

Officer Delegated Decision

<p>Date: Date of signature (see Report to the Executive Director for Place) 23/05/2023</p>
<p>Decision: That:</p> <p>(a) The application be refused</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record: Bridleway 8, Turnworth as shown I – J – K – K1 – L on Drawing 19/12/1 (appendix 1) as a restricted byway.</p> <p>(c) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.</p> <p>To view a copy of the Report please see the Definitive Map Modification Order Register https://mapping.dorsetcouncil.gov.uk/rightsofway/definitivemap/register/Details/T387</p> <p>(Decision taken is detailed within the Scheme of Delegation in the Council's Constitution.)</p>
<p>Key Decision: No Please see definition below.</p>
<p>Reason(s) for Decisions:</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 does not, on balance, show that Bridleway 24 Ibberton, Bridleway 14 Okeford Fitzpaine and Bridleway 8 Turnworth ought to be shown as Byways open to all traffic.</p> <p>(c) The Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made for a restricted byway over part of the claimed route; and</p> <p>(d) The evidence shows, on balance, that part of the route claimed should be recorded as a restricted byway as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.</p>
<p>Decision Maker (Name and Title): Vanessa Penny Definitive Map Team Manager Spatial Planning</p>
<p>Alternative options considered and rejected: None</p>
<p>Any conflict of interest declared by any member consulted: None</p>
<p>Any dispensation granted in respect of any declared conflict of interest: None</p>

Definition of Key Decisions

Key decisions are defined in the Constitution as decisions of the Cabinet which are likely to -

- "(a) result in Dorset Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making he decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms

Report to the Executive Director for Place

Application for a definitive map and statement modification order to upgrade Bridleway 24 Ibberton, Bridleway 14, Okeford Fitzpaine and Bridleway 8 Turnworth to byways open to all traffic

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr A Kerby – Member for Winterborne North
Cllr P Batstone – Member for Blackmore Vale

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Brief Summary:

This report considers an application for a definitive map and statement modification order to upgrade Bridleway 24 Ibberton, Bridleway 14 Okeford Fitzpaine and Bridleway 8 Turnworth to Byways open to all traffic as shown on Drawing 19/12/1 (see Appendix 1)

Recommendation:

That:

- (a) The application be refused
- (b) An order be made to modify the definitive map and statement of rights of way to record:
 - i. Bridleway 8, Turnworth as shown I – J – K – K1 – L on Drawing 19/12/1 (appendix 1) as a restricted byway.

- (c) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

- (a) Subject to (b) below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist;
- (b) The available evidence does not, on balance, show that Bridleway 24 Ibberton, Bridleway 14 Okeford Fitzpaine and Bridleway 8 Turnworth ought to be shown as Byways open to all traffic.
- (c) The Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made for a restricted byway over part of the claimed route; and
- (d) The evidence shows, on balance, that part of the route claimed should be recorded as a restricted byway as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

1 Background

Applicant

- 1.1. An application to upgrade Bridleway 24 Ibberton, Bridleway 14 Okeford Fitzpaine and Bridleway 8 Turnworth and add a byway open to all traffic as shown A, B, C, D, E, F, G, H, I, J, K, K1 and L on Drawing 19/12/1 (Appendix 1) was made by Jonathan Stuart on 11 September 2005.
- 1.2. The application was transferred to the Trail Riders Fellowship on 4 October 2010.

Description of the route

- 1.3. The route claimed commences at point A on Drawing 19/12/1 (Appendix 1) at the public road Belchalwell Street and continues in a north easterly direction to C32 Turnworth road adjacent the Okeford Hill car park at point L.

- 1.4. The track has a surface of partly crushed stone/gravel and partly grass, the width varies from 2 metres to 4 metres. The route is defined by hedges and/or fences along either side. There are field gates at points C, F and L. The used route diverts from the track at point F along a narrower grass track through a gate way re-joining the track at point K1 then continues to a locked field gate and adjoining bridleway gate at point L where it meets the C32 road.
- 1.5. The gradient of the route increases from approximately 225 metres above sea level at point A to approximately 255 metres at point D where it remains relatively level to point H where there is a gradual decline to approximately 220 metres at point L.
- 1.6. The route is owned in parts but not in its entirety, owners and adjoining owners along the route have been identified and consulted.

2 Law

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

3 Issue to be decided

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

3.3 Historical documentary evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T387)

4.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below. Information on the background and evidential weight which should be attached to particular historical sources is included at Appendix 3 which should be read in conjunction with this section.

Inclosure Award

4.2 The Turnworth Inclosure map dated 1805 shows the claimed route shown approximately between points I – L as “Public Road no.4”. Starting from the boundary with the old parish of Belchalwell to its junction with “Public Road No.2”.

4.3 The application route does not appear on any other Inclosures.

Tithe Map

4.4 The Ibberton Tithe Map dated 1841 shows part of the route A – B – C – C1 – C2 – D with pecked lines, this section is also shaded similarly to other sections which are considered roads and are currently metalled. It shows the route up to the Turnworth Parish boundary.

4.5 Okeford Fitzpaine Tithe Map dated 1839 shows the claimed route between points I – J – K – K1 – L bounded with pecked lines similarly to routes currently metalled highways. The route is marked “To Dorchester” to the south west and “To Turnworth” at the north east end.

4.6 Turnworth Tithe Map dated 1842 does not show the route only the boundary line with Okeford Fitzpaine parish.

Finance Act 1910

- 4.7 The evidence from the Finance Act documents shows the application route mostly with dashed parallel lines, indicating an unfenced route, on the Ordnance Survey 1902 base maps (sheets 23.3, 23.4 and 13.16) at a scale of 1:2500, which were used for valuation purposes.
- i) The entrance at point A is shown excluded from the valuation but it is not clear which, if any, of the routes where it splits are also excluded.
 - ii) From point C2 through to the end of the route at point I the route is contained within Okeford Fitzpaine Hereditament 168 and is not excluded from valuation.
 - iii) From point I through to point L is contained within Turnworth Hereditament 1 and is not excluded from valuation.
- 4.8 It cannot be determined which of the branches (if any) were set out to be excluded and therefore the Finance Act does not provide strong evidence to suggest the route was considered at the time to be vested in the highway authority and therefore public highway.

Ordnance Survey Maps

- 4.9 The Ordnance Survey drawings, which were made in preparation for the publication of the First Edition of the 1 inch: 1 mile scale map, are drawn at a scale of 2 inches: 1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Ibberton, Okeford Fitzpaine and Turnworth parishes was completed in 1808/09 and clearly depicts the application route throughout its length as shown from A to L. It is, in the main, defined by two parallel broken lines, suggesting that at this time it was unfenced throughout the majority of its length and is depicted in a similar manner as other public roads in the vicinity.
- 4.10 The 1811 First Edition Ordnance Survey Map at a scale of 1 inch: 1 mile also shows the application route throughout its length as shown A to L. It is defined in a similar manner as the earlier drawing, suggesting that for the majority of its length it was unfenced. 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. The route is shown open at both ends but shows two clear barriers at approximate

locations of points I and J such barriers could indicate gates or fencing across the route.

- 4.11 The 1887 First Edition Ordnance Survey at a scale of 6 inch: 1 mile (1:10560) sheet 23NE shows the application route from A to approximately K1 where it continues onto a separate sheet (13SE) to its termination at point L. The route is not annotated 'F.P.' or 'B.R.'. It is depicted by two parallel broken lines from A to G, I to J and from K to L, suggesting that between these points the route was unfenced. From G to I the route is enclosed, coinciding with the parish boundary, its width defined by parallel hedges still present today. From J to K the route unfenced on its southern side and there is a line crossing the route at K suggesting a gate or barrier. There is annotated along the route 'R.H.' with a measurement which describes "Route of Hedge".
- 4.12 The 1902 Second Edition Ordnance Survey at a scale of 1:2500 (25 inches: 1 mile) are the same maps used for the Finance Act valuation and depict the application route in the same manner as the earlier six inch edition of 1887, although being at a larger scale, in more detail. The application route is not annotated by 'F.P.' or 'B.R.' and is defined in the same manner with parallel broken and/or solid lines.
- 4.13 The applicant also supplied extracts from other small scale Ordnance Survey maps of 1919 and 1945.
- i) These editions show the route from point A to point L being defined by two parallel broken lines and reference to the accompanying key suggest an unmetalled and unfenced minor road.
- 4.14 The Ordnance Survey Maps suggest a route that was quite capable of accommodating vehicular traffic. None of the maps examined depict the route with annotations such as 'F.P.' or 'B.R.', none of the other routes that meet the application route are annotated with these either. The route has annotations of 'R.H' with a width which indicates root of hedge. There are routes near the application route annotated with 'C.R' which indicates centre of road. Which could suggest the application route was not considered public carriageway at the time of the map though this is not conclusive.
- 4.15 Although the Ordnance Survey maps are considered to provide evidence in support of the application, they do not provide evidence of the status of the route on their own. They show the physical characteristics of the route at the date of the map. The lack of annotation towards status of footpath or bridleway could suggest that

the route was considered at the time as a public carriageway which therefore lends support to the application however, the fact that other nearby public routes were annotated with 'C.R' may contradict this.

Dorset Council Records

Documents leading to the production of the Definitive Map and Statement

- 4.16 The National Parks and Access to the Countryside Act 1949 required that a survey be carried out of public rights of way in preparation for the publication of the Draft Map.

Okeford Fitzpaine Parish Survey

- 4.17 Okeford Fitzpaine Parish Council carried out a survey in June 1953.
- 4.18 Okeford Fitzpaine Parish Survey map shows the application route between points A to H with a solid purple line and marked "14" and then between points H to L it is unclear if it is continued to be marked in purple along the parish boundary but the route continues to be marked "14". The supplementary notes state 'F.P from County Road SW along Turnworth parish boundary to Ibberton parish boundary.' Condition of path 'Good', condition of adjoining hedges/fences 'Fairly good', 18 feet wide with gates and stiles. Used occasionally and it wasn't maintained for use as Bridlepath.

Turnworth Parish Survey

- 4.19 The Turnworth Survey map does not show the claimed route being within the parish.

Ibberton Parish Survey

- 4.20 Ibberton Parish Council carried out a survey in November 1956.
- 4.21 Ibberton Parish Survey map shows the application route between points C1 to G with a solid purple line and marked "24". The supplementary notes state 'F.P. from path 23 N.E. to Okeford Fitzpaine P.B.' 'Starts as B.R.23 but bears left and continues without obstruction till it comes to Belchalwell bounds & field gate.'

