

Agenda item:

Roads and Rights of Way Committee

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Dorset County Council



Date of Meeting	23 November 2012
Officer	Director for Environment
Subject of Report	Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)
Executive Summary	In response to an application by the Trail Riders' Fellowship to upgrade Bridleway 12, Winfrith Newburgh, Bridleway 27, West Lulworth, Bridleway 5, Chaldon Herring and Bridleways 11 (part) & 12, Owermoigne to byway open to all traffic, this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives.</p>

	<p>A full consultation exercise was carried out in May and July 2012, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application.</p> <p>In addition notices explaining the application were erected on site. Eleven user evidence forms from users of the claimed route were submitted during the investigation.</p> <p>Any relevant evidence provided has been discussed in this report.</p>
	<p>Budget/ Risk Assessment:</p> <p>Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p>
<p>Recommendations</p>	<p>That:</p> <ul style="list-style-type: none"> (a) The application be refused; (b) An order be made to modify the definitive map and statement of rights of way to record Bridleway 12, Winfrith Newburgh, Bridleway 27, West Lulworth, Bridleway 5, Chaldon Herring and Bridleways 12 & 11 (part) Owermoigne as restricted byways as shown between points A and P on Drawing 12/08/2; and (c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.
<p>Reasons for Recommendations</p>	<ul style="list-style-type: none"> (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 shows, on balance, that highways shown on the definitive map and statement as bridleways ought to be shown as public vehicular ways. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for restricted byways over the claimed route; and (c) The evidence shows, on balance the route claimed is a restricted byway. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.

<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 12/08/2 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1771 Winfrith Newburgh Inclosure Award ▪ 1771 Weld Estate Atlas ▪ 1914 Southdown Farm Sale Documents ▪ 1918 Holworth Farm, Warmwell Estate Sale Documents ▪ 1942 Assignment of 3, Whitenoth Cottages ▪ 1949 National Trust Conveyance (Southdown Farm) ▪ 1970 Statements of Walter Miller, Miss D Peacock, Miss I Peacock, Mrs I Marks, Mr F Powys, Mr W Whittle ▪ 1973 Special Review Committee ▪ 1979 Statutory declarations of Mrs G Parsons and Mrs E Taylor ▪ Ordnance Survey Maps <ul style="list-style-type: none"> – 1811 First Edition scale 1 inch:1 mile – 1903 Second Edition scale 6 inches:1 mile, Sheets 54 NE and 54 NW 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T394)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T394, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 22 1562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade Bridleway 12, Winfrith Newburgh, Bridleway 27 West Lulworth, Bridleway 5, Chaldon Herring and Bridleway 11 (part) and Bridleway 12, Owermoigne, as shown between points A and P on Drawing 12/08/2, to byways open to all traffic was made by Mr M Diamond on behalf of the Trail Riders' Fellowship on 23 June 2005.
- 1.2 The route claimed commences in Winfrith Newburgh at point A, Daggars Gate, its junction with the minor county road leading from West Lulworth to Winfrith Newburgh and identified as the C8, following the route of Bridleway 12, Winfrith Newburgh heading in a generally westerly direction to point A1. The surface comprises a 9 feet (2.74 metres) wide gravel/stone track with grass verges to both sides and the centre with a small ditch on the northern side. The width of the route is approximately 30 feet (9.1 metres) as measured between the centres of the hedges that are located to both sides.
- 1.3 From A1 the route continues westerly through point A2 to a 15 feet (4.5 metres) wide field gate with adjacent bridle gate located at point A3, the surface comprising of the same gravelled/stone track with grass verges, ditch and a hedge to the southern side. The hedge that was located to the northern side does not continue beyond point A1. From A3 the route continues in a south-westerly direction through a further 14 feet wide field gate with adjacent bridle gate located at point B, the parish boundary with West Lulworth.
- 1.4 From point B the route continues in West Lulworth in a south-westerly direction following the route of Bridleway 27, West Lulworth through point C (the parish boundary with Chaldon Herring) before continuing along the route of Bridleway 5, Chaldon Herring to a further 15 feet wide field gate with adjacent bridle gate at point E. The surface of the route from point A3 to E is now comprised of grass and earth, its width being defined by two stock fences located to either side, leaving a width of 30 feet at point A3 narrowing to a width of approximately 25 feet at point E.
- 1.5 From point E the route continues in Chaldon Herring along the route of Bridleway 5, Chaldon Herring in a generally westerly direction through a bridlegate at point F, further 15 feet wide field gates with adjacent bridle gates at points G and I, before continuing in a north-westerly direction to a further 13 feet wide field gate with adjacent bridle gate at point J (the parish boundary with Owermoigne). The width of this section of the route is, in the main, undefined as it passes through open pasture or arable fields. There is a short section immediately to the west of point I, which follows a well defined chalk surfaced track of approximately 10 feet in width with stock fences either side approximately 30 feet apart. The route then continues, undefined, along the north east margin of an arable field to point J.

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- 1.6 From point J the route continues in Owermoigne to follow the route of Bridleway 11, Owermoigne in a northerly direction along the north eastern margin of an arable field to point K, from where it then takes a north westerly direction through a field gate with adjacent bridle gate at point K1. The route passes through a further field gate at point L1 and on to another field gate with adjacent bridle gate and stile at point M, where there is also a Post Office letter box. From point J to point L1 the surface of the route comprises gravel and stone and is well defined by the wheel tracks, the whole being approximately 9 feet wide. There is a stock fence to the north eastern side but no similar physical boundary to the south western side. From L1 to M the surface remains the same but for the majority of its length the width of the route is more easily defined as the route takes the form of a hollow-way, the banks of which have fences or hedges on them.
- 1.7 From point M the route continues along Bridleway 11, Owermoigne to a field gate at point N, from where it continues along the route of Bridleway 12, Owermoigne passing through further field gates at points N1 and O1, the latter having a stile located to the side and a sign stating "NO CARS" affixed to it. The route then continues through the National Trust car park to its junction and termination point with the minor county road leading to Upton and Osmington and recorded as the D21410 at point P, where there is a cattle grid with pedestrian access located to the side. This section of the route is a well defined gravel/stone track with a width of approximately 23 feet (7 metres) between points M and N1, as measured between the adjacent fences. From N1 to O1 the route is fenced, hedged or bounded by thick undergrowth, its width reducing to approximately 12 feet (3.6 metres) at point O1. From O1 the route has no adjacent fence or hedges, its width being defined by the boundaries of the track itself and continues as such to point P.
- 1.8 Most of the claimed route is owned by the Trustees of the Weld Estate and tenanted by H T Simpson and Son, J F Watkins and Sons and J F Cobb and Sons. The western end is owned by The National Trust and tenanted by J H Wilkinson and Sons. Others who have indicated an ownership affected by the claimed route are J and K House.

2 Law

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

3 Documentary evidence (Appendix 3)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T394.
- 3.3 In summary, the applicant states "There is a weight of evidence to indicate it is more likely that this route carries public carriageway rights rather than any lesser rights. This route would appear to be a major coastal route forming part of the Weymouth to Lulworth thoroughfare. Therefore, we believe there is sufficient evidence to support our claim that this road carries vehicular rights".

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4 User evidence (Appendix 4)

4.1 A table of user evidence summarised from witness evidence forms together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 Additional evidence in support of the application

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

6 Evidence opposing the application (copies available in the case file RW/T394)

6.1 Nine submissions were received in response to the application, which was made in June 2005. Of these submissions five offer no evidence for consideration, one states that they would oppose the application and three object to the application.

6.2 The objectors cite a number of reasons for opposing the upgrading of the bridleway, none of which can be considered as being relevant to the investigation.

6.3 In response to the consultation, which began in May 2012, twelve further submissions were received and eight of these objected to the application, a number of issues being raised such as: -

- Safety
- Damage to the surface
- Disruption to residents, wildlife and the natural environment
- Noise
- Pollution
- Suitability
- Dangerous junctions
- Disruption and damage to the historical environment
- Locked gates
- Incorrect scale of application map
- Never observed motorised vehicles using the route

6.4 Several objectors including Mr Newbould and Mrs S Fitzgerald representing The National Trust and Mr J Cheal on behalf of the Weld Estate, provided more detailed submissions and/or documents in evidence and these are summarised and analysed at paragraph 10 of this report.

7 Other submissions received (copies available in the case file RW/T394)

7.1 Of the remaining four submissions two of these, Natural England and Mr G Plumbe had no comments to make and a further two, Mr P Cartwright and J and K House offered no evidence for consideration.

8 Analysis of documentary evidence

Inclosure Award

- 8.1 The **Winfrith Newburgh Inclosure Award of 1771** is not accompanied by a plan or map. However, in their reference work "The Enclosure maps of England and Wales 1595 – 1918" (Cambridge University Press, 2004) Kain, Chapman and Oliver, although uncertain as to the origin of the maps, are nevertheless of the opinion that the maps or plans referred to within the award are those deposited within the Dorset History Centre by the Weld Estate (reference D/WLC/P1/1) and consequently for the purpose of this report they will be recognised as such.
- 8.2 Described within the award under the heading of '**Publick Roads**', is one intended new road and five other roads, which the text suggests were existing roads to be retained. Four of these can be identified as existing public carriageways or parts thereof, the fifth of these comprising two routes and being described as "**the roads from East & West Lulworth to Weymouth & Chaldon**". The course and direction of all these retained roads are described as "**the same as hitherto**" and under the heading "**How to be maintained and kept in repair**" is the inscription "**By the Parishioners of Winfrith as the old roads were**".
- 8.3 The **Inclosure Plan** is entitled "**A plan of Winfrith Down and Common Fields as Divided according to Act of Parliament in the year 1768 Allso containing the Old Inclosures, the Village, Slight Farm and East Fossell South and North fields in the County of Dorset**". The plan was produced by Thomas Sparrow of Middlesex and amongst the roads shown upon it are the two roads that commence from what is now known as Daggars Gate, shown as point A on Drawing 12/08/2. The first of these follows a north-westerly direction and is annotated as leading "To Chaldon" and the second follows a westerly direction, being annotated as leading "To Weymouth". The road to Chaldon is depicted by means of two parallel broken lines, whilst the road to Weymouth is depicted by means of a broken line to the northern side and a hedge to the southern side.
- 8.4 The road to Weymouth corresponds with that part of the claimed route as shown from point A to approximately point E. Reference to the accompanying key defines this road as one of those that were retained post-inclosure, which in itself confirms three things: the first of these being that in order to be retained the road must have existed prior to inclosure; the second that the course and direction of the road was to remain the same, as it would follow a route the "same as hitherto"; and the third that it would be maintained as it always had been by the parishioners of Winfrith.
- 8.5 In conjunction with the Weld Estate Atlas, discussed in the following paragraphs, it is considered that the public roads to be retained post-inclosure and referred to within the Winfrith Inclosure award as the "roads from East and West Lulworth to Weymouth and Chaldon" are those annotated on both the Inclosure Map and the Weld Estate maps and the road described as the Weymouth Road corresponds to that of the claim. Consequently, this document would provide very strong evidence in support of the claim.

Estate Plans & Surveys

- 8.6 The **survey of the Lulworth Castle Estate**, the property of Edward Weld Esq, was undertaken by John Sparrow of Middlesex and published in **1771**. The **atlas** comprises separate maps of all of Mr Weld's Lulworth Estate and had been undertaken in the same, or a very similar, style to that of the Inclosure Maps produced by Thomas Sparrow and are also at the same scale.
- 8.7 A short section of the claimed route from point A westwards is clearly shown on the plan of "**West Lulworth with the Downs and Common Fields**" being annotated as leading "To Weymouth". The plan of "**Burngate & Lodge Farms**" also indicates a road to Weymouth and a further road to Winfrith, the latter by way of Winfrith Drove and the former by means of the claimed route.
- 8.8 The atlas contains a further plan entitled "**Winfrith Down and Common Fields as divided according to Act of Parliament in the Year 1768 Also containing the Old Inclosures, The Village, Slight Farm, East Fossell and North and South Fields**". Both the Chaldon and Weymouth Roads are shown upon it, the Chaldon Road being defined by two parallel broken lines and the Weymouth Road by a broken line to the north and a hedge to the south, in exactly the same manner as the Inclosure Plan, although in this case the Weymouth Road is not annotated as leading to Weymouth.
- 8.9 The plan of "**Chaldron Farm in the Parish and Manor of Chaldron Herring**" also shows a small section of the claimed route (Bridleway 5, Chaldon Herring) in the vicinity of points F to G as shown on Drawing 12/08/2 (annotated 'Warren House' on the Ordnance Survey First Edition 6 inch map 1888). It is bounded by a field named as 'Linningtons' to the north and an area of land named as 'Rabbitt Warren' to the south and is annotated as leading 'to Weymouth' in the west and 'to Lulworth' in the east. The route is defined by two parallel lines, the northern one appearing to represent the presence of a hedge.
- 8.10 Although not clearly stated within the documents it is believed that the ways shown are public as the majority, if not all, of the ways shown are currently recorded as public highways of one status or another. Both sections of the claimed route A to E and F to G are defined in the same manner as those public roads that were to be retained following the inclosure process and consequently it is considered that this evidence provides further strong support to the claimed status of the route.

