parts of the route would make it difficult for use by horse and cart and further submits that no maintenance has been undertaken on the route by any public body. Mr Mills also refers to the opinions of Dr Putnam and Prof Good whom, he states, were of the opinion that the route was mainly used by those on foot, horseback or driving animals.

- Although the present 'usable' width of the claimed route is less than 30 feet there is no conclusive evidence to suggest that the route was not set out in accordance with the requirements of the 1801 Act. Mr Mills provides no actual evidence to conclude that the route has never been publicly maintained and any subsequent encroachment, obstruction or lack of maintenance would not extinguish any public rights that exist over it.
  - The plan of Godmanstone Common is undated but in all probability must pre-date the Inclosure Award. It clearly depicts Fry's Lane but does not appear to show the claimed route which, in turn, lends weight to the presumption that the 'intended' public carriageway was indeed made up, formed and set out in accordance with the legislation.
  - With respect to the gradient, as Mr Mills suggests, whilst it may make it more difficult for horse drawn traffic it does not make it impossible and it does not provide any evidence to the effect that the route was not awarded as a public carriageway and not used as such.
  - As Mr Mills makes clear, both Prof Good and Dr Putnam suggest that historically the main use of the route would not have been vehicular. This is not the same as saying that no vehicular use took place and the situation at that time may well have been as they have suggested. However, their opinions provide no evidence towards the conclusion that the route was not an awarded public carriageway.
- (a) Mr Mills concludes by reference to the sales documents for the Godmanstone Estate from 1865, the 1910 Finance Act, the uncertainty as to the existence of public vehicular rights over Fry's Lane, which is included on the List of Streets as a UCR and finally his conclusions as to the unlikelihood that any of the exceptions to the presumed extinguishment of vehicular rights under the NERC Act would apply to this application.
- The analysis of the Godmanstone Sales Documents can be found at paragraph 8.13 above. Analysis of the evidence from the Finance Act documents can be found in paragraph 8.19 above. The status of Fry's Lane was also raised by Mr Gallia and is discussed in paragraph 10.4(a) below. Should none of the exceptions to the NERC Act apply then Mr Mills' conclusions would be correct.

10.3 Mrs A Brown submitted an e-mail with attachments of extracts from a Survey Map of Sydling Saint Nicholas dated 1831. Mrs Brown asks for this evidence to be taken into consideration in determining the application.

- The evidence submitted by Mrs Brown relates entirely to what was then the property of Winchester College within the parish of Sydling Saint Nicholas. It provides no evidence in respect of this application and is therefore not relevant to the investigation.

10.4 Mr E Gallia submitted a detailed objection to the proposal. Mr Gallia submits that the Godmanstone Inclosure Award shows only roads that were 'intended' and that in order for them to become 'legally created' other actions were required. These actions were the forming and completing of the new highways with a width of 30 feet, the repairing of pre-existing highways and active maintenance. Mr Gallia submits that there is no evidence of any of this activity having been undertaken. Mr Gallia cites the case of *Cubit v Maxse* in support of his position.

- Although the present usable width of the claimed route is less than 30 feet there is no conclusive evidence to suggest that the route was not set out in accordance with the requirements of the 1801 Act. Unlike the case of *Cubit v Maxse* there is no positive evidence that it was not formed, completed, taken to by the public and subsequently maintained as required. Reference to earlier maps, such as the Ordnance Survey 6 inch and 25 inch to the mile scale maps, would suggest that at that time (1887-92) the width recorded by the surveyor was comparable with that of the awarded Highway Road, from which it commences at point A, being approximately 30 feet. Any subsequent encroachment, obstruction or lack of maintenance would not extinguish any public rights that exist over the route.
  - The presumption relating to the plan of Godmanstone Common discussed in paragraph 10.2 above would also apply to Mr Gallia's conclusions that the awarded road was not set out as intended.
- (a) Mr Gallia also makes reference to Fry's Lane, the continuation of the route eastward from point C. Mr Gallia acknowledges that there is a 'mild' presumption in favour of the existence of public vehicular rights over Unclassified County Roads but in this case this has not been proven and he refers to the Planning Inspectorate's Consistency Guidelines noting that all other relevant evidence must be taken into account.
- Mr Gallia is correct in that, due to the manner in which the List of Streets (LOS) and the definitive map have been compiled in Dorset, there is a rebuttable presumption that when a route is recorded upon the LOS this would strongly suggest the existence of public vehicular rights over it. If that presumption was to be questioned it may be necessary to provide other relevant evidence in support of it and in this particular case the 'other' evidence would include the Godmanstone Inclosure Award, public use and sporadic public maintenance.
- (b) Mr Gallia concludes by referring to the evidence from the Finance Act 1910. It is Mr Gallia's belief that, as the route is not excluded from valuation, it would clearly contradict any claim for the existence of a public carriageway.
- Mr Gallia is incorrect in his conclusions as, although exclusion of the route from valuation provides very strong evidence as to the status of the way, its inclusion would not be considered as providing any conclusive evidence as to its status. An analysis of the Finance Act evidence is provided in paragraph 8.19 above.