Definitive Maps

- 4.22 The 1959 Draft Map shows the whole of the claimed route with a solid purple line which denotes the status of a public footpath. The route is not annotated with a number.
- 4.23 The 1964 Provisional Map shows the route across 2 sheets, the route is shown as claimed with a solid purple line denoting the status of footpath and annotated with numbers '24' and '14'.
- 4.24 The 1966-67 First Definitive Map shows the route across 2 sheets, the route is shown as claimed with a solid purple line denoting the status of footpath and annotated with numbers '24' and '14'.

Special Review 1973

- 4.25 A Special Review was commenced in 1973 to reassess the status of the route. The County Council's Special Review Sub-Committee upgraded the route to bridleway with a short section leading to the picnic site car park (near point L) as a byway open to all traffic. The committee decision to upgrade the route to bridleway was reflected on the revised draft map of 1974. The section A to C2 was not recorded on the revised draft.
- 4.26 The Ramblers submitted one evidence form stating that it should be recorded as bridleway. There was also correspondence relating to the reduction in width from 40 feet as set out in the Inclosure Award for Turnworth, however, the Council was unable to trace an original of the document at that time and therefore its authenticity and in any legal proceedings its precise provisions.
- 4.27 Due to outstanding objections that the route should be recorded as byway open to all traffic and similar matters within the area a public inquiry was held on 21 May 1980 at Hazelbury Bryan village hall. The Inspector appointed by The Secretary of State for the Environment determined that the width of 20 feet was to be removed from the definitive statement for Bridleway 14, Okeford Fitzpaine. Also, that there was sufficient evidence to upgrade Footpath 24, Ibberton and Bridleway 14, Okeford Fitzpaine to be recorded with byway status.
- 4.28 The Inspector believed that the claimed routes should originally have been recorded as RUPPs on the Definitive Map. A road used as a public path (RUPP) is a road or highway which is principally used as a footpath or bridleway. The Secretary of State agreed, however, the final decision was that due to an absence of evidence of vehicular use

the extinguishment of vehicular rights would not cause any undue hardship and therefore the routes should be recorded as bridleways.

- 4.29 The 1974 Revised Draft Map shows across 2 sheets the claimed route from point C2 with a solid green line denoting a status of bridleway annotated with number '14' throughout its length, points A – C2 are not shown with any indication as to its status.
- 4.30 The 1989 Definitive Map shows the whole of the claimed route across 2 sheets with a solid green line and annotated with numbers '24' and '14'.
- 4.31 In April 2008 an alteration was made to the Definitive Statement adding the northern section of Bridlway 14, Okeford Fitzpaine as it was discovered this section between point I to L was in the Parish of Turnworth and was thereafter numbered Bridleway 8, Turnworth.

User Evidence

- 4.32 No user evidence was submitted with the application or received during the course of the investigation.

Aerial photographs

- 4.33 The aerial photography between 1947 and 2017 consistently show the claimed route clearly and mainly double hedged along its length. The 1947 and 2017 aerial photographs are included in Appendix 3.

Summary of documentary evidence

- 4.34 There is evidence that part of the claimed route should be recorded as a byway open to all traffic. Part of the route, between points I – L, was designated as a public highway in 1805 by the inclosure process and this is supported by the Okeford Fitzpaine Tithe Map of 1839. Subsequent documentation indicates that those vehicular rights were considered on separate occasions by different groups. However, under the provisions of the NERC Act 2006, any public rights for mechanically propelled vehicles which may exist on the route between points A and L have been extinguished as the exceptions to the NERC Act do not apply in this case.
- 4.35 Section 66 of the Wildlife and Countryside Act 1981 defines a byway open to all traffic as a "highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the

public mainly for the purpose for which footpaths and bridleways are so used”.

4.36 In paragraph 4.38 of the Defra Rights of Way Circular (1/09) where it states the definition of a byway open to all traffic it advises that the authority “should examine the characteristics of the way. Relevant case law suggests that, for a carriageway to be a BOAT, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use. The test also relates to its character or type and whether it is more suitable for use by walkers and horse riders than vehicles.”

4.37 The character of the claimed route is a rural, mainly crushed stone surfaced, double hedged track suitable for walkers and horse riders rather than vehicles due to its narrow width at its centre where it becomes a narrow grass track. This narrowing appears to have remained unchanged for several years. One landowner has created a track that runs alongside the claimed route to use with vehicles. This unofficial track diverting from the central section is also being used by walkers and horse riders allowing the definitive route to become narrower still and unused.

5 Landowner correspondence (copies available in the case file RW/T387)

5.1 A landowner of a section of the route commented in September 2005 that 10 years previous he had installed a lock to the gate at the Ibberton Hill end of the route following an “illegal encampment”. The lock was added with agreement of other landowners affected and no complaints were raised. The route from the Okeford Hill Picnic Site towards the National Trust pond has been overgrown and impassable for walkers or riders. Farmers cleared this to allow farm vehicles. A second landowner has installed a lock at the Okeford Hill end due to “the continued threat of illegal travellers” Cars have blocked the route when the gate has been unlocked preventing access.

5.2 Mr Dyke of Humberts on behalf of an adjoining owner wrote on 20 September 2005 his clients own land at the south-western end and have always been aware that the route has been gated and that there is combination lock that only people “who have a right of way along the track are aware of the combination”. At no time has the track been used as a BOAT.

- 5.3 A tenant wrote following the a landowner notification in 2019, in recent years a marked increase in “illegal motorbike activity on Turnworth down”. Keep breeding cattle on Turnworth down and “motorbike activity causes cattle to become stressed and stampede”.
- 5.4 Following the 2019 public consultation a landowner wrote on 24 June 2019, they had farmed land at the western end of Bridleway 24 for 13 years and has only been aware of vehicles using the route for farm purposes. Stated that there are locked gates at either end of the route.
- 5.5 Landowners of abutting land wrote on 10 July 2019 that there was a permanently locked gate at point C preventing vehicular access. In the previous year the gate had become dilapidated and was usually left open. When buying the property, they were told by vendors that the route between points A to L was restricted to local owners only, each having a specific right of way. Public rights were said to be Bridleway only. The vendors gave the new owners the combination for the padlock. Included was a copy taken from a conveyance dated December 1973 detailing the use of the track. Does not see why this specific access would exist if there was previous open vehicular access.
- 5.6 Mr E Dyke of Symonds and Sampson on the 08 August 2019 wrote on behalf of a landowner they had purchased the land which included points I to L in February 1999. The track was designated as Bridleway. No third parties have the benefit of unrestricted rights. Installed a new gate at point L. The lock is shared by all the landowners. A gap to the side is wide enough for walkers and horse riders. Not aware of any unauthorised vehicular access.
- 5.7 Mr E Dyke of Symonds and Sampson on 13 August 2019 on behalf of a landowner wrote they own land abutting several points along the route. They were “given clear legal assurances that the right of way was designated as a bridleway only and that it was not a byway open to all traffic.” They confirm there are gates at both ends which are locked. Mr Dyke included extracts of the landowners land registry documents.
- 5.8 Officer comment: The most substantial subject of these correspondence is the fact of having locked gates, only one owner mentions a potential reason for this, and this is due to camping along the route. None mention turning people back, one mentions an increase of motorbikes on “Turnworth down” but not specifically the route in question.

6 Consultation responses and other correspondence (copies available in the case file RW/T387)

6.1 Four objections were received after the application's submission in 2005 and the following key points were raised:

- a) The route has been a drover's path for hundreds of years giving habitat to wildlife and is in an area of outstanding natural beauty.
- b) A popular route regularly used by walkers and horse riders whom would suffer greatly should the route be upgraded.
- c) There is no need for the route to be used by vehicles.
- d) Locked gates on route were not complained about.
- e) A section of the route was impassable for many years due to overgrown vegetation.
- f) Previously when the gates were open vehicles would park on the route.
- g) Public inquiry into the status was held in 1980 and the Secretary of State determined the route was bridleway. No fresh evidence had emerged.

6.2 Officer comment: Some of the issues raised cannot be taken into consideration under the Wildlife and Countryside Act 1981. However, the presence of locked gates and the knowledge of vehicles on the route could show that the public have been trying to access the route in vehicles as of right.

6.3 Sixteen representations were received in response to the consultation that was carried out in 2019 and the following points were raised:

- a) The route passes a scheduled ancient monument and wildlife sites.
- b) In recent years there has been an increase in illegal motorbike activity and the proposal would exacerbate the problem.
- c) Can see little benefit in improving the rights of motor vehicles in the area over walkers and horse riders.

- d) Breeding cattle along route can become stressed and stampede.
- e) Locked gates at both ends.
- f) Only seen farm vehicles using the route.
- g) Bridleway 14 was diverted along a new track parallel to route.
- h) Dilapidated gate at C has now been left open.
- i) Access to vehicles is restricted to landowners as set out in a conveyance from 1973. If the route was open to vehicles, then this point would have been unnecessary.
- j) Does not believe the application meets any of the exceptions. (Natural Environment and Rural Communities Act 2006).
- k) Evidence for vehicular rights has been previously considered at a public inquiry in 1980 and no credible new evidence has come to light.
- l) The route is part of the Wessex Ridgeway Trail.
- m) Renewed gate at L to continue prevention of vehicles accessing the route in 1999, gap to the side to allow walkers and horse riders.
- n) If the route was a byway open to all traffic, the owners of the land would not need the reserved rights as set out in the owners' paperwork.
- o) Restricted access is needed due to the risk of theft.
- p) Aware of the application in 2006/7 but thought it had been abandoned in light of the new legislation.
- q) Route is regularly used by walkers and horse riders.
- r) Number of BOATs in the vicinity.
- s) Detriment to the AONB adding congestion and pollution.

6.4 Officer Comment: The majority of the issues raised cannot be taken into account under the terms of the Wildlife and Countryside Act 1981.

6.5 There were several comments regarding the locked gates along the route. If these locks were not authorised there should have been some enforcement action taken as the gates were across a bridleway. However, gates suitable for walkers and horse riders were available to the side of the locked gates.

6.6 Private and public rights can coexist along the same route, and one will not necessarily preclude the other.

7. User Evidence

Conclusions under Section 31, Highways Act 1980

7.1 It is considered that the requirements of Section 31 have not been satisfied in this case as no user evidence is available.

Analysis of the evidence under common law

7.2 This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public.

Conclusions under common law

7.3 There is insufficient evidence from which a deemed dedication at common law can be inferred.

8. Financial Implications

Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.

9. Environmental Implications

Any environmental implications arising from this application are not material considerations and should not be taken into account in determining the matter.