Tithe Apportionments

- 8.11 The **Winfrith Newburgh and West Lulworth Tithe Apportionment and Plan 1839** depicts a number of roads, including that part of the claimed route as shown from point A, Daggars Gate, to approximately point C, where it is annotated as being "from Weymouth". The route is colour-washed brown and is defined by either two parallel solid lines, two parallel broken lines or a mixture of both. It is depicted in the same manner as the other roads shown on the plan, all of which are known to be public highways, the majority being recorded as public carriageways.

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- 8.12 The **Ower Moigne Tithe Apportionment and Plan of 1838** depicts that part of the claimed route as shown between points O1 and P, where point O1 was the boundary between 'Ower Moigne' and the former parish of Abbeymilton. This location can be confirmed by reference to the Ordnance Survey First Edition 6 inch map of 1888. The route is colour-washed brown and is defined by two parallel broken lines. There is no annotation at either point indicating an origin or destination. However, it is depicted in the same manner as the other public roads shown on the plan.
- 8.13 The **Osmington Tithe Apportionment and Plan 1839** depicts the continuation of the route westwards towards Weymouth from a point just to the east of point P, being located inside the parish of Owermoigne. This route, which is currently recorded as a county road (D21401) within the List of Streets, is, in the main, undefined by either solid or broken lines,. Its position is distinguished by the application of the conventional brown colourwash other than at its western end and at the point at which it crosses the parish boundary, point P, where it is defined by two solid parallel lines. Neither this route nor any of the other routes shown on the plan have any annotation as to their origin or destination.
- 8.14 On their own, Tithe Apportionments rarely, provide conclusive evidence as to the status of the ways shown upon them. However, they can provide positive evidence that a particular route physically existed at the time of the apportionment. Although opinion is divided some experts argue that when a route is colour-washed and annotated with a destination and/or origin this may indicate that it was regarded as a public highway, probably a public carriageway. In this case and in light of the other available evidence such as the Winfrith Newburgh Inclosure Award 1771 these Tithe Apportionments may be considered as supporting the application.

List of Streets

- 8.15 Under Section 36(6) of the Highways Act 1980 the Highway Authority is required to keep a list of highways maintainable at the public expense. This may be in the form of a written list, electronic list or a map or plan. Reference to the List of Streets and its accompanying plan reveals that the part of the claimed route as shown between points O2 and P is recorded upon it. Although the List of Streets may include all maintainable public highways including footpaths, bridleways, restricted byways and byways open to all traffic the convention within Dorset is that only public carriageways (and footways) are recorded upon the list of Streets. Consequently the List of Streets provides good evidence towards the status of this part of the claimed route (O2 to P) being that of a public carriageway.

Sales Documents, Leases & Conveyances

Southdown Farm

- 8.16 The documents from the sale of **Southdown Farm** in **July 1914** show that the sale consisted of two lots numbered 1A and 1B. That part of the claim as shown between points M and P (approximately) is shown on the sale plan and that part of the claim between points O1 and P is contained within lot 1B.

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- 8.17 The sale plan shows the route by means of two parallel broken lines being annotated at the western end as being ***"From Weymouth and Osmington"*** and at the eastern end as being ***"To Holworth, Owermoigne and Moreton Stn L.S.W.R."***. The land to the west of P is shown as being the property of Mrs F G A Lane and the land to the east of O1 the property of the Holworth Estate of E B G Foster Esq. The plan also shows a number of other routes, including those that are now recorded as Footpaths 15 (part), 16 and 18 Owermoigne, all of which are annotated 'F.P.'. The plan also shows the route of a 40 feet wide private right of way reserved to Lot 1B, extending northwards from Lot 1A to the south of South Down Farm, part of which is also now recorded as Footpath 17, Owermoigne. There is no similar annotation applied to the section of the claimed route through Lot 1B.
- 8.18 The schedule for Lot 1A reveals that ***"The purchaser of this Lot will be given the benefit of a Right-of-way for all traffic, 40 feet wide, over [parcel] No. 455, as shown on plan and over Road leading from the Farmhouse to the Road from Weymouth and Osmington to Holworth and Owermoigne"***. The schedule for Lot 1B contains a similar declaration namely ***"This Lot is sold subject to a Right-of-way for all traffic, 40 feet wide, over [parcel] No. 455, as shown on plan and over Road leading from the Farmhouse to the Road from Weymouth and Osmington to Holworth and Owermoigne"***.
- 8.19 The private right of way for all traffic in respect of Lot 1A extends to and terminates at point O2 on the claimed route, which is referred to as the Road from Weymouth and Osmington to Holworth and Owermoigne. It did not extend any further to the east or west of this point, which strongly suggests that this part of the claimed route (N to P) was considered to be a public road for all traffic. Consequently, in the knowledge of the status of the route no additional private rights would have been required over it. The evidence from the list of streets provides strong support to this conclusion in respect of the section of the claimed route as shown between points O2 and P.

Warmwell Estate, Holworth Farm

- 8.20 Holworth Farm, part of the Warmwell Estate owned by Major E B G Foster, was auctioned in August 1918. The plan accompanying the sales document shows that part of the claimed route from point J to O2. That part from J to O1 passes through Lot 3, Holworth Farm. The route is colour-washed in brown as are several public carriageways, a route part of which is presently recorded as Bridleway 11, Owermoigne and part as a county road and also part of Footpath 21, Owermoigne leading towards Holworth House. A further unrecorded route leading to the Coastguard Station at Whitenothe, which is discussed at paragraph 8.22 below, is also shown in the same manner.

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8.21 There is no key or statement accompanying the sales plan that provides any conclusive evidence in respect of the status of the claimed route. However, by reference to other documents, such as the sale of Southdown Farm in 1914 and 1949 and the Assignment of 1942, it is considered that the ways shown on it were shown in this manner due to the fact that rights, either private or public, were acknowledged to exist over them. In the case of the claimed route these rights were in all probability public vehicular rights and therefore it is considered that these documents also provide support to the application.

Assignment (Lease) Whitenothe

8.22 An **Assignment or Lease for No 3 Whitenothe Coastguard Station, Chaldon Herring, 1942**, between Marjory and Muriel Maplesdon the purchasers, Edward Wolseley and Robert Lavery, the Lessors, and the Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Northern Ireland, the Lessees, includes the provision of a private right of way, including the use of motor cars leading from Chaldon Burrow Gate (point J) to the hereditaments and premises assigned (No 3 Whitenothe Coastguard Station). The document describes this route as ***"a private turf roadway to the cliff from Chaldon Burrow Gate on the highway leading from Weymouth and Osmington to Lulworth and Kimmeridge"***.

8.23 Although not conclusive as to the status of the claimed route, a private right for all traffic would have to extend to the nearest public carriageway to confer any benefit to the holder of the right. In this case, as the private right terminates at Chaldon Burrow Gate, point J on the claimed route, it is reasonable to conclude that the public highway described as extending from "Weymouth and Osmington to Lulworth and Kimmeridge" was known and acknowledged as a public carriageway. Therefore, it is considered that this document provides strong supporting evidence to the application.

Southdown Farm (National Trust)

8.24 Southdown Farm was acquired by the National Trust in 1949 and the **conveyance documents and plan** include details as to the provision of a number of private rights of way for all traffic for the owners of several individual properties or land holdings within the estate. One refers to a right of way for all traffic leading past ***"Southdown Farm and Homestead to the road from Holworth to Osmington and Weymouth which said road is coloured brown on the said plan"***. Another refers to a right of way ***"for all purposes over the roadway coloured brown on the said plan to and from the Public Road leading to Holworth"***. One other refers to a right of way for all purposes ***"over and along the roadways or paths shown on the said plan and thereon coloured brown leading from the public road leading from Weymouth to Owermoigne"***.

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- 8.25 The private road referred to and coloured brown on the plan is the same private road referred to in the sales documents of 1914 and which terminates at point O2 on the claimed route. The claimed route is that referred to within the conveyance as the "road from Holworth to Osmington and Weymouth", the "Public Road leading to Holworth" and the "public road leading from Weymouth to Owermoigne".
- 8.26 This document, produced some 35 years after the earlier conveyance of 1914 clarifies and reinforces the conclusions reached from it. This part of the claimed route is described as a public road from Weymouth to Holworth and Owermoigne. The fact that the private rights conferred were for all traffic indicates that the public road referred to, the claimed route, was in all probability a public carriageway.

Statutory Declarations - Coastguard Cottages, Whitenothe

- 8.27 The County Council parish file for Chaldon Herring contains two statutory declarations that were submitted to the Department of Environment in 1981. Although it is not entirely clear, these were probably made in relation to the special Review of Rights of Way. The covering letter from Whitehead, Vizard, Venn & Lush, Solicitors, makes reference to the Assignment of 1942 (paragraph 8.22 above) and the provision of the private right of way from Chaldon Burrow Gate to the cottages and that this private road could not be a public highway as, had it been, it would not have been necessary to provide a private right.
- 8.28 Leaving aside the fact that public and private rights can and do co-exist, attention should be turned to the declarations themselves. The first of these was made by Gwendoline Parsons of Bournemouth in 1979, whose father leased No. 7 Coastguard Cottages from 1940 to 1946. Ms Parsons held the lease from 1945 onwards and describes how her father accessed the cottage by driving his Morris Minor car from Holworth south to Sea Barn Dairy (point N) then south-easterly over the parish boundary to point J, the private road to Whitenothe Cottages. Ms Parsons did not drive but from 1945 was normally driven along the same route by either her brother or a friend.
- 8.29 The second declaration was made by Edith Taylor, Guildford, Surrey, in 1979. Mrs Taylor had known of Coastguard Cottages since 1928 when she and her husband holidayed there, returning again the following year and in 1931. From 1947 or 1948 Mrs Taylor and her husband, but latterly her alone, had visited the cottages regularly and in 1974 she purchased the leasehold interest in 5 Coastguard Cottages. When she and her husband first visited the cottage they used a car along the route described in paragraph 8.28 above. From 1947/48 they used "the route through the valley from Sea Barn Dairy", which probably relates to the route from Osmington via the county road and the claimed route from point P to point J. Although she had not used the route from Holworth Farm since the war she states that it "remained as before" and was aware of other people using it such as Mr Wintrip and Mr Tolley, leaseholders of Nos. 4 and 6 Whitenothe Cottages.

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8.30 Although neither declaration specifically mentions the status of the part of the claimed route used neither of these individuals state that they enjoyed any private right over it and, as is clear from the Solicitor's covering letter and the other documents examined in respect of the lease of the cottages, the only claim in respect of a private right was that from Chaldon Burrow Gate to Whitenoth Cottages. Consequently, consideration must be given to the fact that their use of the route was in their knowledge of its reputation as a public carriageway in which case these declarations provide evidence of public vehicular use of part of the claimed route (P to J) and further support towards the claimed rights over it.

Finance Act 1910

8.31 None of the route is excluded on the **Finance Act** plans and the **Valuation Field Books** reveal that only two of the hereditaments through which the route passes, namely 106, Newlands Farm (point A westwards) and 160, South Down Farm (point O to P) have any deductions for public rights of way, £50 and £60 respectively. Due to the size of these hereditaments and the number of paths within them it is not possible to deduce that any part of these deductions were made in respect of the claimed route.

8.32 However, it should also be noted that the recorded public carriageway that continues westwards from point O2 to point P was not excluded from valuation and whilst the exclusion of a way upon the **Finance Act** plans provides good evidence towards the status of the way being that of a public highway, possibly a public carriageway, the non-exclusion of a way and the lack of any deduction in respect of it does not provide any conclusive evidence that the way was not a public highway.

Other documents

Parish Map

8.33 The **Chaldon Herring Parish Map 1863** depicts a route broadly corresponding to that of the claimed route throughout the length of the parish from point C (Owermoigne) to point J (Winfrith Newburgh). It is defined by two parallel broken lines between points C and I and is unshaded, whereas between points I and J it is defined by two parallel solid lines and is colour-washed in light brown. The route is annotated at point C with the words "To West Lulworth". There is no annotation at point J.

8.34 On its own the parish map provides no conclusive evidence as to the status of the claimed route other than it physically existed at the time. However, when examined in conjunction with all of the other available evidence it may be considered as providing some support to the application.

