

Report to the Executive Director for Place

Application for a definitive map and statement modification order to upgrade Bridleway 39, Weymouth, Bridleway 14 (part), Bincombe and add a byway open to all traffic (one continuous route)

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr Howard Legg and Cllr Roland Tarr

Executive Director: Jan Britton, Executive Lead for Place

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Report Status: Public

Brief Summary: In response to an application to upgrade Bridleway 39, Weymouth, Bridleway 14 (part), Bincombe and add a byway open to all traffic (one continuous route), this report considers the evidence relating to the status of the route and recommends that the application is refused but that an order be made to record part of the route as a restricted byway.

Recommendation:

That:

- (a) The application be refused and;
- (b) An order be made to modify the definitive map and statement of rights of way to record;
 - (i) Bridleway 39 (part), Weymouth as shown X – D1 – E and;
 - (ii) Bridleway 14 (part), Bincombe as shown E – F on Drawing 19/23/2 (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- (c) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.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 39, Weymouth and Bridleway 14 (part), Bincombe ought to be shown as byways open to all traffic. 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
- (c) The evidence shows, on balance, that 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 39, Weymouth and Bridleway 14 part, Bincombe as shown A – B – C – D – X – D1 – E – F – G – H on Drawing 19/23/2 (Appendix 1) was made by Friends of Dorset's Rights of Way (FoDRoW) on 11 September 2005.
- 1.2. The application transferred to the Trail Riders Fellowship (TRF) on 04 October 2010.

Description of the route

- 1.3. The claimed route commences at point A as shown on Drawing 19/23/2 (Appendix 1) from its junction with the B3159 Gould's Hill, Weymouth continuing in a generally south eastern direction continuing into the parish of Bincombe at point E, at point F the route turns north east to its junction with the A354 Weymouth Relief Road at point H.
- 1.4. The track surface is crushed stone/gravel between points A – F where the route turns north east into a grassed field and continues to point H and its junction with the A354 Weymouth Relief Road.

- 1.5. The track has a walled north east boundary between points B – C with wire fencing to the south west boundary along this section. Between points D – D1 the route is a mix of wall and hedging to its north east boundary and open field to the south west. From point D1 – F the route is hedged/walled on both sides. From F – H the route is hedged with several trees on the east boundary.
- 1.6. There are field gates with Bridle gates to the side at points B and C and a field gate at point D1, at point F there are 2 field gates.
- 1.7. At point C the claimed route has a junction with Bridleway 40, Weymouth.
- 1.8. At point D the claimed route has a junction with Bridleway 13, Bincombe.
- 1.9. 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 and user 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/T388)

- 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 1839 Map and Award for the Upwey Inclosure. Shows the east section of the route called "The Martinstown Road" and being 30 feet wide between points C – H on Drawing 19/23/2.
- 4.3 The 1839 Award states "...branching out of the Weymouth and Dorchester Turnpike Road on Upwey Down and extending southward in its present track to Bayard Corner and thence in a westward direction over the Little Down along by Bayard Farm wall and leading towards Martinstown".

Tithe Map

- 4.4 The Upwey Tithe Map 1840 shows the claimed route between points X – D1 – E – F – G – H leaving land parcel numbered 157.

Finance Act 1910

- 4.5 The evidence from the Finance Act documents reveals that the route shown A – D1 on Drawing 19/23/2 within hereditaments 137, 323 and 390.

- 4.6 The route shown D1 – F on Drawing 19/23/2 is excluded from valuation and continues from point F south towards Upwey which is currently recorded as part unnamed road D21101 then Old Roman Road D90201 when it crosses the boundary into Weymouth.
- 4.7 The route shown F – H is also shown within hereditament 390.
- 4.8 The Finance Act provides evidence to show that the majority of the route was not considered to be vested in the highway authority by way of not being excluded from valuation. Though this is not conclusive evidence of status.

Ordnance Survey Maps

- 4.9 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.
- 4.10 The First Edition Ordnance Survey map of 1811 at a scale of 1 inch to 1 mile, which was produced for military purposes, shows the claimed route with a solid line to the north boundary and a dashed line to the south boundary and appears similar as designated roads on the plan.
- 4.11 On the First Edition Ordnance Survey map of 1888 without contours at a scale 1:10560 the claimed route is shown between points A – D1 with a solid line on its northern boundary and a dashed line to the southern boundary.
- 4.12 Between points D1 – F it is shown with double solid lines and continues like this towards Upwey along the roman road it is also shown wider than the previous section indicating the possibility of a different status. The section shown F – H with a double dashed line.
- 4.13 The Second Edition Ordnance Survey 1902 at a scale 1:2500 shows the route with a solid line to its northern boundary and a dashed line to the southern boundary. It is shown in a similar way to roads on the plan.

Dorset Council Records

Parish Survey

- 4.14 The Bincombe parish survey completed in 1954 map shows the claimed route E – F as “CRB 14”.

- 4.15 The accompanying schedule states “short connecting link with CRB 39 claimed by Weymouth Borough”. It also says the surface is a hardened track.
- 4.16 The Weymouth Borough survey of 1952 shows the claimed route A – D1 as “B.R. 39” with three field gates marked at B, D and D1.

List of Streets

- 4.17 Part of the claimed route shown F – G – H on Drawing 19/23/2 was recorded on Dorset Council’s list of streets until April 2007 when this section of the D21101 road was stopped up as part of the side roads order process for construction of the Weymouth Relief Road.

User Evidence

- 4.18 One user evidence form was submitted with the application.