## 11 Analysis of Other Submissions

11.1 The Senior Archaeologist, Dorset County Council has no objection to the application.

11.2 Natural England raises no objection to the application.

## 12 Conclusions

12.1 It is necessary for Members to decide:

(a) 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 (with regard to the route shown between points A to B).

(b) Whether or not the evidence shows that the right of way claimed or any other public rights subsist or can be reasonably alleged to subsist (with regard to the route shown between points B and C).

12.2 The documentary evidence analysed in paragraph 8 provides strong evidence towards the existence of public vehicular rights over the whole of the claimed route.

12.3 The **Godmanstone Inclosure Award 1838** awards a public carriage road, 'The Cowdrove Road', part of which includes the claimed route as shown between points A to C. No evidence has been discovered that would suggest that route has ever been legally stopped up or diverted.

(a) Under the 'presumption of regularity' it is considered reasonable, without any evidence to the contrary, to conclude that everything required of the Godmanstone Inclosure Commissioners was completed in accordance with the law. Consequently, it may be considered that the Inclosure Award alone is sufficient to raise the presumption that the claimed rights exist.

12.4 The **Godmanstone Tithe Map and Apportionment 1839** depicts the route in the same manner as other public roads shown upon it. The route is clearly defined, unnumbered and excluded from tithe evaluation. This evidence supports the conclusion that the route was considered to be a public carriageway.

12.5 The pre-inclosure map of **Godmanstone Common** provides evidence to the effect that the awarded public carriage road, the Cowdrove Road, probably did not exist at that time but following the inclosure of land was set out and formed as required by statute.

12.6 The **Godmanstone Estate Sales Map** provides further support towards the claimed public rights.

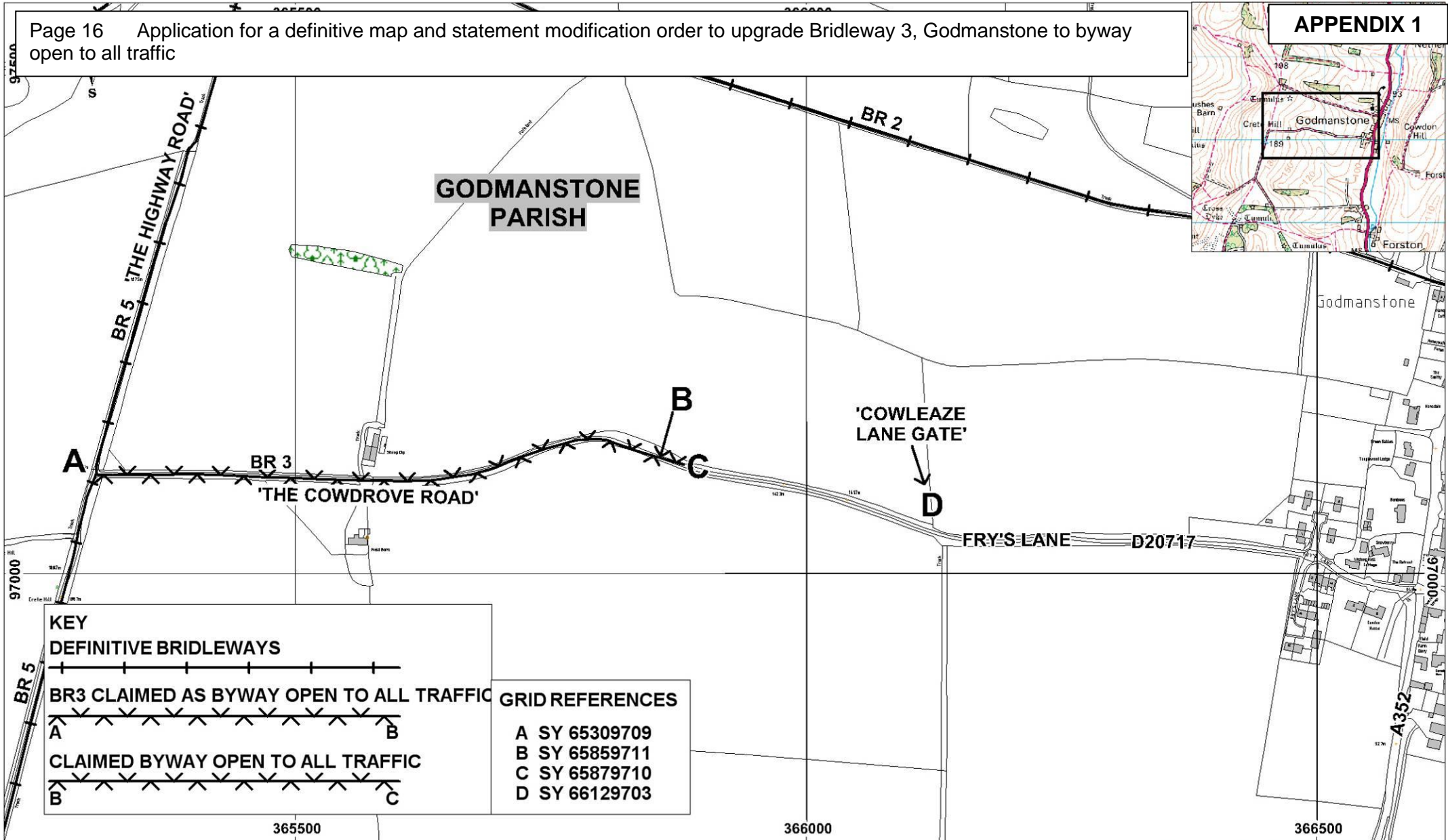
12.7 The documentary evidence provided by the **Ordnance Survey** maps and other **commercially produced maps** provides further support to these conclusions.

