



**Application for a definitive map and
statement order to upgrade Bridleway 42,
Corscombe and add a byway open to all
traffic (continuous route) – Ryam Lane**

Lead Member: Cllr Mary Penfold – Lead Member for Yetminster

Lead Officer: Matthew Piles – Corporate Director for Economic Growth and
Infrastructure

Executive Summary:

In response to an application to upgrade Bridleway 42, Corscombe and add a byway open to all traffic (continuous route) – Ryam Lane, this report considers the evidence relating to the status of the route and recommends that the application be accepted in part and an order be made to record Bridleway 42, Corscombe part byway open to all traffic and part restricted byway in light of the Natural Environment and Rural Communities Act 2006.

Equalities Impact Assessment:

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

Budget:

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

Risk Assessment:

As the subject matter of this report is the determination of a definitive map modification order application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications:

None

Recommendation:

That:

- (a) The application be accepted in part and;
- (b) An order be made to modify the definitive map and statement of rights of way to record the claimed route A – B – C – D – E as shown on Drawing 11/58 as a byway open to all traffic and to record Bridleway 42 Corscombe as shown E – F – G on Drawing 11/58 as a restricted byway;

If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reasons for Recommendations:

- (a) The available evidence shows, on balance, that public rights for mechanically-propelled vehicles exist along the route A – B – C – D – E – F – G as claimed ; and
 - i. The available evidence shows that the claimed right of way was already recorded on Dorset Council’s List of Streets immediately prior to the implementation of the relevant sections of the Natural Environment and Rural Communities Act 2006 therefore an exemption applies to the presumed extinguishment of mechanically propelled vehicular rights between points A – B – C – D – E.
 - ii. The section of claimed route between E – F – G is also recorded as a public bridleway and therefore vehicular rights have been extinguished from this dual recorded part of the claimed route;
- (b) an order should therefore be made for a byway open to all traffic over part of the route A – B – C – D – E and for a restricted byway over part of the route E – F – G;

The evidence shows, on balance, that part of the route claimed should be recorded as a byway open to all traffic and part as restricted byway as described. Accordingly, in the absence of objections Dorset Council can itself confirm the Order without submission to the Planning Inspectorate.

Use of Evidence:

The applicant submitted documentary evidence in support of his application.

Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.

A full consultation exercise was carried out in November and December 2011, and a second consultation was carried out in July and August 2019, both involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. In addition notices explaining the application were erected on site.

One user evidence form from a user of the claimed route was submitted during the investigation.

Any relevant evidence provided has been discussed in this report.

Appendices:

1. Drawing 11/58
2. Law
3. Documentary evidence

Extracts from key documents;

- Corscombe Common Inclosure Map and Award 1818
- Corscombe Tithe Map 1840
- Finance Act map and valuation books 1910
- First Edition Ordnance Survey map 1811
- First Edition Ordnance Survey map 1888
- Second Edition Ordnance Survey map 1903
- Second Edition Ordnance Survey map 1904
- List of Streets
- Corscombe Parish Survey 1952
- Draft Definitive Map 1959
- Provisional Map 1964
- First Definitive Map 1967
- Revised Draft Map 1974
- Current Definitive Map 1989

Background papers:

The case file of the Executive Director of Place (ref. RW/T389).

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/T389, which will be available to view at County Hall during office hours.

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1 Background

Applicant

- 1.1. An application to upgrade Bridleway 42, Corscombe to a byway open to all traffic and to add a byway open to all traffic (one continuous route) – Ryam Lane, as shown on Drawing 11/58 was made by Friends of Dorset's Rights of Way on 11 September 2005.
- 1.2. The application was transferred to the Trail Riders Fellowship on 4 October 2010.

2 Description of the route

- 2.1 The entire claimed route is not registered and no owner has been found although adjoining landowners have been identified and consulted.
- 2.2 The claimed route commences at point A as shown on Drawing 11/58 (Appendix 1) at the junction of New Road opposite Knapp Farm, Corscombe continuing in a general south westerly direction.
- 2.3 The track is tarmac for a short distance between points A and B then becomes a rough stone surface between points B and C. Between points C, D and E the track is a natural surface with partial grass and between points E, F and G the track is also a natural surface with partial grass and parallel ruts from vehicular traffic.
- 2.4 The lane is hedged on both sides its entire length with gates leading into fields at various points.
- 2.5 At point B the claimed route has a junction with Footpath 62, Corscombe.
- 2.6 At point F the claimed route has a junction with Bridleway 41, Corscombe.
- 2.7 At point G the claimed route joins the county road A356.
- 2.8 The gradient of the route increases from approximately 130 metres above sea level at point A to approximately 250 metres above sea level at point G.
- 2.9 The steepest section of the claimed route is to the northeast of Point F where the track rises from approximately 170 to 230 metres above sea level within a 400 metre stretch.

2.10 The width of the claimed route varies (approximate widths given);

Point A – 4 metres

Point B – 3 metres

Point C – 3 metres

Point D – 3.8 metres

Point E – 4.7 metres

Point F – 2.8 metres

Point G – 7.5 metres

2.11 The route is recorded as an unpaved unclassified road D11722 for its entire length point A to G and as Bridleway 42, Corscombe for part of its length from point E to point G.

3 Law

3.1 A summary of the law is contained in Appendix 2.

4 Issue to be decided

4.1 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.

4.2 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.

4.3 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.

5 Documentary evidence (Appendix 3) (copies available in the case file RW/T389)

5.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below.

Inclosure Award

5.2 The most important documents in this case are those relating to the Inclosure of the land of 1818 Map and Award of Corscombe Down Inclosure in the Parish of Corscombe, Dorset.. The southern end of the claimed route is marked as “No 3 Ryham Lane”. Only a short section of the claimed route is shown.

5.3 The 1818 Award states that “One other Public Carriage road..No3 on the said map of the breadth of thirty feet branching off from the said public carriage road numbered 2 on the said map by the allotment marked and numbered I..2 and G.2.... on the said map hereinafter awarded to – William Dawe Christopher Gundry Dawe and to – William Snaydon to an ancient lane called Ryham lane leading to the village of Corscombe”.

5.4 Other routes are noted throughout the 1818 award document for Public Carriageways, Public Bridle Roads and Occupation Roads. There was a clear division between all routes noted and the public carriageway classification for Ryham lane which gives strong evidence of public vehicular rights at that time.

Tithe Map

5.5 The 1840 Corscombe Tithe map and Apportionments shows the claimed route as coloured sienna brown, as are all the other routes, the majority of which are now public roads. A small section of the route at the southern end is shown wider than the rest of the lane. This is the section of the claimed route shown on the 1818 Inclosure map. This shows that this part of claimed route had been laid out at that time. This adds weight to the previous documents that the claimed route was a through route of some significance.

- 5.6 Tithe maps were not drawn for the purposes of establishing or recording rights of way and although the map gives no indication of the status of the route it does provide evidence as to its existence at that time.
- 5.7 The apportionments make no reference to any rights of access along the lane, indicating that it was considered a public route and no additional private access rights to apportionments were required.

Finance Act 1910

- 5.8 The evidence from the Finance Act documents reveals that the whole of the claimed route was excluded from valuation; the route is clearly shown with solid lines, indicating fencing both sides, on the Ordnance Survey 1903 base maps (sheets 20.11 and 20.12) at a scale of 1:2500, which were used for valuation purposes.
- 5.9 Public roads that were fenced were generally excluded from the valuation and this evidence indicates that it is very likely the routes enjoyed public highway rights.
- 5.10 With respect to that part of the route between points E to F, the route passes through Hereditament pt 62. The bracing symbols across the route are broken where they cross Ryam Lane in two places. This clearly indicates that the route was not considered to be part of that parcel of land and therefore not part of the valuation.
- 5.11 This is strong evidence that the whole of the route was considered to be vested in the highway authority at that time and was subject to public carriageway rights.

Ordnance Survey Maps

- 5.12 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.
- 5.13 The First Edition Ordnance Survey map of 1811 at a scale of 1":1 mile, which was produced for military purposes, shows the claimed route as a road.
- 5.14 On the First Edition Ordnance Survey 1888 without contours at a scale of 6":1 mile the claimed route is shaded and shown as the other public carriageways as a metalled road.