Aerial Photographs

- 4.19 Aerial photography between 1947 to 2009 consistently shows the claimed route as a defined track between points A – H as shown on Drawing 19/23/2 with a consistent width throughout. The 2017 aerial photo shows points F – H no longer as a defined track but as part of a grassed area, the tree line in this section is still well defined.

Summary of documentary evidence

- 4.20 There is evidence that part of the route should be recorded as a byway open to all traffic. Part of the route, between points X – D1 – E – F – G – H, was designated as a public highway in 1834 by the inclosure process and this is supported by the Upwey Tithe map of 1840. Subsequent documents indicate that the route was not made up after the Act was passed and subsequent parish meetings requested that no further action was taken regarding the matter.

5 User evidence (Appendix 4) (copy available in the case file RW/T388)

- 5.1 One user evidence form was submitted in September 2005. The form was not accompanied by a map showing a route used however, Grid References were used that suggest they were using a route between points A – B – C – D – E – F as shown on Drawing number 19/23/2.
- 5.2 The user used the route between years 1988 – 2005 at 10 – 12 times a year on foot but mainly by motorcycle.

- 5.3 They used the route as part of a circular route from their home.
- 5.4 They witnessed other people using the route on foot, horseback and with motorcycle.
- 5.5 They state that the gates on the route were not locked and that there were "Public Bridleway" notices.
- 5.6 They state that they know the owners name and that they did not obtain permission to use the route from them nor that they were stopped or turned back from using the route.

Summary of user evidence

- 5.7 The user evidence in this matter is not sufficient to suggest that the route was being used frequently by numerous users.
- 5.8 The user has not suggested using the claimed route between points F – G – H on Drawing number 19/23/2.
- 5.9 The user states that the route was sign posted as a Bridleway and therefore using it on a motorcycle would not have been permitted.
- 5.10 No further user evidence forms have been submitted since the application was received in September 2005.

6 Landowner correspondence (copies available in the case file RW/T388)

- 6.1 An undated submission on behalf of one of the landowners makes comments on various documents and encloses three signed statements and one statement taken from a public inquiry held in 1983.
- 6.2 The comments on the 1889, 1902 and 1929 Ordnance Survey maps are of what these maps show which is also discussed separately within this report.
- 6.3 The Inclosure Award is discussed where it describes the width of 30 feet, the objection is that this was never completed as a public carriageway and that it was not maintained at public expense.
- 6.4 There is a statement that the Parish Council from 1895 informed the board that the "Martinstown Road" has not been repaired since the Inclosure Act was passed and that no action would be taken with respect to this road.

- 6.5 The repair of the road was mentioned the following month and the decision was that the matter be dropped.
- 6.6 Notes taken from Upwey Parish Council minutes of 1909 state that a tenant of Bayard Farm was required to pay one shilling per year for use of the road.
- 6.7 Unauthorised vehicles have been turned away.
- 6.8 A separate statement dated 12 March 2006 describes the route being “stopped up” for some years from early 1930’s until the US army filled in trenches during 1942, these trenches were dug at either end of the claimed route “to prevent access for wheeled traffic from the A354 and B3159.” This was paid for by Upwey Parish Council they had been there for approximately 10 years. Access was maintained for horses and walkers.
- 6.9 Owners of Higher Ashton Farm made up the route at the western end to access their farm in 1974 as there was no track.
- 6.10 Lockable field gates and bridle gates at either end, the locks have been vandalised in the past allowing cattle to escape onto the A354. The field gates were blocked by equipment which wasn’t challenged. The gates were also blocked on other occasions without being challenged.
- 6.11 An undated statement titled “B39 – Upwey” states, the owner of Bayard Farm properly maintained and correctly used the rights of way on the land and that any member of the public straying from a right of way was “quickly told about it”.
- 6.12 A section of the route was very wet and impassable by carts or wagons at any time of year. The surface was improved for use by vehicles in late 1970’s.
- 6.13 After the western section’s surface was improved vehicles were seen using the route but were ordered off the premises.
- 6.14 The statement continues to say that Dorset County Council erected signs at each end of the bridleway stating “No vehicles please” 25 years ago however, the statement itself is undated.
- 6.15 A statement dated 15 September 2005 says there was a rough track across the ridgeway when Bayard Farm was purchased in 1925 between the A354 and B3159.

6.16 At the eastern end there was an old quarry that was used as a traveller's camp, soon after the farm was purchased a further camped area was set up close to the main road. When they left, trenches were dug to prevent wheeled vehicles. The resulting vegetation growth reduced the path to around 3 feet wide. The trenches were filled by the US Army to provide better access between their camps.

6.17 Officer comments: These statements were taken from people either related to or who worked for the landowner so it can be considered they have a particular interest in the route and its status, however they describe trenches being dug and blocking fences which can be considered as a knowledge of frequent vehicular use and these steps were taken to prevent such use. They also state that no challenge was met at any time and as such there appears to be no record of such complaints held on record with Dorset Council.

6.18 The submission also includes a section regarding the Inclosure Award, and they believed that the route was never completed as a full carriageway and the width of 30 feet mentioned within the Award only relates to a section of the route. Further within the submission it states that the local councils did not take on the maintenance of the route and that it had been unrepaired since the act was passed.

6.19 The discussions from Upwey parish minutes mention the maintenance and again the council resolved the matter be dropped without stating that any money be spent on the route in the way of maintenance. The acknowledgement that the then Tenant pay one shilling per year to use the route with a vehicle could also show that it was believed the route did not hold any vehicular rights at the time as this fee may not have been required.

6.20 The discussions from the Parish Council seem to be concerned with maintenance of the route and its upkeep rather than the physical use of the route by the public.