10 Well-being and Health Implications

Any well-being and health implications arising from this application are not material considerations and should not be taken into account in determining the matter.

11 Other Implications

None

12 Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: LOW

Residual Risk: LOW

13 Equalities Impact Assessment

- 13.1 An Equalities Impact Assessment is not a material consideration in considering this application.

14 Conclusions

- 14.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on this route and/or the balance of evidence shows that the route ought to be recorded with a different status.
- 14.2 The documentary evidence indicates that the status of the application route between points I – L was believed to be for use by the public as a public carriageway and the following public inquiry did not conclude that there was no evidence of such public vehicular rights, it was deemed that there was insufficient evidence to hold a status of byway open to all traffic along the entire route. The documentary evidence does not support a change of status for the claimed route between points A and I.
- 14.3 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.
- 14.4 The available evidence is not sufficient for a common law presumption to be inferred.
- 14.5 Therefore, the recommendation is that the application be refused and An order be made to modify the definitive map and statement of rights

of way to record Bridleway 8 Turnworth as shown I – J – K – K1 – L on
Drawing 19/12/1 (Appendix 1) as a restricted byway.

14.6 If the Order is unopposed, or if all objections are withdrawn, it can be
confirmed by the Council.

14.7 If objections are received to the Order and not withdrawn, the matter
will be referred to the Secretary of State for confirmation.

15 **Appendices**

1 Drawing 19/12/1

2 Law

3 Documentary evidence

Extracts from key documents in order of importance

- 1805 Turnworth Inclosure Award
- 1839 Okeford Fitzpaine Tithe map
- 1841 Ibberton Tithe map
- Ordnance Survey maps
 - First edition 1811
 - Drawing 1808/9
 - First edition 1887 sheets 23NE and 13SE
 - Second edition 1902 Sheets 23.3, 23.4 and 13.16
- 1910 Finance Act plan – sheets 13.16, 23.3 and 23.4
- 1953 Okeford Fitzpaine Parish Survey
- 1956 Ibberton Parish Survey
- 1973 Special Review
- 1989 Current Definitive map

17 **Background Papers**

The file of the Executive Director, Place (ref. RW/T387).

Most of the original historic maps and documents referred to are in the
custody of the Dorset History Centre, except for the Finance Act maps,
which are at the National Archives, Kew.

Copies (or photographs) of the documentary evidence can be found on
the case file RW/T387, which will be available to view at County Hall
during office hours.

Date: May 2023

DCC n Survey accuracy improvement project has resulted in a discrepancy between their data and that of DCC. Please allow for this when interpreting the positional accuracy of features on the plan.



GRID REFERENCES

A	ST 79400772
B	ST 79410772
C	ST 79430773
D	ST 79810808
E	ST 80150846
F	ST 80170849
G	ST 80370868
H	ST 80380870
I	ST 80440875
J	ST 80560888
K	ST 80750897
L	ST 81250932

KEY

DEFINITIVE FOOTPATHS

DEFINITIVE BRIDLEWAYS

CLAIMED BYWAY OPEN TO ALL TRAFFIC

A B C C1 C2 D E F G H I J K L

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 24, IBBERTON BRIDLEWAY 14, OKEFORD FITZPAINE AND BRIDLEWAY 8, TURNWORTH TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 19/12/1
 Date: 13/01/2020
 Scale 1:7250
 Drawn By: AH
 Cent X: 380557
 Cent Y: 108520

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LAW

General

Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
 - (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.
- 1.8 An order to add a right of way and change the status of an existing

right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.

- 1.9 Where an objection has been made to an order, the 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 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 in to 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 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit

with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.

- 2.5 Section 32 of the Highways Act 1980 says that the Council 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 criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.

- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

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. DEFRA guidance states that where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.

6.2 One of the exceptions to section 67 is that an application had been made before 20 January 2005 to record a byway open to all traffic. The Courts have held that for this exception to apply, the application must comply with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. Those requirements are that the application is made on the prescribed form and is accompanied by a) a map to the prescribed scale showing the route and b) copies of the evidence in support. The Courts have further held that any departures from these requirements other than relatively minor ones correctly quickly will prevent the exception from applying.

6.3 This application was rejected by the County Council on 7 October 2010 on the basis that the application map did not comply with the statutory requirements. The TRF judicially reviewed this decision and ultimately the Supreme Court found that the map did meet the statutory requirements.

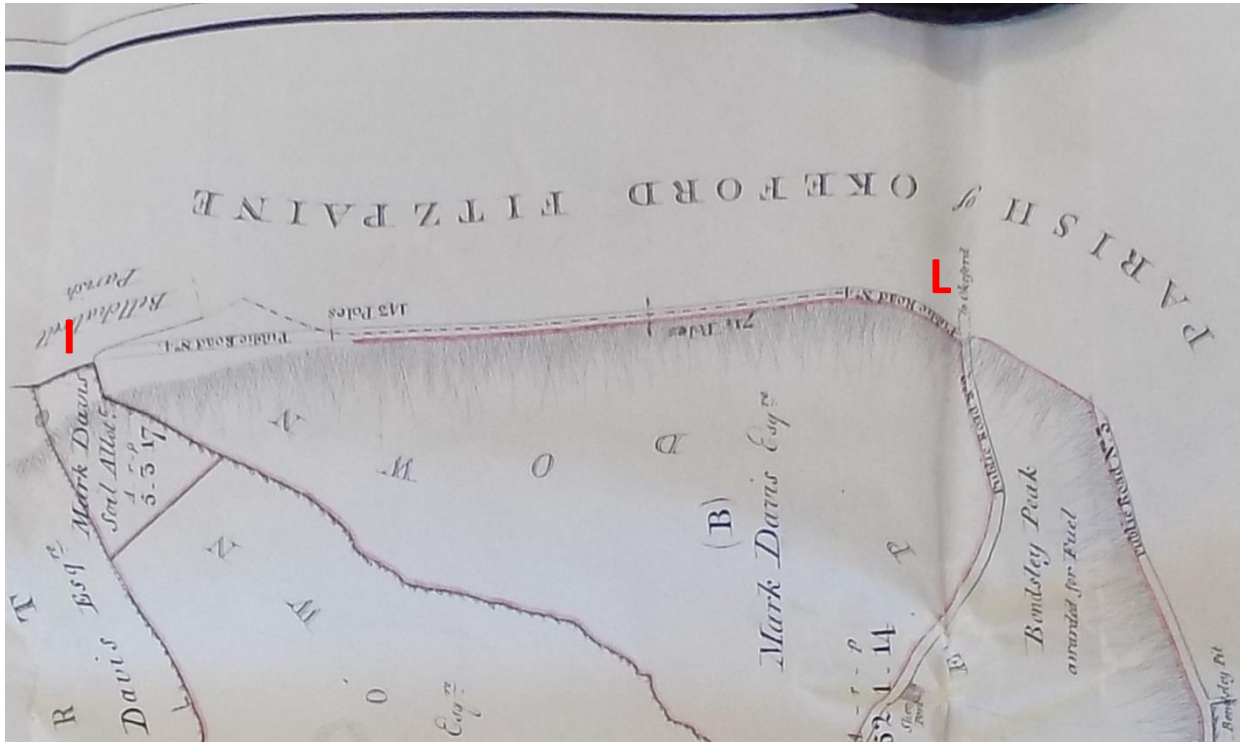
6.4 The Supreme Court’s Order went further and stated that the applications complied with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act. The Council is applying to the Supreme Court for clarification on this point.

Case specific case law

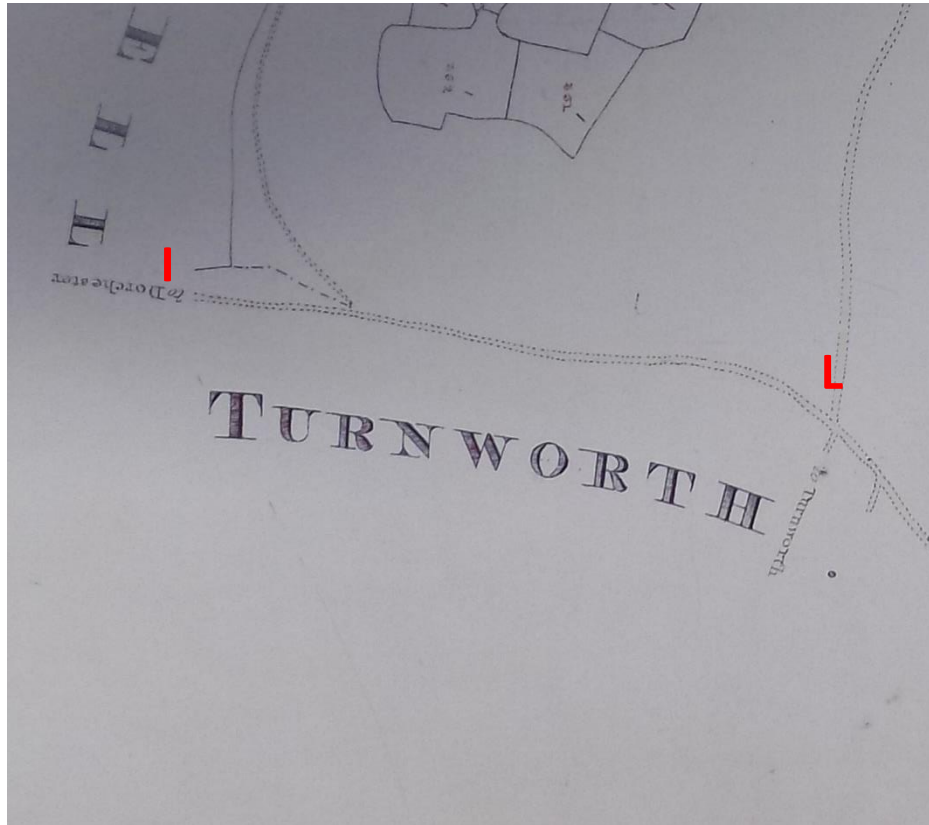
- 7 Kind v SoS for Environment Food and Rural Affairs, EWHC [2005]
("Kind")
- 7.1 This case tested whether any public vehicular rights which had existed over a way prior to its reclassification under the Countryside Act 1968, had been extinguished. It was decided that public vehicular rights had not been extinguished.

