

Agenda item:

Roads and Rights of Way Committee

6

Dorset County Council



Date of Meeting	8 October 2012
Officer	Director for Environment
Subject of Report	Application for a definitive map and statement modification order to upgrade Bridleways 1(part), 2 and 3 (part), Alton Pancras and Bridleway 2 (part), Piddletrenthide to byway open to all traffic
Executive Summary	In response to an application to upgrade bridleways from the B3143 north of Alton Pancras generally east to Folly, north east of Plush in Piddletrenthide parish, 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:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence:</p> <p>The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.</p> <p>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.</p>

	<p>One user evidence form from one user of the claimed route was submitted during the investigation.</p> <p>Any relevant evidence provided has been discussed in this report.</p>
	<p>Budget/ Risk Assessment:</p> <p>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>Recommendations</p>	<p>That:</p> <p>(a) The application be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record part of the claimed route, Bridleway 2, Piddletrenthide as shown K – L – M – O – N on Drawing 12/16/1, as a restricted byway; and</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<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 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 the claimed route; and</p> <p>(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.</p>
<p>Appendices</p>	<p>1 - Drawing 12/16/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1825 Plush Inclosure Map and Award ▪ 1841 Alton Pancras Tithe map ▪ 1910 Finance Act <ul style="list-style-type: none"> - Sheets 22.15, 16 and 23.13 - Valuation Field book – Hereditament 183

	<ul style="list-style-type: none"> ▪ 1826 Estate map – Holcombe and Barkham farms, Alton Pancras (showing enlarged areas) <p>4 - User evidence</p> <ul style="list-style-type: none"> • Table summarising user evidence • Charts to show period and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T386)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T386, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade Bridleways 1(part), 2 and 3 (part), Alton Pancras and Bridleway 2 (part), Piddletrenthide as shown on Drawing 12/16/1 (Appendix 1) was made by David Greenslade on behalf of the Trail Riders' Fellowship on 10 September 2005.
- 1.2 The route claimed starts from the county road B3143 in the parish of Alton Pancras at point A on Drawing 12/16/1 in a north easterly direction. The surface is grass with a hedge on the northern side. At point B the route continues through a gate in to a grass field. At point D, the junction with Bridleway 28 and Footpath 31, Buckland Newton, the path changes to a generally easterly direction. At point E the surface changes to a wide chalk track with a hedge to the north and open fields to the south. Between points E and H the walked route is along the track parallel with the northern field boundary but the recorded definitive route is slightly further into the field. At point G, its junction with Bridleway 6 the route bends around a barn. The claimed route continues east, alongside the northern boundaries of fields and then enters an open field with patches of scrub at point H. It continues generally east and south east on the northern side of the field and around Watcombe Wood to a gate at point J and then south east through the edge of woodland, where the track is well defined, to the parish boundary with Piddletrenthide at point K.
- 1.3 In Piddletrenthide at point K the track becomes a grassed surface and continues in an east south easterly direction with a hedge to the north and open pasture to the south, with a field gate at point L. At another field gate at point M the route becomes enclosed by hedges on both sides, the width is much narrower and the surface worn and very steep. At point N the claimed route terminates at the county road (C97) at Folly.
- 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 varies between 13.8 metres and 4 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/T386.
- 3.3 In summary, the applicant states, "No evidence has been found to indicate this road has ever been stopped up. Thus on the basis of the evidence presented below the TRF believes the route should today be a byway".

4 **User evidence (Appendix 4)**

4.1 A table summarising the user evidence from a witness evidence form, together with charts showing the period and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 **Additional evidence in support of the application** (copies available in the case file RW/386)

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/386)

6.1 A letter dated 24 May 2012 from Mr Cake, one of the landowners affected by the claimed route, writes regarding Bridleway 3, "CHURCH HILL I own between points H and K. I have twice stopped men on motor bikes.....informing them that it's a bridle way and scramble bike are not welcome – they returned the way they came".

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 adds "I feel that if this route is made a Restricted Byway it may also open it up to abuse".

6.3 A letter dated 8 June 2012 from Mrs S Nicola Barker includes an analysis of documentary evidence (full submission held in case file T386).

(a) **1887 Ordnance Survey map** at a scale of **1:2500**: "On this map it is given the status of an uncoloured and unfenced trackway extending from point "A" the B3143 in the west, to point "K" on the Alton Pancras Parish Boundary in the east. The track through Alton Pancras Parish has not been assigned a separate parcel number and is shown "braced" to the fields it crosses, which suggests that the surveyor at that time did not consider it was a public highway". "Through Plush [Piddletrenthide Parish]... Only the last quarter of a mile section from the Chalk Pit onwards to Folly [M to N]... is the track coloured and along with the chalk pit, given its own parcel of land".

(b) **Inclosure Awards**: " I have found no evidence of an Inclosure Award existing for Alton Pancras Parish...An **Inclosure Award** dated **1825** does however exist for**Plush**. This covers the short section at the eastern end of this claimed route, and was laid out as a 30' highway marked as "the Melcombe Horsey Road"... This corresponds to the uncoloured and unfenced track west of the chalk pit on the 25" OS map dated 1887".