7 **Consultation responses and other correspondence** (copies available in the case file RW/T388)

7.1 Eighteen responses were received following the consultation which was carried out in 2019. Seven of these related to objections, ten had no comment or no evidence to offer and one would challenge the application should the exceptions to the NERC Act be met.

7.2 The following points were raised:

- a. "Would be disastrous for the for England's National Trail Network if this became a motorised route".
- b. "Counter to Dorset Council's emerging climate change policies to introduce motorised traffic in such a wild place as this within the Dorset AONB".
- c. Tourism would be threatened by vehicular traffic.
- d. People will use it as a cut through when A354 or B3159 were congested.
- e. Has seen the effect of 4x4 and scrambler bike use in other localities where tracks have become unusable.
- f. The bridleways are unsuitable and impractical for motorised traffic.
- g. The speed that off-road vehicles travel down the metalled part of the ridgeway (Old Roman Road D90201) illegally using the bridleways to the west.
- h. A sign stating "No Through Road" between points E – F during the 1980's.
- i. Track surface was improved by the owners so a feed lorry could travel between Bincombe and the dairy at Higher Ashton.
- j. Additional temporary gates were erected along the route when fields were subdivided for grazing.
- k. The Council and Highways Agency didn't make provision for an exit on to the A354 at point H.
- l. Will bring vehicles into conflict with agricultural use of the land.
- m. If the route is opened up for motorised vehicles the farmer will have to leave the gates unlocked and lead the farmer to fence off the field.
- n. Open invitation to illegal/anti-social purposes.
- o. Will lose the pleasure of peaceful enjoyment of the countryside.
- p. Cattle grazing the area will be disturbed by other traffic.

- 7.3 Officer comments: Of the issues raised most cannot be taken into account in considering the application under the terms of the Wildlife and Countryside Act 1981. However, the lack of provision of an exit onto the A354 at point H when the construction of the Weymouth Relief Road was undertaken would suggest that this section of road was no longer required and at the time there was a wide consultation exercise carried out and it was well publicised in the local press.

8 **Analysis of the evidence**

8.1 Analysis of the evidence under Section 31, Highways Act 1980

For Section 31 of the highways Act to give rise to a presumption of dedication, the following criteria must be satisfied:

- The physical nature of the path must be such as is capable of being a right of way at common law
- The use must be brought into question i.e. disputed or challenged in some way
- Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question
- Use must be 'as of right' i.e. without force, without secrecy and without permission
- Use must be by the public at large
- There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

Physical nature of the route

- 8.2 The claimed route commences at point A as shown on Drawing 19/23/2 (Appendix 1) from its junction with the B3159 Gould's Hill, Weymouth continuing in a generally south eastern direction.
- 8.3 The track surface is crushed stone/gravel between points A – F where the route turns north into a grassed field to point H and its junction with the A354 Weymouth Relief Road.

- 8.4 The track has a walled north east boundary between points B – C with wire fencing to the south west boundary along this section. Between points D – D1 the route is a mix of wall and hedging to its north east boundary and open field to the south west. From point D1 – F the route is hedged/walled on both sides. From F – H the route is hedged with several trees on the east boundary.
- 8.5 There are field gates with Bridle gates to the side at points B and C and a field gate at point D1, at point F there are 2 field gates.
- 8.6 At point C the claimed route has a junction with Bridleway 40, Weymouth.
- 8.7 At point D the claimed route has a junction with Bridleway 13, Bincombe.

Without force, secrecy or permission

- 8.8 There is no evidence to suggest that the route has ever been used by force.
- 8.9 There is mention of tenants paying to use the route and this suggests a level of permission to use the route was sought from the landowner.

Conclusions under Section 31, Highways Act 1980

- 8.10 It is considered that the requirements of Section 31 have not been satisfied in this case as there is one piece of user evidence which is not conclusive of the route used and does not contain enough detail.

Analysis of the evidence under common law

8.11 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. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied by a sufficient period of public use without force, secrecy or permission and the acquiescence of those landowners in that use. This is needed to meet the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as turning people back, putting up a physical barrier or erecting notices stating that the route is not a public right of way of the type being claimed.

Conclusions under common law

8.12 There is insufficient evidence from which a deemed dedication at common law can be inferred. Although there is some evidence that landowners were aware that there was use of the route there is no evidence that this view has been widely communicated to the public.

9. Financial Implications

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

10 Natural Environment, Climate and Ecology Implications

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

11 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.

12 Other Implications

None

13 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

14 Equalities Impact Assessment

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

15 Conclusions

- 15.1 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.
- 15.2 The documentary evidence indicates that the status of the application route between points X – D1 – E – F – G – H shown on Drawing 19/23/2 was believed to be public carriage road at the point of inclosure. However, this seems to have not been made up to carriage road status from the point the act came into being. The route is mostly not excluded on the Finance Act plans and Tithe Maps. The documentary evidence does not support a change in status for the claimed route between points A and X.
- 15.3 The user evidence is insufficient on its own as it is not accompanied by a plan showing the route used, it also does not appear to state the whole route as shown on Drawing 19/23/2 was used.
- 15.4 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.
- 15.5 The available evidence is not sufficient for a common law presumption to be inferred.

Page 15 Application for a definitive map and statement modification order to upgrade Bridleway 39, Weymouth, Bridleway 14 (part), Bincombe and add a byway open to all traffic (one continuous route)

15.6 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 39 (part) Weymouth as shown X – D1 – E and Bridleway 14 (part) Bincombe as shown E – F on Drawing 19/23/2 (Appendix 1) as restricted byway.