Ordnance Survey Maps

- 8.35 The **Ordnance Survey Drawings**, which were made in preparation for the publication of the first edition of the one inch 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 from West Lulworth to Osmington was completed in **1805** and clearly depicts the claimed route throughout its length (A to P). The route is defined by two parallel lines both of which are, in the main, broken suggesting that no fences or hedges were present. There are also stretches defined by solid lines suggesting that here fences or hedges were present. The route is shown as a through route and is depicted in the same or similar manner as other known public highways within the vicinity,
- 8.36 The **Ordnance Survey First Edition Map of 1811** at a scale 1 inch:1 mile shows a route that generally corresponds to both that of the 1805 drawing and that of the claimed route throughout its length from A to P. It is clearly defined by two parallel lines, sometimes solid and sometimes broken, denoting whether hedges or fences were present. The route was depicted in the same manner as other routes in the vicinity, many of which are recorded as public highways including public carriageways. The manner in which it is depicted suggests that it was a significant route capable of accommodating vehicular traffic. The location of the Signal House in the vicinity of point J, other buildings in the vicinity and along the route and the resulting traffic to and from them supports that conclusion.
- 8.37 The **1888 Ordnance Survey First Edition Map** at a scale of 6 inches:1 mile shows a very similar picture to the earlier 1 inch:1 mile scale map. The route is clearly depicted throughout its length from point A to point P. At point A the map is annotated with the words "Daggers Gate" and both the claimed route and an additional route leading south towards West Lulworth have solid lines across them suggesting that they may both have been gated or had some other form of barrier in place. From point A to a point just west of point B the route is defined by a broken line to the north and a solid line to the south, suggesting the southern boundary comprised of a hedge or fence. From here to point C the route is located to the south of this hedge or fence, its northern boundary now being defined with a solid line and its southern boundary by a broken one.
- (a) The definition of the continuation of the route westwards from point C towards point J is generally by means of 2 parallel broken lines and the solid lines across the route, where it crosses various boundaries including points E, G and I, suggests the presence of gates or barriers. From point J the route continues north westerly and is in the main defined by a solid line as its northern boundary and a broken line to the south as far as point N. From point N to its termination point at P the route is defined by two parallel broken lines suggesting that it was unfenced. In the vicinity of points J, L, O and P the route crosses boundaries and has solid lines across it suggesting that here the route may have been gated.

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- 8.38 The **1903 Ordnance Survey Second Edition Map** at a scale of 6 inches:1 mile generally concurs with the first edition map at the same scale. However, there is some additional information in the form of Ordnance Survey abbreviations in respect of features surveyed at the time. At point M the map is annotated with a 'G.P.' and at point N with 'L.B.'. The abbreviation 'G.P.' defines the location of a guide post (finger post) whilst 'L.B.' denotes the location of a Post Office letter box.
- 8.39 The **1902 Ordnance Survey Second Edition Map** at a scale of 25 inches:1 mile depicts the same or a very similar situation as the Ordnance Survey 6 inch:1 mile Second Edition map, although being to a larger scale there is more detail. It also clearly depicts the presence of a guide post (G.P.) and letter box (L.B.) at points M and N respectively.
- 8.40 The applicant also provided extracts from several other Ordnance Survey maps in support of the application.
- (a) The **Reduced Ordnance Survey 1 inch:1 mile Map** produced by G Richmond, Birmingham, circa early 1900s, has no key but the route claimed is prominently defined by two parallel solid or broken lines from point A to point P, being depicted in the same manner as other public roads in the vicinity.
 - (b) The **Ordnance Survey Second Edition 1 inch:1 mile Map (coloured) c1906** shows the route throughout its length, A to P. It is clearly depicted with a combination of two parallel solid or broken lines and reference to the accompanying key reveals that it was defined as an 'Unmetalled Road'.
 - (c) **Ordnance Survey Sheet 328, dated 1898**, was used in the feasibility survey of the Osmington Light Railway (discussed at paragraph 8.43 below) and shows the route clearly throughout its length, depicting it in the same manner as other roads in the vicinity. Reference to the accompanying key defines it as an 'unmetalled unfenced road'.
 - (d) The **Ordnance Survey 1 inch:1 mile maps (Sheet 140 dated 1919 and Sheet 178 dated 1945)** both show the claimed route, sheet 178 between points A and P and sheet 140 from its eastern boundary, equating to approximately from point F to point P. Both maps define the route as being a 'minor road'.

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- 8.41 The **Ministry of Transport Road Map 1923** was produced for the Ministry by the Ordnance Survey as a result of the classification of roads in Great Britain undertaken by the Minister of Transport under Section 17(2) of the Ministry of Transport Act 1919. These maps were produced to provide general information as to the classification system for roads, which was dictated by the value of a road as a means of through communication, but did not guarantee the condition of any given road. Roads were classified as Class 1, Class 2 and 'all other roads'. The claimed route is shown throughout its length, A to P, being depicted as two parallel broken lines and is shown in exactly the same manner as many other public roads in the vicinity. The accompanying key designates the route as an 'other road'. Other roads were not numbered and were uncoloured but the fact that a road was uncoloured did not necessarily mean that it was inferior, many being described as excellent, but being less important channels of communication they were not classified.
- 8.42 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route that was quite capable of accommodating vehicular traffic. The claimed route is consistently shown in the same manner as other public carriageways in the vicinity, being clearly defined throughout its length. The reference to a guide post (G.P.) at point M, which the Ordnance Survey depicted only when located at rural road junctions, suggesting that the route was clearly signed in order to assist the travelling public. The location of a letter box at point N may also suggest that the route had a higher status than that of a footpath or bridleway. However, although the Ordnance Survey evidence when considered alongside all other available evidence does provide support to the application it does not, on its own, provide any conclusive evidence as to the status of the route.

Railway Plan

- 8.43 In November 1899 a feasibility survey for the construction of the **Lulworth and Osmington Light Railway** was published. These documents include several plans, drawings and a book of reference. The proposal consisted of the construction of three connected light railways commencing from a junction with the London and South Western Railway west of Wareham and terminating at Osmington. The claimed route was to be crossed by **Railway Number 2** in the vicinity of point I and by **Railway Number 3** in the vicinity of point N.
- 8.44 Reference to the associated plans reveals that **Railway Number 2** crosses the claimed route approximately 6 furlongs 4 chains east of its junction with Railway Number 3, shown as approximately point I on Drawing 12/08/2. At this point the Railway Section Plan is annotated "Road level unaltered".

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- (a) The parcels of land affected are numbered 4, 5 and 6 and the accompanying book of reference describes parcel 4 as consisting of "Pasture field, public footpaths, pond and telephone posts and wires", parcel 5 as "Arable Field" and parcel 6 as "Arable and pasture field, public footpath and telephone posts and wires". The owners or reputed owners of parcels 4 and 6 are named as "Reginald Joseph Weld and his Committee, Rev Ernest Borradaile, Chaldon Parish Council" and of parcel 5 as "Reginald Joseph Weld and his Committee and, Rev Ernest Borradaile. The occupiers are named as "John Ford Tod, Charles Emmanuel Bagg, William Dugdale Kent, the Lords of the Admiralty".

8.45 Reference to the associated plans reveals that **Railway Number 3** crosses the claimed route approximately 4 furlongs west of its junction with Railway Number 2, shown as approximately point N on Drawing 12/08/2. At this point the Railway Section Plan is annotated "Road to be lowered 3ft & crossed on the level See cross section No 5". Cross Section No 5 shows the area in more detail and is annotated "Greatest inclination of present Road 1 in 7 Greatest inclination of altered Road 1 in 10".

- (a) The parcels of land affected are numbered 7 and 8 and the accompanying book of reference describes parcel 7 as consisting of "Pasture field, warren pond, occupation roads, public footpaths, telephone posts and wires, shelter and pillar box" and parcel 8 as "Pasture field, warren, occupation road, public footpaths and telephone posts and wires" The owners or reputed owners are named as "Capt. Richard Baynton Foster, R.N. and Owermoigne Parish Council", the Lessees or reputed Lessees as "Obadiah Legg" and the occupiers as "Obadiah Legg, Her Majesty's Post-master-General the Lords of the Admiralty".

8.46 The **Lulworth and Osmington Light Railway Act** is clearly identified as a Draft Act and the railway was never constructed, the project being abandoned. No evidence has been discovered of any responses or objections to the initial consultation. Whilst not being entirely clear the application route appears to have been described as an occupation road within the draft documents. Although this may be considered as being unsupportive of the applicant's case, it is a fact that an occupation road can carry both private and public rights and only those occupation roads, which can be identified as being for the "sole and separate use" of named individuals can safely be said not to have public rights over them. Where a railway plan or book of reference shows a public way this would be regarded as good evidence of the existence of a public right, but railway plans alone cannot be used as conclusive evidence that no public right existed when the line was constructed or, as in this case, proposed. Consequently, this evidence is considered as being neutral in this particular case.

Commercial Maps

8.47 The applicant provided a number of extracts from various commercially produced maps of Dorset at both large and small scales. In all probability the majority, if not all, of the small scale maps referred to by the applicant derive their data from other surveys such as the Ordnance Survey. Very few, if any, are wholly independent surveys and several have no accompanying key.

- (a) **Isaac Taylor's Map of Dorset 1765** clearly depicts a route that generally corresponds to that of the claimed route throughout its length. The accompanying key defines the route as a 'road over open heath etc'.
- (b) **J Bayly's Map of Dorset 1773** shows a route that generally corresponds to that of the claimed route throughout its length, the accompanying key defining it as a 'cross road'.
- (c) **J Cary's Map of Dorset c1787** shows a route broadly corresponding to that of the claim. Although there is no key accompanying the map it appears that it only depicts the more significant routes throughout the county.
- (d) **Isaac Taylor's Map of Dorset 1796** clearly depicts the claimed route throughout its length from A to P.
- (e) **J Stockdale's Map of Dorset 1805** shows the claimed route throughout its length. It is shown in the same manner as other routes upon the map and although this map has no accompanying key it appears to only show the most significant routes, which consist predominantly, if not entirely, of public carriageways.
- (f) **Bradley's map of the Hundreds and Liberties of Dorset 1805** shows a route generally corresponding to that of the claim. Reference to the accompanying key reveals that it was defined under the heading of 'Turnpikes and Principal Roads'.
- (g) **Arrowsmith's Map of Dorset 1815** shows the route throughout its length and although there is no accompanying key this map also appears to show only the most significant routes upon it.
- (h) **Wallis' Map of Dorset 1817** at a scale of 7 miles:1 inch shows a route generally corresponding to that of the claim. Reference to the accompanying key reveals that it is defined as a 'road'.
- (i) **Greenwoods' Map of Dorset 1826** depicts the claimed route throughout its length. It is defined as a 'cross road' in the accompanying key.
- (j) **Pigot & Co's Map of Dorset c1832** shows a route that generally corresponds with that of the claim throughout its length. Reference to the key reveals that it was defined as a 'cross road'.

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- (k) **Moule's Map of Dorset c1850** shows a route generally corresponding to the eastern part of the claimed route as shown between points A and N. From N it then takes a northerly direction, possibly following what is now recorded as Bridleway 11, Owermoigne, before terminating at Owermoigne itself. It is shown prominently and in the same manner as other routes the majority of which are presently recorded as public carriageways.
- (l) **Weller's Map of Dorset c1860** depicts a route that generally corresponds to that of the claim. It is clearly defined by two parallel broken lines and, although there is no accompanying key, the manner in which it is depicted may suggest a route of some significance
- (m) **Harrod's Map of Dorset c1865**, carries the statement that it was "improved from the Ordnance Surveys". The map depicts a route generally corresponding to that of the claim throughout its length between points A and P.
- (n) **Harding's Guide Map to the District of Dorchester 1924** depicts the claimed route very clearly, both Daggars Gate and the Warren are clearly identified and reference to the accompanying key reveals that the route is defined under the category of 'Other Roads'.
- (o) Both the **Botanical and Geological Maps of Dorset produced by George Philip & Son** show a route that generally corresponds to that of the claim. It is clearly defined by two parallel broken lines which, although there are no accompanying keys, may suggest a route of some significance.
- (p) **G W Bacon's Geographical, Botanical and Cycling Maps of Dorset** all show a route that generally corresponds to that of the claim. It is clearly defined by two parallel broken lines, a category that is not defined within the accompanying keys but nevertheless may suggest a route of some significance.

Bartholomew Maps

- 8.48 The applicant also provided several extracts from **Bartholomew Maps** published in the years 1911, 1920, 1944 and 1951. They are all produced at a scale of 1 inch:2 miles and depict a route that generally corresponds with that of the claim. Reference to the accompanying keys reveals that the route is defined on the 1911, 1920 and 1951 maps as an 'inferior road' from point A to A1 and from point M to point P. The section between point A1 and M is defined within the category of 'Footpaths & Bridlepaths'. The 1944 map depicts the route in the same way but those parts from points A to A1 and M to P are defined as 'Serviceable Roads'.
- 8.49 However, the Bartholomew 1 inch:4 miles road map of 1913 depicts the claimed route throughout its length, it being defined by two parallel solid lines and described in the accompanying key as an 'other road'.

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- 8.50 Several of the larger scale maps define the route as a road or 'cross road'. There is no definition for the historic use of the term 'cross road', although the modern definition would be the point where two roads cross. Historically, the term 'cross road' used in an old map or document may have applied to a highway running between and joining other highways. Whilst this would not necessarily mean that it was a 'public' highway and may only be an indication as to what the author believed, reference to the other evidence such as the Inclosure Award may suggest that in this instance that the author was in fact referring to a public carriageway.
- 8.51 Although it is considered that the evidence provided from the commercial maps provides nothing conclusive as to the status of the route they may, when considered alongside all the other available evidence be seen as adding some support to the claim although no significant weight has been attached to them.