Documentary Evidence

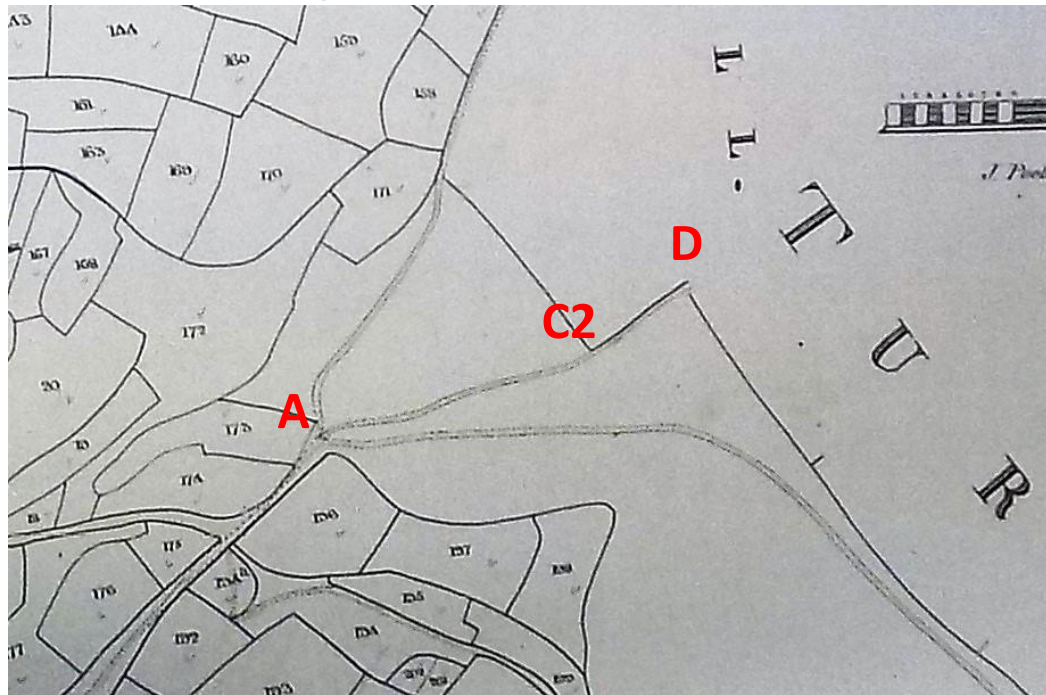
1805 Turnworth Inclosure



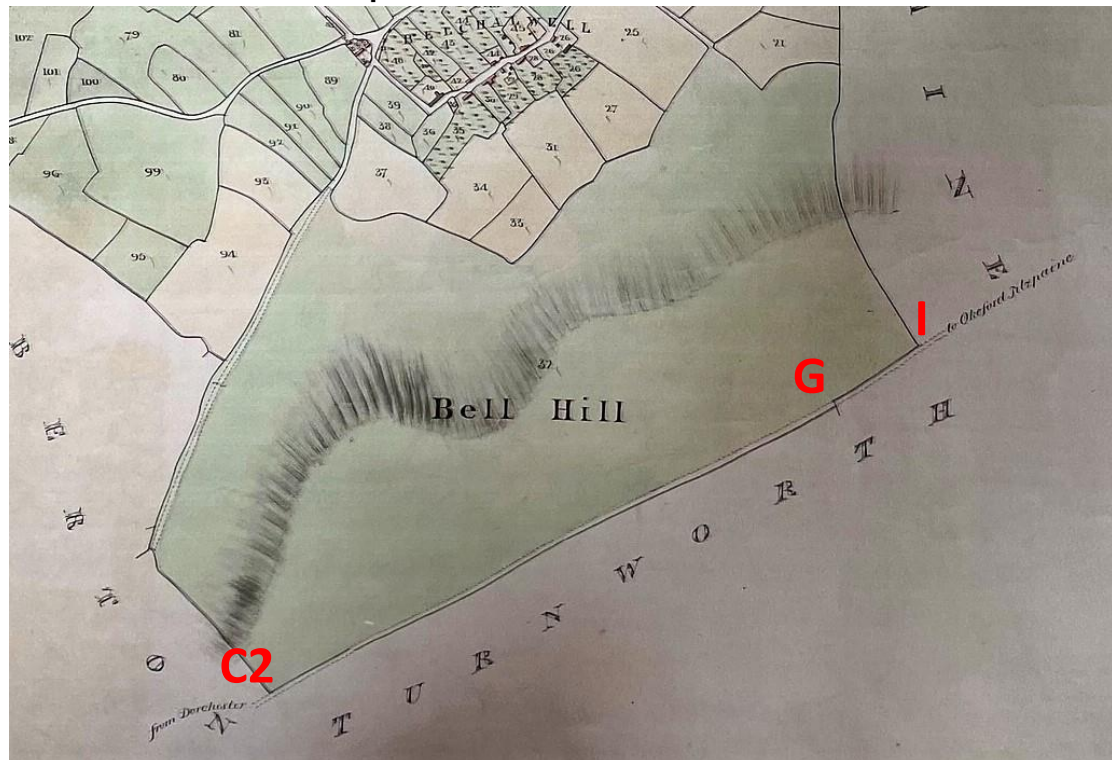
1839 Okeford Fitzpaine Tithe Map



1841 Ibberton tithe map

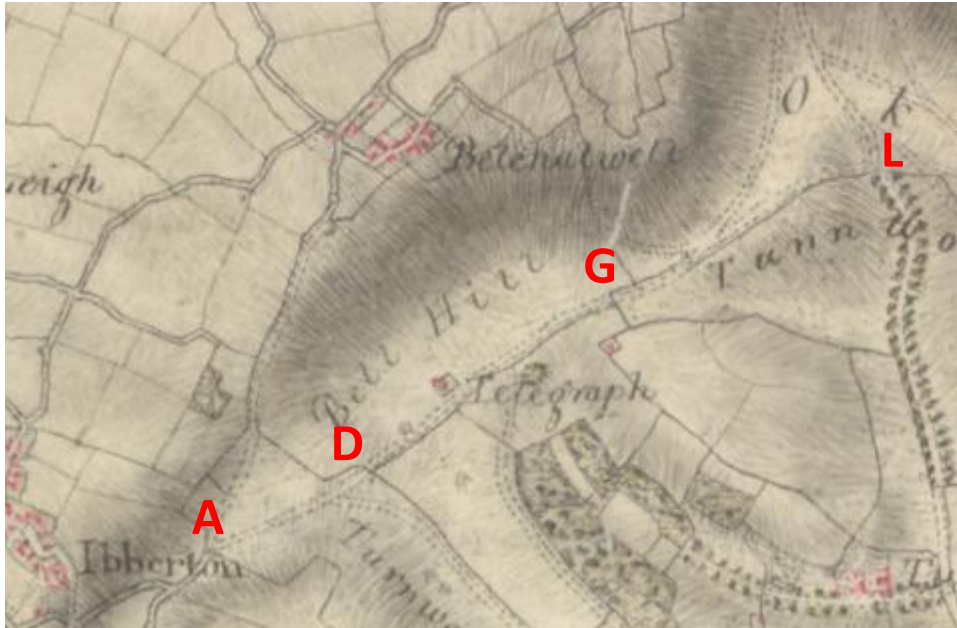


1842 Belchalwell Tithe Map



1808 Ordnance Survey drawing

Annotated with points referencing Drawing 19/12/1



1811 Ordnance Survey First Edition

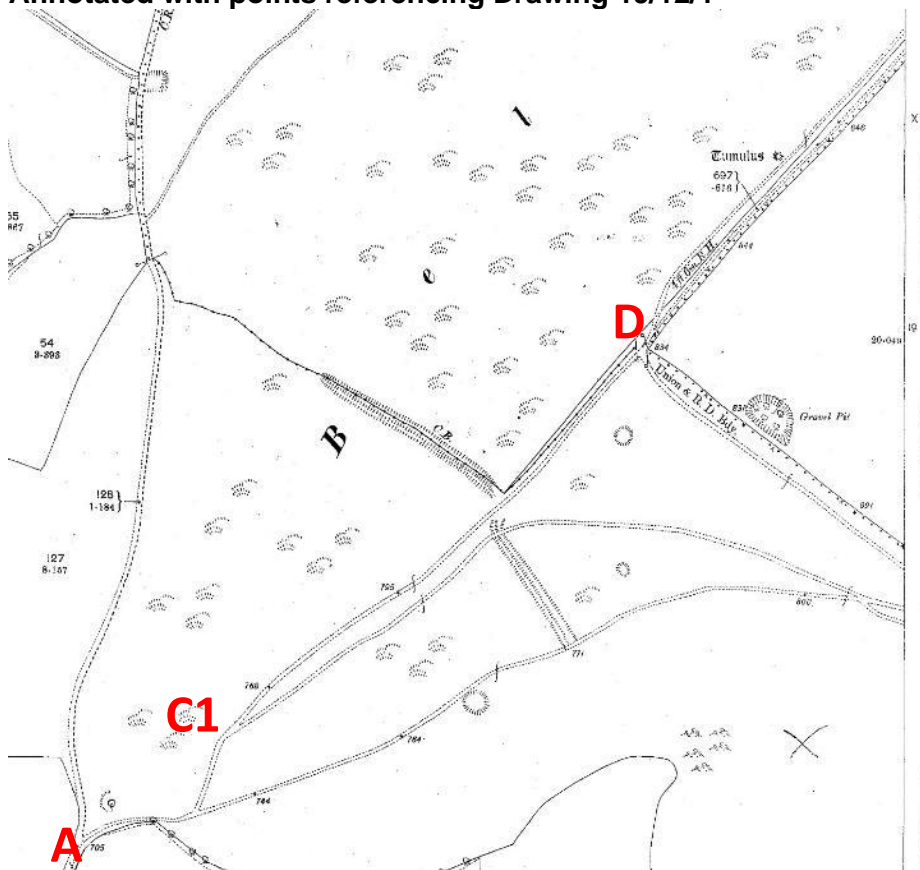
Annotated with points referencing Drawing 19/12/1