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

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

16 Appendices

1 Drawing 19/23/2

2 Law

3 Documentary evidence

Extracts from key documents in order of importance

- Ordnance Survey drawing 1806
- Ordnance Survey drawing 1811
- Upwey Inclosure Award 1839
- Ordnance Survey first edition 1888
- Ordnance Survey second edition 1902
- Finance Act 1910
- Bincombe Parish Survey 1954
- Weymouth Borough Survey 1952
- Revised Draft Map 1974
- Current Definitive Map 1989

4 User evidence

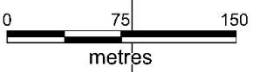
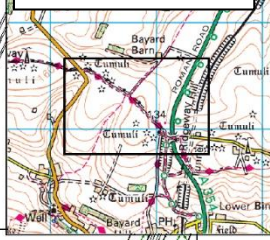
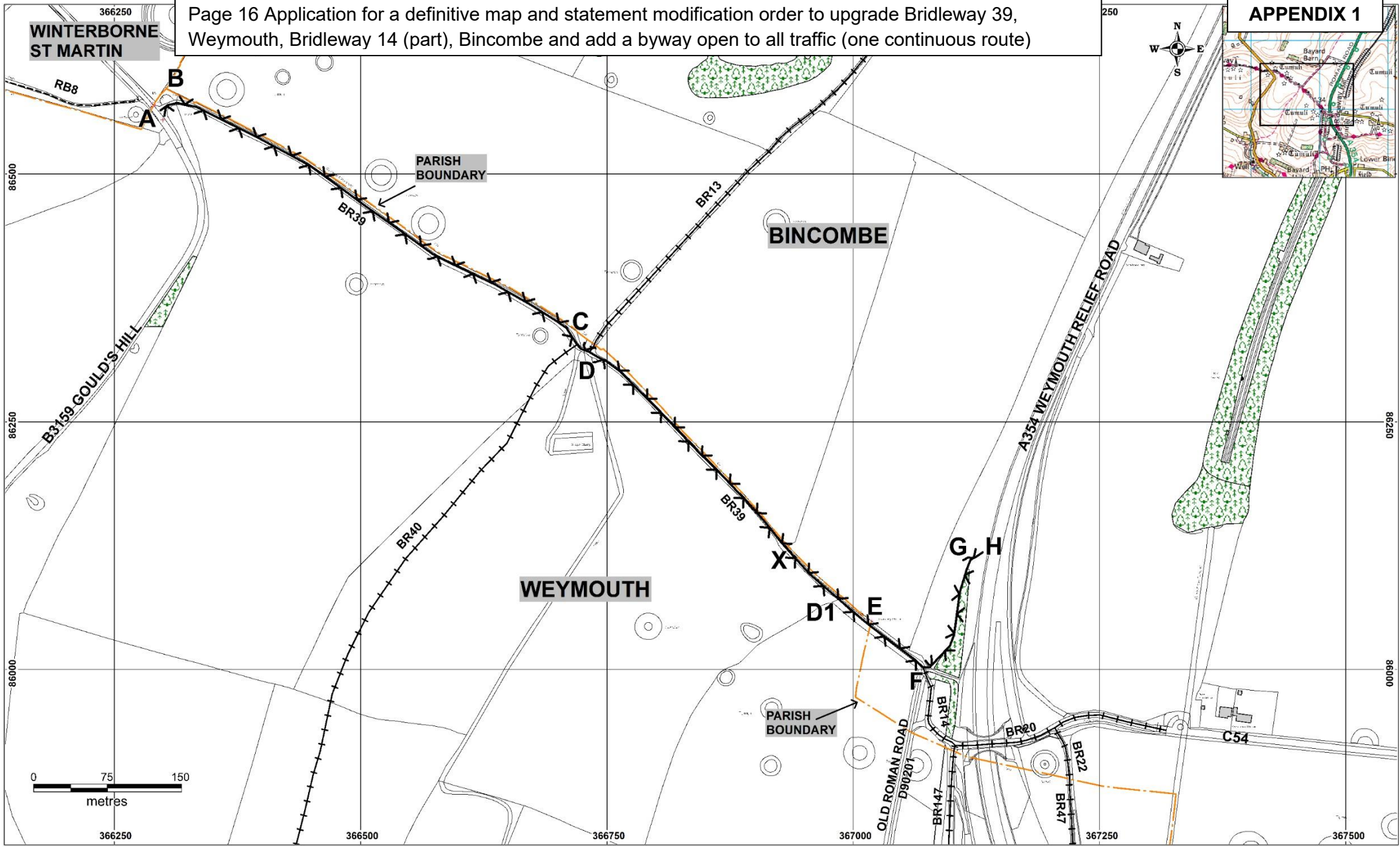
17 Background Papers

The file of the Executive Director, Place (ref. RW/T388).

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/T388, which will be available to view at County Hall during office hours.

Date: February 2024



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 39, WEYMOUTH BRIDLEWAY 14 (PART), BINCOMBE AND ADD BYWAY OPEN TO ALL TRAFFIC (ONE CONTINUOUS ROUTE).

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

KEY

- DEFINITIVE BRIDLEWAYS
 - DEFINITIVE RESTRICTED BYWAY
 - CLAIMED BYWAY OPEN TO ALL TRAFFIC
- A B C D X D1 E F G H

GRID REFERENCES

- A SY 66298656
- B SY 66318657
- C SY 66718632
- D SY 66738632
- X SY 66938612
- D1 SY 66988607
- E SY 67018604
- F SY 67078600
- G SY 67118611
- H SY 67138611

Ref: 19/23/2

Date: 27/10/2023
 Scale 1:3500
 Drawn By: AH
 Cent X: 366846
 Cent Y: 86247

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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.