National Parks and Access to the Countryside Act 1949

Parish Surveys

- 8.52 The **Parish Survey of Winfrith Newburgh** did not include that part of the claimed route as shown from point A to B.
- 8.53 The **Parish Survey of West Lulworth** was completed by March 1951. The claimed route was inadvertently claimed by West Lulworth from point A to point C when in fact only that part between point B and C was within West Lulworth, the part from A to B being located within Winfrith Newburgh. The route was identified as a "Farm track" and given the number 9, being described as "free passage always. 7 Field Gates. Leading from Wool Road to Weymouth Gate". The term "farm track" was crossed out and "BR confirmed 22/9/54" written in red pencil to the side.
- 8.54 The **Parish Survey of Chaldon Herring** claimed that part of the application route shown between points C to J. The route was initially identified as number 4, with the 4 crossed out and 3 added in pencil and is annotated with the letters "FP & BP" on the parish survey map, suggesting that the parish believed that it comprised both a footpath and bridleway. The map is also annotated with the words "To Daggars Gt" at the eastern end of the route and "To Holworth" at the western end. The accompanying schedule includes many alterations in red pencil and number 4, altered to number 3, is identified as a BR (Bridleway) and described as leading "from Dagger's Gate to Holworth", altered to read "From Parish Boundary to Parish Boundary", with the following additional script, "The Council hope that everything will be done to prevent this being used by cars".

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8.55 The **Parish Survey of Owermoigne** claimed that part of the route as shown between parts J to P. The route was identified as number 13 and annotated with the script "Bridle Rd". The accompanying schedule describes the route as leading from "Top of Ringstead Road" to "Whitenothe Coastguard Station Cottages", this was then altered with additional script added in pencil to read from "Psh boundary top of Ringstead Rd, passing north side of S Holworth Barn" to "Psh bdy leading to Whitenothe Coastguard Station cottages". The route was initially described as a "Bridle Road partly a rough cart track over grass land to the coast guard Cottages" this being altered to read "CRB [Carriage or Cart Road used mainly as a Bridleway] and BR [Bridle Road]". Its condition is described as being "above South Down Farm very rough remainder good" to which the additional script "Grass track to Coast Guards" has been added in pencil. The schedule also provides information to the effect that the route was not fenced or hedged, had no signage and had a gate located "one above South Down Farm" this last entry being crossed out and the script "field gates" added in pencil.

8.56 The continuation of the route westward beyond point P passes through Osmington. The **Parish of Osmington** did not include this route in their survey as they did not regard it as a footpath, bridleway CRB or CRF. The annotation alongside the route clearly indicated it was regarded as a road (public carriageway), which is its currently recorded status. The surveyor has also annotated that part of the route within Owermoigne, as shown between points M and P, as a 'road' and that part from L to M as a 'CRB'.

Draft, Provisional & First Definitive Map

8.57 After completion of the parish surveys the claimed route was recorded upon the **draft map**, which in the case of **West Lulworth, Winfrith Newburgh and Chaldon Herring** was in the South East area and published during May 1955. The **Owermoigne and Osmington** was in the South area and published during October 1954. The error that occurred during the parish surveys in West Lulworth and Winfrith Newburgh was repeated at the draft map stage, the claimed route between points A and B being recorded as **Bridleway 9, West Lulworth** along with the part shown from B to C. The continuation of the route through **Chaldon Herring** as shown between points C and J was also recorded as a Bridleway being given the number 3 for identification. Through **Owermoigne**, between points J and P, the claimed route is recorded as a 'CRB' and given the number 13 for identification. The continuation of the route westward through **Osmington** is recorded as a County Road.

8.58 The **provisional map** for the parishes of **West Lulworth, Winfrith Newburgh and Chaldon Herring** was published in May 1964 and for **Owermoigne and Osmington** in February 1964. The error involving the recording of the claimed route within Winfrith Newburgh, as shown A to B, has now been rectified although there are no file notes recording this event. This part of the route was now recorded as **Bridleway 12, Winfrith Newburgh**. The part between points B and C is recorded as **Bridleway 27, West Lulworth**, between C and J as **Bridleway 5, Chaldon Herring**, the part between points C and N as **Bridleway 11, Owermoigne** and between points N and P as **Bridleway 12, Owermoigne**.

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- 8.59 The route in **Owermoigne** (C to P) was recorded on the draft map as a CRB and there are no records of any objections or submissions that may have been used as evidence for this change of status. It is assumed, therefore, that the status of this part of the route was changed in response to the decision taken by the **National Parks Sub Committee** who met on 23 June **1958** to discuss the recording of those rights of way "defined as Public Carriage or Cart Roads or Green (un-metalled) Lanes mainly used as (i) Footpath (C.R.F.) or (ii) Bridleway (C.R.B.)". The Sub-Committee determined that the National Parks and Access to the Countryside Act 1949 (NPAC 49) required the County Council to establish public rights on footpaths and bridleways only and that references to any other uses should be omitted. As a consequence of this decision the designation of certain rights of way as CRFs or CRBs would be abandoned and in future these ways would be shown as either footpaths or bridleways.
- 8.60 The conclusion made by the National Parks Sub-Committee that the County Council were required to establish public rights on footpaths and bridleways only was incorrect as Section 27 of the National Parks and Access to the Countryside Act 1949 also required the surveying authority to show those ways which were, or were reasonably alleged to be, Roads Used as Public Paths (RUPPs). The designation of CRFs and CRBs, although used by many authorities, has no legal significance, the correct term used for this type of right of way being that of a RUPP. Nevertheless, consideration should be given to the fact that a CRB had been claimed by Owermoigne in accordance with the advice provided by the Open Spaces Society (see Appendix 3, Table of evidence for 1949). This advice would have made them aware that those routes being used by the public mainly on foot or horse but also in vehicles should be recorded as CRBs or CRFs (RUPPs).
- 8.61 The **first definitive map** was sealed on 9 June 1967 and the claimed route is recorded as a bridleway throughout its length, A to P. The numbering of the different sections of the route remained the same as that shown on the provisional map, the details of which are contained in paragraph 8.58 above.
- 8.62 The evidence derived from the records leading to the publication of the first definitive map provides some support, although nothing conclusive, to the claimed rights in the parishes of **Owermoigne** and **Chaldon Herring**. In Owermoigne the claimed route had been recorded as a CRB, which suggests that evidence had been considered either documentary or through local knowledge or reputation, that would have indicated the existence of public vehicular rights over the route. The comment made by Chaldon Herring Parish Council that "The Council hope that everything will be done to prevent this being used by cars" may suggest that such use was taking place at that time.

Special Review – Revised Draft Map

- 8.63 Following the Special Review of the definitive map the Special Review Committee determined that the entire route (A to P) ought to be shown as a byway open to all traffic, this decision in respect of West Lulworth and Winfrith Newburgh was made on 29 November 1973 and in respect of Owermoigne and Chaldon Herring on 8 August 1973. The decision was reached in light of the evidence provided to the Committee, a note of which was retained on the parish files and which states:

“Evidence has been obtained that the way from the County Road at MR756825 [point P] in the Parish of Owemoigne running generally south-eastwards (bridleways Nos. 12 and 11) then eastwards through the Parishes of Chaldon Herring (bridleway No. 5) and West Lulworth (bridleway No. 27) thence along the Parish boundary of Winfrith Newburgh (bridleway No. 12) to Daggars Gate at MR 810813 [point A] is an old road (carriageway) and it has been suggested therefore that this should be shown as a RUPP with Byway status”.

From the notes attached to the Special Review Committee's decision this recommendation was made as a result of **“strong evidence obtained after the perusal of old maps and the interviewing of a large number of local residents”**.

- 8.64 It is not clear how many local residents were interviewed and whether all of these records survive. However, contained within the parish files are six signed declarations that date from this period and were made in connection with the claimed route (copies form part of Appendix 3). It is considered that in all probability these do relate to the interviews referred to and a summary and analysis of these statements follows.
- (a) Miss D Peacock of Garden Cottage, Milborne St Andrew signed her statement on 13 July 1970. Miss Peacock states that she took holidays at White Nothe cottages from 1919 and apart from the war years holidayed there several times a year. Her knowledge of the route from Daggars Gate to the unclassified county road west of South Holworth Barn covers this period (1919 – 1970). Both before and after the war Miss Peacock observed people, whom she believed were “ordinary members of the public” driving cars along various sections of the route. Miss Peacock often cycled along the route and “always believed this way to be a public right of way for vehicles” although she had doubts when a notice prohibiting vehicles was erected at Daggars Gate. Miss Peacock also refers to the staking of a gate at point A [point G] in about 1951 and the locking of a gate and erection of a hunting gate at point B [point J] in about 1958 on her attached plan, which then prevented public vehicular usage of the way.

- (b) Miss I R Peacock of 5 White Nothe Cottage signed her statement on 4 July 1970. Miss Peacock first went to White Nothe cottages on a holiday in 1919 and apart from the war years went for holidays there up to 1949 when she bought 5 White Nothe Cottage, where she still lived at this time. Her knowledge of the claimed route extends throughout this period. She also observed on many occasions members of the public driving cars along various sections of the route who often stopped her and asked for information about the area. She too had also cycled the route many times and had "never doubted that it was other than a public right of way for vehicles". Miss Peacock also referred to the locked and staked gates that prevented public vehicle usage of the whole route.
- (c) Mrs Isobel Powys Marks, Lilac Cottage, Mappowder signed her statement on 1 July 1970. Mrs Marks stated that in 1924 her aunt moved to Chydok, East Chaldon and from that time until about 1957 she frequently visited her aunt. During this time she became familiar with the claimed route and learnt to ride a horse along it. She also walked the route many times and although she had never ridden in a car along it, during the 1930s she observed cars and carts being driven along it, which she believes were being driven by "ordinary members of the public". She remembered the way having a "firm, well-worn and rutted surface, consistent with vehicular usage, although in parts it was grassy". She was aware of gates across the route but they were easily opened. She had never seen any notices prohibiting vehicular use and was not aware of anybody being turned off and had "always regarded this way as an unmade public road".
- (d) Francis Powys, Bestfield, Buckland Newton signed his statement on 3 July 1970. Mr Powys was born in East Chaldon in 1909 and lived there until he was 21(1930). During this time he came to know the claimed route well and learnt to ride a horse along it. He also cycled along it many times and although he never rode along it in a cart or car he frequently observed "pots, dog-carts and gypsies' caravans being driven along various sections of it, especially in the summer months". He recalled especially once seeing a Model T Ford being driven along it and believed the drivers of all these vehicles were ordinary members of the public. Both he and, as he believed, all the residents of East Chaldon always took the way to be a public road, there was no question of asking permission to drive vehicles along it. "Mr Dymant of West Chaldon, who rented part of the land over which the route ran, was the type of man, who, if one had no right to drive a vehicle along it, would have turned one off". Mr Powys recalled an old shepherd by the name of Smith who he used to know, telling him the way was known as the "White Road" although why it was he did not know as the way was covered with short grass but very firm and rutted. Mr Powys had never observed any notices prohibiting vehicles or ever heard of the way being obstructed although there were some gates across it that were easily opened.

- (e) Mr W Whittle, 20 West Lulworth signed his statement on 30 June 1970. Mr Whittle was born in East Lulworth in 1887 and had known the claimed route since his schooldays. Mr Whittle knew the route as the "Warren Road" and when he was a schoolboy Mr C Baggs of Lulworth rented the warrens in the middle bottom area. Mr Baggs employed Mr W Chaffey of Lulworth to collect the rabbits in his donkey and cart. On many occasions Mr Whittle would accompany Mr Chaffey on his journey, which used part of the route. Mr Whittle walked the route on numerous occasions and had always regarded it as a public road, understanding that it formed part of the old road, a roman road he believed, from Burngate Farm to Weymouth. Mr Whittle worked for tenants of the Weld Estate and had never been given instructions as to using those parts of the way which passed over the Estate's Land.
- (f) Mr Walter Miller, Lilac Cottage, East Chaldon signed his statement on 1 July 1970. Mr Miller had lived in East Chaldon for 50 years [1920] and had been Chairman of Chaldon Herring Parish Council for the last 40 years [1930]. Mr Miller had known the claimed route for the previous 75 years [1895] and states that the way was known locally as the "Roman Road" or "Gypsy Track", the latter name due to the fact that gypsies used to drive and park their caravans along it. Mr Miller recalled that the section through the Warrens was called "The Warren Road". Mr Miller's parents went to live in Rose Cottage, Ringstead in 1888, his father was a rabbitier and fisherman and rented warrens at Holworth and used the route in his donkey cart for all purposes until approximately 1931. Mr Miller states that on many occasions he drove or was driven in various types of horse vehicles from Rose Cottage to Lulworth and Weymouth. The last time he used part of the route being in 1939 when he drove a cart from Chaldon to Rose Cottage. He has also cycled along the route many times the last occasion being around 1950.
- (i) Mr Miller had also been driven along the route in a motor vehicle and had observed other people driving horse drawn vehicles along the route. He also recalled that prior to World War One it was an annual event for the villagers of West Lulworth to gather blackberries for jam making to be sold for charity, the villagers being driven along the route by wagonette. He also recalled that at this time the Post Office erected telegraph poles along part of the way, which he understood they only did along public roads as it would save them having to pay private landowners. Up to the 1950s he had never heard of any person with a vehicle being turned off or otherwise prevented from using the route and both he and other local people regarded the route as a public road. After the First War use of the way from Lulworth to Weymouth by cars gradually increased and Mr Miller had observed cars on various sections of the way.