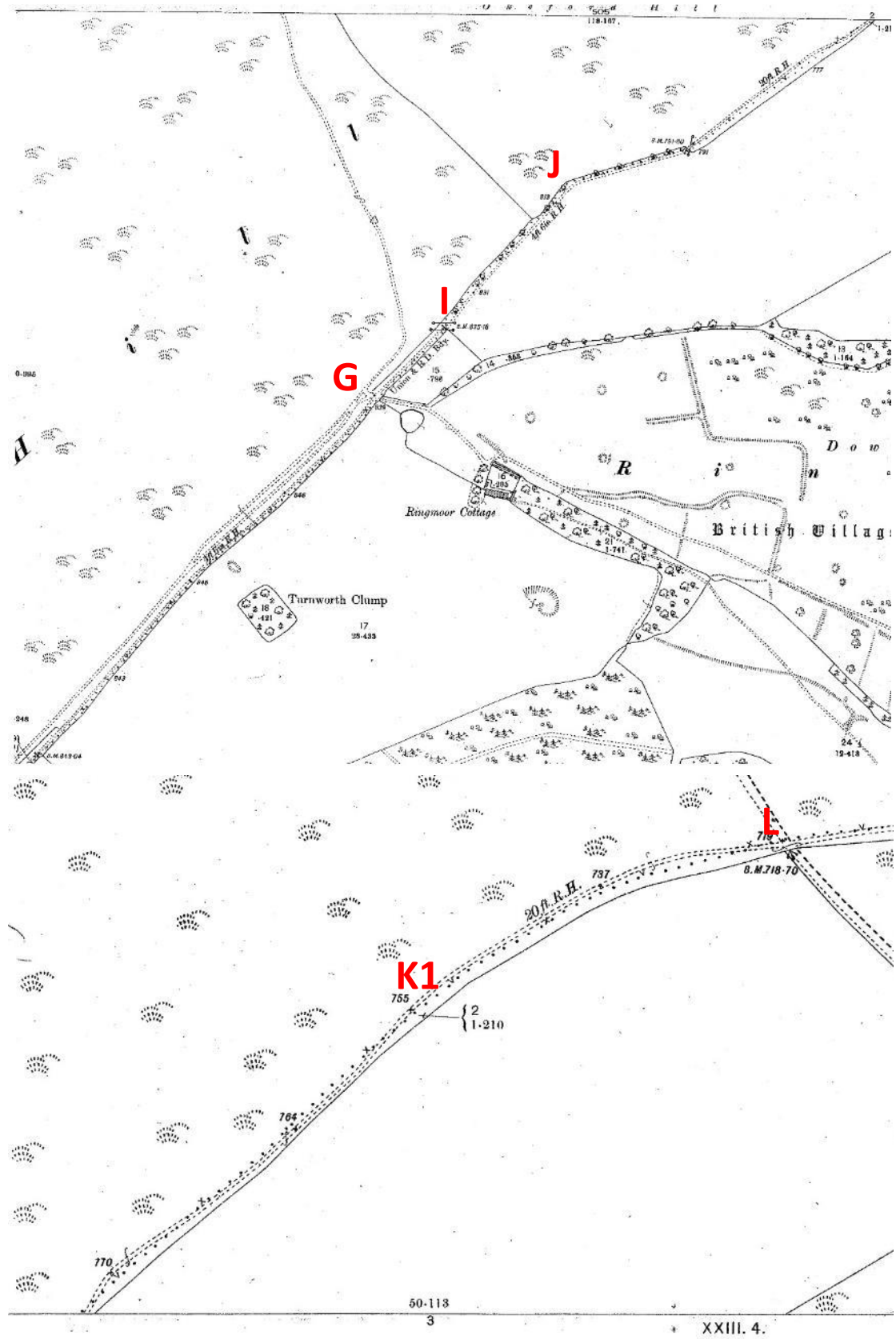


C.1900 Bacons Geographical
Annotated with points referencing Drawing 19/12/1



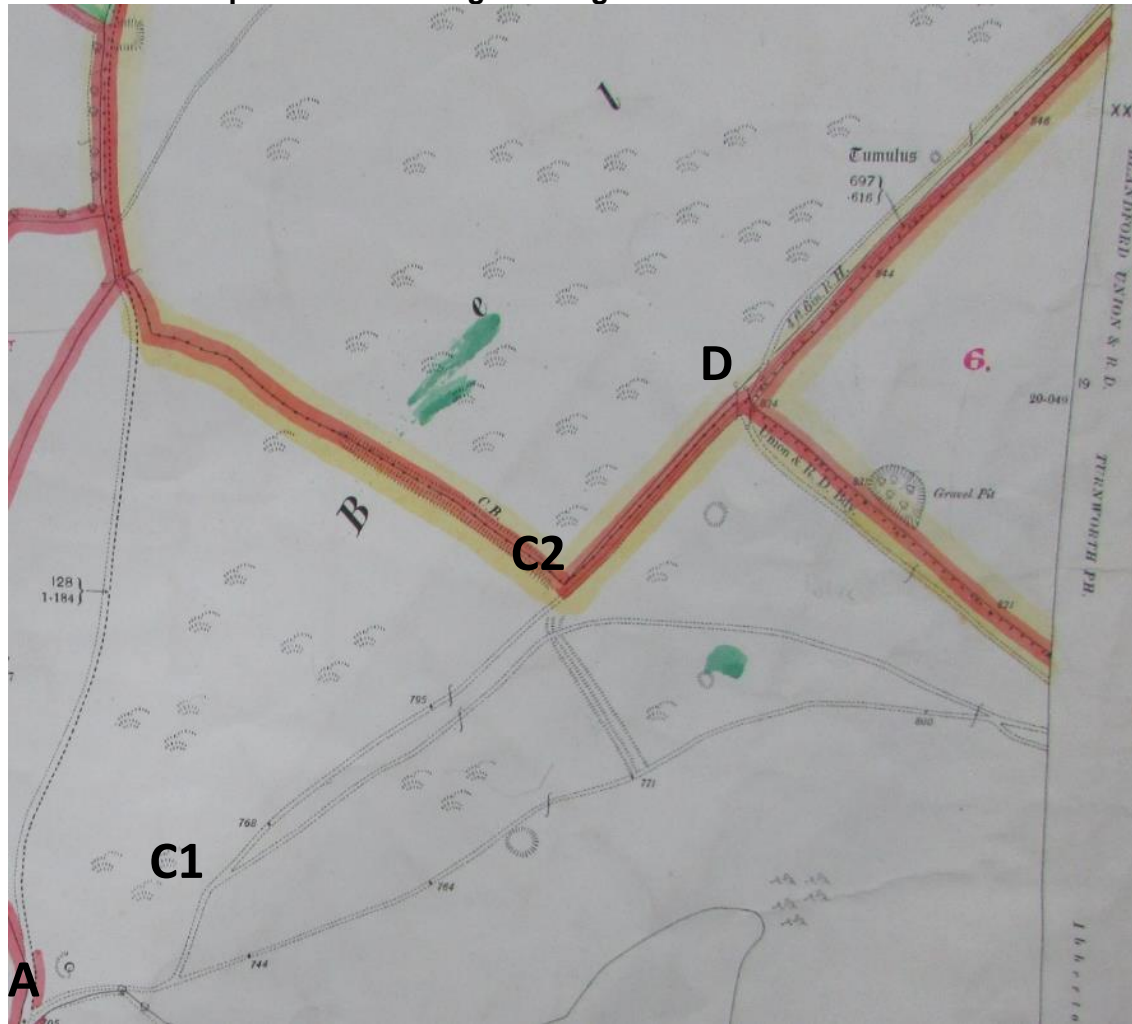
1902 Ordnance Survey second edition
Annotated with points referencing Drawing 19/12/1

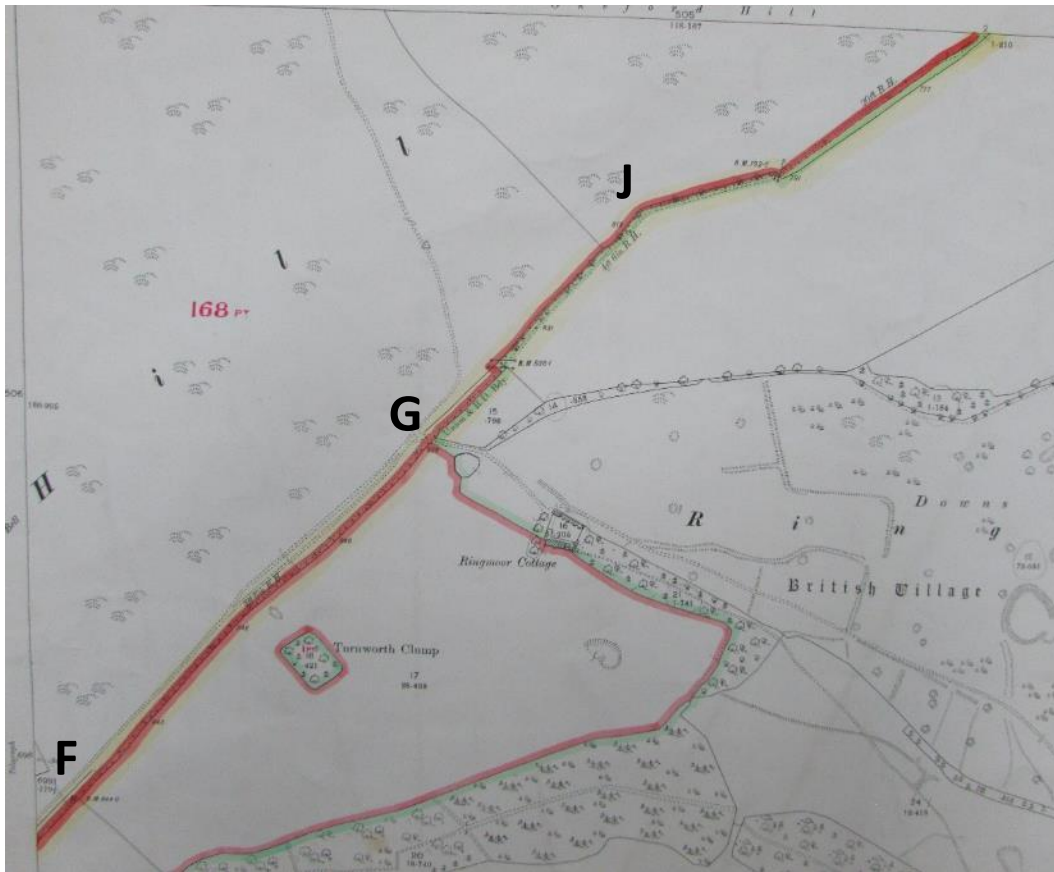




1910 Finance Act

Annotated with points referencing Drawing 19/12/1



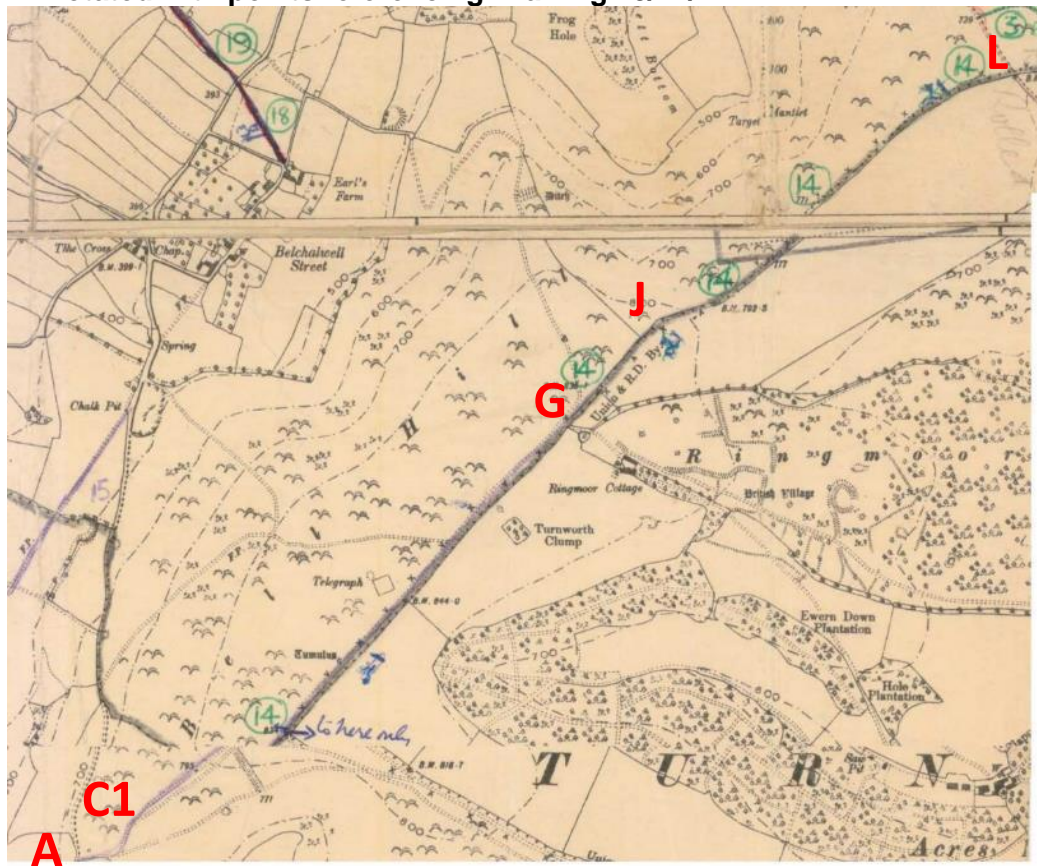


1943 Bartholomews map

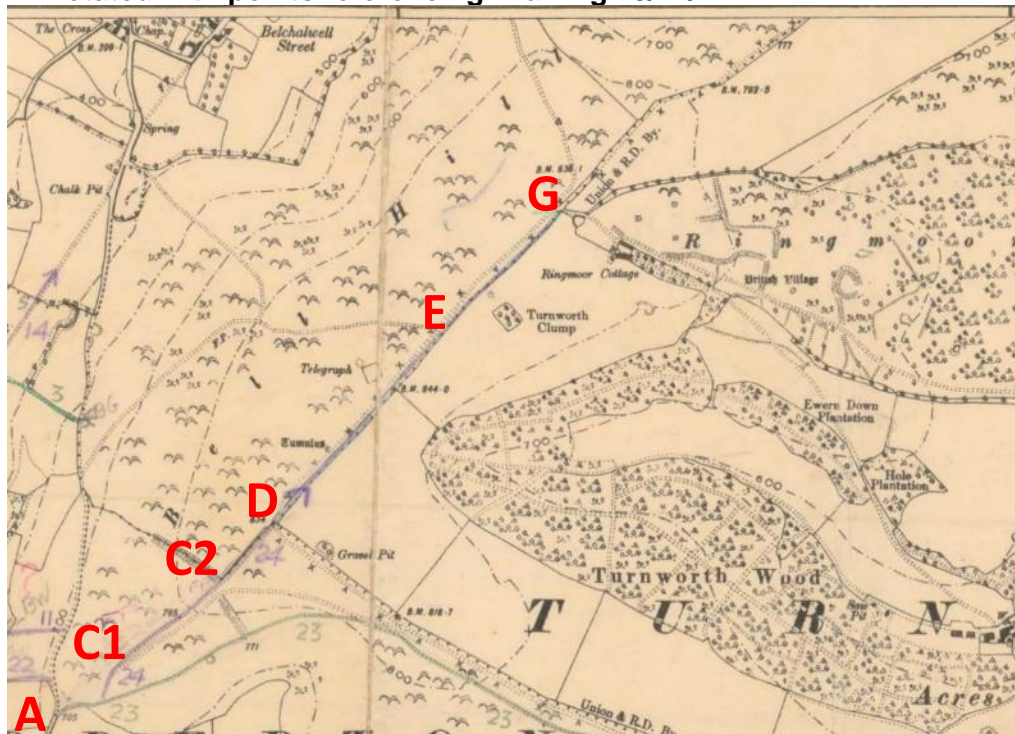
Annotated with points referencing Drawing 19/12/1



1953 Okeford Fitzpaine Parish Survey
Annotated with points referencing Drawing 19/12/1

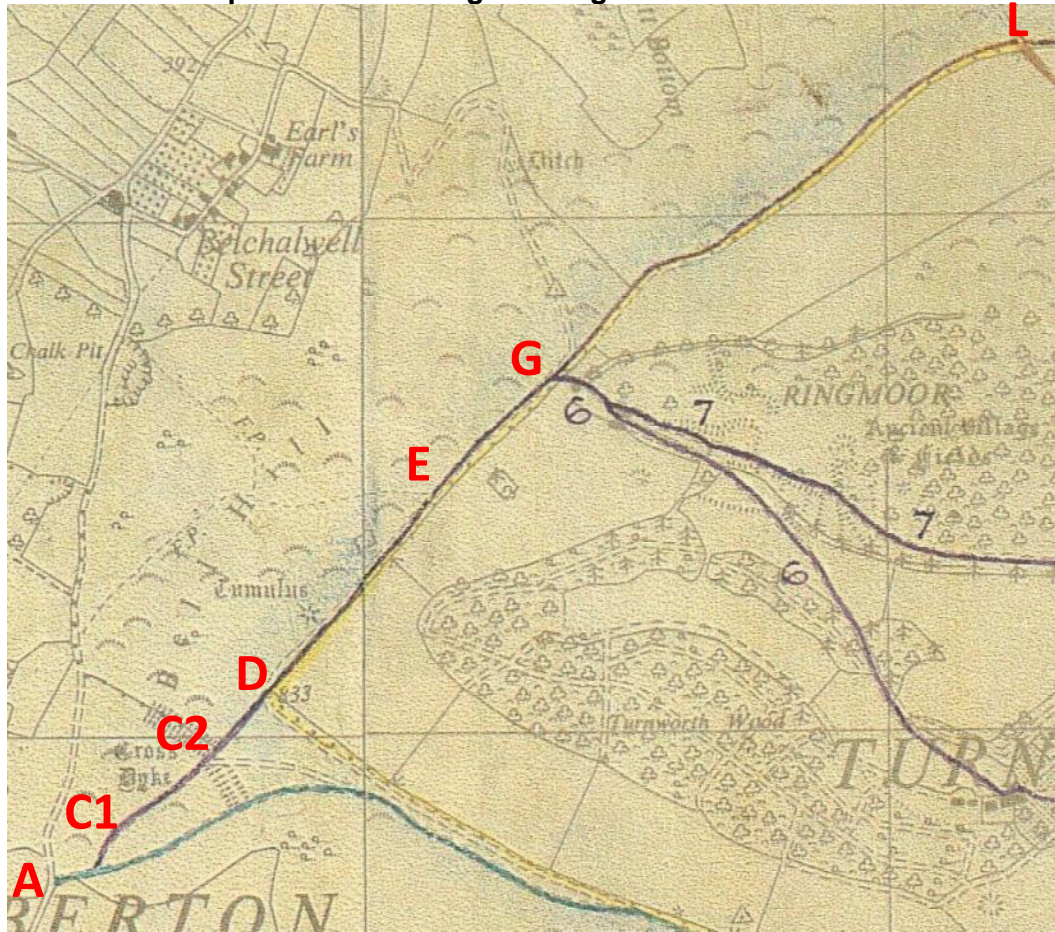


1956 Ibberton Parish Survey
Annotated with points referencing Drawing 19/12/1



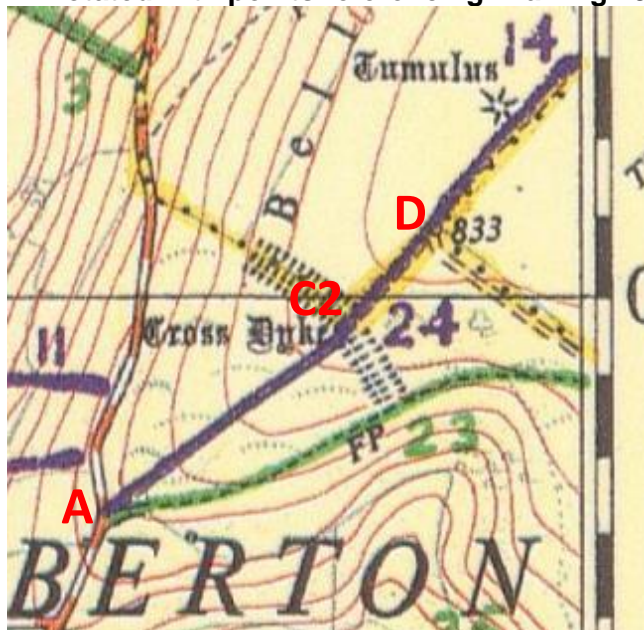
1959 Draft Map

Annotated with points referencing Drawing 19/12/1

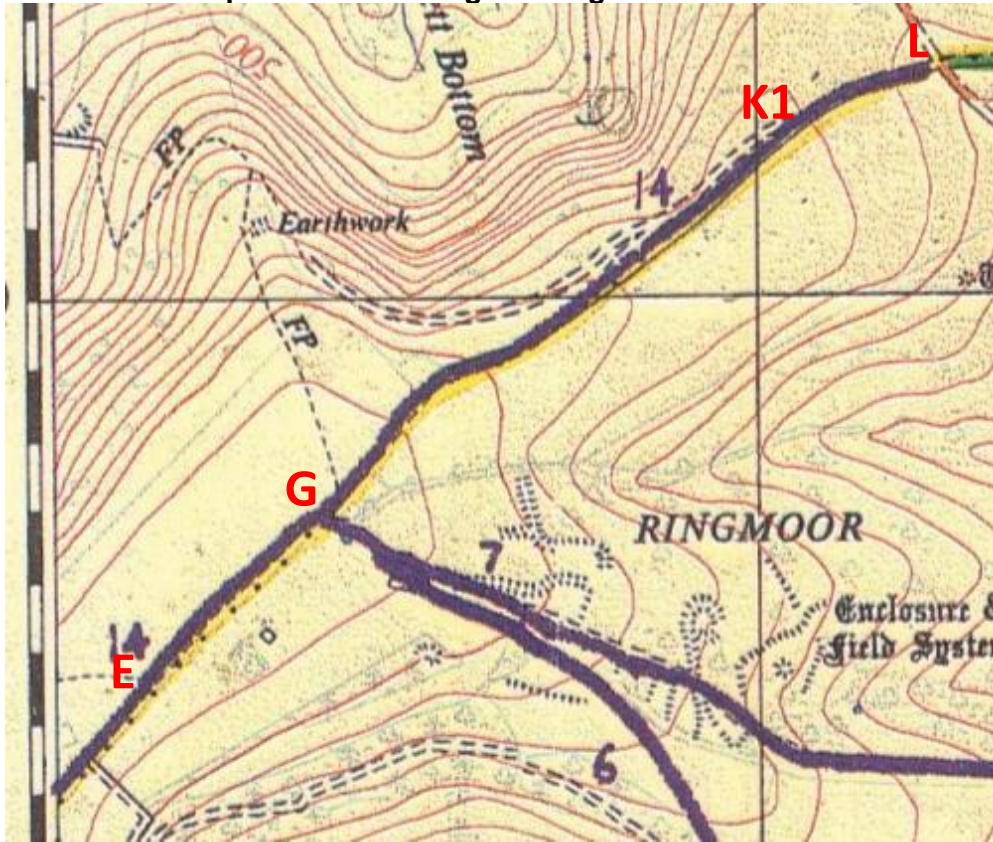


1964 Provisional Map (West)

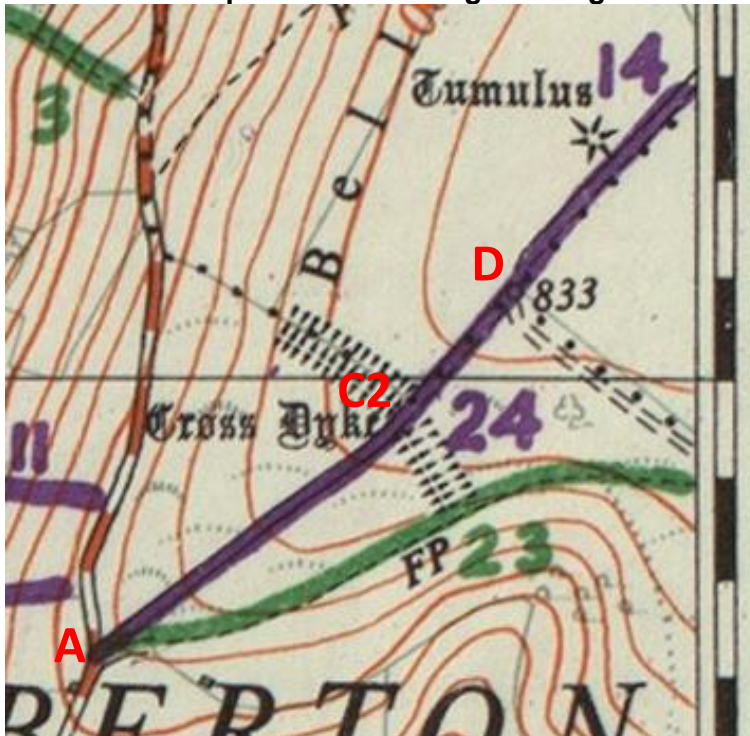
Annotated with points referencing Drawing 19/12/1



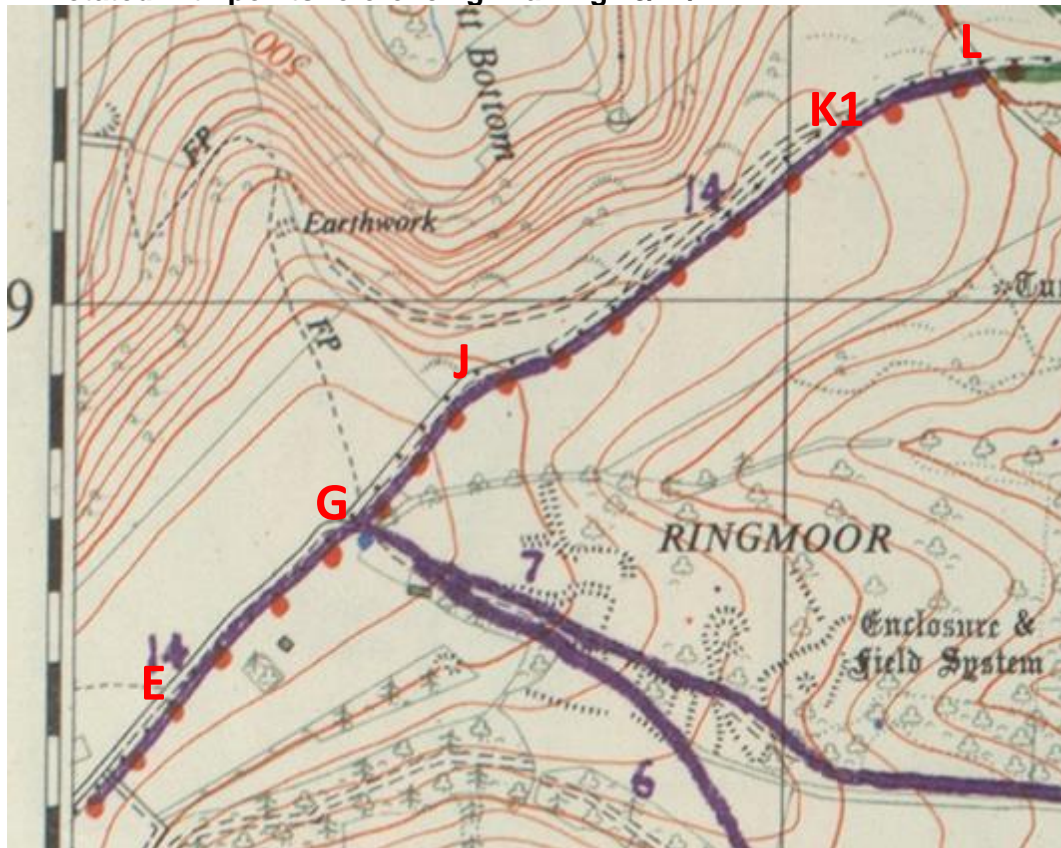
1964 Provisional Map (East)
Annotated with points referencing Drawing 19/12/1



1966-67 First Definitive Map (West)
Annotated with points referencing Drawing 19/12/1



1966-67 First Definitive Map (East)
Annotated with points referencing Drawing 19/12/1

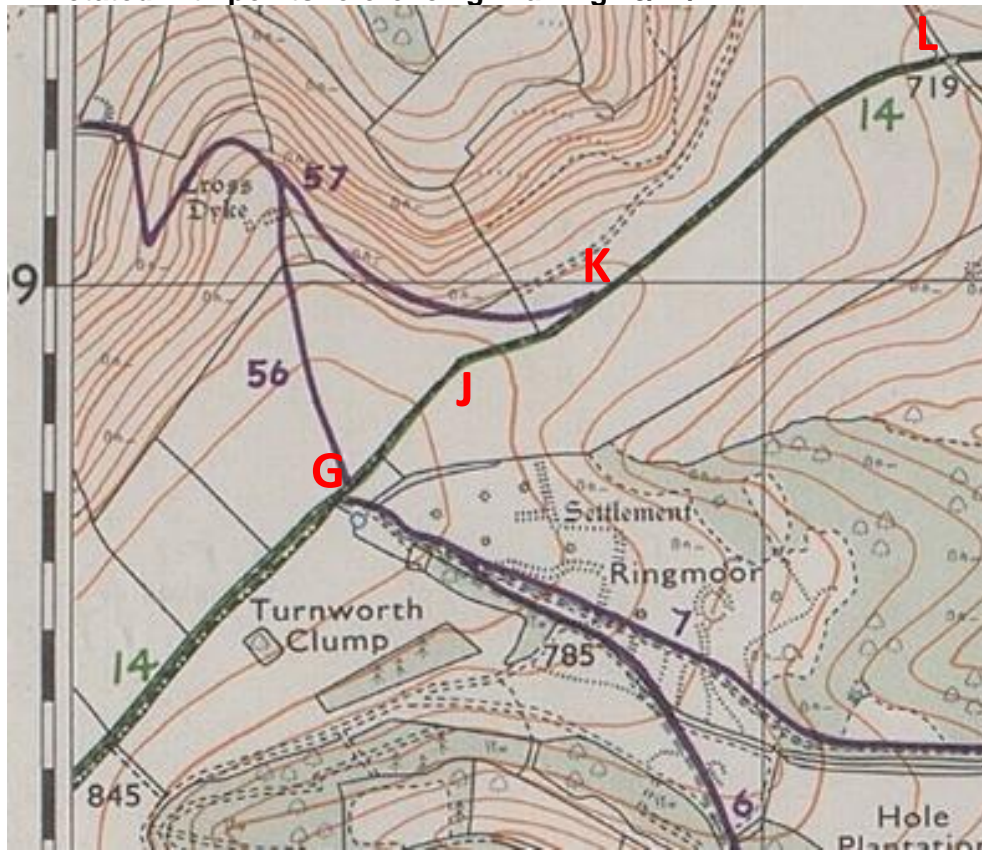


1974 Revised Draft (West)
Annotated with points referencing Drawing 19/12/1



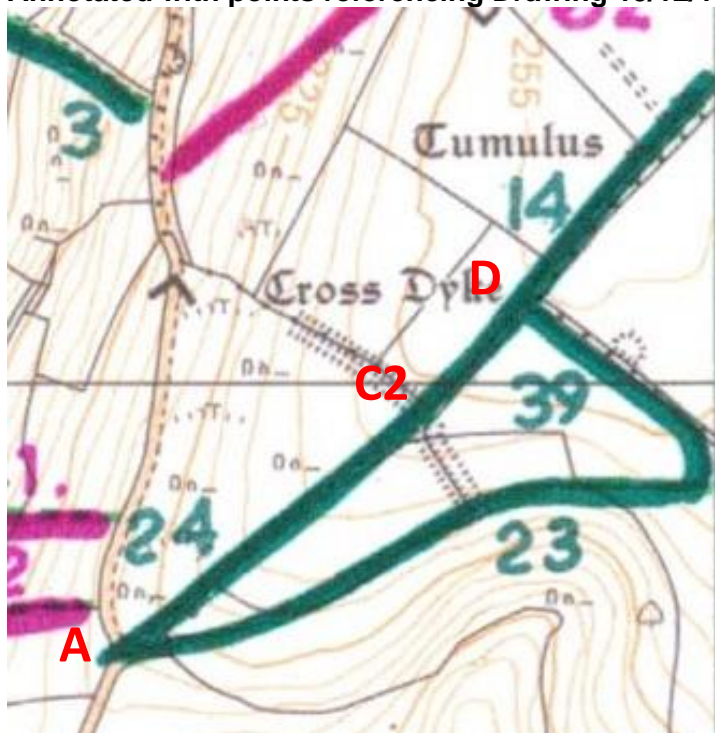
1974 Revised Draft (East)