- (c) **Other Maps:** “The only other pre-1887 map on which the claimed track is clearly marked, is on a private **map of Holcombe and Barkham farms in the parish of Alton Pancras, drawn in 1825...** This track is shown in an identical fashion to that of the network of unfenced tracks which cross both large fields in all directions, some of which have since disappeared and some still exist today as footpaths or Bridleways. There are no place directions at either end of the claimed track and no suggestion of public ownership”.
 - (d) **Present Day Usage:** “Motorbike riders have been known to have used the track, but their presence represents a very rare occurrence over these last 30 years”.
 - (e) **Conclusion:** With regard to Alton Pancras, “no evidence exists that the claimed track...was anything other than a farm track... and more recently a public Bridleway.Although the Plush Inclosure Award does show the eastern end was intended to be laid out as a 30ft wide public highway, there has to be some doubt as to whether this was ever implemented. Only the part of this section was ever marked as a highway and this could well have be [sic] related to extraction of chalk from the chalk pit, It was certainly never laid out to 30ft on the ground and exist today as a narrow sunken farm track.”
- 6.4 A letter dated 13 June 2012 from Dr C Burnham records 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”. He adds that “the evidence presented is virtually all map based”, which “may show existence of a route, but provide no evidence of status or use, unless otherwise stated”.
- 6.5 An email dated 15 June 2012 from Mr P and Mrs Charlton, who live near point N says that “We have not encountered motor-bikes when walking the bridleway”. They add that from looking at the public file “that there was only a single entry in the usage section and this covered the years 1988 to 2005. The paucity of information that has been submitted re-inforces our evidence that usage by motorized vehicles...has been very rare”.
- 6.6 A letter dated 25 June 2012 from Symonds & Sampson on behalf of John Waterman of Barcombe Farm makes several points.
- (a) **Enclosure Award:** “There appears to be no evidence of an Enclosure Award existing for Alton Pancras parish, which would indicate [the] track was a Public Highway through the Parish”. They add that the **1825 Plush Inclosure Award and Map)** “covers the short section between points M and N on the Dorset County Council application map and shows that this section was intended to be laid out as a 30ft wide public highway. However this only related to the last quarter of a mile at the eastern end of the track, and could have been intended for use when extracting chalk from the chalk pit...”.

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- (b) **Finance Act 1910 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”.
- (c) They add that the application has not met any of the exceptions laid down by the Natural Environment and Rural Communities Act 2006 that extinguished the public rights for motor powered vehicles (see Law, Appendix 2, paragraph 7).

6.7 Three submissions were received before the consultation started and four letters were received as a result of the consultation. These cited many reasons for opposing upgrading the bridleway. Issues were raised such as: -

- Safety
- Damage to the surface
- Disruption to residents, wildlife and the natural environment
- Noise
- Pollution
- Suitability
- Disruption and damage to the historical environment

7 **Other submissions received** (copies available in the case file RW/386)

7.1 In a letter dated 22 May 2012, Claire Pinder, Senior Archaeologist, Dorset County Council states that “the affected route runs extremely close to.....two Scheduled Monuments”.

7.2 Another four submissions offered no evidence, including those from Graham Plumbe, Natural England, Southern Gas Networks and British Horse Society.

8 **Analysis of documentary evidence**

Inclosure Map and Award

8.1 The most important documents in this case are those relating to the inclosure of land at Plush. The **1825 Plush Inclosure Map** clearly shows the claimed route between points K and M on Drawing 12/16/1 and has the words “Melcombe Horsey Road • B • 30 Feet” within the boundaries of the marked route. Point K is annotated “Churchill Gate” and “From Cerne” is written in continuation of the route. Point M is annotated “White Linch Gate” and “To Melcombe Horsey” is written in continuation of the route.

8.2 The **1825 Plush Inclosure award** records “One other public carriage road of the like breadth of thirty feet called the Melcombe Horsey road and distinguished on the said map by the letter B. Beginning at Churchills Gate on the North hill and extending Eastward by the North boundary of the said hill to White Lynch Gate where it unites with an ancient lane leading to Melcombe Horsey”.

- 8.3 The eastern side (bottom) of the Inclosure map has the words “Old Inclosures in Plush”, suggesting that the route may link up with an “ancient lane” that had been enclosed previously.
- 8.4 No stopping up order has been found. This indicates that public vehicular rights continue to exist along this part of the claimed route (K – M). 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.

Tithe map and apportionment

- 8.5 The **1841 Alton Pancras Tithe map** shows the claimed route in Alton Pancras as shown between points A to K with double pecked lines. This confirms that the claimed route continued from Piddletrenthide parish 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.
- 8.6 The route is shown through several apportionments, numbers 30, 29, 62 and 66 and named as “Churchills” and “part of Churchills”.... The state of cultivation for parcel numbers 62 and 66 is recorded as “pasture”. None of the parts of the route are recorded as “Roadway” as is, for example, No. 69A.
- 8.7 Although tithe apportionments were not concerned with identifying public highways, public highways can often be identified as they form the boundaries to apportionments. In many cases, particularly in the case of footpaths and bridleways, public highways were included within apportionments as a crop, such as hay, could be taken from the surface
- 8.8 As in this instance the route is mostly un-apportioned and is indistinguishable from the other public carriageways that can be clearly identified upon it, the tithe apportionment and plan provide good supporting evidence to the claimed public rights.

1910 Finance Act

- 8.9 The evidence from the **1910 Finance Act** documents reveals that part of the claimed route between points O and N, shown fenced on both sides, is excluded from taxation. This indicates that this section of the route was considered to be vested in the Highway Authority at that time.
- 8.10 Public roads that were fenced were generally excluded from valuation and this evidence indicates that it is very likely that the routes enjoyed public highway rights.
- 8.11 The claimed route crosses **Heredityment 11** (between points A – K) and in the accompanying valuation book there are deductions for the landowner of £50 for public rights of way. However, they do not specify to which routes they refer and the Hereditament is large, in several parts and shows many routes.

- 8.12 The claimed route also crosses **Hereditaments 183 (M – O) and 189 (K – M)** but in the accompanying valuation book there are no deductions for public rights of way. However, within the field book giving details of Hereditament 183, it mentions that there are public rights of way. This adds support to the continuation of the claimed route from the excluded section (O – N) in this Hereditament (M – O) having public rights.
- 8.13 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.

Estate Maps

- 8.14 There are two Estate maps of Holcombe and Barcombe Farms in the parish of Alton Pancras, one drawn in 1825 and another in 1826.
- (a) The 1825 map appears to be a rough draft of the later one, with various pencil annotations of land use. It shows the claimed route from point D eastwards to point K as a single pecked line but there is no key.
- (b) The 1826 map is a more detailed version, showing the whole of the claimed route in Alton Pancras between points A and K coloured as other public routes that are shown. From A to B the route is drawn with a hedge on the northern side and a pecked line on the southern side, with a gate at points A and B. From B to K it is drawn as a double pecked line, but coloured within the markings. Again there is no key.
- (c) This suggests that the claimed route A – K was considered to be public highway but gives no indication as to status.

Ordnance Survey Maps

- 8.15 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.
- 8.16 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. This shows the claimed route with double pecked lines (unfenced) for most of its length except around the north east edge of Watcombe Wood (J – K), where it is shown as double pecked lines inside double solid lines, indicating a track within a wider route, and at its eastern end (approximately O – N) where it is shown with double solid lines (fenced). The depiction on this map is in a similar manner as other routes in the vicinity that are known to be public carriageways.
- 8.17 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 except the part from K to M is now fenced on the northern side and therefore shown with a solid line on this side. Although not conclusive to status it is shown in a similar manner as other routes in the vicinity that are known to be public carriageways.

- 8.18 The **1887 First Edition Ordnance Survey maps** at a scale of 6 inches: 1 mile show the claimed route on two sheets, 23 SW and 22 SE. The claimed route is clearly depicted on sheet 22 SE, defined by double pecked lines as an unfenced track, apart from the very eastern end where the part from the chalk pit eastwards (point M) is shaded on one side, indicating a public road. Sheet 23SW shows the claimed route with solid lines, also shaded on one side, indicating a public road (see note in Appendix 3, 1896).
- (a) 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 Piddletrenthide between points M and N but is less supportive in respect of the rest of the claimed route.
- 8.19 The **1892 Ordnance Survey map** shows the claimed route in Alton Pancras as a double pecked line, the key indicating that it is an unfenced minor road. In Piddletrenthide it is shown with either parallel pecked and solid lines or parallel solid lines, again indicating a minor road but with fencing on one or both sides.
- 8.20 The **1902 Second Edition Ordnance Survey maps** at a scale of 1:2500 (25 inches:1 mile) clearly depicts the claimed route on sheets 22.15, 22.16 and 23.13 (this is the base map used for the Finance Act valuation). The claimed route is shown for the majority of its length as a track, with double pecked lines, except for between points O and N where it is a single pecked line within a two solid lines, indicating a lane enclosed on both sides. The route is not annotated 'BR' or 'FP', which could suggest a higher status.
- 8.21 The **1902/3 Second Edition Ordnance Survey maps** at a scale of 6 inches:1 mile (1:10560) also show the claimed route as a defined track on sheets 23 SW and 22 SE.

Parish Survey

- 8.22 The **1952 Piddletrenthide Parish Survey of rights of way** shows the claimed route coloured red and entered on the schedule as "No. 5 – B.R. to Alton Pancras", described as a sunken lane. The typed schedule has been altered in pencil, substituting "CRB Fox Inn, Folly to Ph, Bdy at Watcombe Wood leading to Alton Pancras". It is not known who made the alteration but it appears that the Parish Council initially considered the route K – N to be a bridleway.
- 8.23 The **1954 Alton Pancras Parish Survey of rights of way** shows the claimed route coloured red and numbered 2, 7 and 6.
- (a) The schedule records:
- (i) Path 2 as a CRB "From ~~County~~ Sherborne Road north of village To Ph. Bdy at end of White Way linking with CRB No. 6 & CRB No. 7 and continuing as CRB No. 52 in the parish of Buckland Newton".
- (ii) Path 7 as CRB "From Ph. Bdy at end Crowthorne Lane at tis junction with White Ways to join CRB 6 on Church Hill".

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- (iii) Path 6 as CRB “From CRB 2 eastwards linking with CRB No. 7, BR No. 8, FP No. 11 To Ph. Bdy at Ball Hill where it continues as CRB No. 5 in the parish of Piddletrenthide”. This indicates that the Parish Council considered the route A – K to carry public vehicular rights.

Draft, Provisional and First Definitive Maps

- 8.24 The draft map for the south area shows the claimed route as CRBs 2 and 6 in Alton Pancras and CRB 5 in Piddletrenthide.
- 8.25 However, the provisional map 1964, first definitive map 1967 and the revised draft map 1974 all show the claimed route described and numbered as on the current definitive map, i.e. as bridleways and re-numbered as Bridleways 1, 2 and 3 in Alton Pancras and 2 in Piddletrenthide.

Special Review

- 8.26 In 1973 a **Special Review** Committee considered the status of Bridleway 2, Piddletrenthide in view of the ‘new evidence’ from the Inclosure Award as a public carriageway 30 feet wide.
- 8.27 The précis of the claim said that “There is no evidence of public vehicular use and the section is used only by agricultural vehicles for access to fields. It is not suitable for use other than by farm vehicles and has been entered on the OS map in its existing status of bridleway”.
- 8.28 The decision of the Committee was “retain as a bridleway – although public vehicular rights exist as path is 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.
- 8.29 There was a claim that Bridleway 2, Piddletrenthide should be upgraded to byway following publication of the revised draft map, which showed the route as a bridleway, but the claim was withdrawn at the Public Inquiry held to decide objections to the revised draft map in the area in 1982.
- 8.30 Although the fact that the whole of the claimed route is recorded upon the **current definitive map** (sealed 1989) as a public bridleway is regarded as conclusive evidence as to the existence of these rights, it is not regarded as being prejudicial to the existence of any higher public rights over the route.

Commercial Maps

- 8.31 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.

- 8.32 **The 1765 Taylor's Map of Dorset** depicts a route that generally corresponds 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.
- 8.33 **The 1787 John Carey's map, 1805 J Stockdale's map, 1825 Greenwoods' map, 1826 Holcombe and Barcombe farms in the parish of Alton Pancras map, 1890 Bacon's map and 1920 Ministry of transport road 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.
- 8.34 **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** and **1920**. On both maps the claimed route is depicted similarly.
- (a) The whole of the claimed route is shown with double solid lines and is referred to in the key as an uncoloured 'inferior' road. It is shown in exactly the same manner as several other routes in the area that are public roads.
 - (b) 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".

9 Analysis of user evidence supporting the application

- 9.1 Only one user evidence form has been submitted. Mr Oickle states that he has used the route claimed (shown A to N on Drawing 12/16/1) and that this use was on a motorcycle and foot. He saw other people using the route on horseback, bicycle and on motorcycles.
- 9.2 His use spans the period from 1988 to 2005, the date of the application.

- 9.3 His reason for using the route was for pleasure, it forming part of a circular route from his home. He never obtained permission and there were no locked gates or other barriers to his use. He saw a notice in the 1990s at point N saying "No Vehicles", the effect of which would have suggested that the use of the route with vehicles was being challenged.
- 9.4 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication, it does require that their use must have been for a minimum period of 20 years preceding the date that the right to use the route (in this case, with mechanically propelled vehicles) was brought into question.
- 9.5 There is no evidence of bringing the use of the route with vehicles into question prior to the application. The application was made on 31 August 2005 and due to the lack of any recorded challenge this is taken as the date of bringing that use into question. However, at 18 years the period of use is insufficient to satisfy the requirements of Section 31 of the Highways Act 1980 and as there is only one user it is considered this would not satisfy use by the 'public' under the common law.

10 Analysis of evidence opposing the application

- 10.1 Mr Cake states that he challenged two motorcycle users, however no dates were given.
- 10.2 Mrs S Nicola Barker states that on the **1887 Ordnance Survey map** bracing marks along the claimed route suggests the surveyor did not consider it to be a public highway. However, the bracing on all Ordnance Survey maps indicates that the feature braced in this way is part of the same landholding either side.
- (a) She confirms the **1825 Plush Inclosure** shows a short section, which corresponds with the **1887 Ordnance Survey map**. She states in her conclusion that the claimed route was never laid out to 30 feet and is a narrow sunken track. The Inclosure award did state 30 feet as its width along its entire length (N – O) and just under 200 years have passed since the award was made. The narrowing of the claimed route can be seen as an enforcement issue that has not been followed up over the passing years.
- (b) Regarding her comment that the **1825 Holcombe and Barkham farms map** having no place directions at either end of the claimed track suggests no public ownership, the claimed route is shown as a separate double pecked track, coloured as the other routes shown on the map, whereas there are other routes shown as single pecked lines. The colouring indicates that the claimed route is similar to other main roads shown and suggests it could be a public vehicular route.
- 10.3 Dr C Burnham objects to the application but has not provided any evidence to support this position.
- 10.4 Mr and Mrs Charlton mention that the lack of user evidence indicates usage by motorized vehicles has been very rare. The user evidence does indeed suggest very slight modern day use.

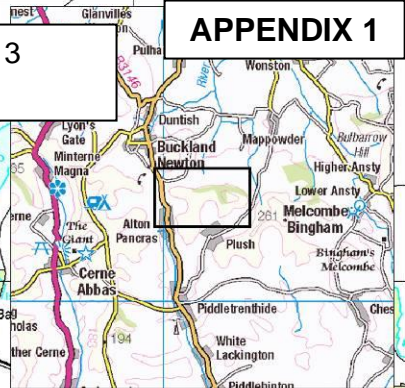
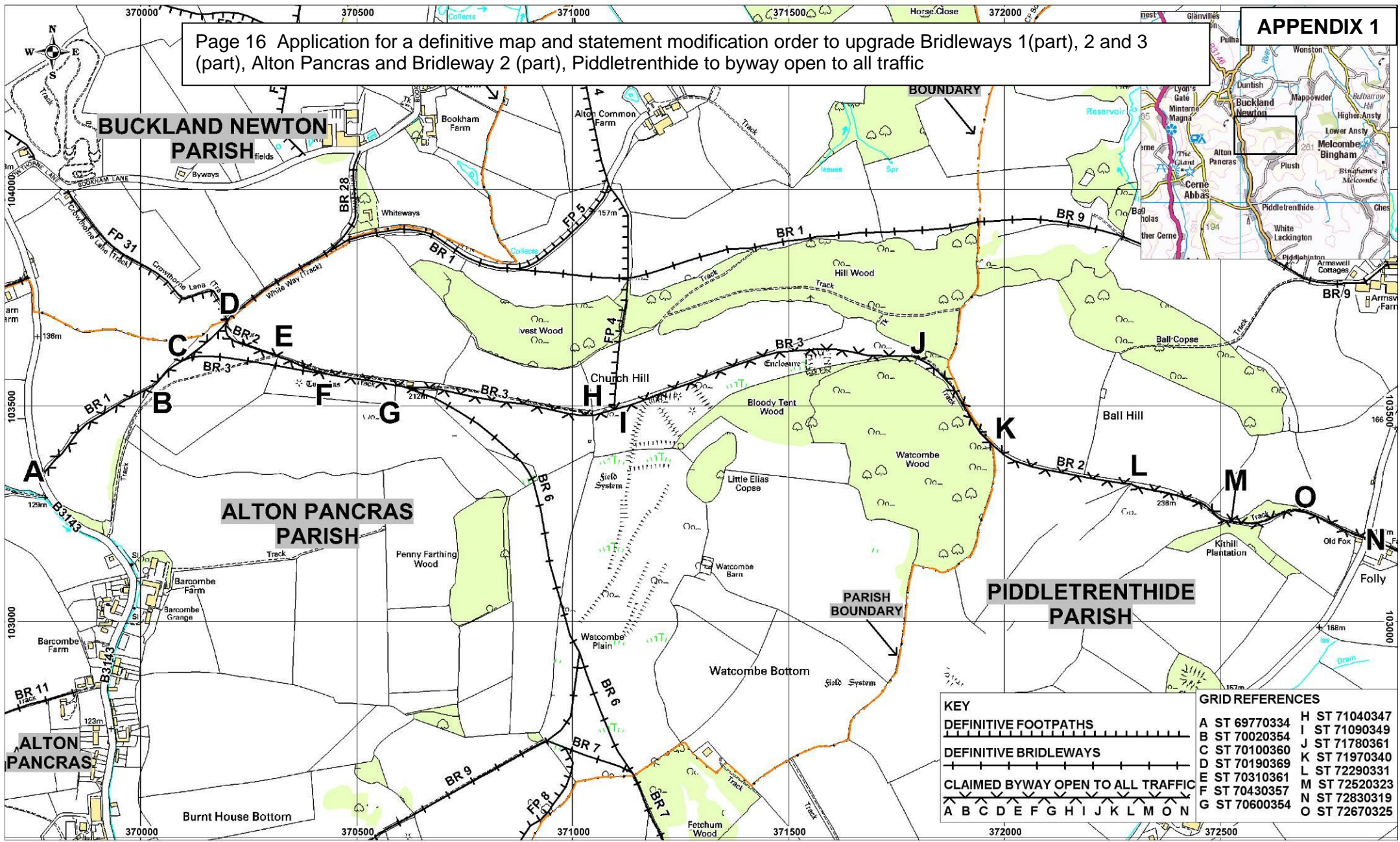
- 10.5 Symonds & Sampson on behalf of John Waterman confirms that the **1825 Plush Inclosure** shows a short section of the claimed route and suggests that this “could have been intended for use when extracting chalk from the chalk pit”.
- (a) The submission comments that the claimed route is not shown 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. However, the section O to N in Piddletrenthide is excluded.
- 10.6 The majority of the other submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.
- 11 **Analysis of other submissions**
- 11.1 The other letters contain no evidence to be considered.
- 12 **Conclusions**
- 12.1 As the route is currently recorded as a bridleway, it is necessary for members to decide whether, on the balance of probability, the highway (or part of highway) shown in the map and statement as a bridleway ought to be shown as a highway of a different description.
- 12.2 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 K and M in the parish of Piddletrenthide.
- 12.3 It is also considered that the **1910 Finance Act** map acknowledges the existence of a public vehicular highway between points O and N, as this section is shown to be excluded from taxation. The reference to public rights of way within Hereditament 183 supports the continuation of these public rights between points M and O.
- 12.4 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, 1826 Holcombe and Barcombe farms Alton Pancras map, 1887 First Edition Ordnance Survey map and 1892 Ordnance Survey map** that support the existence of higher public rights than the currently recorded bridleway status.
- 12.5 The **Special Review** provides further supporting evidence as the Committee acknowledged that the route fell within the definition of a ‘RUPP’ but under the tests that then applied they chose not to record it as such.
- 12.6 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**.

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- 12.7 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 or can be reasonably alleged to subsist in respect of part of the claimed route, as shown between points K and N on Drawing 12/16/1 but that it is insufficient in respect of the part shown between points A and K.
- 12.8 The user evidence is considered insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, necessary for presumed dedication under Section 31 of the Highways Act 1980, nor would it satisfy the common law requirements to infer a dedication of public vehicular rights.
- 12.9 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.
- 12.10 Therefore, it is recommended that the application be refused but that an order be made to upgrade Bridleway 2, Piddletrenthide as shown between points K and N on Drawing 12/11/1 to a restricted byway.
- 12.11 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation have been met.

Miles Butler
Director for Environment
February 2021

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KEY	
	DEFINITIVE FOOTPATHS
	DEFINITIVE BRIDLEWAYS
	CLAIMED BYWAY OPEN TO ALL TRAFFIC
A B C D E F G H I J K L M O N	

GRID REFERENCES	
A	ST 69770334
B	ST 70020354
C	ST 70100360
D	ST 70190369
E	ST 70310361
F	ST 70430357
G	ST 70600354
H	ST 71040347
I	ST 71090349
J	ST 71780361
K	ST 71970340
L	ST 72290331
M	ST 72520323
N	ST 72830319
O	ST 72670325

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAYS 1 (PART), 2 AND 3 (PART), ALTON PANCRAS AND BRIDLEWAY 2 (PART), PIDDLTRENTHIDE TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/16/1

Date: 07/09/2012

Scale 1:8000 at A3

Drawn By: ACH

Cent X: 371298

Cent Y: 103460

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 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.

Table of documentary evidence

Date	Document	Comment
1765	Isaac Taylor's map	Shows the claimed route as a "road enclosed within hedges"
1787	John Carey's map	Shows a route near the claimed route
1796	Isaac Taylor's map	Shows the claimed route
1805	Ordnance Survey Drawing	Shows the claimed route with double pecked lines A – J, J –K as double pecked lines insides solid lines and O – N as double solid lines
1805	J Stockdale's map	Shows the claimed route
1811	1 st Edition Ordnance Survey	Shows the claimed route
1825	Plush Inclosure map and Award	Shows the claimed route between points K and M. It is annotated "Melcombe Horsey Road • B • 30 Feet". The award records it as "One other public carriage road".
1825	Estate map of Holcombe and Barkham farms, Alton Pancras	Shows the claimed route partly as a single dashed line
1826	Estate map of Holcombe and Barkham farms, Alton Pancras	Shows the whole of the claimed route coloured as other roads. A – B hedged on north side and pecked line on south side. B – K as double pecked lines - unfenced?
1826	Greenwoods map	Shows the claimed route
1826	Holcombe and Barcombe farms Alton Pancras	Shows the claimed route
1830	Thomas Moule's map	Shows a route near the claimed route
1841	Alton Pancras Tithe map	Shows the claimed route between points A and K with double pecked lines
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	1 st Edition Ordnance Survey 6 inches:1 mile	Sheet 22 SE shows the claimed route with double pecked lines between points A and M, then with shading on one side to edge of map. Sheet 23 SW shows the claimed route as double solid lines, shaded on one side.
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.	

Date	Document	Comment
1890s	Bacon's Map	Shows the claimed route J – N as other public roads and approximately D – J with double pecked lines.
1892	Ordnance Survey 1 inch: 1 mile Sheet 328	Shows the claimed route as a minor 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.	
1902	2 nd Edition Ordnance Survey map 25 inches :1 mile	Shows the claimed route in great detail and not annotated as bridleway or footpath
1903	2 nd Edition Ordnance Survey map 6 inches:1 mile	Shows the claimed route in detail
1906	Ordnance Survey map 1 inch:1 mile	Shows the claimed route as a Unmetalled Road
1910	Finance Act Map	Excluded between points O and N
1911	Bartholomew's Tourist & Cyclists' map	Shown as an inferior road
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1919	Ordnance Survey 1 inch:1 mile sheet no. 140	Shows the claimed route as a minor road
1920	Bartholomew's Tourist & Cyclists' map	Shown as an inferior road
1923	Ministry of Transport road map of Weymouth, Yeovil and Taunton ½ inch:1 mile	Shows the claimed route as an 'other road'
1945	Ordnance Survey sheet no.178 1 inch:1 mile	Shown as a unfenced minor road
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 the claimed route as bridleway 5, altered to read CRB
1954	Alton Pancras Parish Survey	Shows the claimed route as CRBs 2, 7 and 6

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Date	Document	Comment
1954	Draft Map South Area	Whole length recorded as a CRBs 2 and 6, Alton Pancras and CRB 5, Piddletrenthide
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	Shows the claimed route as bridleways
1967	First Definitive Map	Shows the claimed route as bridleways
1973	Special Review Sub-committee	Considered the status in view of Inclosure Award evidence. Decided it should remain BR status although public vehicular rights exist, it was unsuitable for public vehicular use.
1974	Revised draft map	Shows the claimed route as bridleways
1982	Objection to showing claimed route in Piddletrenthide as bridleway – should be shown as a byway	Objection withdrawn at Public Inquiry.
1989	Current definitive Map	Shows the claimed route as bridleways

Extracts from key documents

(See the Director for Environment's file RW/T386 for copies of other documents mentioned)

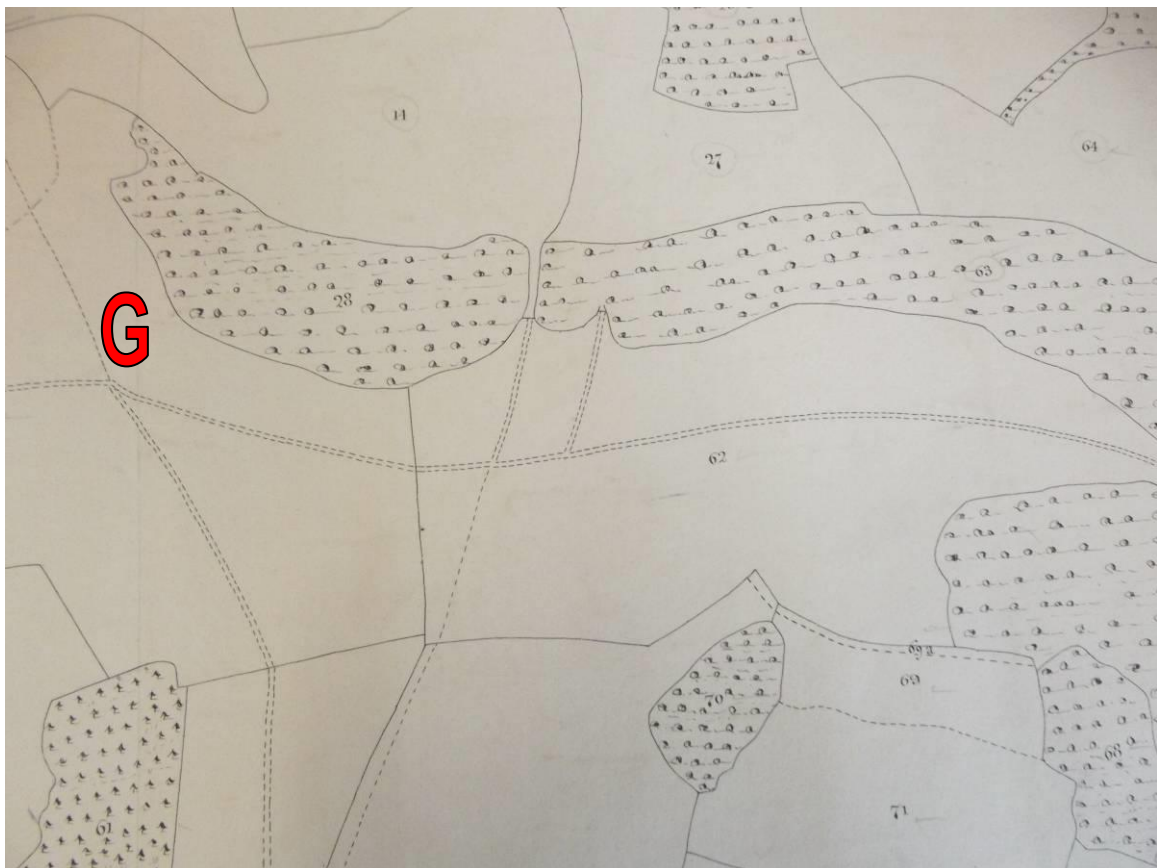
1825 Plush Inclosure map



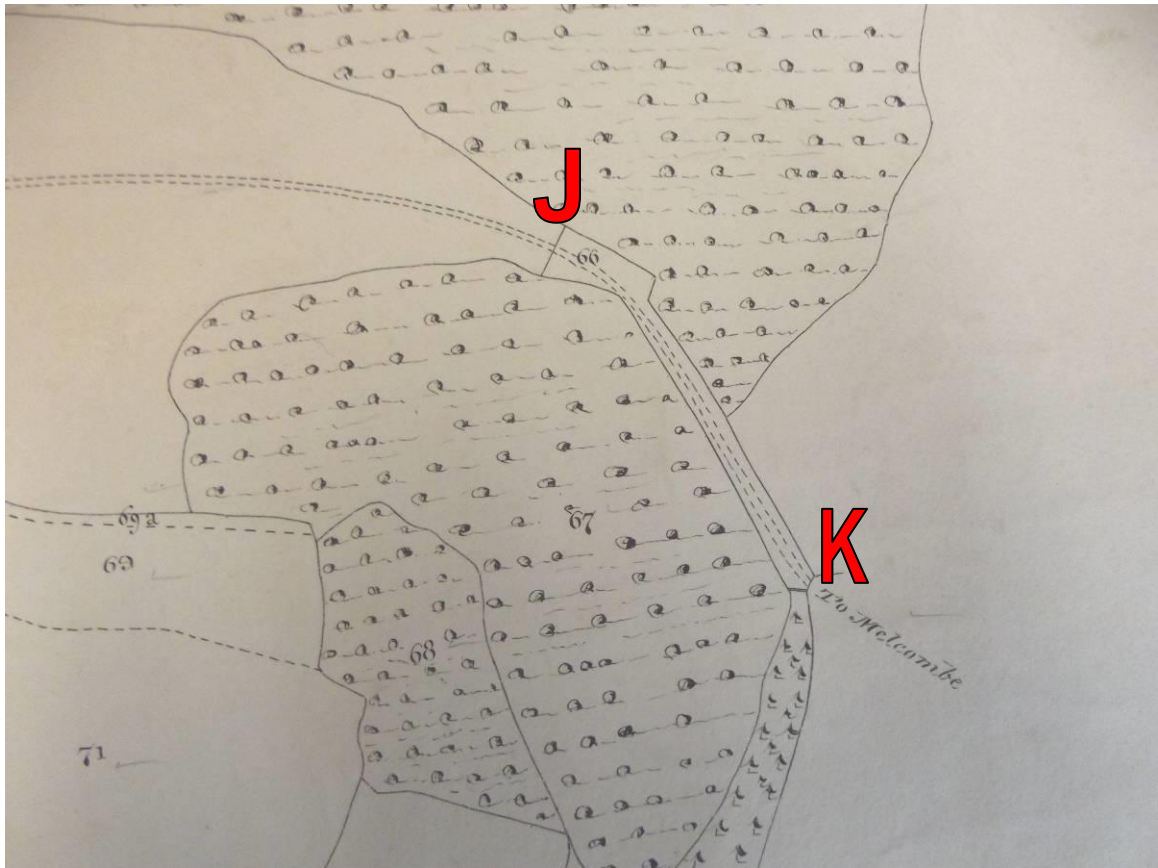
Award

... One other public carriage road of the like
breadth of thirty feet called the Strombe Down road
and distinguished on the map by the letter O. beginning
at Churchills gate on the North Hill and extending eastward
by the North boundary of the said Hill to White Lynde
gate where it unites with an ancient lane leading
to Strombe Down.

1842 Alton Pancras Tithe map



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1910 Finance Act
Sheet 22.15



Sheet 22.16





Sheet 23.13



1910 Finance Act Valuation Field book – Hereditament 183

XXII. 15. 70220
XXII. 16. 67170
XXII. 17. 0.

183 Reference No. Map No. *XXII. 15. 70220*

Situation **BUCKLAND NEWTON** *Armswell Farm*

Description *Hous. Garden Building & Land*

Extent *3 Acres 2 rods 29 perches 407^a - 0^b - 20^c*

Gross Value { Land, £ } *300.0.0* Rateable Value { Land, £ }
 { Buildings, £ } { Buildings, £ } *270.1.0*

Gross Annual Value, Schedule A, £

Occupier *Cross. W.*

Owner } *as 152.*

Interest of Owner }

Superior interests

Subordinate interests

Occupier's tenancy, Term *yearly.* from *29th Sept 1897.*

How determinable

Actual (or Estimated) Rent, £ *365.0.0.*

Any other Consideration paid

Outgoings—Land Tax, £ *14.13.6.* paid by *owner*

Tithe, £ *58.3.6* paid by *"*

Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance (c) *occupier* (d) *owner*

Who is liable for repairs *owner*

Fixed Charges, Easements, Common Rights and Restrictions

There are public rights of way.

Former Sales. Dates

Interest

Consideration

Subsequent Expenditure

Owner's Estimate. Gross Value

Full Site Value

Total Value

Assessable Site Value

Site Value Deductions claimed

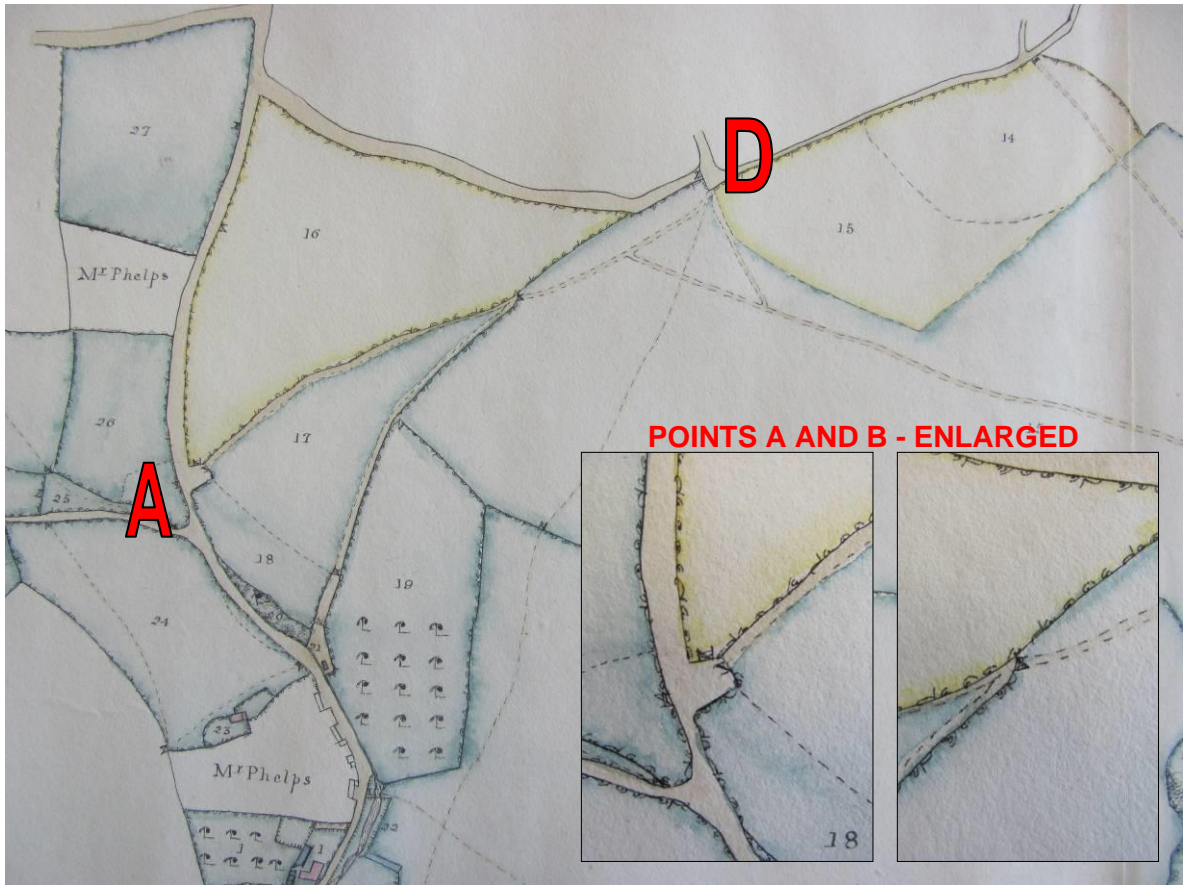
W.S.

Roads and Sewers. Dates of Expenditure

Amounts

as 152

1826 – Estate map Holcombe and Barkham farms, Alton Pancras (showing enlarged areas)



User Evidence

Table summarising user evidence

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr D Oickle	1988 - 2005	12 -15 times a year	On motorcycle and on foot	Used for pleasure. Many other people also used the route on foot, horseback and motorcycle. Gates on the route, unlocked. Notices saying "Public Bridleway". In the late 1990s there was a notice saying "No Vehicles" near the Old Folly Inn. Width approx 10 feet in places but generally 15 – 20 feet.

Charts to show period and level of use