- 12.8 The evidence from the **Finance Act 1910** clearly shows that the route was not excluded for valuation. However, this was not always the case and reference to other public roads on the plan would show that these routes were not excluded either. This evidence is considered as being neutral with respect to this claim.
- 12.9 The documentary evidence summarised in Appendix 3 and analysed in paragraph 8 is sufficient to demonstrate, on balance that the claimed rights subsist or can be reasonably alleged to subsist along the claimed route and an order should be made.
- 12.10 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.
- 12.11 Therefore it is recommended that an order be made to:
- (a) Upgrade Bridleway 3, Godmanstone to a restricted byway as shown A – B on Drawing 11/51/1; and
  - (b) Add a restricted byway as shown B – C on Drawing 11/51/1.
- 12.12 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

December 2011

**APPENDIX 1**



KEY	
DEFINITIVE BRIDLEWAYS	
BR 5	+
BR 3 CLAIMED AS BYWAY OPEN TO ALL TRAFFIC	
A	x
CLAIMED BYWAY OPEN TO ALL TRAFFIC	
B	x

GRID REFERENCES	
A	SY 65309709
B	SY 65859711
C	SY 65879710
D	SY 66129703

**WILDLIFE AND COUNTRYSIDE ACT 1981**

APPLICATION TO UPGRADE BRIDLEWAY 3, GODMANSTONE TO BYWAY OPEN TO ALL TRAFFIC AND ADD BYWAY OPEN TO ALL TRAFFIC TO JOIN UNCLASSIFIED COUNTY ROAD, FRY'S LANE, GODMANSTONE

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 11/51/1

Date: 8/12/2011

Scale 1:5000

Drawn By: JLC

Cent X: 365921

Cent Y: 97148

GEOGRAPHICAL INFORMATION SYSTEMS



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## LAW

### General

- 1 Wildlife and Countryside Act 1981
- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist or 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 right of way not shown on the definitive map and statement subsists or 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 add a right of way to the definitive map and statement if the balance of evidence shows either:
  - (a) that a right of way subsists or
  - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 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.
- 1.6 An order can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.
- 1.7 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 Inclosure Consolidation Act 1801**

- 4.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.
- 4.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.
- 4.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.
- 4.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.
- 4.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

#### **5 Finance Act 1910**

- 5.1 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.
- 5.2 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.

6 National Parks and Access to the Countryside Act 1949

- 6.1 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.

7 Natural Environment and Rural Communities Act 2006

- 7.1 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.

**DOCUMENTARY EVIDENCE CONSIDERED**

<b>DATE</b>	<b>DOCUMENT</b>	<b>COMMENTS</b>
1765	Isaac Taylor's Map of Dorset	Shows claimed route
1773	J Bayly Map of Dorset	Shows claimed route as a 'cross road'
1796	Isaac Taylor's Map of Dorset	Shows claimed route
1805	J Stockdale's Map of Dorset	Does not show claimed route
1811	Ordnance Survey One Inch Map	Shows claimed route
1826	Greenwood's Map of Dorset	Shows claimed route as a cross road
1835	J & C Walker Map of Dorset	Does not show claimed route
Pre 1838	Pre-Inclosure Plan Godmanstone Common	Shows Fry's Lane but not the claimed route
1838	Godmanstone Inclosure Award	Claimed route awarded as Public Carriageway
1839	Godmanstone Tithe Map	Shows claimed route
1863	Godmanstone Estate Sale Catalogue Plan	Shows route was not included in sale
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.	
1887	Ordnance Survey First Edition 6 inches: 1 mile	Shows claimed route shaded to southern boundary – could be indicative of public second class road
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.	
1892	Ordnance Survey map scale 1 inch:1 mile	Describes claimed route as minor road
Undated	Pigot Map of Dorset	Does not appear to show route
Undated	British Gazetteer Map Dorset	Does not appear to show route
Undated	G Philip Botanical Map of Dorset	Does not appear to show route
Undated	G Philip Geological Map of Dorset	Does not appear to show route
Undated	Bacon's Revised Map of Dorset	Shows claimed route
Undated	Weller Map of Dorset	Shows claimed route
Undated	Johnston Map of Dorset	Shows claimed route
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.	

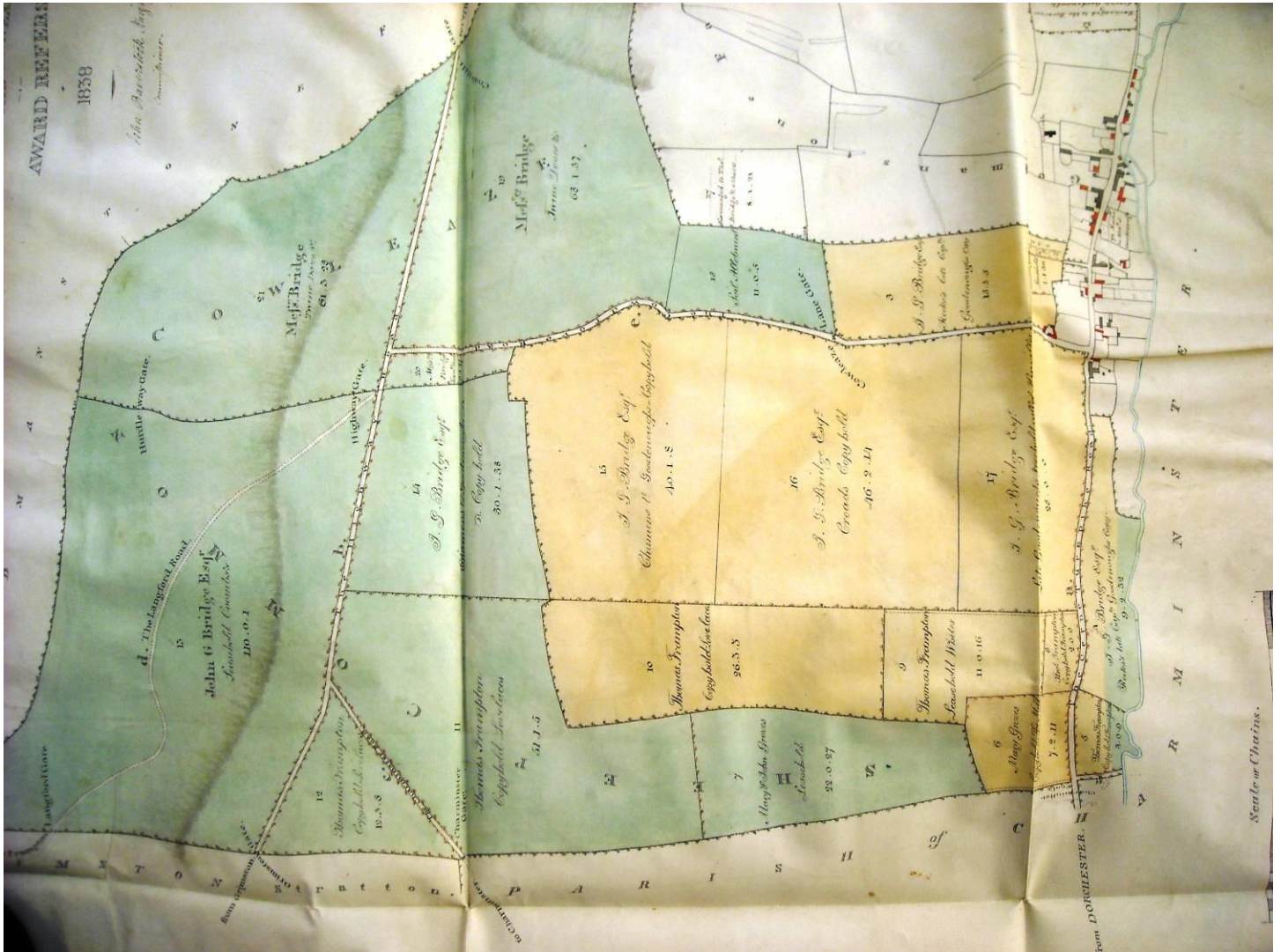
1902	Ordnance Survey Second Edition scale 25 inches:1 mile	Shows claimed route shaded to southern boundary (may be indicative of public second class road)
1903	Ordnance Survey Second Edition scale 6 inches:1 mile	Shows claimed route shaded to southern boundary (may be indicative of public second class road)
1906	Ordnance Survey scale 1 inch:1 mile	Shows route as third class metalled road
1910	Finance Act map and valuation books	Route not excluded
1911	Bartholomew's Tourists and Cyclists map 1 inch:1 mile	Shows route as 'Indifferent or Inferior Road'
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1919	Ministry of Transport road map of Weymouth, Yeovil and Taunton	Shows route as 'other road'
1919	Ordnance Survey map scale 1 inch:1 mile	Shows route as 'road under 14 feet wide'
1920	Bartholomew's Tourists and Cyclists map 1 inch:1 mile	Shows route as 'Indifferent or Inferior Road'
1925	Harding's Half Inch Map of Dorset	Shows route as 'Other Road'
C 1940	Geographia Road Map of Dorsetshire	Shows route as 'Other Road'
1944	Bartholomew's Tourists and Cyclists map 1 inch:1 mile	Shows route as 'Serviceable Road'
1945	Ordnance Survey One Inch Popular Edition Map	Shows route as 'fenced minor road'
1947 - 2009	Aerial Photographs	Shows the claimed route
1951	Bartholomew's Tourists and Cyclists map 1 inch:1 mile	Shows route as 'Serviceable Road'
1951	Godmanstone Parish Survey	Claimed route and Fry's Lane shown as 'CRB'
1954	Draft map	Claimed route shown as 'CRB' shown connecting with Fry's Lane shown as a County Road
1964	Provisional map	Claimed route shown as Bridleway 3 connecting with Fry's Lane shown as an Unclassified County Road
1967	First definitive map	Claimed route shown as Bridleway 3 with a small break between it and Fry's Lane
1974	Revised draft map	Claimed route shown as Bridleway 3
1982	Local Public Inquiry	Width from Inclosure Award to be recorded in definitive statement as 30 feet
1989	Definitive map	Claimed route shown as Bridleway 3 with a small gap between it and Fry's Lane



**Extracts from key documents**

(See the Director for Environment's file RW/T384 for copies of other documents mentioned)

**Godmanstone Inclosure Award and Plan 1838**

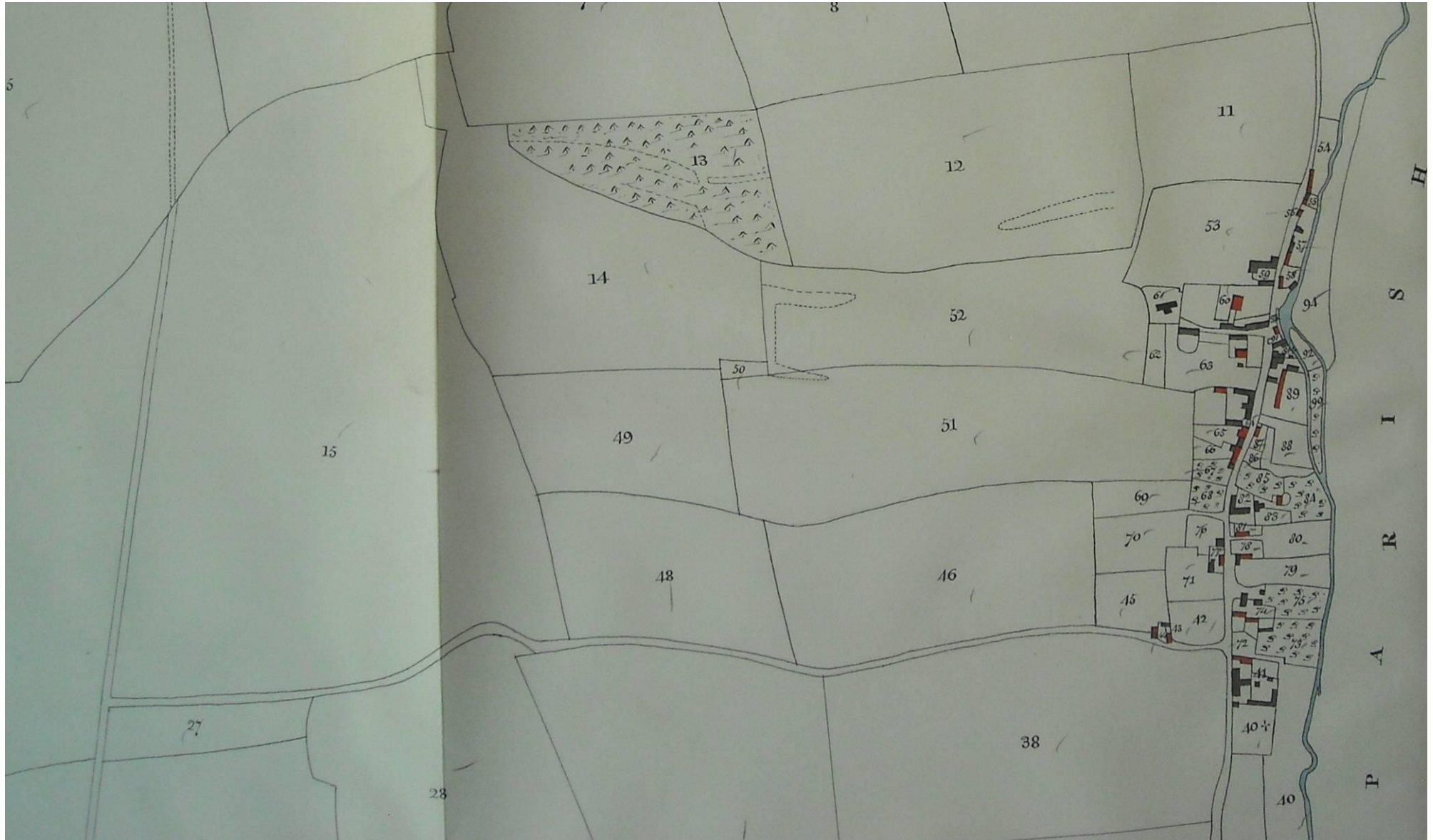


The Cowdrove Road  
30 feet wide

And one other Public Carriage Road and Highway of the  
breadth of thirty feet called the Cowdrove Road and marked with  
the Letter C on the said Map commencing at Cowleaze Lane Gate  
and extending Westward over the Cowleaze by the Common Field  
Hedge until it enters the Highway Road near Highway Gate.



**Godmanstone Tithe Map and Apportionment 1839**





**Pre-Inclosure plan of Godmanstone Common (undated)**

**FRY'S  
LANE**





Godmanstone Parish Survey 1951



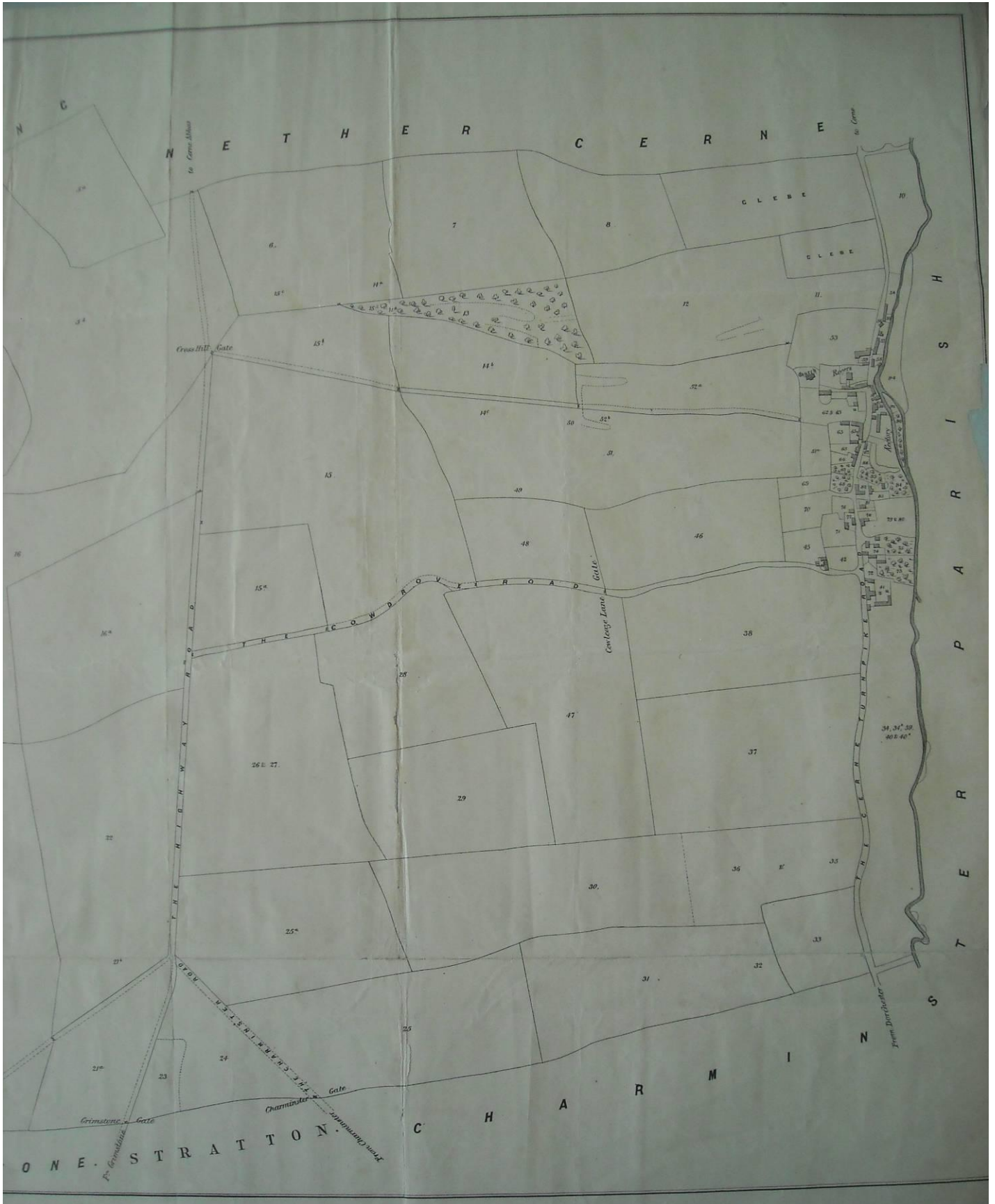
Schedule to the Rights of Way Map deposited for the purposes of the National Parks and Access to the Countryside Act, 1949, Part IV, by the Godmanstone Parish meeting, & approved at the Parish meetings of November 9<sup>th</sup>, 1950, and April 3<sup>rd</sup>, 1951.