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- (ii) Following the Second World War Durdle Camp became a holiday camp and visitors would drive in their cars along the route to Weymouth. They tended to leave gates open which led to cattle straying and in 1951, after consultation with the County Council, Chaldon Herring Parish Council agreed to the section of the way known as Bridleway 5, Chaldon Herring being turned into a bridleway. Mr Miller recalls that he was reluctant to agree to this as he considered the way to be part of his heritage and a public road, but as the Parish Council looked at the matter, the abuse of this section by car drivers warranted this action. At around this time the gate at point A [point G] was staked and in 1958 the field gate at point B [point J] was locked and a hunting gate erected alongside it. These actions prevented any further use by vehicles.

Revised Draft Map and Current Definitive Map

- 8.65 The Special Review of the definitive map was abandoned before the Committee's decisions could be implemented. Consequently, although the entire route, A to P was recorded as a byway open to all traffic on the revised draft map published in 1974, as there were outstanding objections to the bridleways being classified as byways, the route reverted to a bridleway on publication of the current definitive map published in September 1989.

Aerial Photographs

- 8.66 The aerial photographs from 1947 are incomplete, only those showing the claimed route between approximately points M and P are available. The photographs from 1972 show the entire route from point A to P, which is shown very clearly in much the same manner as the earlier 1947 photographs and the pictures from 1997 and 2009 show the same or a very similar situation.
- 8.67 These pictures all show the route clearly, its width and clarity suggesting that it was capable of accommodating vehicular traffic and that it was used as such. Closer examination of the 1947 and 1972 photographs suggest that at this time no gates were located at points A and M, although gates may have been located at points A3, E, F, J, O and P. However, all the photographs can confirm is that the route at this time did physically exist, was capable of and appears to have been used by vehicular traffic and was probably not as heavily gated as it is today. They do not provide any conclusive evidence as to the status of the route.

Analysis of user evidence supporting the application

- 9.1 A total of eleven written forms of user evidence were submitted by the applicant. A summary of these forms of evidence is set out below, but reference should be made to the actual forms contained within the file of the Director of Environment Ref RW/T381 for all the information.
- 9.2 None of the witnesses have been personally interviewed. The information has been taken from the forms of evidence which have been signed stating: "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true".

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- 9.3 All of the witnesses state that they have used the route on motorcycles, either individually or with other users, as shown between points A to P on Drawing 12/08/2. Their use was for pleasure and all of the witnesses were aware of other users on foot, motorcycles, motor vehicles and horses.
- 9.4 The earliest date of use is 1966 with the latest being 2006, encompassing a period of 40 years. Frequency of use varies from one or two times a year to ten times a year.
- 9.5 During this period of use none of the witnesses recall having been given permission to use the route with a motor vehicle. Ten of the witnesses state that they were never challenged, although one witness recalls being challenged by a National Trust Warden. Five witnesses do not recall seeing any notice, the effect of which would have suggested to them that the route was not a public right of way for vehicles, however, five do recall seeing a notice at the western end [point O1] stating "NO CARS". All of the witnesses recall meeting or seeing other users and several are of the opinion that the landowner(s) must have been aware of their use of the route due to tyre tracks, the number of users, the regularity of their use and the timescale over which their use took place.
- 9.6 All of the witnesses recall the presence of gates along the route and that these gates were always unlocked, although one witness states that he recalled the route being temporarily obstructed by what he describes as an "anti motorcycle / bridle gate" [in the vicinity of point M], which was later removed.
- 9.7 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route (in this case, with mechanically propelled vehicles) was brought into question.
- 9.8 There are a number of possible dates of challenge to public vehicular rights:
 - (a) The earliest of these would be the locking of the gates in 1958 as detailed in the Special Review.
 - This is a clear challenge to the use of the route by the public with vehicles.
 - (b) Locking of the 'field' gates in approximately 1992.
 - This would be sufficient to bring public rights into question. However, given that the gates were locked this would constitute an unlawful obstruction, preventing use by the public across the extent of the bridleway.
 - (c) Challenge by landowner or tenant but no specific dates or details provided.
 - This is a clear challenge to the use of the route by the public with vehicles. However, it should be noted that only one of the witnesses mentions being challenged once, in 1996.

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(d) Notices "No Cars" erected by the National Trust and possibly at Daggars Gate.

- No exact details as to when these notices may have been erected have been provided and therefore it has not been possible to identify an exact date of challenge. Had this occurred prior to 1973 there is no mention in the investigation during the Special Review of rights of way. However, several of the user statements refer to this notice and this, in conjunction with other evidence, suggests it was probably erected at sometime between 1973 and 1980 and such action is regarded as a lack of intention to dedicate the route for use by the public in vehicles.

9.9 Consequently, it is considered that the locking of the gates in 1958 represents the earliest corroborated challenge to the use of the route by the public with mechanically propelled vehicles.

10 Analysis of evidence opposing the application

10.1 The majority of the objections or submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist. However, several objectors raise issues or have provided evidence requiring more detailed examination a summary and analysis of these submissions follows.

10.2 **Mr J F Watkins** states that he can confirm that the 12 feet wide gates located within the land that he rents from the Weld Estate (at points E & F) have remained locked at all times. However, he also acknowledges that unlocked gates of four feet in width are located to the side, allowing the passage of horses and pedestrians only.

- Mr Watkins does not state for what period of time the gates have been padlocked, although West Lulworth Parish Council estimate that this has been for a period of approximately 20 years. However, the later user evidence refers to the use of the adjacent bridle gates and not the larger field gates and should the evidence indicate the existence of public vehicular rights over the entire width of the route then the larger gates should not have been padlocked.

10.3 **West Lulworth Parish Council** state that they believe that the gates located along the route have been locked for at least the last 20 years [since 1992] and that no one has observed motorised vehicles using the route.

- With respect to the padlocked gates see response to 10.2 above. As for there being no observation of vehicles using the route, this contradicts the evidence of several of the objectors who do acknowledge either seeing or challenging users in vehicles and also the evidence of the users themselves.

10.4 **Mr J Newbould** raised several issues namely:

- (i) The map accompanying the application was not at the prescribed scale.

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- The application map is an extract from an Ordnance Survey 1:25000 map and therefore complies with the current legislation.
- (ii) There is a cattle grid at point P with gates and a small gate to the side for pedestrians and horses. An accompanying notice states that cars are only permitted for the purposes of picnics, etc and that the National Trust reserves the right to charge for parking.
- The cattle grid and notice are both placed on that part of the claimed route (P to O2) shown on the List of Streets and therefore any attempted control of use by the public is unauthorised, given its highway status.
 - The cattle grid, for which no authorisation has been discovered and for which no by-pass has been provided, constitutes an unlawful obstruction.
- (iii) The gate at point O carries a National Trust sign stating 'NO CARS'.
- Whilst the erection of such a sign by the National Trust may be seen as a challenge to the use of the route with vehicles by the public it is not evidence that such rights do not exist over it. Should public vehicular rights be shown to exist over the route then the sign would be misleading and would have to be removed.
- (iv) At approximately point M the 12 feet wide gate is padlocked and has been since July 2012. In approximately the same location Mr Newbould measured the width of the track (at the hollow-way) as being 9 feet 7 inches and is of the opinion that it is unfit for vehicles other than agricultural vehicles.
- With respect to the padlocked gates see response to 10.2 above. Although in Mr Newbould's opinion the route is not fit for vehicular use this is not in itself evidence that public vehicular rights do not exist over it. Conversely, the formation of a hollow-way would generally be regarded as evidence of the passage of vehicles over a considerable period of time and may be seen as supporting the conclusion that the route was both vehicular and of ancient origin.

10.5 Mrs S Fitzgerald on behalf of the owners of the land from approximately point O1 to P, **The National Trust**, objected to the application, stating her belief that any [public] vehicular use of the route after their acquisition of the land in 1949 may have been in breach of their bye-laws. From 1955, after the revision of the bye-laws, she believes that such use would certainly have been illegal. Mrs Fitzgerald provided copies of the bye-laws from 1938 and 1955 in addition to a copy of the original conveyance documents for the property.

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- It appears that the bye-laws from 1938, which were in force until 1955 would not prevent the unauthorised use of vehicles over the land so long as such use did not “**injure the turf or shrubs thereon**”. The 1955 revision omitted this passage stating at Section 11 that no unauthorised person could propel any vehicle over Trust lands but included the caveat “(other than on tracks, parking places, waterways or mooring sites set out and authorised by the National Trust for public use or on public roads and waterways)”.
- As discussed earlier from paragraph 8.16 under the heading of Sales Documents & Conveyances, all of these documents suggest that the route over the National Trust land was known as and considered to be a public road namely a carriageway. Consequently any public vehicular use of the route, whether this occurred before or after 1955, would have been as of right and the terms of the bye-laws in respect of unauthorised use would not apply.

10.6 Mr J Cheal for Dyne Drewett Solicitors on behalf of the **Weld Estate** provided a detailed submission objecting to the application. The relevant points are summarised and analysed as follows.

- (a) Mr Cheal opens with reference to the fourth edition of Rights of Way - A Guide to Law and Practice, Riddall and Trevelyan, commonly referred to as the ‘Blue Book’, making particular reference to the interpretation of commercial maps as evidence in respect of public highways.
- (b) Mr Cheal continues by discussing the maps submitted or discovered as evidence for this particular application, beginning with the **Winfrith Newburgh Inclosure Award 1771**. Mr Cheal notes that this document was also discussed in respect of an earlier application (T369) in May 2011. The Award refers to “roads from East and West Lulworth to Weymouth and Chaldon” and was described within the report and in respect to that application as being “vague and noncommittal”.
 - Mr Cheal’s quote from the earlier report is accurate. However, it is taken out of context when applied literally to this or any other application as the author of the report confirms when he concludes the same paragraph with the following statement. “**When this Inclosure was written, the readers were aware of the roads and ways within this area but today we can only guess or find evidence to help understand the layout. However, for other routes the evidence from this Award has been much more detailed and is primary evidence to back up a claim**”.
- (c) Mr Cheal makes reference to the **commercial maps** produced by Moule, Gray and one or two others, which he states do not show the route in its entirety.

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- Mr Cheal's observations are correct, for example the Gray map shows the route extending only to point N, from where it continues northerly along what is now recorded as Bridleway 11. However, Mr Cheal makes no comment in respect of the 19 other commercially produced maps that **do** show the claimed route throughout its length, the majority of which describe it as a road or cross road. Although on their own these maps provide no conclusive evidence as to the status of the way they do provide evidence as to the physical existence of the route at the time. A summary and analysis of the commercial maps commences at paragraph 8.47 of this report.
- (d) Mr Cheal makes a number of observations in relation to the various **Tithe Apportionments** that have been examined in the course of this investigation.
- A summary and analysis of the relevant Tithe Apportionments in relation to this application begins at paragraph 8.11 above.
- (e) Mr Cheal refers to the number of **gates** along the route, which from his examination of the 1902 Ordnance Survey Map, he estimates as numbering 17 in total. He is of the opinion that this number of gates is excessive and would militate against there being any public vehicular rights over the route.
- Mr Cheal acknowledges that public carriageways can be gated. However, examination of the 1903 Ordnance Survey 6 inches:1 mile map suggests nine gates and the 1902 25 inches:1 mile map 14, whilst the 1811 map indicates that there were no gates to be found along the route.
 - By way of comparison the short stretch of public carriageway from Daggars Gate towards West Lulworth as shown on the 1888 Ordnance Survey 6 inches:1 mile map indicates the possibility of at least three gates.
 - Furthermore, as the claimed route was unfenced for the majority of its length, passing through land predominantly used for the grazing of livestock, it is unsurprising that there are a number of fences and gates defining the different leaseholds and preventing the individual leaseholders stock from straying.
 - It is also worth noting that, although a solid line across a thoroughfare on an Ordnance Survey map may be reasonably interpreted as representing a gate, no instructions to this effect are known to have been issued by the Ordnance Survey.
- (f) Mr Cheal turns his attention to the papers relating to the proposed **Osmington Light Railway 1899**, which he considers provide good evidence against the claimed status of the route, it being described within the documents as an occupation road or footpath.