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.

Page 21 Application for a definitive map and statement modification order to upgrade Bridleway 39, Weymouth, Bridleway 14 (part), Bincombe and add a byway open to all traffic (one continuous route)

Documentary Evidence

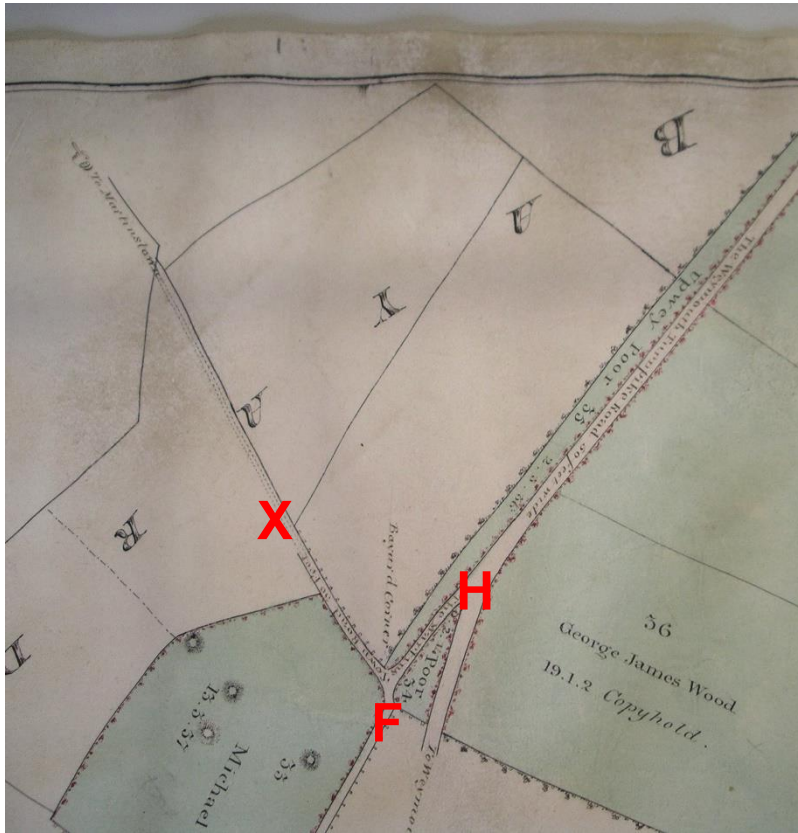
Ordnance Survey 1806



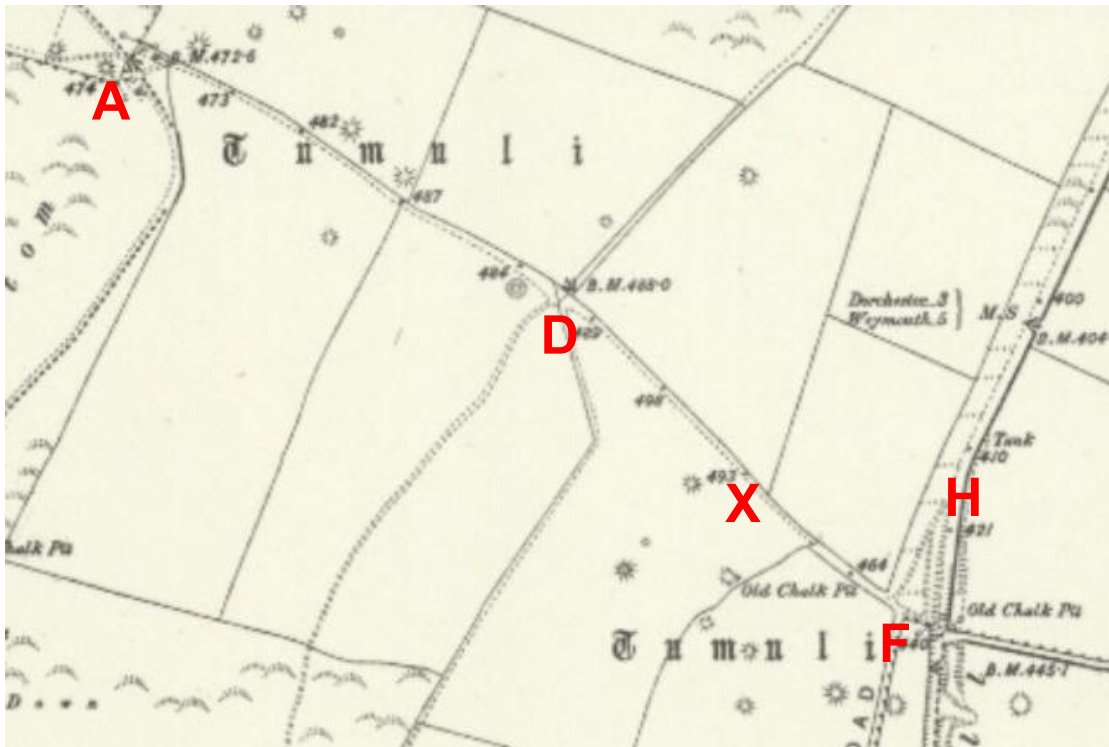
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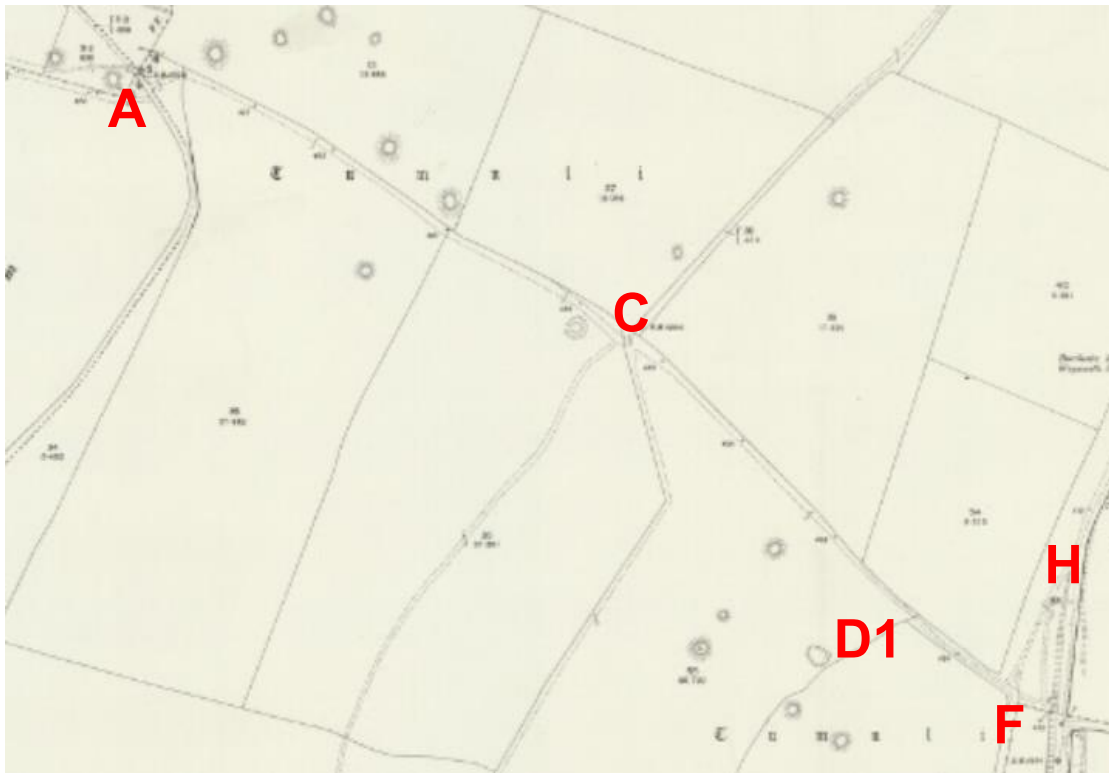
Upwey Inclosure 1839