- 5.15 The Second Edition Ordnance Survey 1903 at a scale of 25 inches: 1 mile clearly shows the claimed route bounded by solid lines. This indicates that the route is a fenced road.
- 5.16 The Second Edition Ordnance Survey 1904 at a scale of 6 inches: 1 mile also clearly shows the claimed route bounded by solid lines. This also indicates that the route is a fenced road.

Dorset Council records

List of Streets

- 5.17 The claimed route is recorded on Dorset Council's List of Streets 1961, 1965 and 1973/4 and the current list of streets. It is recorded as the D11722 from Junction New Road Knapp Farm – South West with grid reference GR 514057-510054.
- 5.18 The claimed route is shown as a dashed blue line on the List of Streets map (see Appendix 3).
- 5.19 The available evidence shows that the claimed right of way was already recorded on Dorset Council's List of Streets immediately prior to the implementation of the relevant sections of the Natural Environment and Rural Communities Act 2006 (see paragraph 5 in Appendix 2). Therefore an exemption applies to the presumed extinguishment of mechanically propelled vehicular rights between points A – B – C – D – E.
- 5.20 Whilst the inclusion of a route on the list of streets does not automatically indicate public vehicular rights, there is evidence that Dorset Council as Highway Authority, considers that there are public vehicular rights between points A – B – C – D – E.
- 5.21 The Council's Community Liaison Team Leader, Dorset Highways states that "Ryam Lane is a UCR in its entirety and [has] vehicular rights over it".
- 5.22 In 2006 the route was reported as deeply rutted and overgrown. The Council's highways department funded repairs to the route including clearance and regrading of the path.

- 5.23 On 26 March 1971 a memo regarding “Classification of Roads – Division No. 1” from Dorset County Council’s Roads and Bridges Department from Divisional Surveyor to the County Surveyor stated that the “length of Ryhams Lane between the A356 and Corscombe would appear to be at least a Byway and is typical of many similar roads looked at last year. Its course is well defined between banks and hedges and, whilst not usable by vehicles throughout its entire length, the lower end is traversed quite frequently by agricultural machinery. The only physical obstruction to free passage were two gates, only one of which was closed.” A handwritten file noted states “It could be negotiated by a vehicle of the Land Rover type and just about qualifies as a Byway Open to all traffic.

Documents leading to the production of the Definitive Map and Statement

Corscombe Parish Survey

- 5.24 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.
- 5.25 Corscombe Parish Council carried out a parish survey in October 1953.
- 5.26 Corscombe Parish Survey map shows the claimed route with a dashed purple line and marked “C.R.B”. indicating that the route was considered to be a carriageway used mainly as a bridleway. The supplementary notes state ‘CRB...Lower part foot to field gate. Very bad further up. Overgrown. No gates or stiles...was a lane called “Ryham Lane” now only used as a footpath’.
- 5.27 The 1959 Draft Map shows the whole of the claimed route with a dashed green line which denotes a road used as a public path (RUPP).
- 5.28 The 1964 Provisional Map shows part of the claimed route E – F – G with a solid green line denoting it as a public bridleway, number 42 whilst the section A – B – C – D – E is shaded in pencil, showing that it is a public road.
- 5.29 The 1967 First Definitive Map and the 1974 Revised Draft Map both show part of the claimed route E – F – G with a solid green line denoting it as a public bridleway, whilst the section A – B – C – D – E is dashed orange which denotes it as a public road.

- 5.30 In 1971, correspondence from the Parish Council to Dorset County Council notes that the claimed route was identified as “Public Road no.3” on the Inclosure Award 1818, and subsequently shown on the Parish Survey map as “part County Road D1722 and part Bridleway 42 and is shown on the Parish Survey map as RUPP suggested byway. The original Parish Survey and draft map show the section as Carriage Road / Bridleway Number 36. The Section extends from 511054 to 504046 and has been entered on the Ordnance Survey map as a byway except for the section comprising a County Road. It is used for agricultural purposes only by adjoining farmers. The Corscombe Parish Meeting have been asked for their comments and have suggested that the whole section from the A356 to Knapp Farm should in fact be a bridleway. They claim that it is not needed as anything more than a bridleway as there is a tarmac road in close proximity which follows a parallel course.” (A RUPP is a Road used as a Public Path which is 'a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used' and equates approximately to a Byway Open to all Traffic.)

A memo dated 26 March 1971 from Dorset County Council's Roads and Bridge Department describes the route; “The length of Ryhams Lane between the A356 and Corscombe would appear to be at least a Byway and is typical of many similar roads looked at last year. Its course is well defined between banks and edges and whilst not usable by vehicles throughout its entire length, the only physical obstruction to free passage were two gates, only one of which was closed.”

Special Review 1973

- 5.31 A Special Review was commenced in 1973 to reassess the status of the route. The County Council's Special Review Sub-Committee retained the route as a bridleway in view of the Parish Council's recommendation that there was no need for vehicular rights due to a parallel tarmac road nearby. The Committee felt that the route was unsuitable for vehicles due to the steepness of the route. Their decision is reflected on the revised draft map which was published in 1975.
- 5.32 The classification of Bridleway 42 for inclusion on the revised draft map was considered by the Special Review Sub-Committee in 1973 but new evidence given by the Ramblers Association and the British Motor Cycle Federation justified further consideration as part of an inquiry into the draft revised map.

- 5.33 It was concluded in 1978 that the classification of the route as a bridleway should stand.
- 5.34 At this time, in accordance with the Countryside Act 1968, the suitability of a route could be taken into account when determining status.
- 5.35 The 1989 Current Definitive Map shows part of the claimed route E – F – G with a solid green line denoting it as a public bridleway.

Aerial photographs

- 5.36 Aerial photography between 1947 and 2017 consistently shows the claimed route as a double hedged lane. The 1947 and 2017 aerial photographs are included in Appendix 3.

Summary of documentary evidence

- 5.37 There is strong evidence that the claimed route be recorded as a byway open to all traffic. The route was designated as a public highway in 1818 by the inclosure process and subsequent documentation indicates that those public vehicular rights continue to exist for that section of the claimed route between points A and E. Under the provisions of the NERC Act 2006, public rights for mechanically propelled vehicles on the section of the claimed route between points E and G have been extinguished as that section is recorded on both the Definitive Map and also the List of Streets.
- 5.38 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”.
- 5.39 Paragraph 4.48 of the Defra Circular 1/09 advises authorities to “examine the characteristics of the way...it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular user. The test also relates to its character or type and whether it is more suitable for use by walkers and horse riders than vehicles”.
- 5.40 The character of the claimed route is a rural unsurfaced, double hedged track more suitable for walkers and horse riders than vehicles due to its rough surface, steep gradient, narrow width and rural character.

6 User evidence (copies available in the case file RW/T389)

- 6.1 One user evidence form was submitted in 2012 during the initial investigation.
- 6.2 The user states that he used the claimed route “Up to 2003, back to 1980’s, possibly 1970’s” with a car and motorcycle as part of an organised event. In addition up to 70 other “participants” used the route. No permission was granted and there was no challenge to use, however the owner or occupier was given prior notice of the events.

7 Consultation responses and other correspondence (copies available in the case file RW/T389)

- 7.1 Eleven objections were received to the proposed modification following the consultation which was carried out in 2019. The following points were raised:
- (a) Ryam lane is a peaceful rural lane and a wildlife habitat.
 - (b) It is used for herding livestock, and a change in status to allow vehicles would therefore create safety concerns.
 - (c) There is also concern that the change in status to BOAT would cause conflict between motor vehicles and horseriders, walkers and dogs.
 - (d) Upgrade of route to BOAT would damage the surface creating ruts, disrupting natural drainage with vehicles producing noise, fumes, oil spillage and leaving behind metal and plastic debris.
 - (e) Vehicular use would disturb wildlife and have a negative impact on the natural environment.
 - (f) Ryam lane is unsuitable for motor vehicles due to its surface, gradient, winding route and narrow width.
 - (g) Corscombe and Halstock Parish Council comment that no one has been seen to use the lane as a road apart from occasional off-road users for many years and it is unsuitable for vehicles except tractors. They also state that the “retention of sections A – B – C – D – E as a BOAT is odd” as it is a dead end route with no destination or reason to come along a one way track.

- (h) One objector states that the lane is frequently used as a challenge trial damaging the surface and creating noise pollution, and that the lane is deeply rutted adding to the flooding risk in the village.
- (i) Ryam lane is a “health promoting local asset” for walkers and a BOAT classification is a backwards step, as exercise and decreased vehicle use should be promoted.

7.2 Officer comment: None of the issues raised can be taken into account in considering the application under the terms of the Wildlife and Countryside Act 1981.

7.3 In addition to the applicant there was one consultation response in support of the application stating that the claimed route would provide safe access for all users whilst the narrow width would deter use by delivery vehicles. The consultee and her late husband used Ryam lane on a quad bike to check livestock on a regular basis.

7.4 Officer comment: Since the purpose of using the route was to check on livestock, this is not deemed as public use and does not add any evidence of use to the claimed.

7.5 During the consultation period in July / August 2019, the applicant requested additional time to respond. An extension was given, but no further evidence was submitted by the Trail Riders Fellowship.

8 **Analysis of the user evidence**

8.1 The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.

8.2 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

Conclusions under Section 31, Highways Act 1980

- 8.3 It is considered that the requirements of Section 31 have not been satisfied in this case.

9 Analysis of the evidence under common law

9.1 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

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

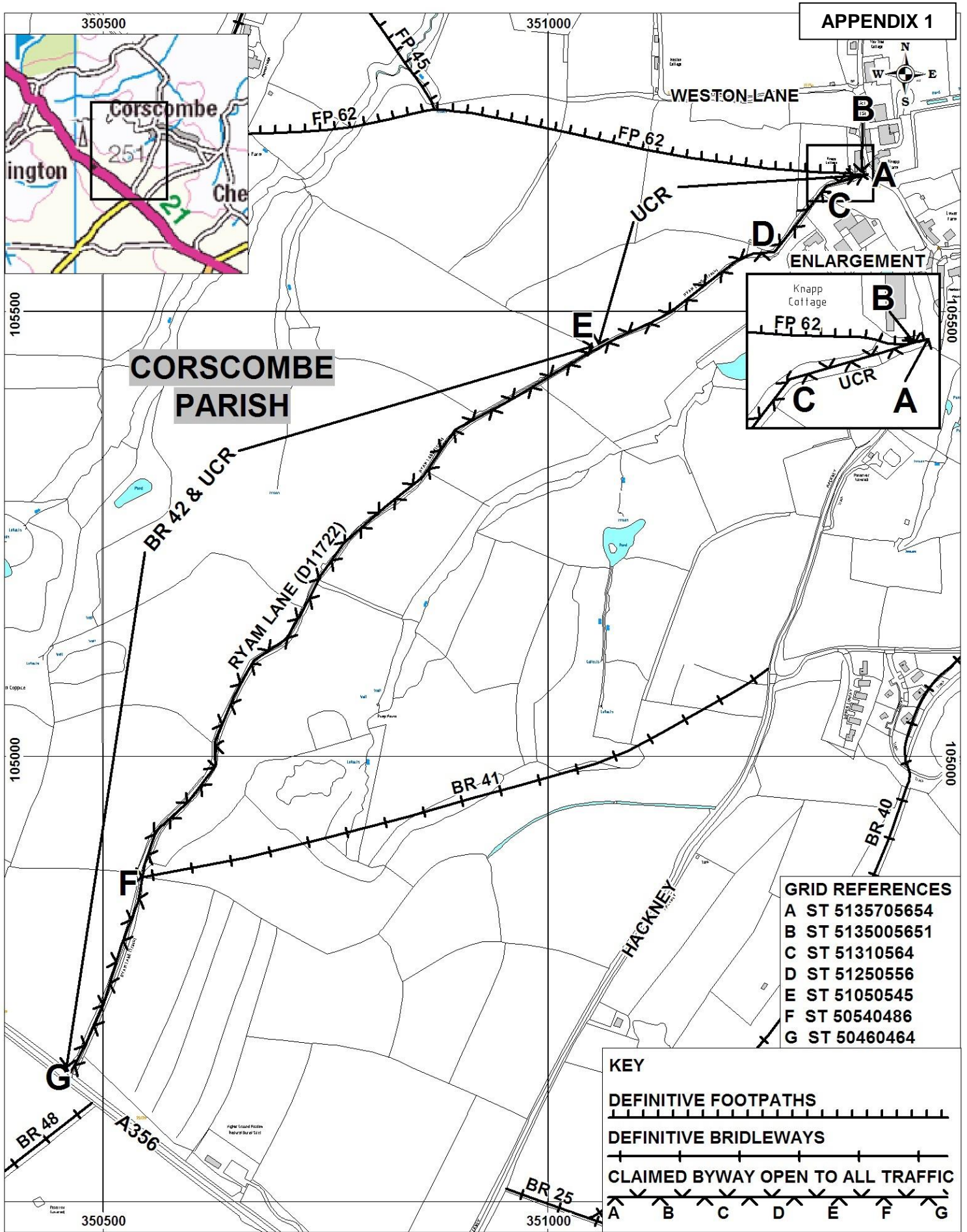
10 Conclusions

10.1 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.

10.2 The documentary evidence indicates that there is a strong indication that the claimed route be recorded as a Byway Open To All Traffic.

10.3 Under the NERC Act 2006, subsection (2) (b) if a way is not shown in a definitive map and statement immediately before commencement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of streets maintainable at public expense), the rights for mechanically propelled vehicles is not extinguished.

- 10.4 In this case, part of the claimed route (A – B – C – D – E) was shown on the list of streets immediately before commencement, but not on the Definitive Map, therefore rights for mechanically propelled vehicles have not been extinguished along this section. This part of the claimed route is currently recorded on the List of Streets as an unclassified county road.
- 10.5 The character of the claimed route is that of a highway more suitable for walkers and horse riders than vehicles which meets the definition of a byway open to all traffic under Section 66 of the Wildlife and Countryside Act 1981 (see 5.38), taking into account the advice given in the Defra Circular 1/09 (see 5.39).
- 10.6 The rights for mechanically propelled vehicles have been extinguished along the remainder of the claimed route (E – F – G) because it was, at the date of commencement of the NERC Act 2006, recorded as both an unclassified road on the list of streets and a public bridleway on the Definitive Map and Statement.
- 10.7 The user evidence does not indicate that the requirements of Section 31 have been satisfied in this case.
- 10.8 The available evidence is not sufficient for a common law presumption to be inferred.
- 10.9 Therefore, the recommendation is that;
 - (a) The application be accepted in part and;
 - (b) An order be made to modify the definitive map and statement of rights of way to record the claimed route A – B – C – D – E as shown on Drawing 11/58 as a byway open to all traffic and to record Bridleway 42 Corscombe as shown E – F – G on Drawing 11/58 as a restricted byway;
- 10.10 If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council
- 10.11 If objections are received to the Order and not withdrawn, the matter will be referred to the Secretary of State for confirmation.



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO CLAIM A BYWAY OPEN TO ALL TRAFFIC CORSCOMBE, 'RYAM LANE'.

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 11/58

Date: 14/11/2011

Scale 1:5500

Drawn By: ACH

Cent X: 350927

Cent Y: 105150



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GRID REFERENCES

| | |
|---|---------------|
| A | ST 5135705654 |
| B | ST 5135005651 |
| C | ST 51310564 |
| D | ST 51250556 |
| E | ST 51050545 |
| F | ST 50540486 |
| G | ST 50460464 |

KEY

| | |
|--|-----------------------------------|
| | DEFINITIVE FOOTPATHS |
| | DEFINITIVE BRIDLEWAYS |
| | CLAIMED BYWAY OPEN TO ALL TRAFFIC |

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

Finance Act 1910

- 3.3 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.
- 3.4 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.

4 National Parks and Access to the Countryside Act 1949

4.1 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.

5 Natural Environment and Rural Communities Act 2006

5.1 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.

5.2 Under Section 67 of the NERC Act,

An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—

- (i) was not shown in a definitive map and statement, or
- (ii) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

5.3 The main exceptions to the extinguishment of vehicular rights are;

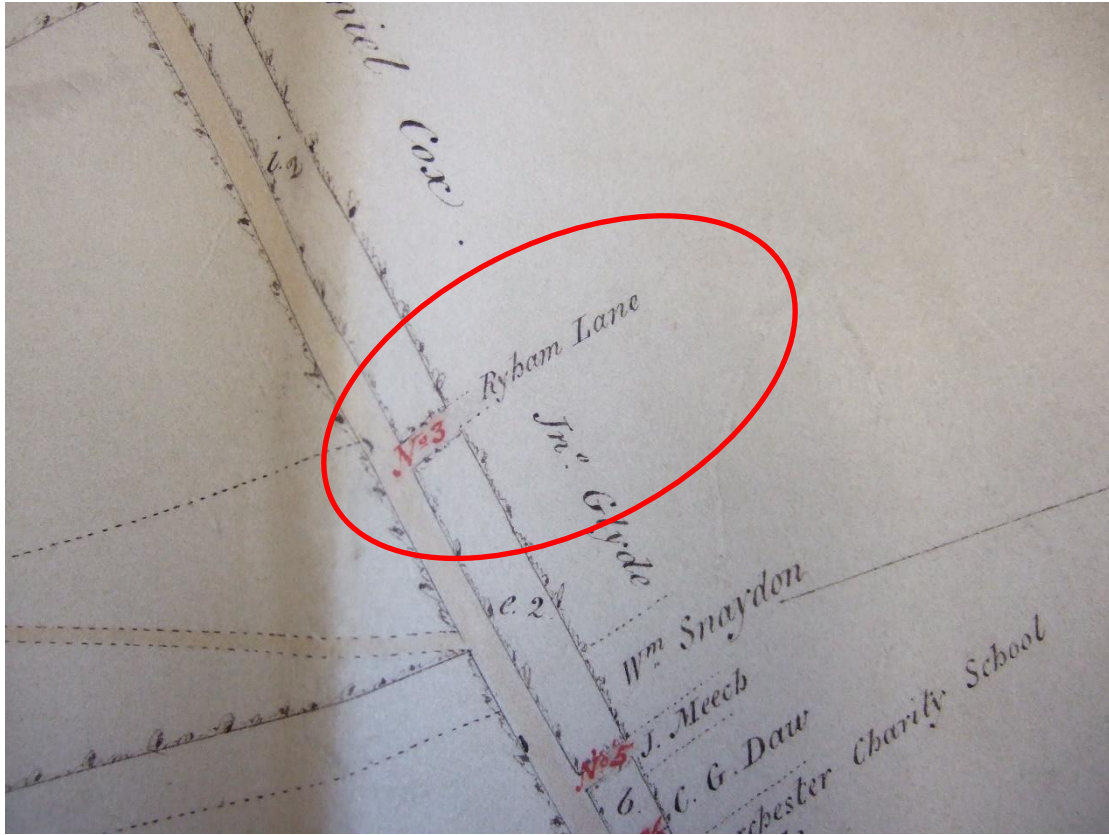
- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
- (b) immediately before commencement (20 January 2005) it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,

- (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
- (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

Case specific case law

- 6 Kind v SoS for Environment Food and Rural Affairs, EWHC [2005]
("Kind")
- 6.1 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
Corscombe Common Inclosure Map 1818



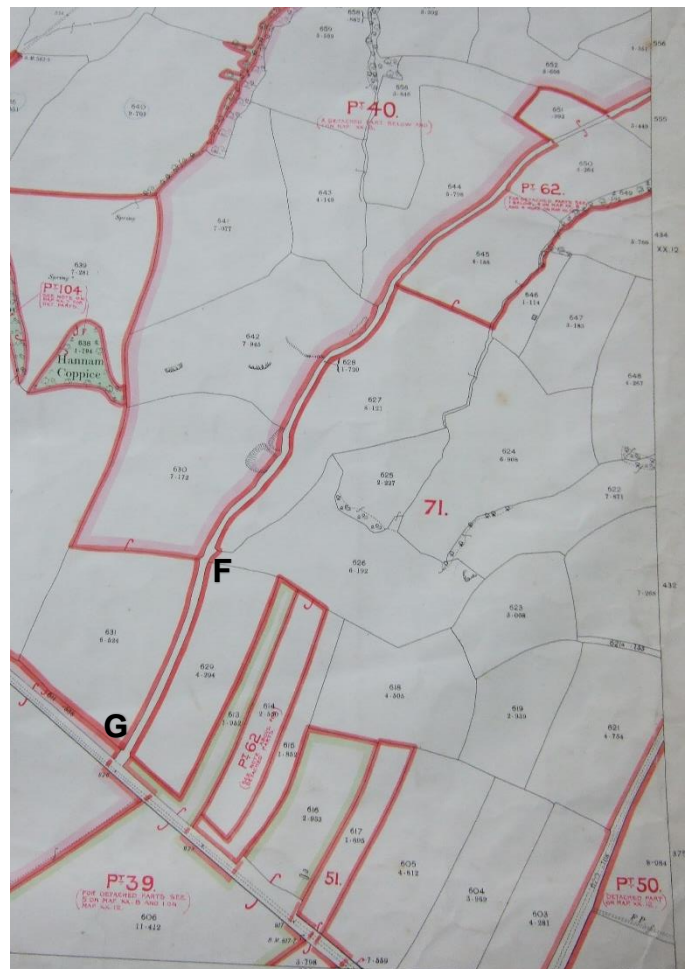
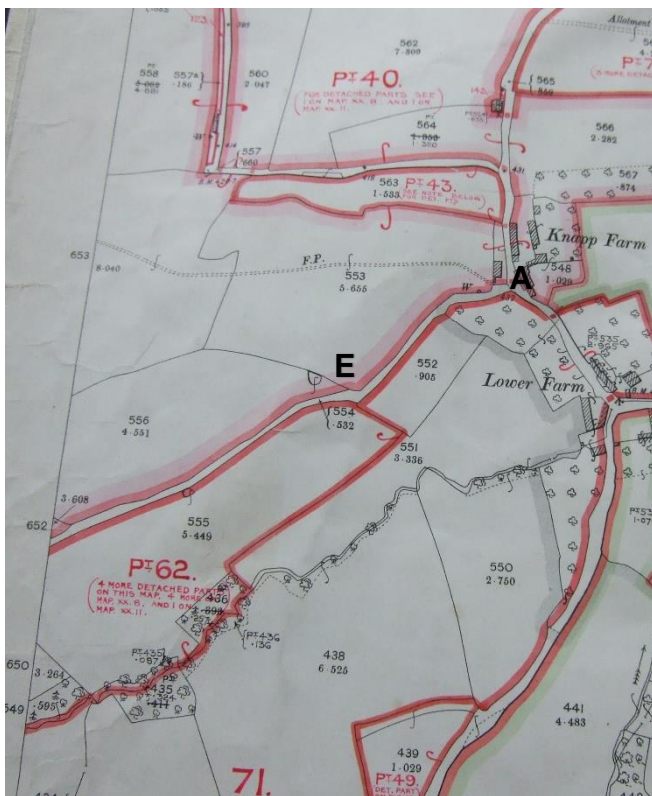
Commonly called
Newton Sumfote
One other Public Carriage road No. 3
on the said Map of the breadth of thirty feet branching off
from the said public Carriage road numbered 2 on the
said Map by the allotment marked and numbered 2
and 6. 2 on the said Map hereinafter awarded to our
William Dawe Christopher Gundry Dawe and to
William Snaydon to an amount Lane called Ryham
Lane leading to the Village of Corscombe One
Public Bridle road No. 4 on the said
Map of the beath of ten^{feet} branching off from the said
public Carriage road number 2 on the said Map at

Page 26 Application for a definitive map and statement modification order to upgrade Bridleway 42, Corscombe and add a byway open to all traffic (one continuous route) – Ryam Lane

Corscombe Tithe Map 1840 annotated with points referencing Drawing 11/58



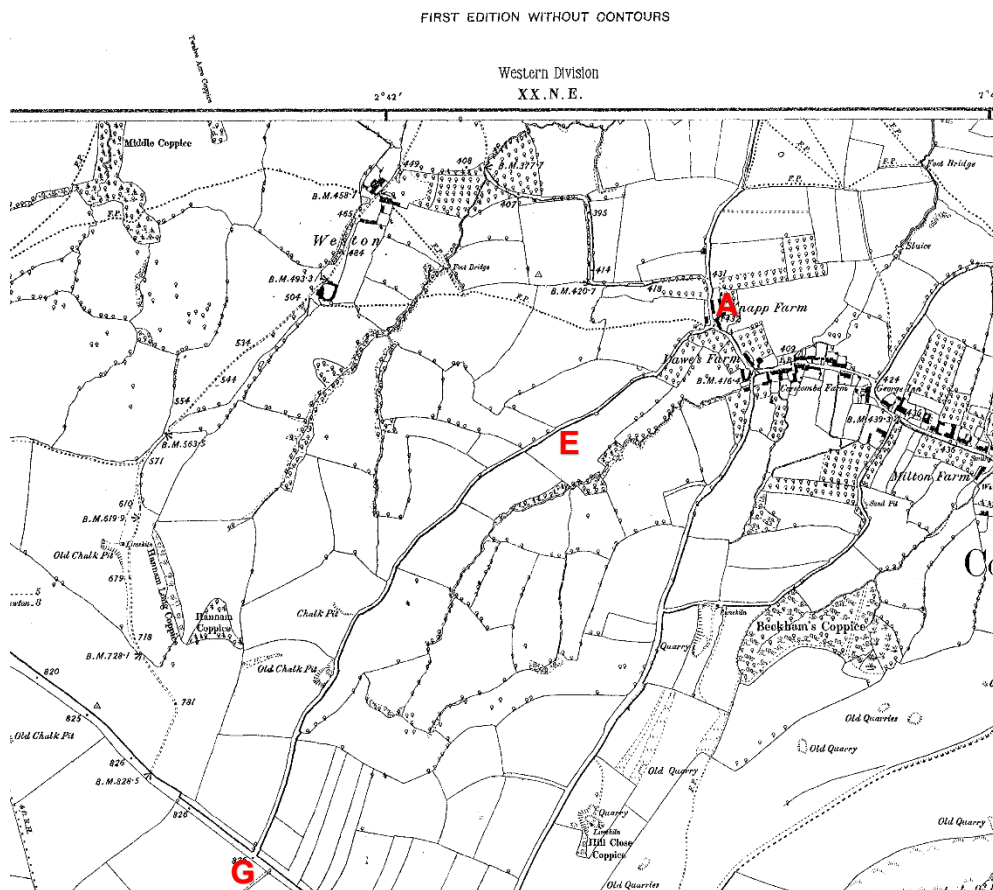
Finance Act 1910 annotated with points referencing Drawing 11/58



First Edition Ordnance Survey Map 1811
annotated with points referencing Drawing 11/58

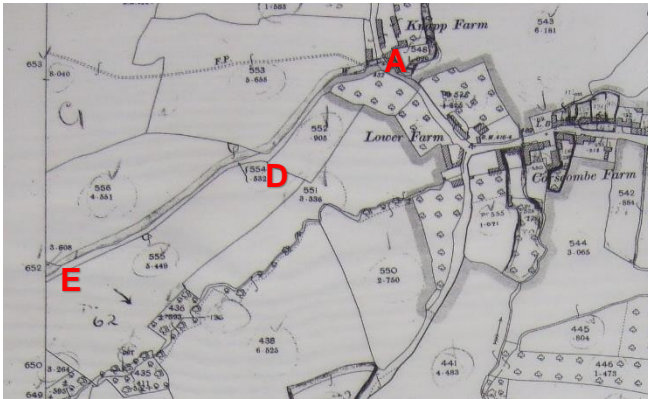


First Edition Ordnance Survey Map 1888
annotated with points referencing Drawing 11/58



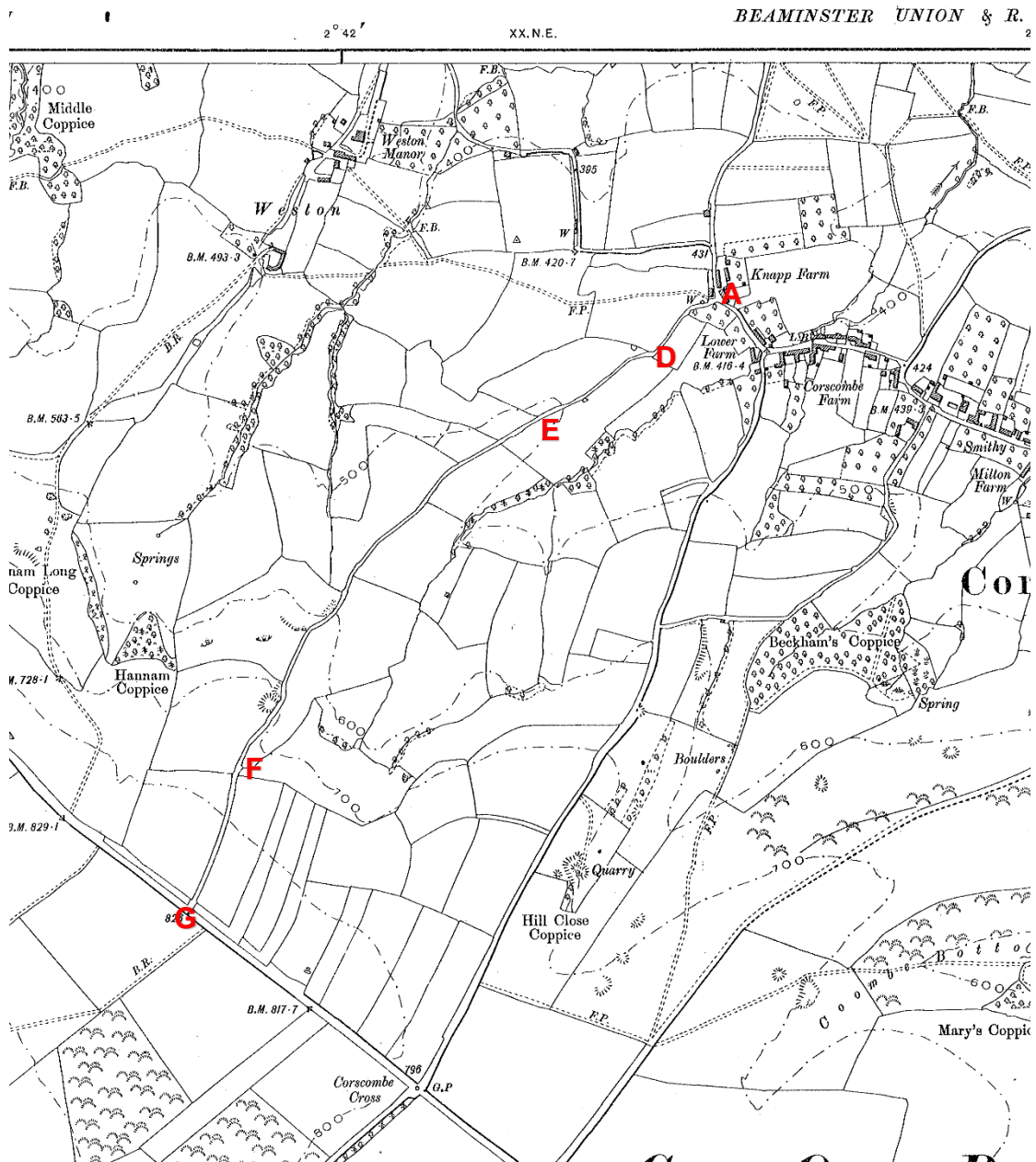
Page 28 Application for a definitive map and statement modification order to upgrade Bridleway 42, Corscombe and add a byway open to all traffic (one continuous route) – Ryam Lane

Second Edition Ordnance Survey Map 1903 annotated with points referencing Drawing 11/58

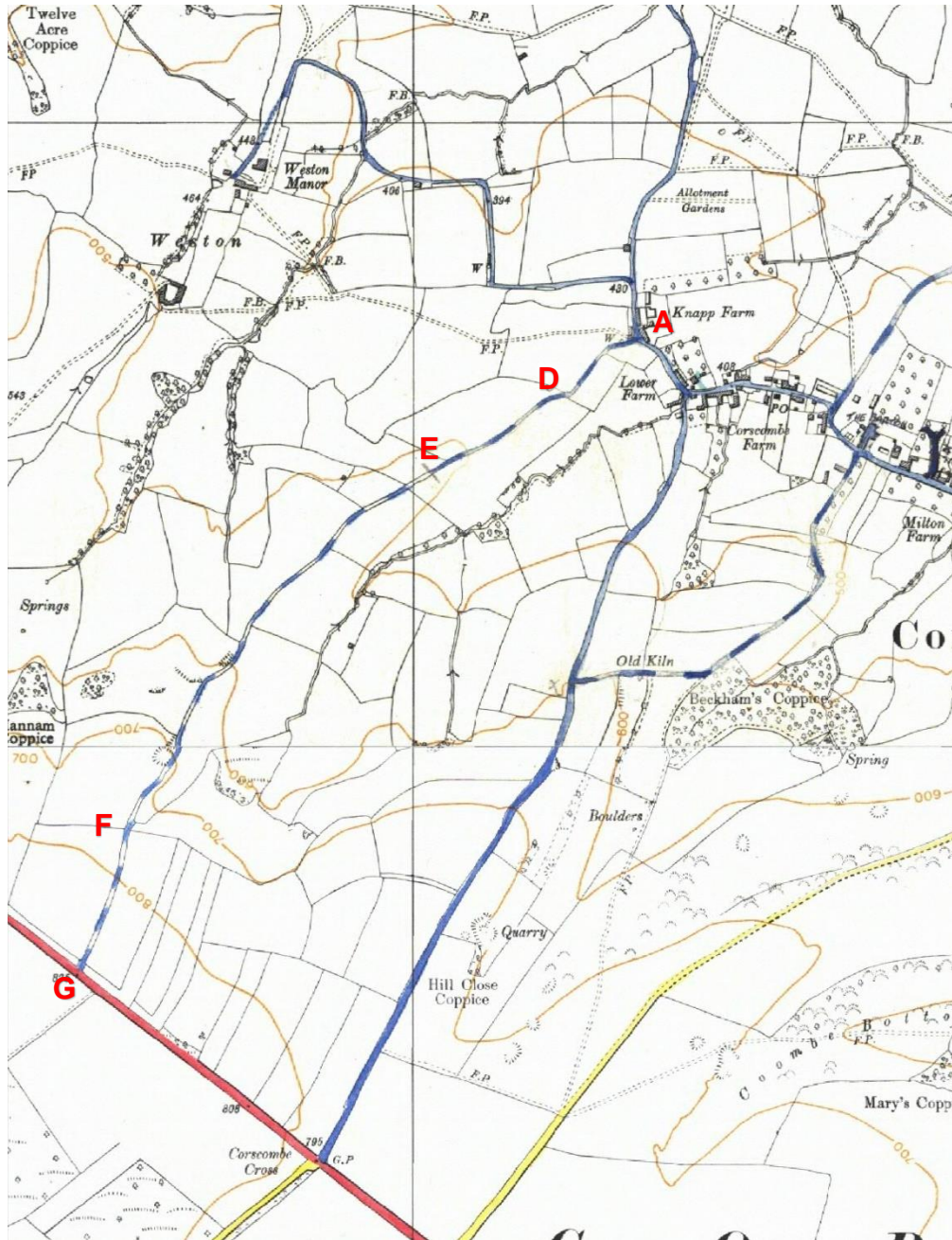


Second Edition Ordnance Survey Map 1904
annotated with points referencing Drawing 11/58

SECOND EDITION, 1904.



List of Streets
annotated with points referencing Drawing 11/58

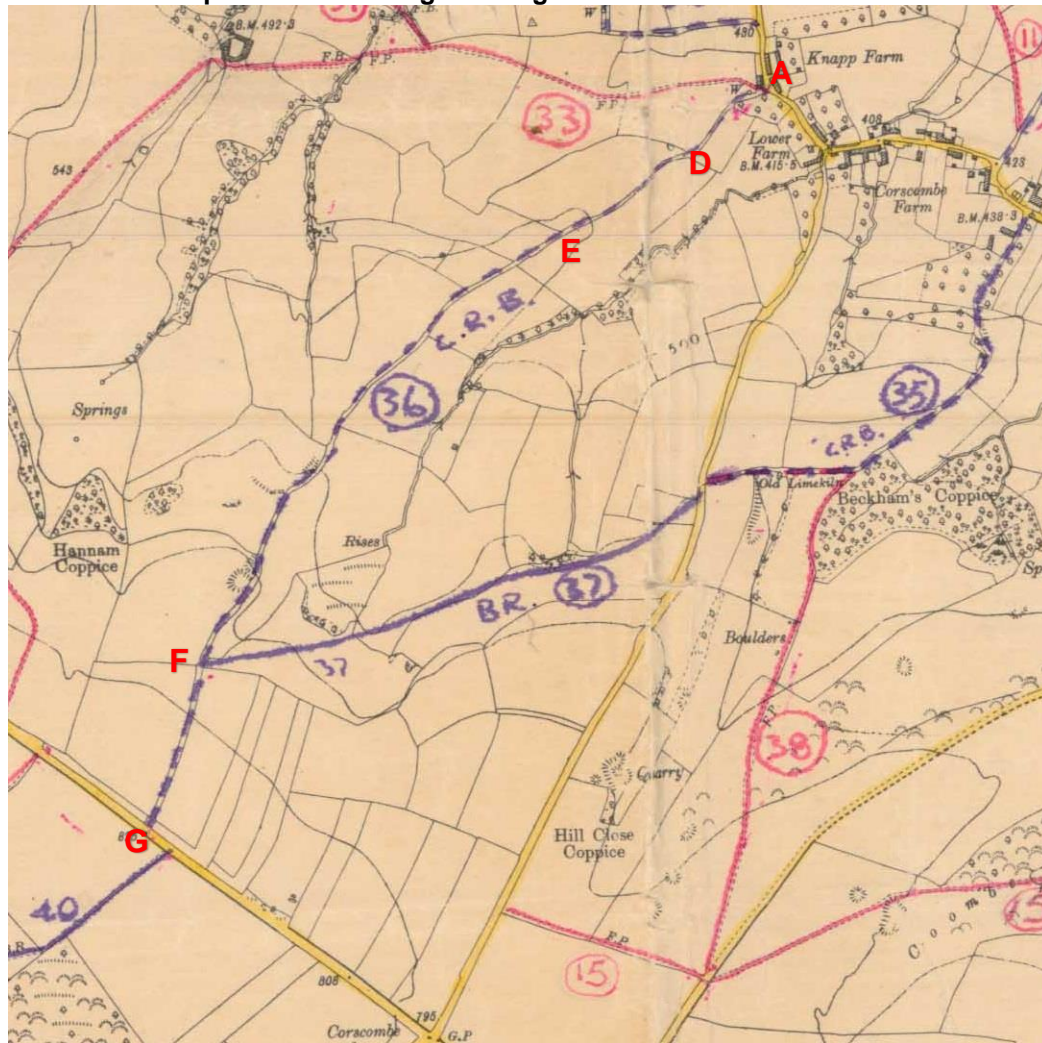


List of Streets

| ROAD NO. | CLASS OF ROAD: UNCLASSIFIED | SCHEDULE OF ROADS | | PARISH: HALSTOCK, CORSCOMBE, EAST & WEST CHELBOROUGH | | | | DIVISION NO. 1 | |
|----------|--|---|--------------|--|----------------------------------|-------------|---------|----------------|--|
| | | DISTRICT: WEST DORSET | DATE ADOPTED | PAVED ROADS | UNPAVED ROADS | GREEN LANES | REMARKS | LENGTH (km) | |
| | DESCRIPTION | MAP REFERENCE | | | | | | | |
| D117 | 13. Junction C132 Halstock - Junction New Road near Woodfold Hill | 538079 - 516066 | | | 1.78 (2.86) | | | | |
| | 14. Junction C132 - New Road - Junction Hackney Gate Lane, Corscombe | 510071 - 514056 | | 1.23 | | | | 1.98 | |
| | 15. Junction C132 Higher Halstock, Leigh - County Boundary | 512027 - 510082 510082 - 510085 | | 0.53 | 0.24 (0.39) | | | 0.85 | |
| | 16. Junction A356 - Pretty Box Lane - Junction C132 | 489064 - 492065 | | 0.23 | | | | 0.27 | |
| | 17. Junction D17(13) Woodfold Hill - Junction D17(19) Corscombe Village | 522067 - 517055 | | | 0.84 (1.35) | | | | |
| | 18. Junction D17(17) - Junction D17(19) Popes Cottage, Corscombe | 520058 - 521053 | | | 0.33 (0.53) | | | | |
| | 19. Junction New Road and Hackney Gate Lane through Corscombe Village - Junction C37 south of School | 514056 - 523050 | | 0.69 | | | | 1.11 | |
| | 20. Court Lane, Corscombe | 522052 - 525052 | | 0.21 | | | | 0.30 | |
| | 21. Junction New Road - Weston Manor | 513058 - 507059 | 12.2.61 | 0.33 0.63 | | | | 0.96 1.59 | |
| | 22. Junction New Road Knapp Farm - South West | 514057 - 510054 <i>51020544 - 50460464</i> | | | 0.26 (0.42) 0.64 (1.03) | | | | |

DORSET COUNTY COUNCIL
ENVIRONMENTAL SERVICES DIRECTORATE

Corscombe Parish Survey 1953
annotated with points referencing Drawing 11/58



Corscombe Parish Survey notes 1953

A

DORSET COUNTY COUNCIL
FOOTPATH SURVEY

Parish: Corscombe Path Section Number: 36
From: Knapp Farm To: Toller Down Rd.

Kind of Path : C.R.B.
Condition of Path : Lower part good to field gate Very Bad further up. Overgrown
Width (in feet) : _____
If ever ploughed : _____

Condition of adjoining hedges/fences : Lower part good upper part bad

| Type of Gates, Stiles etc. : | Condition : |
|------------------------------|-------------|
| <u>none</u> | |
| | |
| | |
| | |

Whether maintained for use as Bridlepaths : Overgrown

Details of Notice Boards, Direction Signs etc. : none

Details of Obstructions : Overgrown

Reasons for believing Path to be Public : not used
was a lane called "Ryham lane"
now only used as a foot path

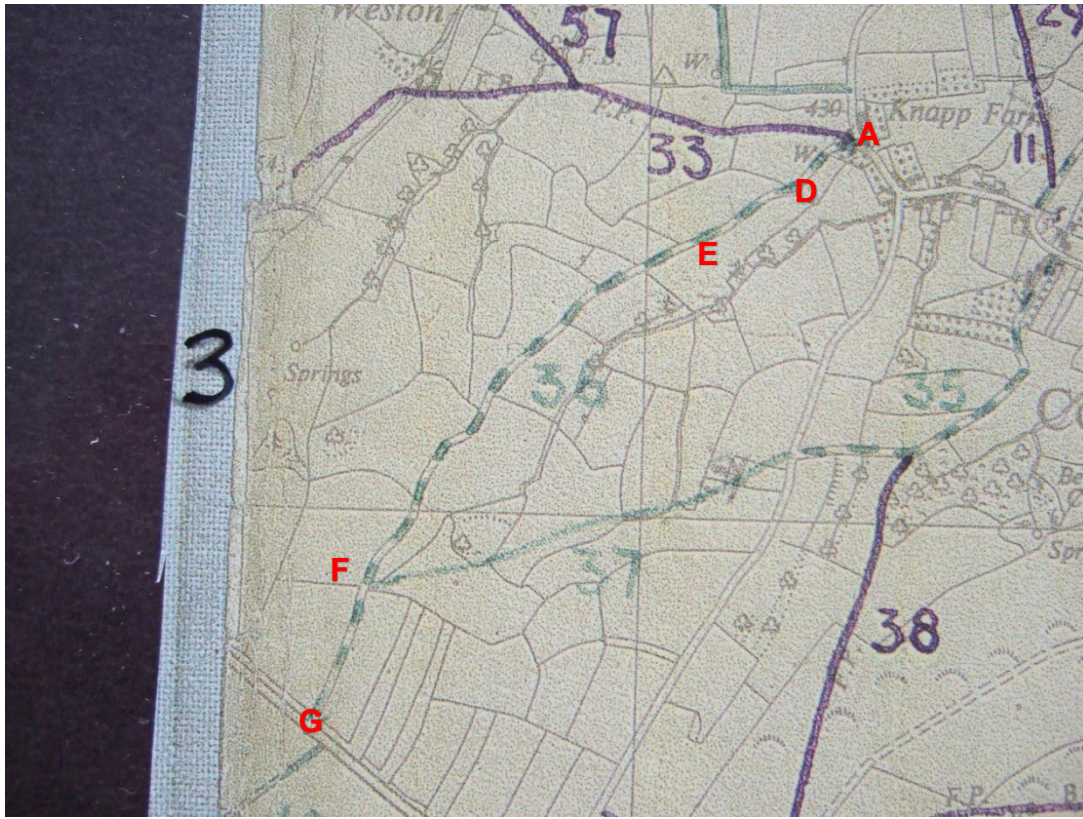
Objectors Name and Address : _____
Reasons for objection : _____

Where Path leads to (if out of Parish) : _____
Improvements Necessary : _____

Surveyor : _____ Address : _____
Date: _____

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Bridleway 42, Corscombe and add a byway open to all traffic (one continuous route) – Ryam
Lane

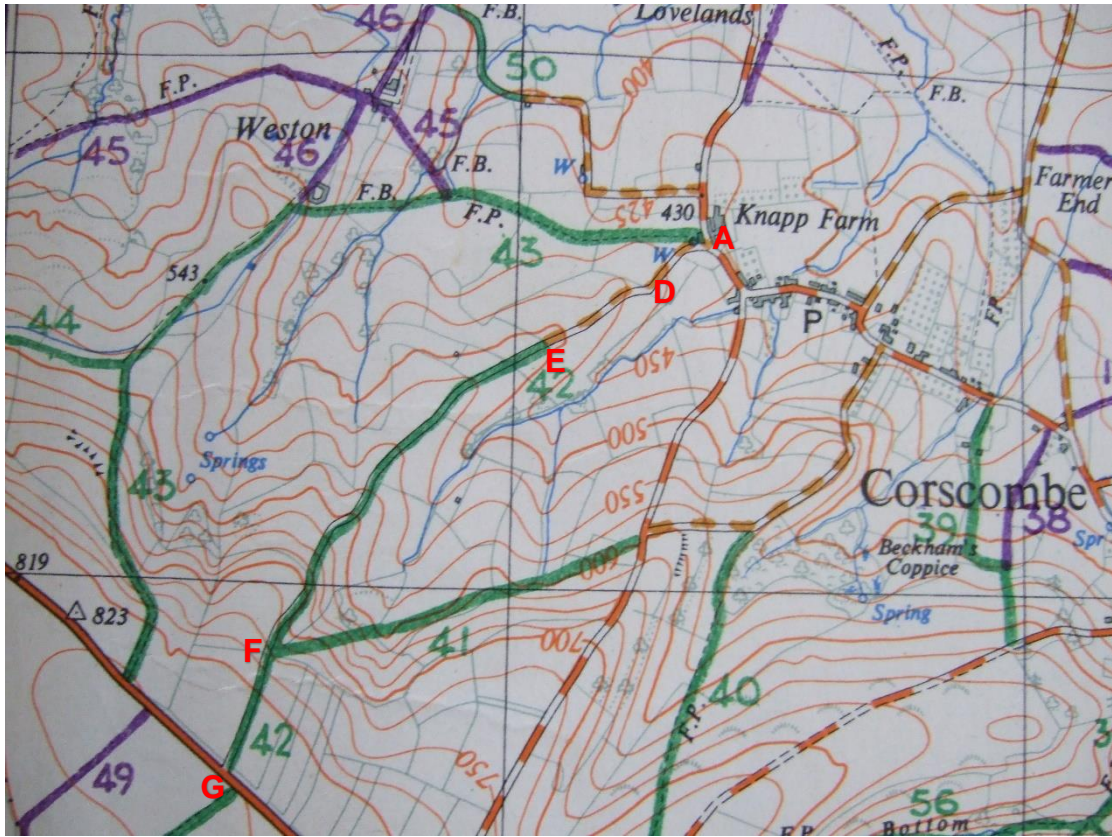
Draft Map 1959
annotated with points referencing Drawing 11/58



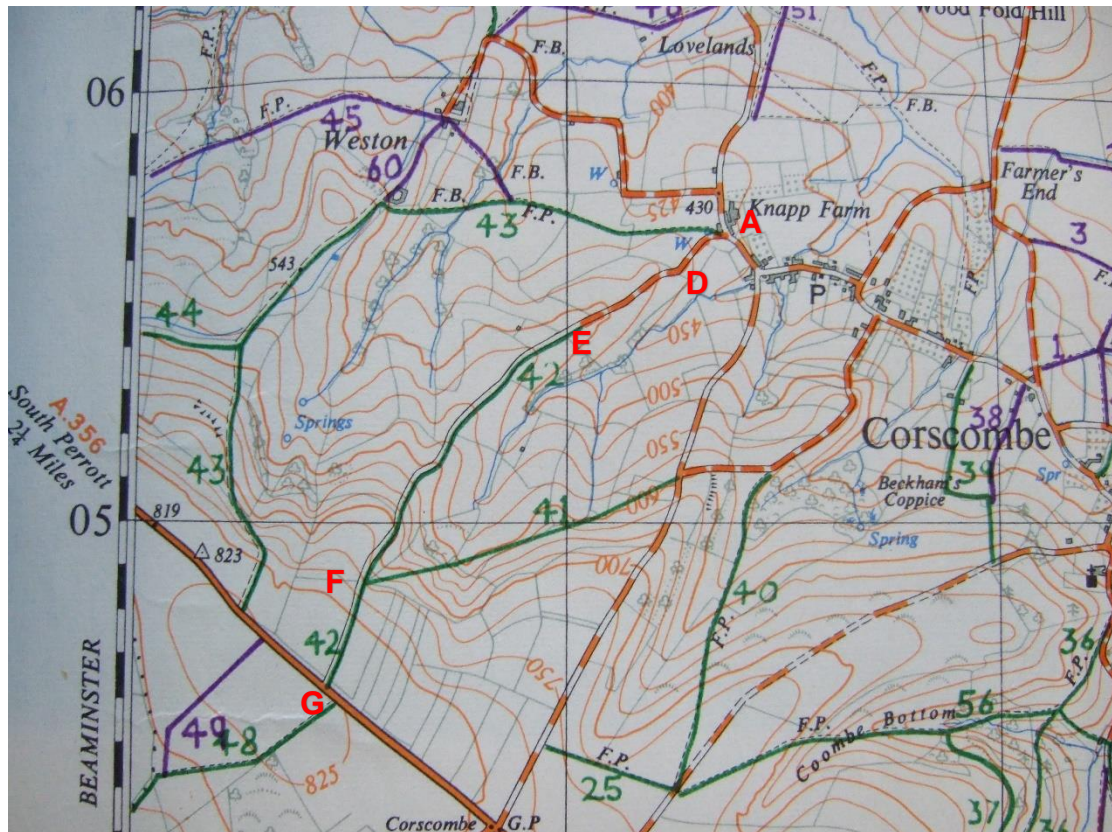
Provisional Map 1964
annotated with points referencing Drawing 11/58



First Definitive Map 1967
annotated with points referencing Drawing 11/58

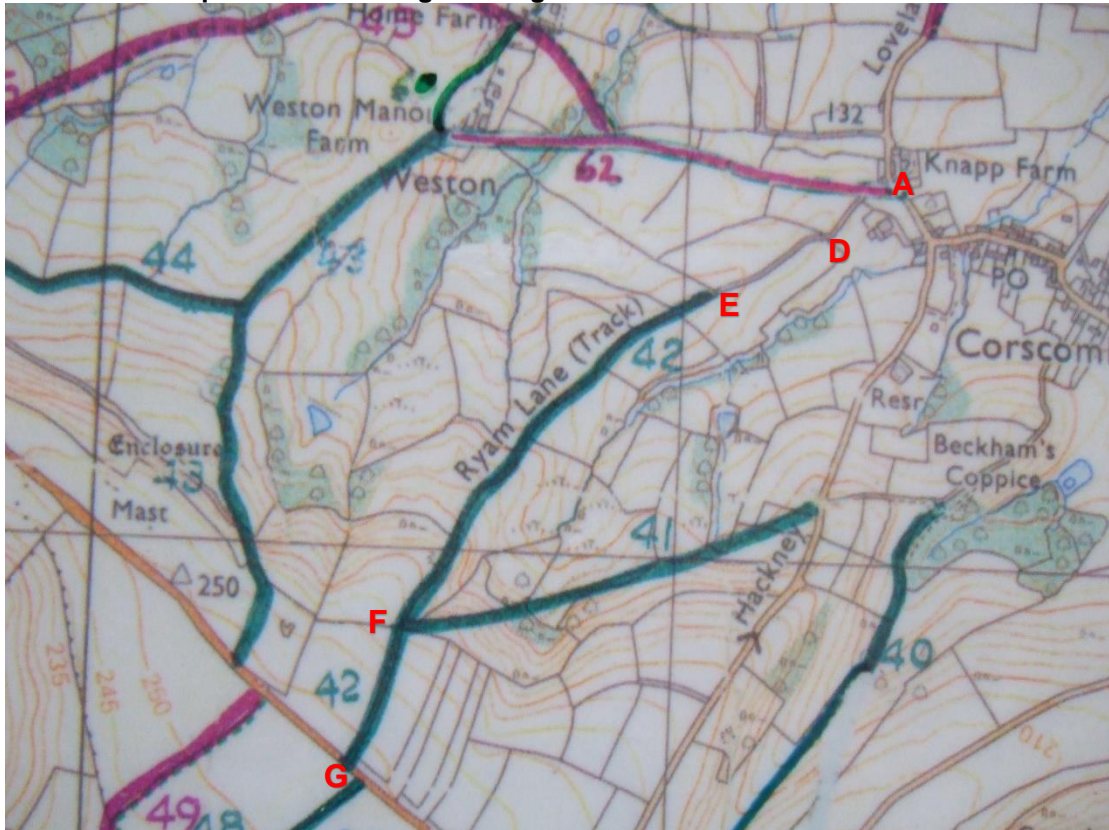


Revised Draft Map 1974
annotated with points referencing Drawing 11/58



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Bridleway 42, Corscombe and add a byway open to all traffic (one continuous route) – Ryam
Lane

Current Definitive Map 1989
annotated with points referencing Drawing 11/58



Aerial Photography 1947
annotated with points referencing Drawing 11/58



Aerial Photography 2017
annotated with points referencing Drawing 11/58



Page 39 Application for a definitive map and statement modification order to upgrade
Bridleway 42, Corscombe and add a byway open to all traffic (one continuous route) – Ryam
Lane

Recommendations accepted:

Signed:



Date: 23/1/20

Vanessa Penny

Definitive Map Team Manager

Spatial Planning