- As discussed from paragraph 8.43 above the route is described as an occupation road within these documents. Leaving aside the fact that there is no reason in law that prevents public rights existing over an occupation road, the most significant aspect of these documents is that they were clearly prepared as a 'draft' to be put out to public consultation. However, the project was abandoned and did not proceed beyond the draft stage, nor is there any record of any responses that may have been received in response to the consultation. Consequently, it is unsafe to reach any strong conclusions from these documents.
- (g) Mr Cheal's examination of the **Finance Act documents** leads him to conclude that there is nothing to suggest the existence of a public carriageway as no part of the route was excluded from valuation. He also notes the labelling of a letter box and guide post on the base map, the former he dismisses as providing no evidence of the existence of a public carriageway and the latter as it was more likely to have been pointing to and indicating access to South Holworth Cottages.
- As discussed in the analysis of the Finance Act records from paragraph 8.31 above, they provide little if any evidence in support of the claimed rights. However, the fact that a route was not excluded from valuation or the lack of any deduction in respect of it cannot, in itself, be taken as providing any conclusive evidence that the way was not a public carriageway. The fact that it is recorded as a public highway, namely a bridleway, but for the vast majority of its length no claim for any deduction was made in respect of it demonstrates why such a conclusion would be unsafe.
 - Although the location of an isolated public letter box half a mile from the nearest recorded public carriageway may not provide any conclusive evidence towards determining that the route itself was a public carriageway, it is nevertheless a somewhat unusual occurrence as letter boxes are not usually to be found located on footpaths or bridleways.
 - With respect to the guide post, there is nothing to suggest that it pointed in the direction of South Holworth Cottages and this suggestion is entirely speculative. Richard Oliver in his guide to Ordnance Survey Maps (1994) states that on Ordnance Survey maps they were to be "shown at Rural Road junctions only".
- (h) From paragraph 23 of his submission Mr Cheal discusses the **Ordnance Survey One Inch map**. He notes the disclaimer as to the evidence of rights of way shown upon it and concludes that at best the route is shown as an unfenced and un-metalled road and not even a third class road.

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- It is acknowledged that from 1889 Ordnance Survey maps have carried the usual disclaimer “***The representation on this map of a road, track or footpath is no evidence of the existence of a right of way***”. However, it is equally true to state that the representation of the way upon the map provides good evidence of its existence at that time and no conclusive evidence that it was not a public right of way.
 - With respect to Mr Cheal's observations regarding unmetalled and third class public carriageways, these cannot be distinguished either from each other or from any 'private' ways shown as, unlike first and second class public carriageways, they were not shaded. Therefore, there is no basis for his conclusion that the route was not even considered to be a third class public road.
- (i) At paragraph 26 Mr Cheal notes that the route is shown in the same manner as the route discussed in the **Committee report** for the application **T369**, which the Committee determined had not been shown to enjoy public vehicular status.
- The report to which Mr Cheal refers was in connection with a different application concerning a different route. The decision reached was based on the evidence submitted or discovered in respect of that application and it cannot be assumed that the same conclusions would apply to this application.
- (j) In paragraphs 28 to 33 of his submission Mr Cheal discusses the documents in respect of the **sale of Southdown Farm in 1914**, which are summarised and analysed from paragraph 8.16 above. Mr Cheal's conclusions are that the claimed route, which is described as “***the Road from Weymouth and Osmington to Holworth and Owermoigne***”, is a road just as the way up from the farmhouse to it was also a road and that there is nothing to suggest that it was a public carriageway. At paragraph 31 he states that long standing access rights for the farm may have existed allowing access to the nearest public road towards either Weymouth or Holworth and the station at Moreton. He concludes at paragraphs 32 and 33 that the evidence derived from the Finance Act, Osmington Light Railway and the sale of Southdown Farm in 1914 would more likely demonstrate the existence of a private right of way over the route and consequently if any dedication had occurred this would have to have been after 1918.
- It is true that within these documents the claimed route is only described as a road with no specific mention as to whether or not it was public. In respect of this one document the conclusion that it may have been public is due to the fact that the private right terminated at point O2 on the claimed route and should the claimed route not have enjoyed public vehicular rights the private right to it would have conferred no benefit to the prospective purchaser of the farmhouse.

- The public carriageway from Weymouth does not terminate at the parish boundary but, as the evidence from the List of Streets demonstrates, the recorded 'maintainable' carriageway continued to point O2, the same termination point as the private road from the farmhouse. Consequently, no further private rights were required to the west of point O2.
 - With respect to the road to Holworth and Moreton Station, which would use the claimed route to the east of point O2, Mr Cheal suggests that long standing access rights for the farm may have existed over it. If this were the case, due to the obvious benefit they would have conferred, as with the private right detailed within the documents it seems reasonable that any prospective purchaser would have been made aware of them and they would also have been clearly described.
 - The conclusion that this document provides evidence towards the existence of public vehicular rights over the claimed route at or prior to 1914 is reinforced with the evidence derived from the later sales documents, conveyance, assignment and statutory declarations. These describe private rights, including the use of vehicles, extending to the claimed route, which is described as a road, highway or public road. They also provide evidence as to the use of the route with vehicles.
 - It has also been established that the documents from the Finance Act and the Osmington Light Railway cannot be relied upon as providing any conclusive evidence towards the status of the claimed route.
- (k) In paragraph 34 Mr Cheal discusses the issues of dedication and acceptance. Dedication, he states, could not have taken place after 1926 without the consent of all of the Trustees of the Weld Estate. He continues noting that, in addition to dedication, there must be acceptance by the public and evidence of public repair, concluding that there is no evidence of public repair and insufficient use of vehicular use by the public as of right.
- Whilst a presumption of dedication under common law would be difficult to demonstrate due to the manner in which the Estate was managed, it would not frustrate a presumption under Section 31 of the Highways Act 1980, providing the applicant could demonstrate 20 years of use as of right.
 - Although evidence of public repair of a route may be regarded as good evidence towards its status as a public highway, it is not a prerequisite of acceptance by the public. Furthermore, the repair and maintenance of public highways is not always at the public expense but may be, for example, by prescription or tenure, the responsibility of an individual or body or no-one at all.

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- Having mind to the evidence previously discussed it is considered that the way was already dedicated as a public carriageway prior to 1914. Should this be the case then the question of dedication and acceptance post-1926 does not arise.
- (l) From paragraphs 35 to 41 Mr Cheal discusses the **Bartholomew maps**, which he describes as providing no conclusive evidence as to the existence of a public carriageway over the route.
- The route is described on four Bartholomew maps as a combination of 'other roads and tracks' and 'footpaths or bridleways', being shown by a combination of parallel lines and/or a single broken line. However, although the Bartholomew map of 1913 depicts the whole of the route by two parallel lines and defines it as an 'other road' on their own these maps provide no conclusive evidence in favour of or against the existence of public vehicular rights over the route.
- (m) From paragraph 42 to 44 Mr Cheal discusses the making of the **definitive map**.
- Mr Cheal makes no comment in respect of the decision in 1973 by the Special Review Committee, having been persuaded by the weight of the evidence presented to them, to record the entire route as a byway open to all traffic.
 - The statement "***the Council hope that everything will be done to prevent this being used by cars***" is attributed to the Highway Authority, suggesting that it should be regarded as being of high significance. This statement was in fact made by the Chaldon Herring Parish Council to the Highway Authority, although it is agreed that some significance should be attached to it as it strongly suggests the route was being used by the public in vehicles at that time.
- (n) From paragraphs 45 to 47 Mr Cheal discusses some of the **letters** contained on the parish files.
- However, with respect to Mrs Colyer's statement "***we had got the farmer's permission to drive to the top***" (to visit the Powys Memorial), as the Memorial was located off the claimed route then there would be nothing unusual in obtaining permission to drive to it as this would have been required.
 - The statement by the Clerk of the County Council in 1969 "***I can find no evidence of vehicular rights***" is of no significance because, as Mr Cheal himself notes, evidence to that effect was produced during 1970.

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(o) From paragraphs 48 to 57 Mr Cheal discusses the **witness statements** obtained during the **Special Review**, which are summarised and analysed at paragraph 8.64 above. At paragraph 50 Mr Cheal states that no weight should be attributed to them as the circumstances in which they were obtained is not known and the witnesses cannot be cross examined.

- It is incorrect to state that the circumstances under which these statements were obtained is unknown. They are contained within the Special Review section of the parish files and therefore, in all probability, they do relate to the Special Review of rights of way.
- To the best of our knowledge these witnesses are not available to be cross examined and as a consequence, whilst less weight may be attributed to their statements it is incorrect to suggest that no weight at all can be attributed to them.

(p) In paragraphs 58 and 59 Mr Cheal discusses the **user evidence** submitted with the application. Mr Cheal considers that use of the route on motorcycles would be considered a crime and consequently, as such use was illegal, it could not be counted as modern user evidence. He also considers that the number of users is insufficient and that the date of challenge to vehicle use probably occurred much earlier than 2006.

- If the evidence demonstrates that the use in vehicles was with lawful authority then no crime has been committed. It is commonly acknowledged that the number of users in a claim for public vehicular rights would be significantly less than those for a footpath or bridleway. The number of users in this case is highly significant for a byway claim. As detailed in the report there is evidence of a well documented earlier challenge to public vehicular use in 1958.

(q) In paragraph 60 Mr Cheal refers to attached **witness statements** and a photograph of a sign said to have been erected at the eastern end of the route (Daggers Gate).

- The evidence to which Mr Cheal refers was not attached to his submission and has not been provided prior to the publication of the report. Consequently, it has not been possible to consider or comment on this evidence.

11 Analysis of other submissions

11.1 The other letters contain no relevant evidence to be considered.

12 Conclusions

- 12.1 It is necessary for members to decide, by applying the relevant legal test to the evidence, whether or not the right of way claimed subsists. As the whole of the claimed route is already recorded upon the definitive map and statement as a public bridleway it is necessary for members to determine whether, on the balance of probability, the highways (or parts of them) shown on the definitive map and statement as bridleways ought to be shown as highways of a different description.
- 12.2 It is considered that there are several important pieces of documentary evidence that, when considered together demonstrate, on balance, that public vehicular rights exist over the whole length of the route. The first of these is the **Winfrith Newburgh Inclosure Award 1771** that provides very strong evidence to the effect that a pre-existing public road (carriageway) described as leading from East and West Lulworth to Weymouth was to be retained as such, the accompanying plan for which shows that part of the claimed route as shown from A to E on Drawing 12/08/2.
- 12.3 The conclusions in respect of the Inclosure Award are supported by good evidence provided from the **Weld Estate Atlas** of the same year. This contains a similar plan to that of the Inclosure Award and another which depicts that part of the claimed route between points F to G.
- 12.4 The **List of Streets** provides very strong evidence to the effect that the part of the route as shown between points O2 and P is a publicly maintainable public carriageway.
- 12.5 The evidence derived from the sales documents in connection with **South Down Farm 1914** and its later conveyance to the **National Trust in 1949** and also those from the sale of part of the **Warmwell Estate, Holworth Farm 1918** and the **Statutory Declarations, Coastguard Cottages, Whitenothe** provide very good evidence in support of public vehicular rights over part of the claimed route (J to P) in describing the claimed route as a public road or highway whilst conferring private vehicular rights to it but importantly not over it. The statutory declarations also provide evidence of public vehicular use of this part of the route from 1928.
- 12.6 The **Assignment or Lease for No 3 Whitenothe Coastguard Station 1942** also provides good evidence to the effect that the whole of the claimed route was regarded as a public carriageway, it being described within the document as the "highway leading from Weymouth and Osmington to Lulworth and Kimmeridge", this conclusion being reached due to the inclusion of a private turf roadway for vehicular traffic from the cottages that terminated on the highway at Chaldon Burrow Gate, point J, on the claimed route. If the claimed route did not enjoy public vehicular rights then the purchaser of the cottage would have no authority to proceed any further than point J.