~~CRB~~ <sup>CRB</sup> - is a metalled road, kept up by the Dec, which runs from the main Barchin - Com Abbas road to the Driftway, marked BR.1.

BR.1 is a Driftway running from Chasminster to St Peter's.

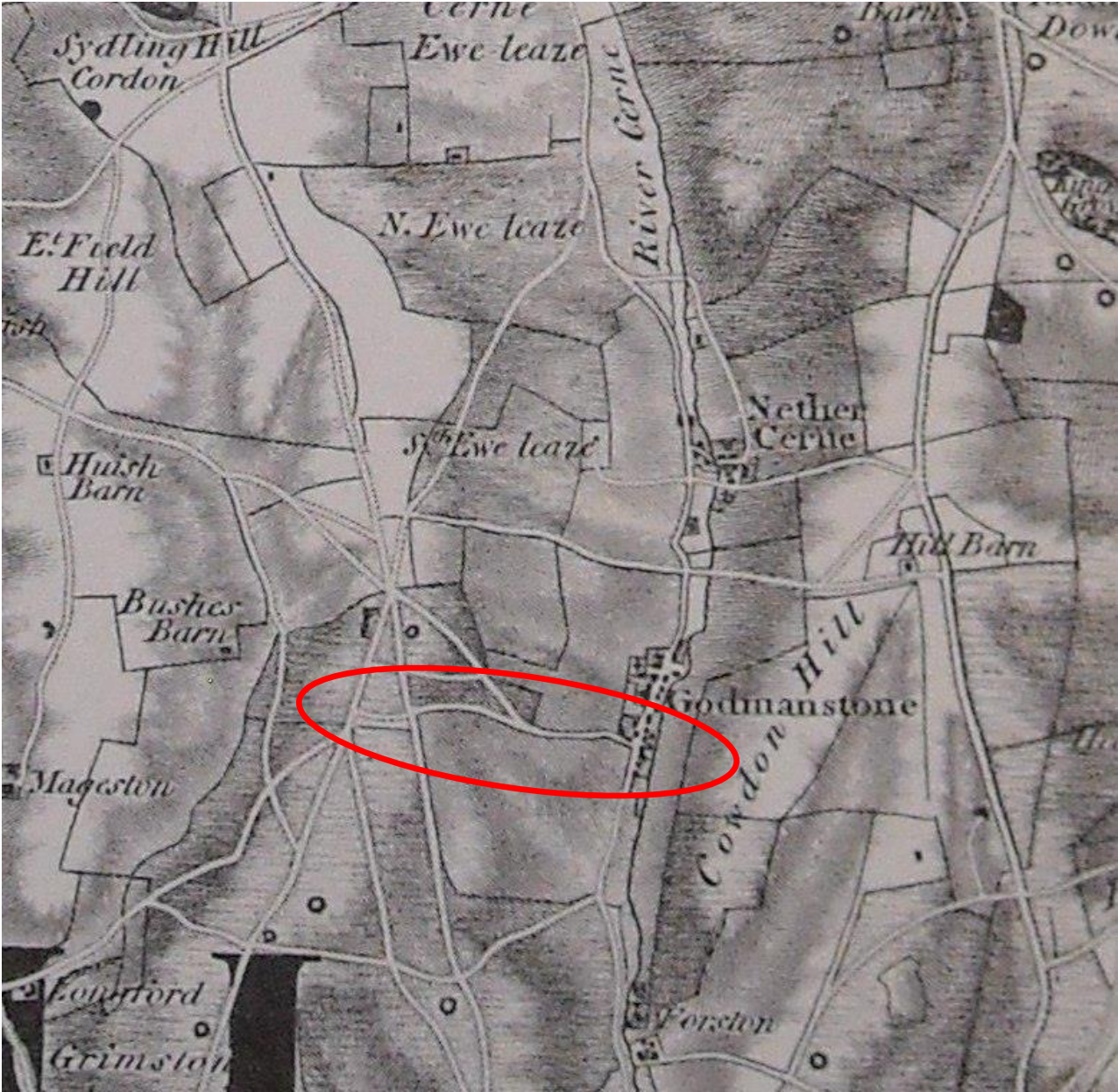
BR.5 is a Bridle Path branching off from BR.1, & leading to

Godmanstone Estate Sale map 1865

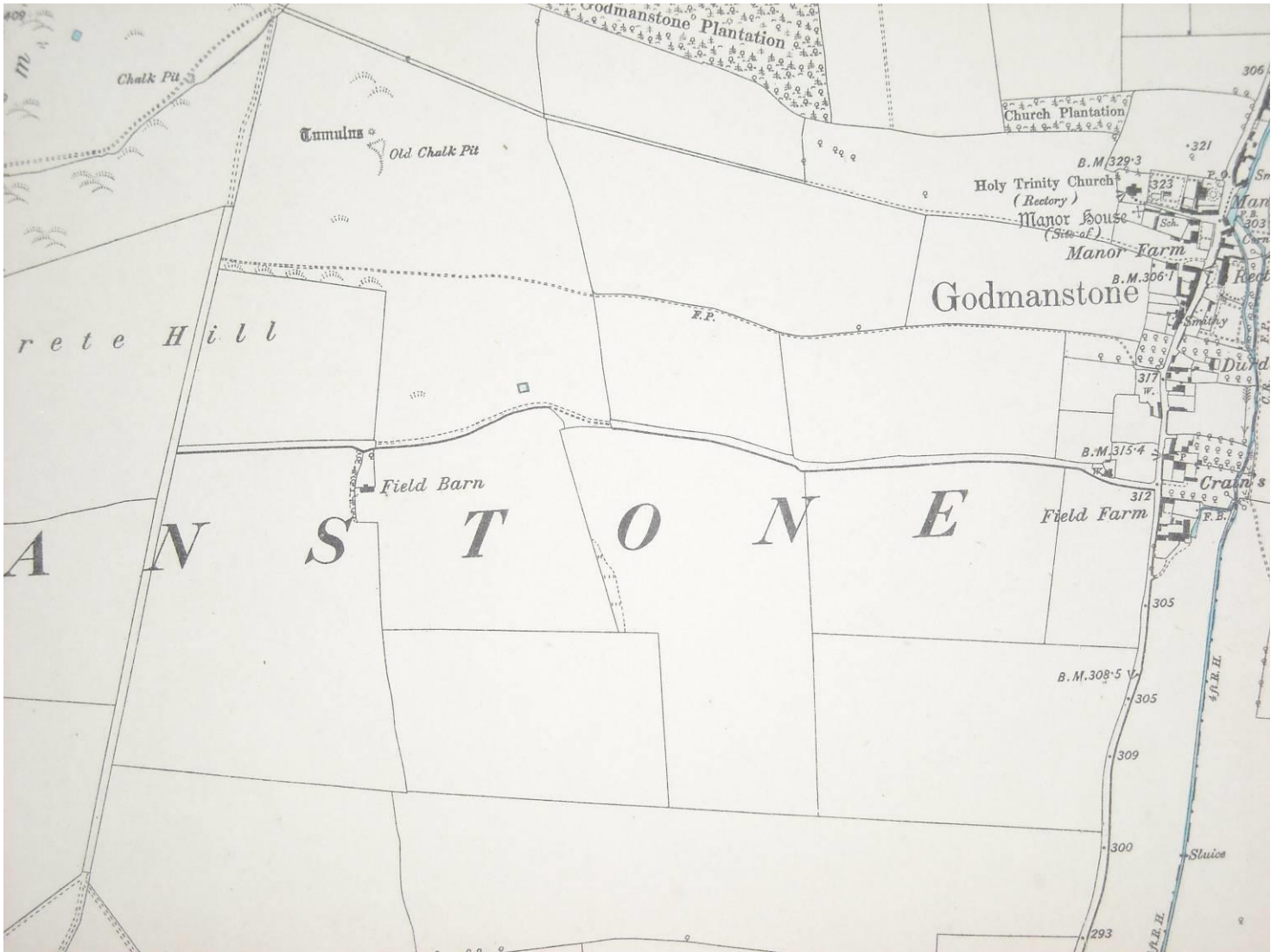




**Ordnance Survey maps**  
**First Edition 1811 1 inch:1 mile**



First Edition 1887 6 inches:1 mile





Second Edition 1902 25 inches:1 mile



Second Edition 1903 6 inches:1 mile