Annotated with points referencing Drawing 19/12/1



1989 current Definitive Map (West)

Annotated with points referencing Drawing 19/12/1



1989 current Definitive Map (East)
Annotated with points referencing Drawing 19/12/1

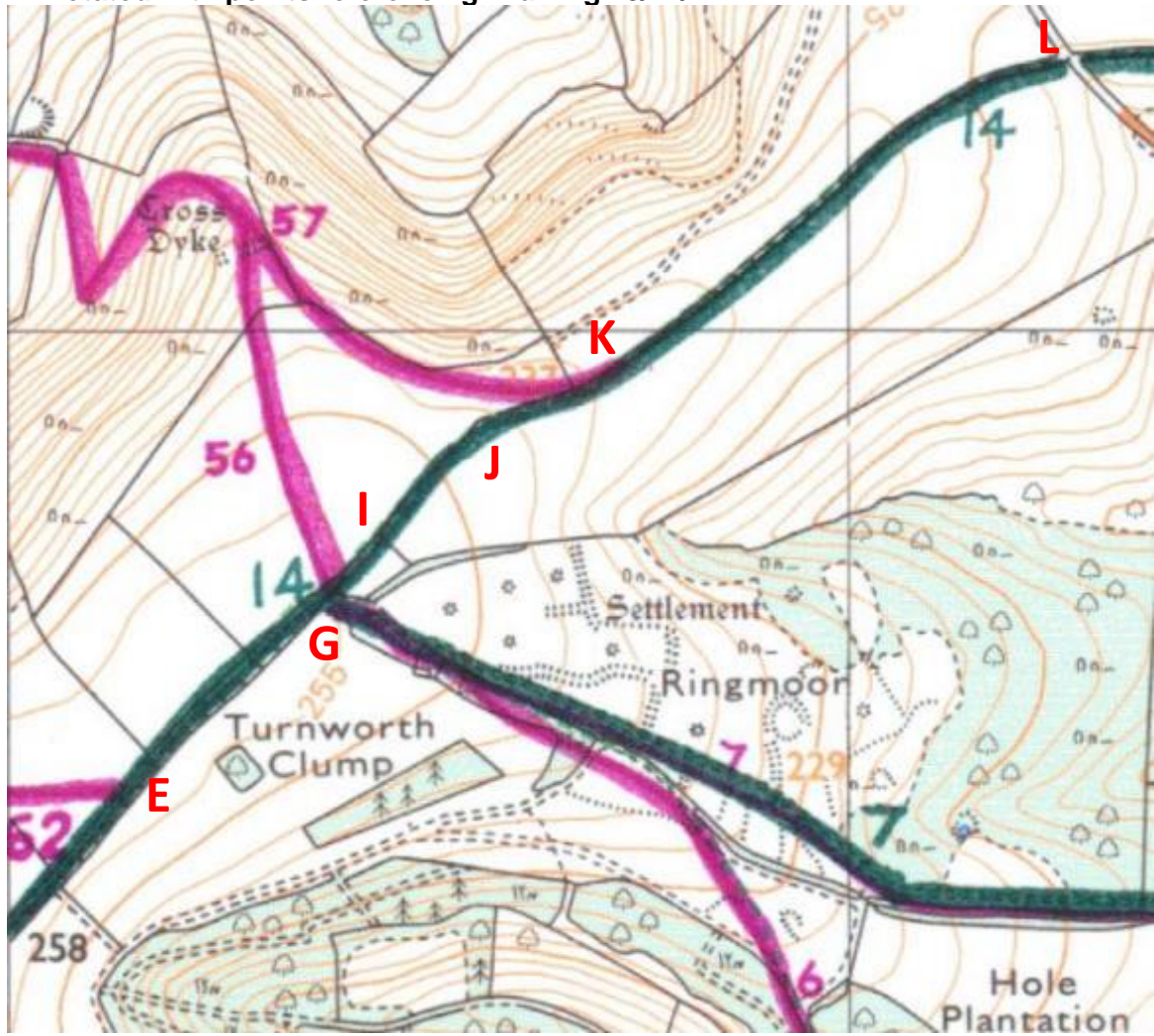


Table of documentary evidence

Date	Document	Comment
1805	Turnworth Inclosure	Shows part of the route (approx. I – L) bounded by a solid lines, one being red and a central pecked line labelled Public Road No 4. Red shading denotes Fenced allotment boundaries on those sides.
1808/9	Ordnance Survey Drawing	Shows a route similar to that claimed with dashed lines along its route.
1811	Ordnance Survey First Edition	Shows a route similar to that claimed with part dashed lines, part solid along its route.
1815	Arrowsmith map	Shows a route along a similar line with a single bold line (along with all other routes in the area).
1839	Okeford Fitzpaine Tithe Map	Part of the route is shown (approx. from I – L) with pecked lines.
1841	Ibberton Tithe Map	Part of the route (A – D) shown shaded and with pecked lines, it is shown entering Turnworth Parish
1842	Turnworth Tithe Map	Does not show the route
1842	Belchalwell Tithe Map	Shows part of the route (C2 – I) shown exiting Ibberton parish, running above Turnworth parish and entering Okeford Fitzpaine parish.
C1900	Bacons Geographical	Shows the route part with dashed lines and part solid lines.
1902	Ordnance Survey Second Edition	Shows the route with dashed lines for its entire length. There is a difference at the western end from a point approximately south of point C1 where the route runs in a north direction which differs from that shown on other documents examined apart from the Ibberton Parish Survey which uses the same Ordnance Survey base mapping.
1910	Finance Act plan	Using an Ordnance Survey Second Edition base map the route is part excluded from the western end (A – C2 on Drawing 19/12/1). Points C2 – L are mostly on the boundaries of 2 hereditaments.
1943	Bartholomews Enlarged	Shows the route with solid lines which is described in the key as “Other Roads & Tracks” connecting routes at the west and East ends are shown differently with a central coloured dashed line described in the key as “Serviceable Motoring Roads”.
1947	Aerial Photograph	Shows a clear route between points A – L.

1953	Okeford Fitzpaine Parish Survey	Shows the route from Ibberton along the parish boundary north east to its junction with the county road at point L. The claimed route appears to be shown on the survey plan from point D entirely in Okeford Fitzpaine parish and is marked as Footpath 14. The attached schedule states the route runs South West along the Turnworth parish boundary to its junction with the Ibberton parish boundary.
1954	Turnworth Parish Survey	Does not show the route within its boundary.
1956	Ibberton Parish Survey	Shows the route as part Bridleway 23 and part Footpath 24. It uses a OS Second Edition base map. The attached schedule states for BR 23 "BR from Okeford Road BM 705", "generally eastwards along Ibberton long down to Turnworth parish boundary". For FP 24 "FP from path 23 N.E. to Okeford Fitzpaine P.B".
1959	Draft Map	Shows the route entirely as Footpath but unnumbered. The South West end is shown on a different route and does not meet the road but that it joins Bridleway 5.
1964	Provisional Maps (multiple sheets)	The route is shown from the road as Footpath 24 then continuing north east becoming Footpath 14 terminating at its junction with the C32 road at Okeford Fitzpaine.
1966 - 67	First Definitive Map (multiple sheets)	Similar to the Provisional Map the route is shown from the road at the south west end as Footpath 24 running north east and becoming Footpath 14 where it terminates with the C32 road at Okeford Fitzpaine.
1972	Aerial Photograph	Shows a route between points A – L.
1973	Special Review	Part of summary states that the Parish Council maintained the road track used by all going SW along GT Ridgeway and turning left to Turnworth FP 24 upgrade to BOAT. The Committee decision was to overrule the claim as there was no evidence of public vehicular use. (committee decision 11/09/1973).
	Special Review Objections	One objection states FP 24 should be a byway. Others state it should be recorded as Bridleway and that it was a drafting error.

		British Motorcyclists Federation object as FP 24 constitutes part of 'Dorchester Road' in the Turnworth Inclosure Award 1805 and was marked as Highway and Carriage Road No4 and is 40ft wide.
		British Horse Society claimed FP 24 was omitted from the Revised Draft Map and should be Bridleway.
		Rambers state that FP 24 should be Bridlepath.
		Several forms objecting and states FP 24 should be Bridleway.
		Mrs Colyer objects and states FP 24 Ibberton and FP 14 Okeford Fitzpaine should be BOAT. "FP 14 is on Inclosure as carriageway 40' wide".
		User Evidence forms for Bridleway status. Many notes stating it has been used as BR for many years.
		Magistrates did not accept the Turnworth Inclosure Award as a true copy, no trace within Quarter Sessions records and the County Council had no means to prove the provisions in the Award.
1974	Revised Draft (multiple sheets)	Shows route as Bridleway 14 from approximate point C2 shown on drawing 19/12/1 continuing generally north-east to its junction with the C32 road at Okeford Fitzpaine.
1980	Public Inquiry	A public inquiry was held to deal with objections and representations in respect of the rights of way.
		Inspector concludes there is sufficient evidence to support byway status.
1984	Special Review by Secretary of State	Concluded that there was not sufficient evidence to support byway status and dismissed the Inspector's recommendations. Determined routes should be recorded as bridleways.
1989	Current Definitive Map (multiple sheets)	Shows the entire route A to L as Bridleways.
1997	Aerial Photograph	Shows a route between points A – L.
2002	Aerial Photograph	Shows a clearly defined track between points A – L.
2005	Aerial Photograph	Shows a clearly defined track between points A – L.

2017	Aerial Photograph	Shows a clearly defined track between points A – L.
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Recommendations accepted:

Signed:

.....V Penny.....

Date:.....23 May 2023.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning