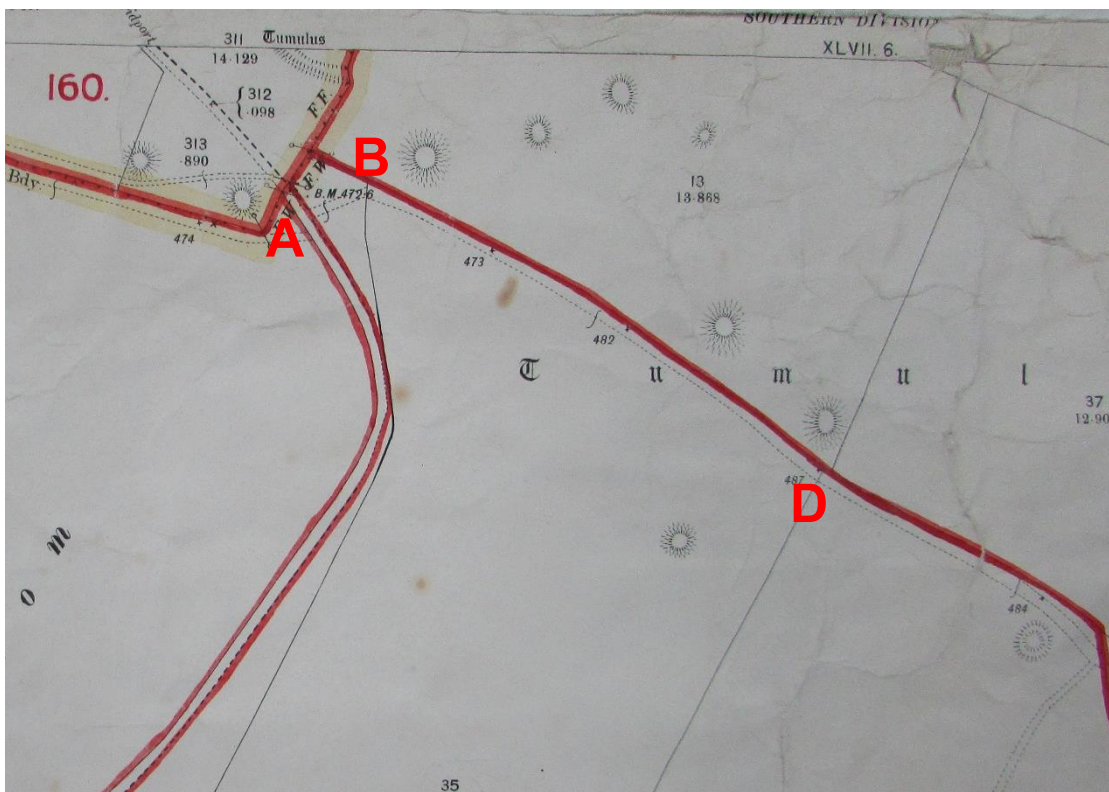
Ordnance Survey first edition 1888

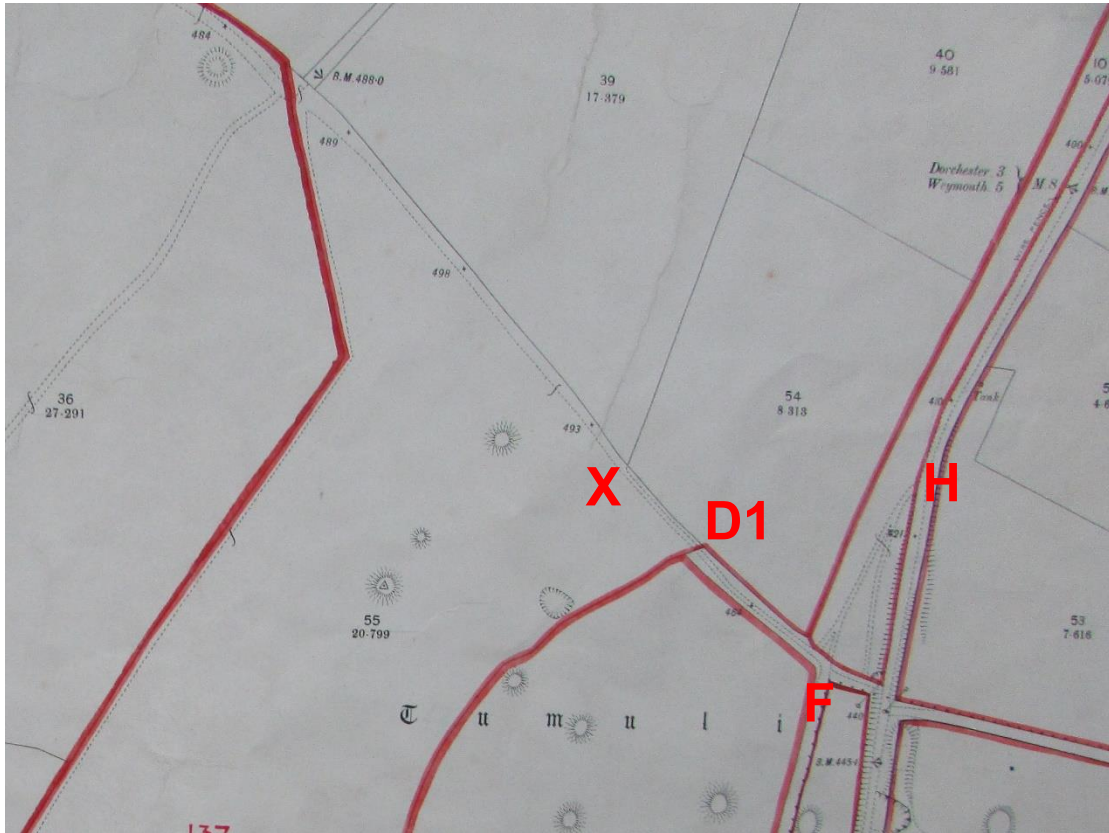


Ordnance Survey second edition 1902

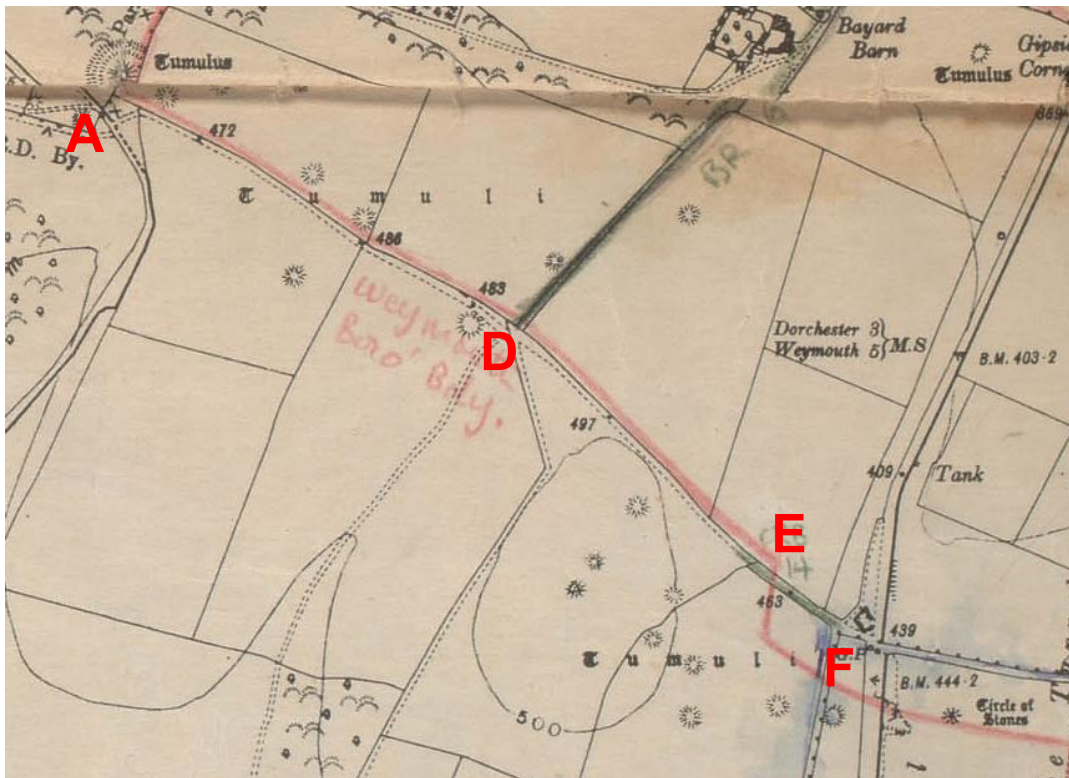


Finance Act 1910





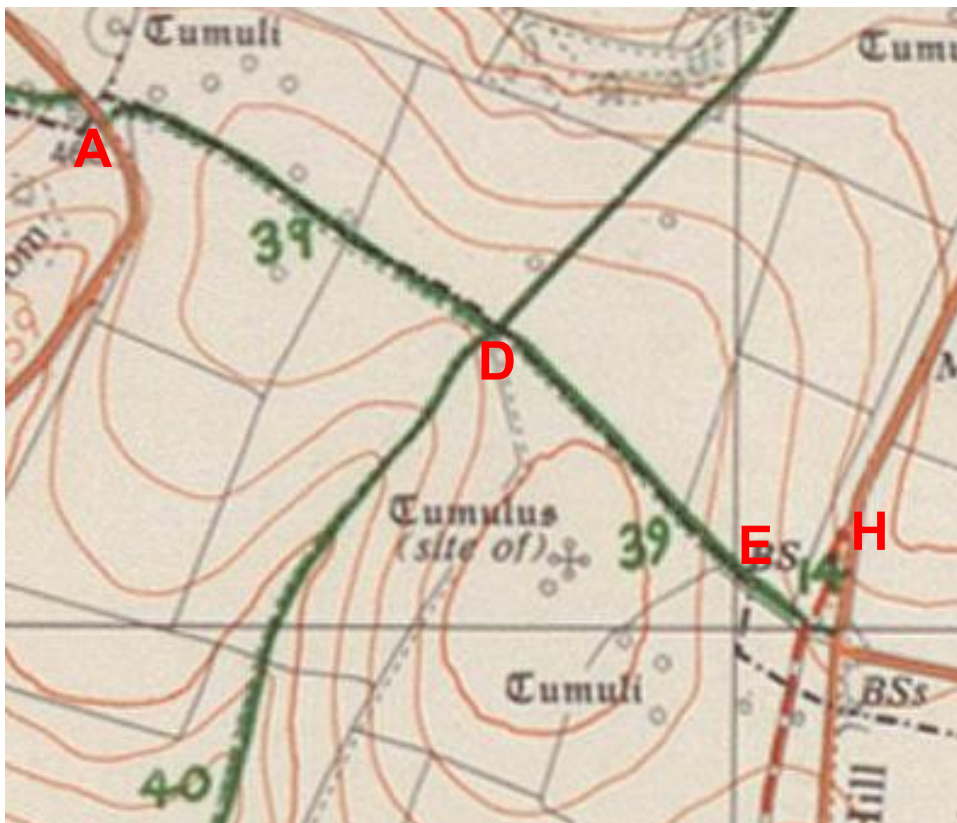
Bincombe Parish Survey 1954



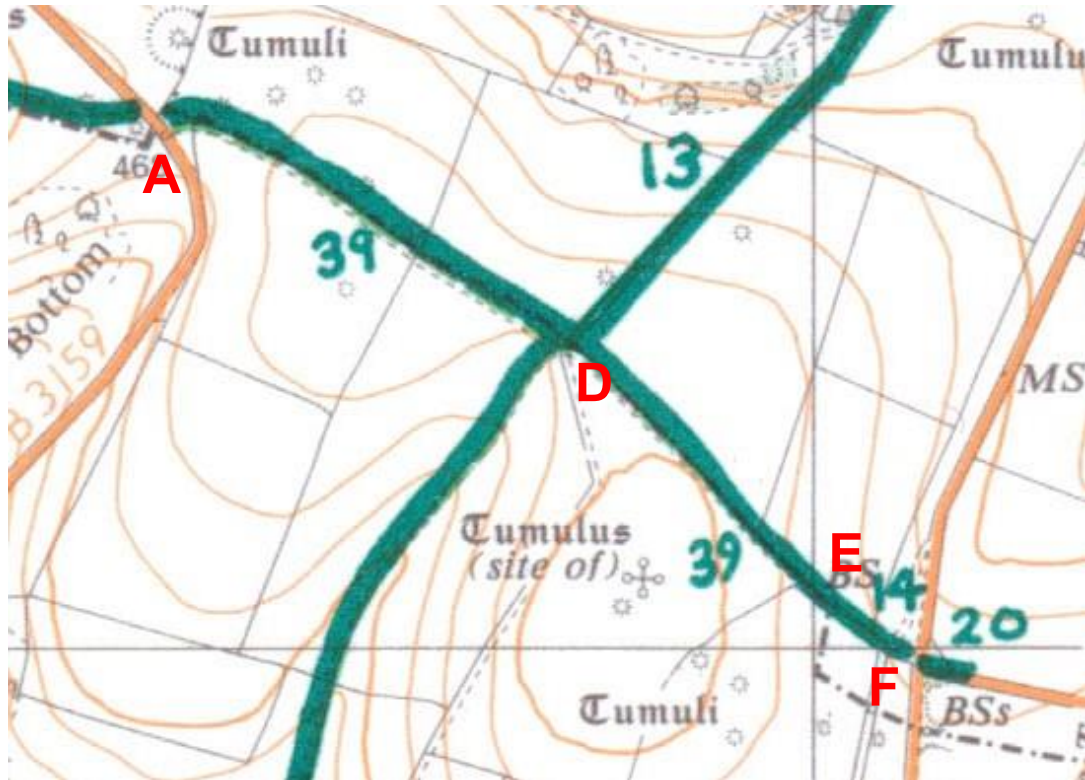
Weymouth Borough Survey 1952



Revised Draft Map 1974



Definitive Map 1989



Recommendations accepted:

Signed:

Signature redacted
...

Date:.....29 February 2024.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning