

Agenda item:

# Roads and Rights of Way Committee

6

## Dorset County Council



Date of Meeting	3 September 2012
Officer	Director for Environment
Subject of Report	<b>Application for a definitive map and statement modification order to upgrade Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras (from Plush to Church Hill) to a byway open to all traffic</b>
Executive Summary	In response to an application to upgrade Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras to a byway open to all traffic this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>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 May and June 2012, 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.</p>

	<p><b>Budget/ Risk Assessment:</b> Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p>
<p><b>Recommendations</b></p>	<p>That:</p> <ul style="list-style-type: none"> <li>(a) The application be refused;</li> <li>(b) An order be made to modify the definitive map and statement of rights of way to record part of the claimed route, Bridleway 7, Piddletrenthide as shown A – B – C on Drawing 12/11/1, as a restricted byway; and</li> <li>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</li> </ul>
<p><b>Reasons for Recommendations</b></p>	<ul style="list-style-type: none"> <li>(a) Subject to (b) below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist;</li> <li>(b) The available evidence shows, on balance, that part of the claimed route, a highway currently 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 part of the claimed route; and</li> <li>(c) The evidence shows, on balance that part of the route claimed should be recorded as a restricted byway. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</li> </ul>
<p><b>Appendices</b></p>	<ul style="list-style-type: none"> <li>1 - Drawing 12/11/1</li> <li>2 - Law</li> <li>3 - Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ 1825 Plush Inclosure map and award</li> <li>▪ 1841 Alton Pancras Tithe map</li> <li>▪ Ordnance Survey maps: <ul style="list-style-type: none"> <li>□ 1805 Drawing scale 2":1 mile</li> <li>□ 1811 First Edition scale 1":1 mile</li> <li>□ 1887 First Edition scale 6":1 mile</li> <li>□ 1892 sheet 328 scale 1":1 mile</li> </ul> </li> </ul> </li> </ul> </li> </ul>

Background Papers	The file of the Director for Environment (ref. RW/T385) 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.
	Copies (or photographs) of the documentary evidence can be found on the case file RW/T385, which will be available to view at County Hall during office hours.
Report Originator and Contact	Name: Roger Bell Rights of Way Officer Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk

## **1 Background**

- 1.1 An application to upgrade Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras to a byway open to all traffic as shown A – B – C – D – E – F – G – H – I on Drawing 12/11/1 (attached as Appendix 1) was made by Mr David Greenslade on behalf of the Trail Riders' Fellowship on 20 July 2005.
- 1.2 The route claimed commences at Plush in Piddletrenthide parish and runs northwest from point A (Drawing 12/11/1) with a high bank on the west side and a bank and hedge on the east side. It is a well used track with a natural chalk surface. The route continues north west in the same manner until point C, the parish boundary, when it enters an open field, which has a grazed grass surface.
- 1.3 In Alton Pancras the claimed route continues through the field to point E, where it passes through a gate in a hedge into a cropped field. The route then continues north north west, across the field and into the adjoining field, following the fence on its eastern side with a grassed surface to the field boundary at point H. The route then passes through the field boundary and cuts across the corner of the adjoining field to meet Bridleway 3, Alton Pancras next to a barn.
- 1.4 The claimed route and the surrounding area is owned by Mr Cake of Harveys Farm, Plush and Mr Waterman of Barcombe Farm, Alton Pancras.
- 1.5 The width of the claimed route is between 1.8 metres and 7 metres.

## **2 Law**

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

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

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T385.
- 3.3 In summary, the applicant states that "There is a weight of evidence to indicate it is more likely that this route carries public carriageway rights rather than any lesser rights. Therefore we believe there is evidence to support our claim that this road carries vehicular rights".

## **4 User evidence**

- 4.1 No user evidence has been submitted.

## **5 Additional evidence in support of the application**

- 5.1 No additional evidence has been submitted in support of this application.

- 6 **Evidence opposing the application** (copies available in the case file RW/T385)
- 6.1 A letter dated 24 May 2012 from Mr Cake confirmed that he was “a landowner of some of BR7/6 and BR 3” and commented that “Point E – ST 70970304 was an established Hunt Jump I.E. a post and rail fence when my father bought Harvey’s Farm in 1956 – it remained so until the mid 70’s when it was changed to the present Hunt gate – a bit over 5ft wide – wide enough for a horse but no more”.
- 6.2 A further letter dated 18 June 2012 from Mr Cake states his objection “to any change” to the definitive map “regarding footpaths and bridleways around Plush”. He reiterates the points made in his previous letter and continues “I feel that if this route is made a Restricted Byway it may also open it up to abuse”.
- 6.3 A letter dated 13 June 2012 from Dr C Burnham states his objection and comments that “ I have reviewed the documents listed in support of the application and can see no evidence that the route has at any point been used by mechanically propelled vehicles”.
- 6.4 A letter dated 14 June 2012 from Peter Chance, who is a representative of the Campaign to Protect Rural England and local resident of Plush, notes that “the Ordnance Survey Map, Sheet 194 dated 1974 shows the route as a Public Path/ Bridleway and not as a Byway Open to All Traffic”. He has walked the route frequently since 1979 and has “never seen vehicles other than those belonging to owners or tenants of the land”.
- 6.5 A letter dated 25 June 2012 from Camilla White of Symonds & Sampson makes representations on behalf of John Waterman of Barcombe Farm: -
- (a) She states that there “appears to be no evidence of an Enclosure Award existing for Alton Pancras parish”.
  - (b) The Ordnance Survey map of 1887 shows “ the uncoloured and unfenced nature of the tracks” in Alton Pancras.
  - (c) The 1825 Plush Enclosure Award “covers the area between points A and C ... and show that this section was also intended to be laid out as a 30ft wide public highway”.
  - (d) In respect of the 1910 Finance Act maps and field books “No reductions have been made in the Field Data Books and no tracks marked on the maps forming part of the Valuation Office survey carried out between 1910 and 1915.....suggesting that they were nothing more than farm tracks”.
  - (e) She concludes that the application does not meet any of the exceptions laid down by the Natural Environment and Rural Communities Act 2006.

6.6 One further letter dated 22 May 2012 was received from W J and E A Jordan in which they state that they have never encountered motorcycles or other unauthorised vehicles. They cite many reasons for opposing the upgrading of the bridleway and raise issues such as: -

- Damage to the surface
- Disruption to residents, wildlife and the natural environment
- Suitability
- Disruption and damage to the historical environment.

## 7 **Other submissions received** (copies available in the case file RW/T385)

7.1 An email dated 18 May 2012 from Mr and Mrs Lawrence states that they have lived there only a short time but confirms that the right of way has been used by walkers and farm traffic for access.

7.2 A letter dated 22 May 2012 from Claire Pinder, Senior Archaeologist, Dorset County Council states that “ the affected route runs extremely close to (I believe just within) the south-western edge of Scheduled Monument Dorset 759 *Field System and Settlement on Watcombe Plain (1002429)*..... I would be very concerned if the proposed modification brought about changes in use which were likely to lead to erosion and consequent deterioration of the monument”. English Heritage was also consulted, however they did not respond.

7.3 Another three submissions offered no evidence, including those from Graham Plumbe, Natural England and Southern Gas Networks.

## 8 **Analysis of documentary evidence**

### **Plush Inclosure Award and Map**

8.1 The most important documents in this case are those relating to the inclosure of land at Plush. The **1825 Plush Inclosure Award and Map** shows the claimed route from the “Piddletrenthide Road” at point A to the parish boundary between Piddletrenthide and Alton Pancras at point C (see Drawing 12/11/1). It clearly shows the way and has the words “Cerne Road • C • 30 feet” within the boundaries of the marked route. At point C, the route ends with a gate pictured across it and it is annotated with the words “Thirtly Gate”. It also has the words “To Cerne” continuing into Alton Pancras from the end of the claimed route.

8.2 The Award states “One other public carriage road and bridleway of the like breadth of thirty feet called the Cerne Road distinguished on the said map by the letter C beginning at cow lane gate near the west end of the said village of Plush and extending north ward in its ancient track over the middle field and west hill to Thirtly Gate where it unites with the road leading toward Cerne”.

- 8.3 No stopping up order has been found. This indicates that public vehicular rights continue to exist along this part of the claimed route. Therefore it provides very strong evidence as to the claimed route's status being that of a public carriageway. There is no Inclosure Award covering the remainder of the route.

### **Other documents**

#### **Alton Pancras Tithe map and apportionment**

- 8.4 The **1841 Alton Pancras Tithe map** shows the claimed route between points C to I as a double pecked line. This confirms that the claimed route continued from Piddletrenthide parish north west into Alton Pancras at this time. As the map has no key none of the routes depicted have their status shown and so the pecked lines may indicate that the route was unfenced. In addition the route has no apportionment number and therefore does not feature in the list of apportionments.
- 8.5 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 cases of footpaths and bridleways, public highways were included within apportionments as a crop, such as hay, could be taken from the surface.
- 8.6 Therefore the tithe apportionment and plan provide some supporting evidence to the claimed public rights.

### **Ordnance Survey Maps**

- 8.7 Although **Ordnance Survey maps** are not conclusive of public status they do show the physical characteristics on the ground at the date of the map.
- 8.8 The **1805 Ordnance Survey Drawing** was made in preparation for the publication of the First Edition of the 1 inch:1 mile scale maps but was drawn at a larger scale of 2 inches:1 mile and therefore generally contains more detail than the later 1 inch:1 mile scale maps. The drawing depicts a route that generally corresponds with that of the claim between points A and F but joins the route now recorded as Bridleway 3, Alton Pancras slightly further to the east. It is defined by two parallel dotted lines, suggesting that it was unfenced throughout its length and is depicted in exactly the same manner as other routes in the vicinity, which are public roads, such as the road running south from Plush village.
- 8.9 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile, which was produced for military purposes, shows the claimed route similarly to the earlier drawing. 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.

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- 8.10 The **1887 First Edition Ordnance Survey map** at a scale of 6 inches:1 mile shows the claimed route on two sheets, 31 NE and 22 SE. The claimed route is clearly depicted, defined by two dotted parallel lines along the whole of its length and with an additional solid line on its western side between points A and C. This suggests that in Alton Pancras the route was unfenced and in Piddletrenthide the defined track was inside a fenceline.
- (a) The route is also annotated “B.R.” (bridleway) alongside between points B and C in Piddletrenthide. The southern end at point A has a solid line across it, suggesting that at this time a gate or barrier may have been in place.
  - (b) This edition did not carry the usual disclaimer regarding public rights (see Appendix 3 Table of documentary evidence). This map therefore supports the claimed rights in Alton Pancras but is less supportive in respect of the Piddletrenthide section.
- 8.11 The **1892 Ordnance Survey map** (sheet 328) at a scale of 1 inch:1 mile shows the claimed route with double pecked lines, which the key describes as unfenced “Ordinary Metalled Roads” and supports the claim.

### **Special Review**

- 8.12 In 1973 a **Special Review** Committee considered the status of Bridleway 7, Piddletrenthide in view of the ‘new evidence’ from the Inclosure Award as a public carriageway 30 feet wide.
- 8.13 The précis of the claim said that “It was probably used by carts at one time, but would not serve any useful purpose as a byway today. It has been entered on the OS map in its existing status of bridleway”.
- 8.14 The decision of the Committee was “Retain as a bridleway – this way falls within the definition of a R.U.P.P [Road Used as a Public Path] and is unsuitable for public vehicular use”. This shows that the Committee at that time accepted that the route should have higher public rights, however, they rejected this status as the legislation at the time took into account different criteria for its upgrading, including suitability.

### **Commercial Maps**

- 8.15 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.
- 8.16 **The 1765 Taylor’s Map of Dorset** 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”. **The 1796 Taylor’s Map** 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.



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- 8.17 **The 1787 John Carey's map, 1825 Greenwoods' map and 1890 Bacon's map** all show the claimed route in a same way as Taylor's map. The route is shown in the same manner as other roads known to be public carriageways in the vicinity.

### **Analysis of Other Supporting documents**

#### **Other Ordnance Survey Maps**

- 8.18 The **1902 Second Edition Ordnance Survey maps** at a scale of 1:2500 (25 inches:1 mile) clearly depicts the claimed route on sheets 31.16 and 22.4.
- (a) Between points A and C the claimed route is shown mostly with double pecked lines with a parallel solid line to the east, suggesting a track set away from a fence or hedgeline, and also with a single pecked line with a parallel solid line to the east, suggesting that the route runs alongside the fenceline. The annotation "B.R." is written alongside the route between points B and C.
  - (b) Between points C and I the claimed route is shown as double pecked lines, suggesting that it is unfenced. The annotation "B.R." is written alongside in two places, between C and D and between E and F.
- 8.19 The **1903 Second Edition Ordnance Survey maps** at a scale of 6 inches:1 mile (1:10560) show the claimed route on sheets 31 NE and 22 SE.
- (a) The southern end of the claimed route in Piddletrenthide between points A and C is shown as a single pecked line parallel with a solid line, indicating that the path is fenced on the eastern side. It is annotated alongside "B.R."
  - (b) The northern part of the claimed route in Alton Pancras between points C and I is shown as double pecked lines, indicating an unfenced path, with "B.R." alongside in two places, as on the 1902 larger scale edition.
- 8.20 Therefore the Ordnance Survey maps researched for this claim show that the route was regarded as a bridleway in Piddletrenthide from 1887 onwards and in Alton Pancras from 1902 onwards and do not support the claim for higher rights.

#### **Commercial Maps**

- 8.21 **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 are dated 1911 to 1920. On both maps the claimed route is depicted similarly.
- (a) The southern end as far as point D is shown with a dashed line and referred to as "Footpaths and Bridlepaths" in the key.

- (b) The northern end between points D and I is shown as an uncoloured road and is referred to in the key as an 'inferior' road in exactly the same manner as several other routes in the area that are public roads.
- (c) Under the heading 'Background to Selected Documentary Evidence' the applicant expands on the evidence from **Bartholomew's Maps** used for the claim, as follows:
  - (i) The maps were produced in conjunction with the Cyclists Touring Club, whose local Map Revision Officers supplied information on the condition of the routes.
  - (ii) The roads marked on the maps "were therefore roads used by cyclists at the time, no doubt in the belief that they were allowed to use those roads. Since cyclists could not use bridleways until 1968 such routes had to be roads with vehicular rights".
  - (iii) The applicant quotes from the case of 'Commission for New Towns v J J Gallagher Ltd (not enclosed with the application), in which the Judge "gives some weight to Bartholomew's maps as an aid to proving the existence of a public carriageway".

8.22 The extracts from and reference to the **Small Scale Maps of Dorset** (1765 to 1945) 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, or significant parts of it, clearly and prominently and consequently it is considered that this evidence, whilst providing nothing conclusive, may be seen as adding some support to the claim, although no significant weight has been attached to it.

#### **Finance Act 1910**

- 8.23 The evidence from the **Finance Act 1910** documents reveals that no part of the claimed route was excluded from valuation, although the path is clearly shown on the 1902 Ordnance Survey base maps at a scale of 1:2500, which were used for valuation purposes. This weighs against the existence of public vehicular rights.
- 8.24 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.
- 8.25 The claimed route crosses **Hereditament 11 and 13** and in the accompanying valuation books there are deductions for the landowner of £50 and £100 respectively for public rights of way. However, they do not specify to which routes they refer and both hereditaments are large and show many routes.
- 8.26 The claimed route also crosses **Hereditament 191** but in the accompanying valuation book there is no deduction for rights of way.

- 8.27 Where deductions are made in these books for rights of way it usually signifies that the route is regarded as a public footpath or bridleway. If a route is excluded from valuation it may suggest that the route is a road. Therefore in this case the Finance Act documents neither support nor oppose the claimed rights.

## **Parish Survey**

### **Draft, Provisional and First Definitive Maps**

- 8.28 The **1952 Piddletrenthide parish survey of rights of way** shows the claimed route between points A and C coloured red, annotated '4' and described as a bridleway.
- 8.29 The **1954 Alton Pancras parish survey of rights of way** shows claimed route between point C to I coloured green, annotated '8' and also described as a bridleway.
- 8.30 The **1954 draft map** for the **south area** shows the claimed route as Bridleway 4, Piddletrenthide and Bridleway 8, Alton Pancras. The **1964 provisional map, 1967 first definitive map** and the **1974 revised draft map** all show the claimed route described and numbered as on the current definitive map, i.e. Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras.
- 8.31 Although the fact that the whole of the claimed route is recorded upon the **current definitive map** (sealed 1989) as a public bridleway is conclusive evidence as to the existence of these rights, it is not prejudicial to the existence of any higher public rights over the route.

## **9 Analysis of evidence opposing the application**

- 9.1 Mr Cake states that at point E on the claimed route, a 'hunt jump' (post and rail fence) was in existence when his father bought the farm in 1956 and remained so until the "mid 70's". The claimed route was surveyed by the Alton Pancras parish in 1954 and the post and rail fence at that time is not mentioned. An RAF aerial photograph from 1947 clearly shows the claimed route passing through the fenceline at point E but it is impossible to see if there is a post and rail fence in existence. (This aerial photograph can be found on the case file RW/T385).
- 9.2 Dr C Burnham objects to the application but has not provided any evidence to support this position.
- 9.3 Peter Chance's statement that the 1974 Ordnance Survey map shows the route as a bridleway and not as a byway open to all traffic is correct and the current definitive map supports this statement. However, the documentary evidence supplied with this application pre-dates this map.
- 9.4 Symonds & Sampson's comments regarding the Inclosure award between points A and C supports it as being important evidence in determining this application.

- (a) The submission comments that the claimed route is not excluded on the Finance Act maps, and suggests that they were farm tracks. 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.

9.5 The majority of the other submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

## 10 Analysis of other submissions

10.1 The other letters contain no evidence to be considered.

## 11 Conclusions

11.1 As the route is currently recorded as a bridleway, it is necessary for members to decide whether, on the balance of probability, the highway (or part of highway) shown in the map and statement as a bridleway ought to be shown as a highway of a different description.

11.2 It is considered that the most important piece of documentary evidence is the **1825 Plush Inclosure award and map** as it acknowledged the existence of a public vehicular highway as shown between points A and C in the parish of Piddletrenthide.

11.3 In addition to the above there are other documents, including the **1841 Alton Pancras Tithe Map, 1805 Ordnance Survey Drawing, 1811 First Edition Ordnance Survey map, 1887 First Edition Ordnance Survey map & 1892 Ordnance Survey map** that support the existence of higher public rights than the currently recorded bridleway status.

11.4 The **Special Review** provides further supporting evidence as the Committee acknowledged that the route fell within the definition of a R.U.P.P. but under the tests that then applied they chose not to record it as such.

11.5 Although not conclusive as to status, additional supporting evidence as to the physical existence of a significant route over a considerable period of time is provided by the **Ordnance Survey** maps and the **Commercial maps**.

11.6 The cumulative weight of the documentary evidence analysed in paragraph 8 is considered sufficient to demonstrate, on balance, that a public right for vehicles subsists in respect of part of the claimed route, as shown between points A and C on Drawing 12/11/1 but that it is insufficient in respect of the part shown between points A and I.

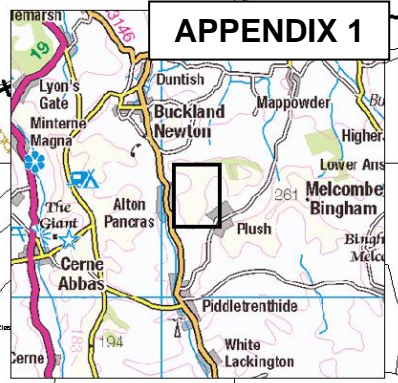
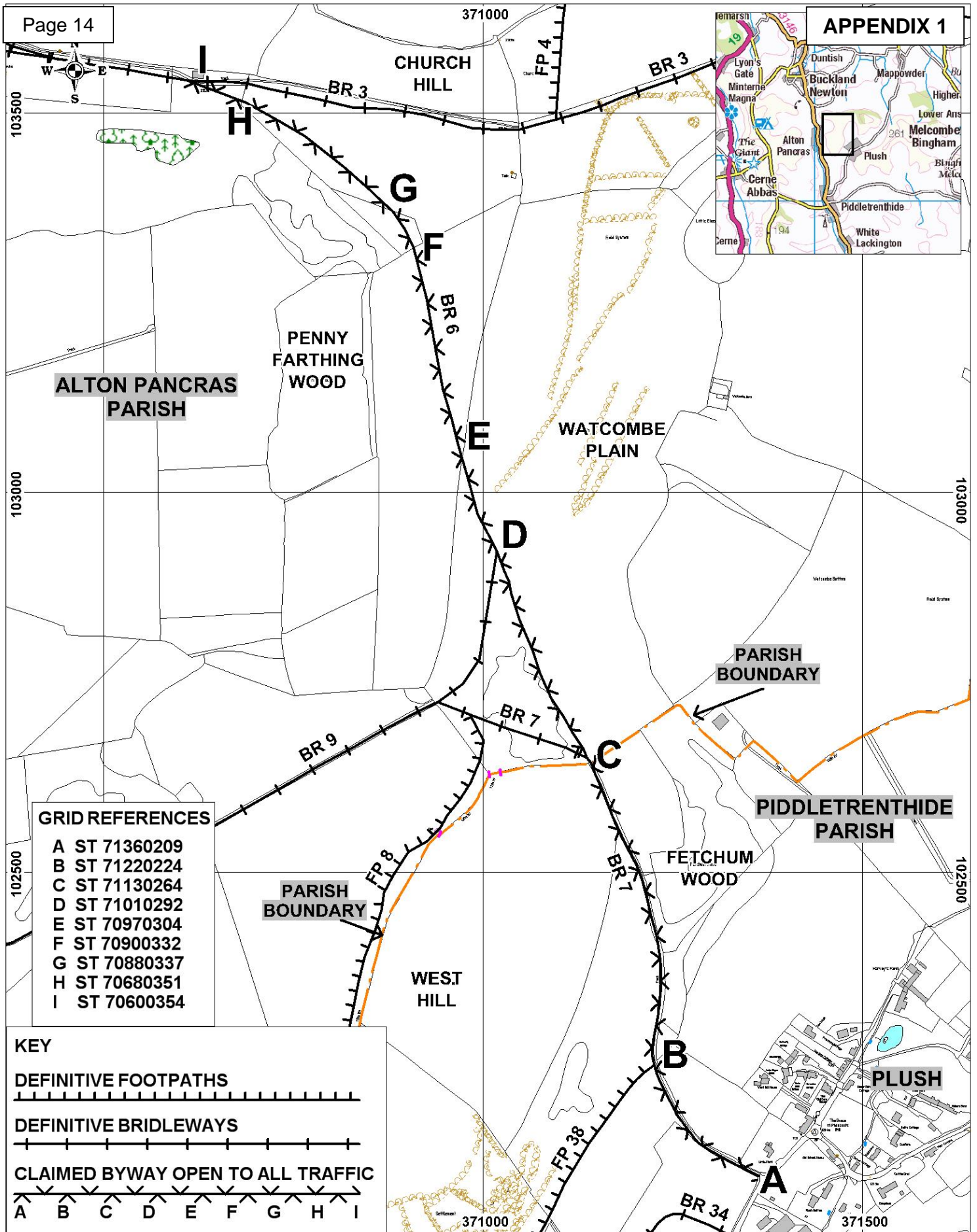
11.7 However, as no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.

11.8 Therefore, it is recommended that the application be refused but that an order be made to upgrade Bridleway 7, Piddletrenthide as shown between points A and C on Drawing 12/11/1 to a restricted byway.

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11.9 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

**Miles Butler**  
**Director for Environment**  
February 2021



**GRID REFERENCES**

- A ST 71360209
- B ST 71220224
- C ST 71130264
- D ST 71010292
- E ST 70970304
- F ST 70900332
- G ST 70880337
- H ST 70680351
- I ST 70600354

**KEY**

- DEFINITIVE FOOTPATHS
  - DEFINITIVE BRIDLEWAYS
  - CLAIMED BYWAY OPEN TO ALL TRAFFIC
- A B C D E F G H I

**WILDLIFE AND COUNTRYSIDE ACT 1981**

CLAIM TO UPGRADE BRIDLEWAY 7, PIDDLTRENTHIDE AND BRIDLEWAY 6, ALTON PANCRAS TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/11/1

Date: 23/07/2012

Scale 1:6500

Drawn By: ACH

Cent X: 371007

Cent Y: 102834

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**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1765	Isaac Taylor's map	Shows the claimed route
1787	John Carey's map	Shows a route similar to the claimed route as other roads are shown
1795	Isaac Taylor's map	Shows the claimed route
1805	Ordnance Survey drawing	Shows part of the claimed route A – F as other roads are shown
1811	Ordnance Survey First Edition map scale 1":1 mile	Shows part of the claimed route A – F as other roads are shown
1825	Plush Inclosure map and award	Shows the claimed route from point A to point C. It is annotated "Cerne Road – 30 Feet". The award records it as "One other public carriage road and bridleway".
1826	Greenwoods' map	Shows the claimed route as double pecked lines as other routes that are roads
1841	Alton Pancras Tithe map and apportionment	Shows the claimed route between points C and I as a double pecked line.
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.	
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.	
1887	First Edition map scale 6":1 mile map sheets 22 SE and 31 NE	The claimed route is shown with double pecked lines and labelled as a bridleway on sheet 31 NE but not on sheet 22 SE
1890s	Bacon's map	Indistinct but shows a route roughly in the claimed position
1892	Ordnance Survey Sheet 328 scale 1":1 mile	Shows the claimed route with double pecked lines as an unfenced Ordinary Metalled Road
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1903	Ordnance Survey Second Edition map scale 25":1 mile sheets 22.16 and 31.4	Shows the claimed route with double pecked lines and pecked/ solid lines and labelled 'B.R.' (bridleway)
1903	Ordnance Survey Second Edition map scale 6":1 mile Sheet 22 SE and 31 NE	Shows the claimed route with double pecked lines and pecked/ solid lines and labelled 'B.R.' (bridleway)

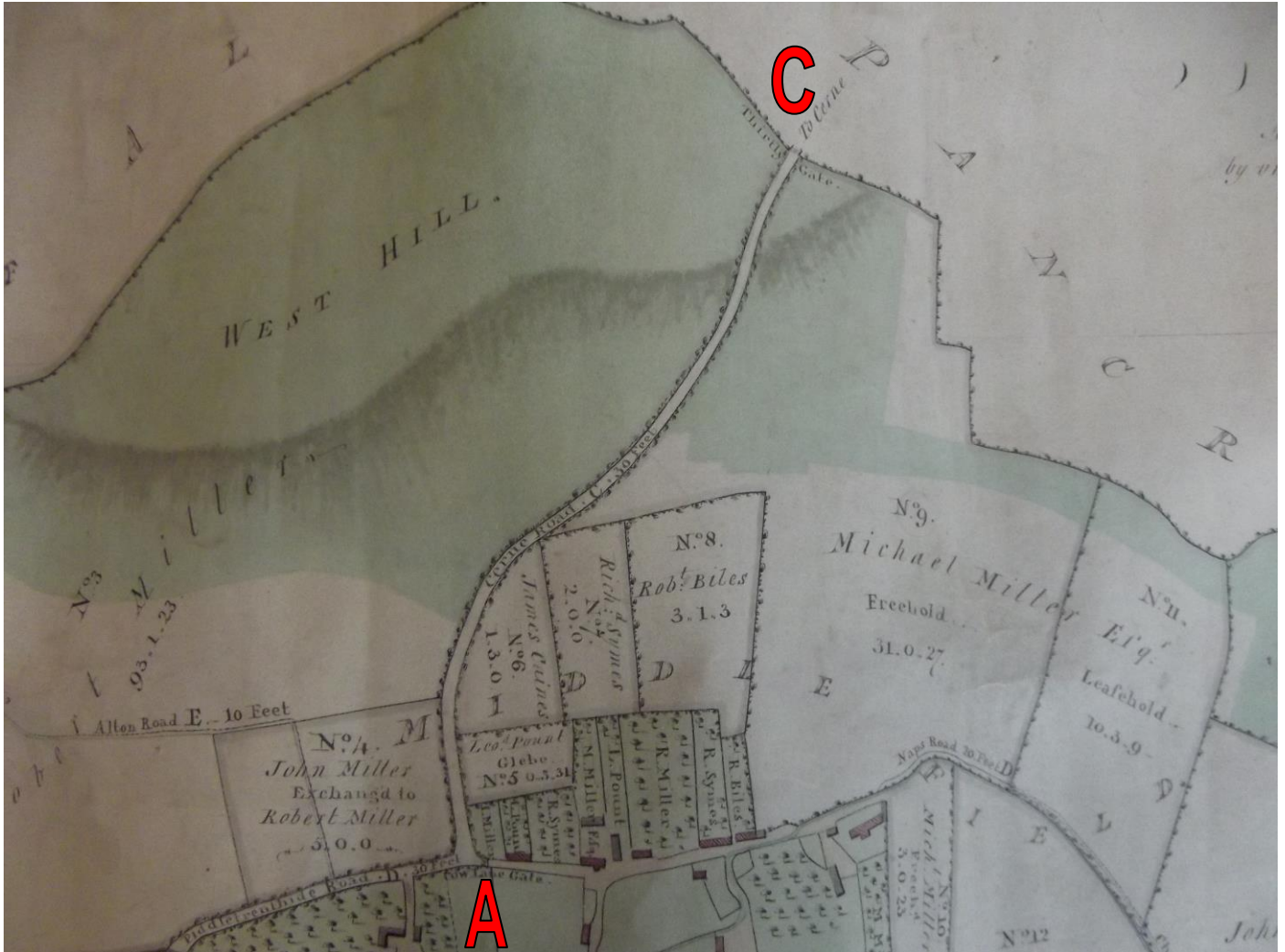
Date	Document	Comment
1910	Finance Act map and valuation books	Not excluded. Some deductions for rights of way.
1911	Bartholomew's Tourist & Cyclists map	Shows the claimed route – northern part as an 'inferior road' and southern part as a footpath or bridleway
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1919	Ordnance Survey sheet 140	Shows the claimed route – northern part as an unfenced road and southern part as a bridle and footpath
1920	Bartholomew's Tourist & Cyclists map	Shows the claimed route – northern part as an 'inferior road' and southern part as a footpath or bridleway
1920s	Geographia large scale map of Dorsetshire scale 1":2 miles	Shows the claimed route – northern part as an 'other road' and southern part as a footpath
1945	Ordnance Survey Popular Edition scale 1":1 mile	Shows the claimed route – northern part as an unfenced road and southern part as a footpath and bridlepath
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1952	Piddletrenthide parish survey	Shows claimed route A – C as a bridleway numbered 4
1954	Alton Pancras parish survey	Shows claimed route C – I as a bridleway route 8
1954	Draft map	Shown as Bridleway 4, Piddletrenthide and Bridleway 8, Alton Pancras
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1964	Provisional map	Shown as Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras
1967	First definitive map	Shown as Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras

Page 20 Application for a definitive map and statement modification order to upgrade Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras (from Plush to Church Hill) to a byway open to all traffic

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1973	Special Review Committee review of status of Bridleway 7, Piddletrenthide	Decision to “Retain as a bridleway – this way falls within the definition of a R.U.P.P and is unsuitable for public vehicular use”.
1974	Revised draft map	Shown as Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras
1989	Current definitive map	Shown as Bridleway 7, Piddletrenthide and Bridleway 6, Alton Pancras

**Extracts from key documents**  
(See the Director for Environment's file RW/T385 for copies of other documents mentioned)

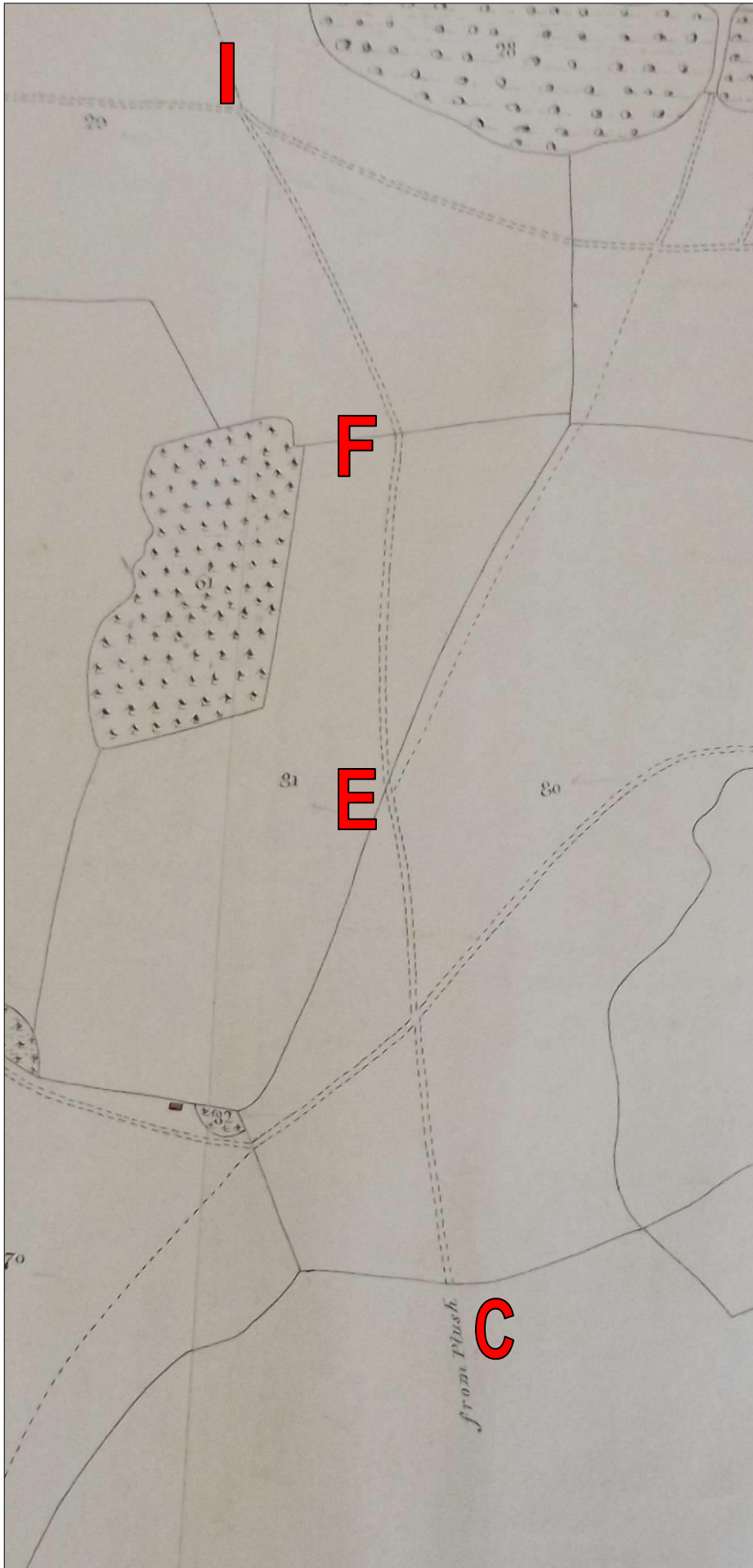
**1825 Plush Inclosure map**



**1825 Inclosure Award**

One other public carriage road and highway of the like breadth of thirty feet called the Corn Road is distinguished on the said map by the letter C. beginning at Cow Lane gate near the west end of the said village of Alton Pancras and extending southward in its ancient track over the middle field and west hill to Sturley gate where it unites with the road leading towards Corn.

1842 Alton Pancras Tithe map





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**Ordnance Survey maps:  
1805 Drawing scale 2":1 mile**





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1811 First Edition scale 1 inch: 1 mile

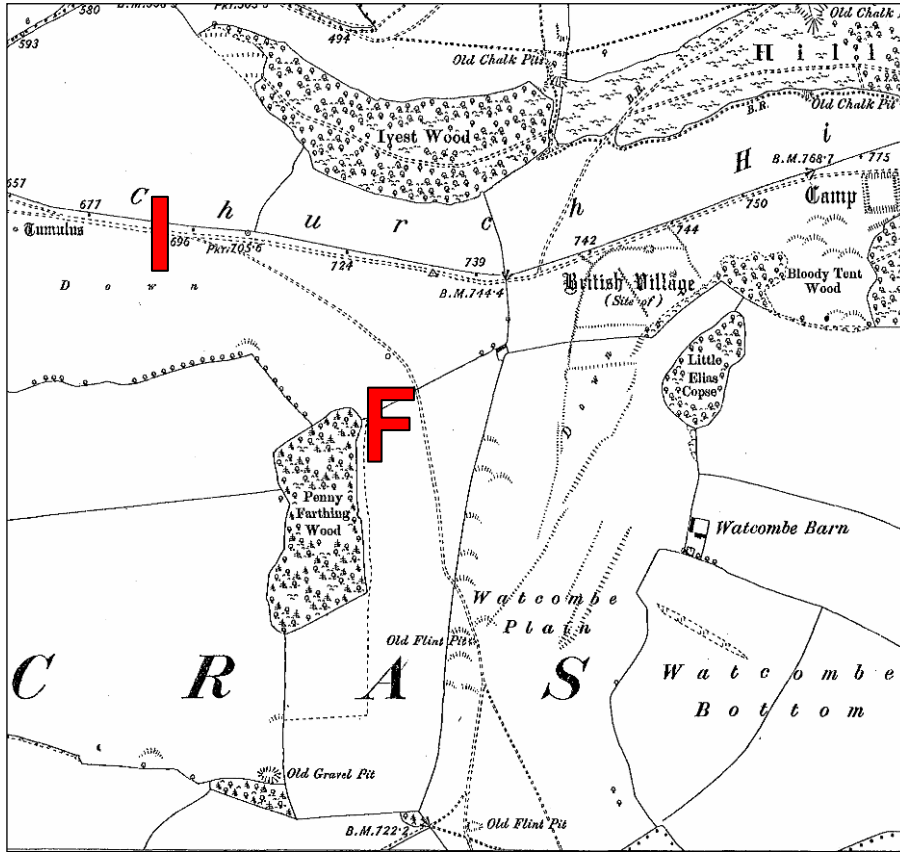


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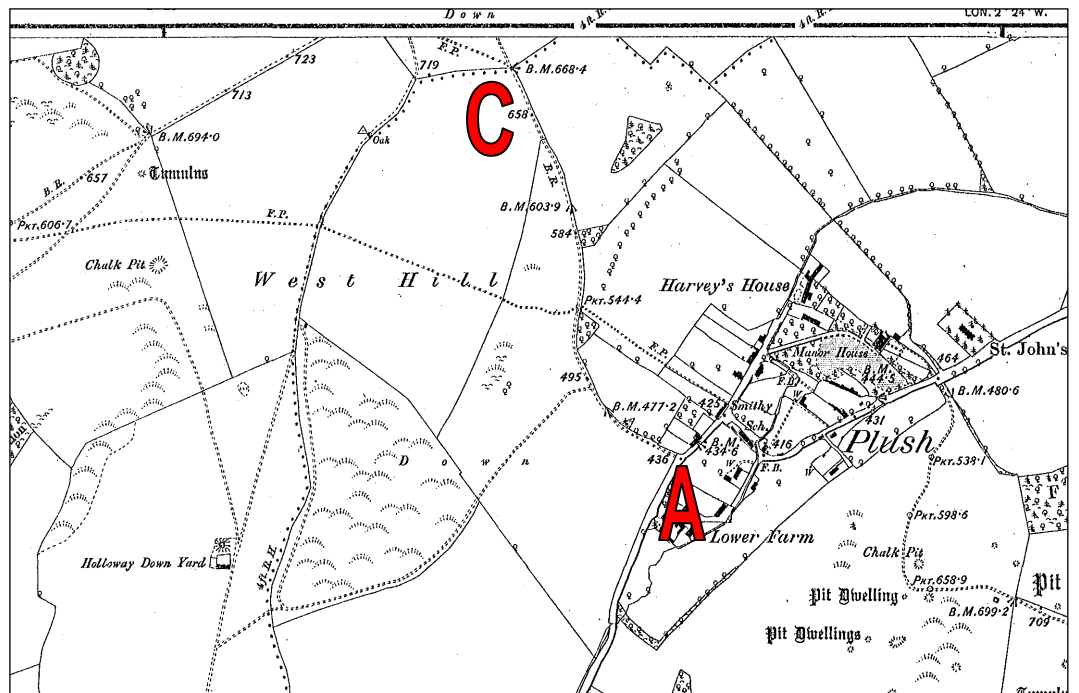


1887 First Edition scale 6 inches:1 mile

Sheet 22 SE



and 31 NE



1892 sheet 328 scale 1":1 mile