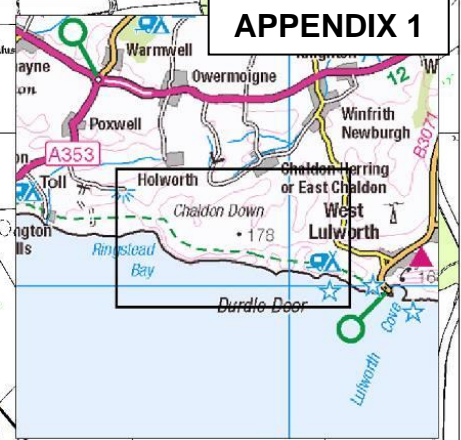
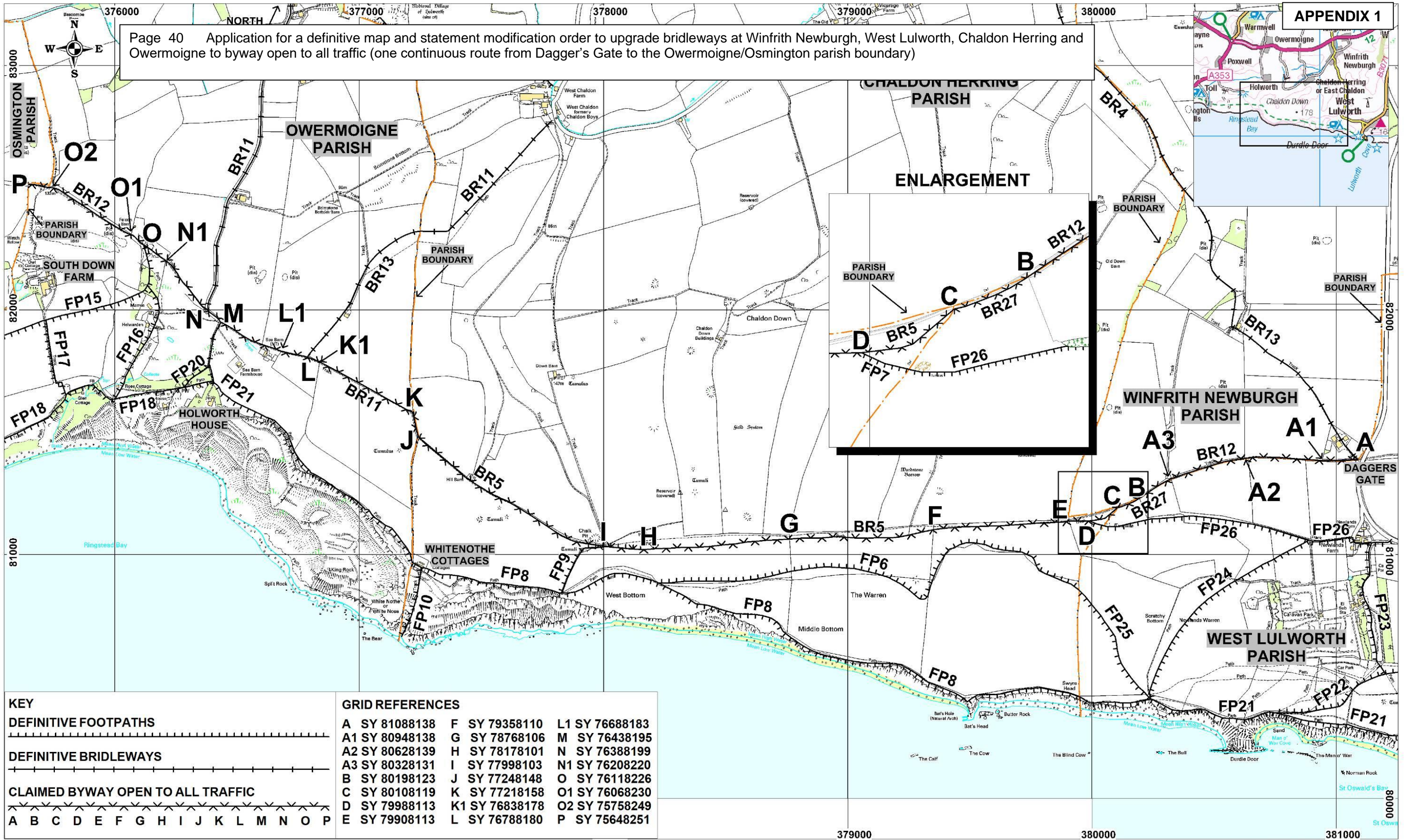
Page 38 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)

- 12.7 The evidence derived from the **Parish Surveys** during the preparation for the first definitive map shows that **Winfrith Newburgh Parish Council** mistakenly, as the route was in West Lulworth, claimed part of the route as a bridleway and **Chaldon Herring Parish Council** also believed the route to be a bridleway. However, Chaldon Herring Parish Council added the following statement "The Council hope that everything will be done to prevent this being used by cars", which strongly suggests that such use was taking place. With respect to **Owermoigne and Osmington Parish Councils** they were both of the opinion that the route from point P to point J was a CRB, suggesting that they were aware that the route was used by the public with vehicles.
- 12.8 The strongest supporting evidence from this period is found in the work undertaken during the **Special Review in 1973**. Evidence was presented to the Special Review Committee, the weight of which persuaded them that the route was recorded incorrectly and should be shown as a byway open to all traffic. This evidence included six statements from members of the public, including the Chairman of Chaldon Herring Parish Council, Mr Miller. All of these witnesses were of the opinion that the route was a public vehicular road, having either used the route in a vehicle or having observed other users in vehicles. Their combined evidence covers a period from the early 1900s to the time they believe the gates were locked, preventing use, around 1958.
- (a) It is also on record that in 1951 Mr Miller reluctantly agreed to the route in Chaldon Herring being turned into a bridleway due to users of the route in vehicles leaving gates open that resulted in stock straying. Mr Miller's reluctance was due to his belief that the route was a public road and part of his heritage.
- (b) These statements provide both evidence of public vehicular use, some of which it should be noted occurred prior to 1930, and also evidence as to the reputation of the route being that of a public vehicular highway and provides very good support to the application.
- 12.9 The evidence of the **Tithe Apportionments from Winfrith Newburgh & West Lulworth, Owermoigne and Osmington** and that from the **Commercial mapping** and the **Ordnance Survey maps** provide nothing conclusive as to the status of the route. However, they do provide evidence as to the physical existence at that time of a significant through route and in light of the other available evidence may be considered as providing some support to the claimed rights.
- 12.10 The cumulative weight of the documentary evidence analysed in paragraph 8 provides strong evidence towards the existence of public vehicular rights over the whole of the claimed route as shown between points A to P on drawing 12/08/2. It is considered sufficient to demonstrate, on balance, that the claimed public rights exist along the whole of the claimed route and an order should be made.

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- 12.11 If members are not satisfied that the documentary evidence alone shows, on balance, that a public vehicular right exists they should then consider it in conjunction with any user evidence and whether such user evidence in itself would constitute a deemed or inferred dedication under Section 31 of the Highways Act 1980.
- 12.12 If the relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the blocking of the gates in 1958, the user evidence submitted with the application does not fall into this period and must be discounted.
- 12.13 The 1973 investigation as part of the Special Review concluded that “**strong evidence obtained after the perusal of old maps and the interviewing of a large number of local residents**” and that the way should be recorded as a byway open to all traffic. However, only six of the witness statements survive and it is considered that on their own they do not provide sufficient evidence to demonstrate use by the public for 20 years prior to 1958.
- 12.14 There is some evidence of use of the route with mechanically propelled vehicles prior to 1930. However, it is considered as being insufficient to satisfy any exemption to the extinguishment of vehicular rights under Section 67 of the Natural Environment and Rural Communities Act 2006.
- 12.15 Although a part of the route (O2 to P) is recorded on the list of streets, it is also recorded on the definitive map and statement as public bridleway and so the provision for exemption in Section 67(2)(b) of the Natural Environment and Rural Communities Act 2006 is not satisfied.
- 12.16 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.
- 12.17 Therefore it is recommended that an order be made to record the claimed route as a restricted byway throughout its length as shown between points A to P on Drawing 12/08/2 .
- 12.18 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation have been met.

Miles Butler
Director for Environment
November 2012



KEY

DEFINITIVE FOOTPATHS

DEFINITIVE BRIDLEWAYS

CLAIMED BYWAY OPEN TO ALL TRAFFIC

A B C D E F G H I J K L M N O P

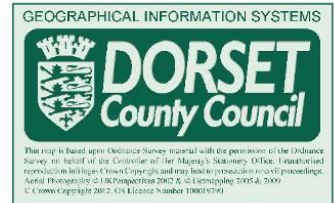
GRID REFERENCES

A SY 81088138	F SY 79358110	L1 SY 76688183
A1 SY 80948138	G SY 78768106	M SY 76438195
A2 SY 80628139	H SY 78178101	N SY 76388199
A3 SY 80328131	I SY 77998103	N1 SY 76208220
B SY 80198123	J SY 77248148	O SY 76118226
C SY 80108119	K SY 77218158	O1 SY 76068230
D SY 79988113	K1 SY 76838178	O2 SY 75758249
E SY 79908113	L SY 76788180	P SY 75648251

WILDLIFE AND COUNTRYSIDE ACT 1981
 APPLICATION TO UPGRADE BRIDLEWAY 12, WINFRITH NEWBURGH, BRIDLEWAY 27, WEST LULWORTH, BRIDLEWAY 5, CHALDON HERRING AND BRIDLEWAY 11 (PART) AND BRIDLEWAY 12, OWERMOIGNE TO BYWAY OPEN TO ALL TRAFFIC. 'DAGGERS GATE - UPTON'.

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/08/2
 Date: 19/10/2012
 Scale 1:10000 AT A2
 Drawn By: ACH
 Cent X: 378400
 Cent Y: 81544



LAW

General

- 1 Wildlife and Countryside Act 1981
 - 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
 - 1.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a highway shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
 - 1.3 The Committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
 - 1.4 The County Council must make a modification order to alter the status of a route on the definitive map and statement if the balance of evidence shows that a highway shown in the map and statement ought to be shown as a highway of a different description.
 - 1.5 An order can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.
 - 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.
- 2 Highways Act 1980
 - 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
 - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

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- (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 landowner 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 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
 - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

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(b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Case specific law

4 Finance Act 1910

4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

4.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as "Surveying Authority" to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

6 Natural Environment and Rural Communities Act 2006

6.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. Where it is found that a route was historically a public vehicular route before NERC, that route may be recorded as a restricted byway rather than a byway open to all traffic.

Table of documentary evidence

Date	Document	Comment
1765	Taylor's Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined in key as "Road over open heath etc"
1771	Winfrith Newburgh Inclosure Award	Claimed route described under the title of "the roads from East & West Lulworth to Weymouth & Chaldon". Described as existing "publick" road to be retained.
1771	Weld Estate Atlas	Shows parts of route A to E and F to G key states "Retained Roads"
1773	Bayly Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined as a "cross road" in accompanying key
1787	Cary Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P
1796	Taylor Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P
1805	Stockdale Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P
1805	Bradley Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined under heading of "Turnpikes and Principal Roads"
1805	Ordnance Survey Drawings	Shows a well defined route corresponding to that of the claim from A to P
1811	Ordnance Survey First Edition Map scale 1 inch:1 mile	Shows a well defined route corresponding to that of the claim from A to P, no evidence of the existence of any gates at this time
1815	Arrowsmith Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P.
1817	Wallis Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined as a "road" in accompanying key
1826	Greenwoods' Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined as a "cross road" in accompanying key
c1832	Pigot & Co Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P being defined as a "cross road" in accompanying key
1838	Owermoigne Tithe Apportionment and Plan	Shows well defined route corresponding to that of the claim between points O1 and P colour-washed in brown.

Date	Document	Comment
1839	Osmington Tithe Apportionment and Plan	Shows westernmost section of route immediately prior to point P. Shows route continuing towards Weymouth - this section is a recorded county road.
1839	Winfrith Newburgh and West Lulworth Tithe Apportionment and Plan	Shows route between points A and C at which point it is annotated "To Weymouth"
c1850	Moule map of Dorset	Shows a well defined route corresponding to the eastern part of the claim from A to N
c1860	Weller Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P
1863	Chaldon Herring Parish Map	Shows a well defined route corresponding to that of the claim from C to J. At point C map is annotated with the words "To West Lulworth".
c1865	Harrod Map of Dorset	Shows a well defined route corresponding to that of the claim from A to P
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows entire route A to P defined by mixture of parallel broken or unbroken lines. No 'F.P' or 'B.R.' annotation
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.	
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1898	Ordnance Survey Sheet 328 (Lulworth & Osmington Light Railway Plan)	Shows a well defined route corresponding to that of the claim from A to P, key defining it as an 'unmetalled unfenced road'
1899	Lulworth & Osmington Light Railway Plans and Book of Reference	Railway Plans shows railway line to cross route at points I and N, at I plan states "road level unaltered", at N "road to be lowered 3 feet and crossed on the level". Reference book mentions footpaths and occupation road affected at points I and M.
c1900	Richmond Reduced Ordnance Survey	Shows a well defined route corresponding to that of the claim from A to P

Date	Document	Comment
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile	Shows a well defined route corresponding to that of the claim from A to P. Includes labelling for a Post Office Letter Box 'L.B.' at N and a Guide Post (finger post) 'G.P.', only shown at rural road junctions, at M. Also suggests a number of gates present along the route
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile	Shows a well defined route corresponding to that of the claim from A to P. Includes labelling for a Post Office Letter Box 'L.B.' at N and a Guide Post (finger post) 'G.P.', only shown at rural road junctions, at M. Also suggests a number of gates present along the route
1906	Ordnance Survey Second Edition map scale 1 inch:1 mile	Shows a well defined route corresponding to that of the claim from A to P key defining it as an 'unmetalled road'
1911	Bartholomew map scale 1 inch:2 miles	Shows a well defined route corresponding to those parts of the claim between points A to A1 and M to P, key defining the route as an 'inferior road'. Between A1 and M it is defined under category of 'Footpaths and Bridleways'.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1913	Bartholomew map scale 1 inch:4 miles	Shows a well defined route corresponding to that of the claim between points A to P, key defining the route as an 'other road'.
1914	Sales documents and plan Southdown Farm	Route described as public road from Weymouth to Holworth and Owermoigne
1918	Warmwell Estate Sales Documents & Plan	Shows part of claimed route from J to O2 it being colour-washed in brown
1919	Ordnance Survey map Sheet 140 scale 1 inch:1 mile	Shows a well defined route corresponding to that of the claim from A to P key defining it as a 'minor road'
1920	Bartholomew map scale 1 inch:2 miles	Shows a well defined route corresponding to those parts of the claim between points A to A1 and M to P, key defining the route as an 'inferior road'. Between A1 and M it is defined under category of 'Footpaths and Bridleways'.
1923	Ministry of Transport Road Map	Whole route shown from A to P key defined as 'other road'
1924	Hardings Map Dorchester District	Shows a well defined route corresponding to that of the claim from A to P

Date	Document	Comment
1942	Assignment (Lease) 3 Whitnothe Cottages Chaldon Herring	Provides evidence as to the status of the whole of the claimed route as document conferred a private vehicular right from Whitnothe Cottages to point J. The claimed route being described as a public highway from Weymouth and Osmington to Lulworth and Kimmeridge.
1944	Bartholomew map scale 1 inch:2 miles	Shows a well defined route corresponding to those parts of the claim between points A to A1 and M to P, key defining the route as a 'serviceable road'. Between A1 and M it is defined under category of 'Footpaths and Bridleways.
1945	Ordnance Survey Sheet 178 scale 1 inch:1 mile	Shows a well defined route corresponding to that of the claim from A to P key defining it as a 'minor road'
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1949	National Trust Conveyance Southdown Farm	Provides evidence as to the status of the claimed route, N to P, as document conferred a private vehicular right from Southdown Farm to the claimed route which is described within the documents as the "road from Weymouth to Holworth and Owermoigne", a "public road leading to Holworth" and the "public road leading from Weymouth to Owermoigne"
1951	West Lulworth Parish Survey	Records that part of the route A to B as a bridleway
c1951	Chaldon Herring Parish Survey	Records that part of the route C to J as a bridleway. Footnote added stating "the Council hope that everything will be done to prevent this being used by cars" which suggest such use was actually taking place.
c1951	Owermoigne Parish Survey	Records that part of the route J to P as a CRB (Carriage or Cart Road used mainly as Bridleway) and Bridleway. This suggests Parish Council may have been aware of public vehicular use of the route.

Date	Document	Comment
c1951	Osmington Parish Survey	Survey Map identifies that part of the route in Owermoigne between L and M as a CRB (Carriage or Cart Road used mainly as Bridleway) and that part between M and P as a road
1951	Bartholomew map scale 1 inch:2 miles	Shows a well defined route corresponding to those parts of the claim between points A to A1 and M to P, key defining the route as an 'inferior road'. Between A1 and M it is defined under category of 'Footpaths and Bridleways'.
1954	Draft map for the South area (Owermoigne & Osmington)	Route in Owermoigne, J to P, recorded as a CRB (Carriage or Cart Road used mainly as Bridleway)
1955	Draft map for the south East area (West Lulworth, Winfrith Newburgh & Chaldon Herring)	Route between points A to J recorded as a bridleway
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1964	Provisional map	Entire route A to P recorded as bridleway (see 1958 Note above)
1967	First definitive map	Entire route A to P recorded as bridleway
1970	Statement of Walter Miller (Chairman of Chaldon Herring Parish Council 1960-70)	Provides evidence of personal use in vehicles and observation of use by others in vehicles from the 1890s and in addition his belief as to the reputation of the route and its obstruction by the locking of gates in 1958
1970	Statement of Miss D Peacock	Provides evidence of personal use with a vehicle (bicycle) and her observation of other users in vehicles from 1919 to 1958 and of her belief as to the reputation of the route being that of a public carriageway.
1970	Statement of Miss I Peacock	Provides evidence of personal use with a vehicle (bicycle) and her observation of other users in vehicles from 1919 to 1958 and of her belief as to the reputation of the route being that of a public carriageway.
1970	Statement of Mrs I Marks	Provides evidence of her observation of other users in vehicles during 1930s to 1957 and of her belief as to the reputation of the route being that of a public carriageway

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Date	Document	Comment
1970	Statement of Mr F Powys	Provides evidence of his observation of other users in vehicles, including a 'Model T Ford' during 1920s to 1930s and of his belief as to the reputation of the route being that of a public carriageway.
1970	Statement of Mr W Whittle	Provides evidence of personal use, as a passenger, driving/riding in a vehicle and his observation of other users in vehicles from the 1890s and of his belief as to the reputation of the route being that of a public carriageway.
1973	Decision of Special Review Committee	Special Review Committee determined on the basis of the evidence discovered that the route ought to be recorded as a byway open to all traffic
1974	Revised draft Map	Entire route A to P recorded as a byway open to all traffic
1979	Statutory Declaration Gwendoline Parsons	Provides evidence of public vehicular use of part of the route, J to N and also of its status
1979	Statutory Declaration Edith Taylor	Provides evidence of public vehicular use of part of the route, N to P and also of its status
1989	Current definitive map	Entire route A to P recorded as bridleway
2012	List of Streets	O2 to P is recorded as a maintainable public highway (public carriageway) it is also recorded within these records back to 1965. There is no formal date of adoption suggesting its origin maybe historical.

Extracts from key documents

(See the Director for Environment's file RW/T394 for copies of other documents mentioned)

1771 Winfrith Newburgh Inclosure Award

Donne... so were hereafter (as followeth).

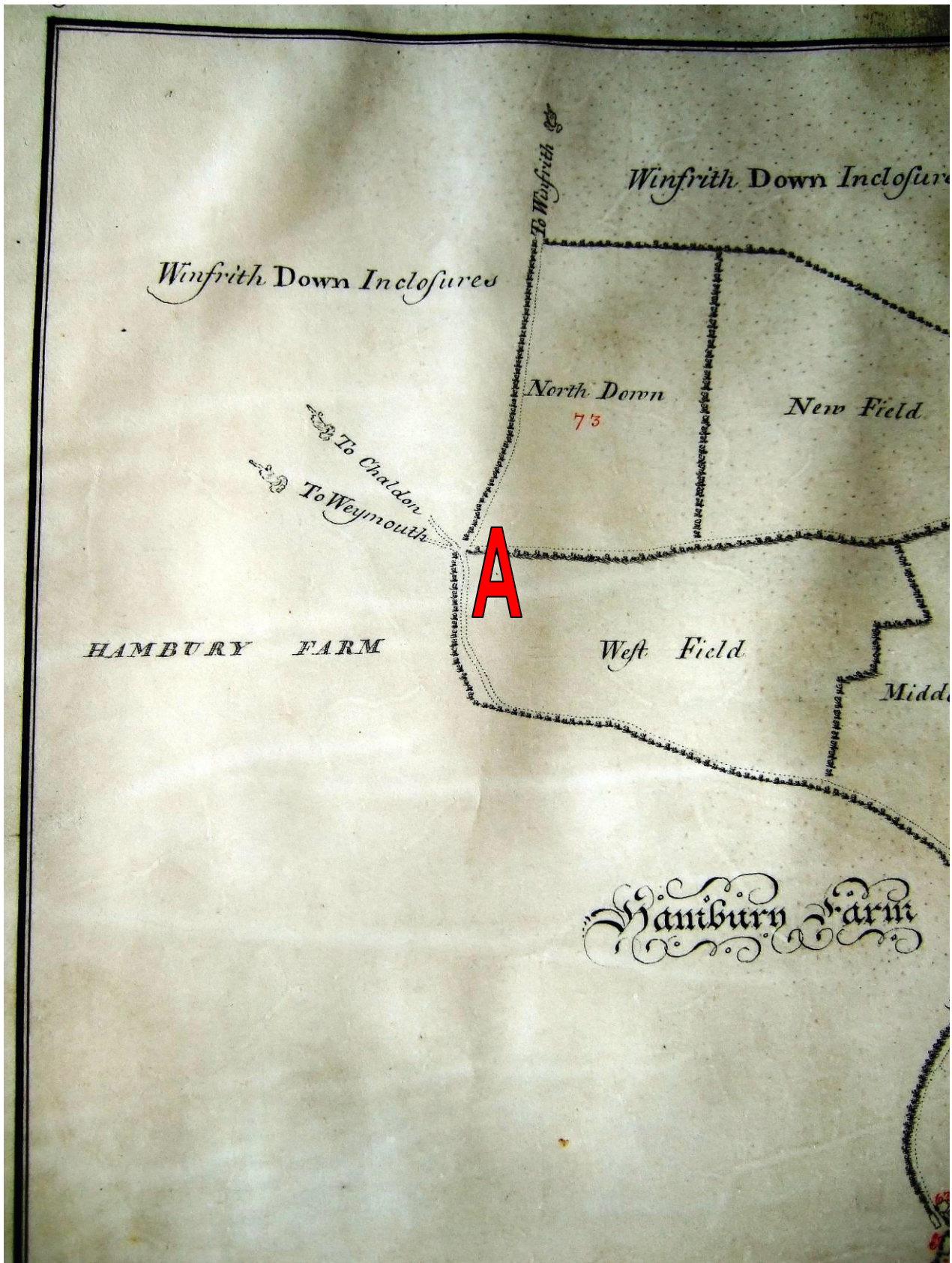
Publick Roads. The Newintended Road which the said Commissioners thinking more usefull for the Persons interested than any of the Old Roads...

	Breadth	Contents	
in One direct Line to the West Corner of the House & Race Ground on the Donne, & from thence to Bellhouse Farm Gate & then via Bungate Lane as far as hitherto	60 Feet	13 2 25	
The Road leading from the Church to West Lulworth			The same as hitherto
The Roads leading from the Church of Winfrith Farm House to Dorchester & Heymouth			The same as hitherto
The Road leading from the Church of the Rectory of Portway Lane to Dorchester			The same as hitherto
The Roads from East & West Lulworth, to Heymouth & Chaldon			The same as hitherto
The Road leading from the Parishes to Combe Wood from the Crown Inn thro' Rays Street			The same as hitherto
Private Roads. The Newway leading from Bellhouse Farm Gate down to the last mentioned Road to Combe			The same as hitherto

How to be maintained & kept in Repair

- By the Parishioners of Winfrith as the Old Roads were
- The same Direction as to this
- The same Direction as to this
- The same
- The same
- The same
- The same
- The same for private Conveniency only

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1771 Weld Estate Atlas

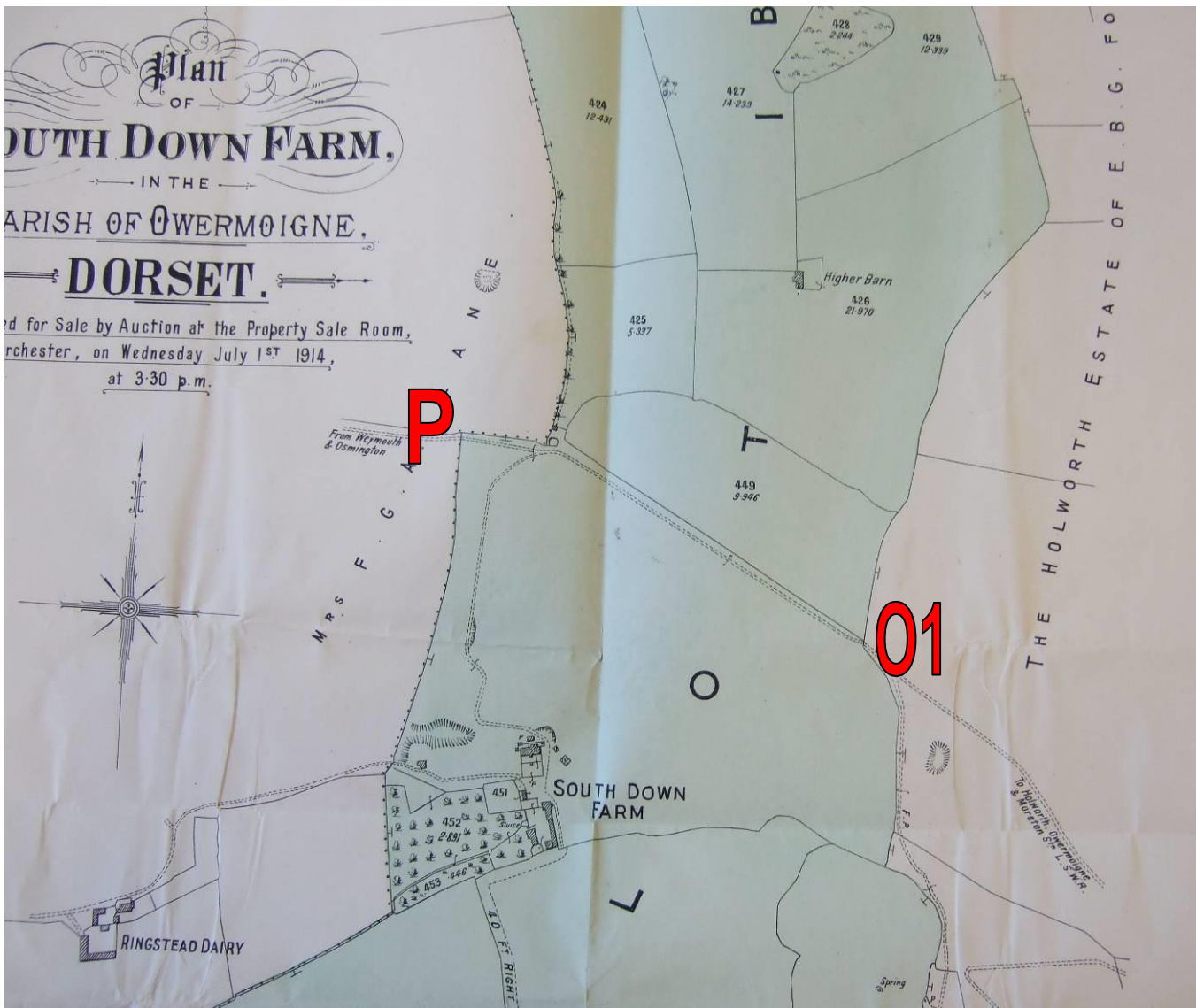


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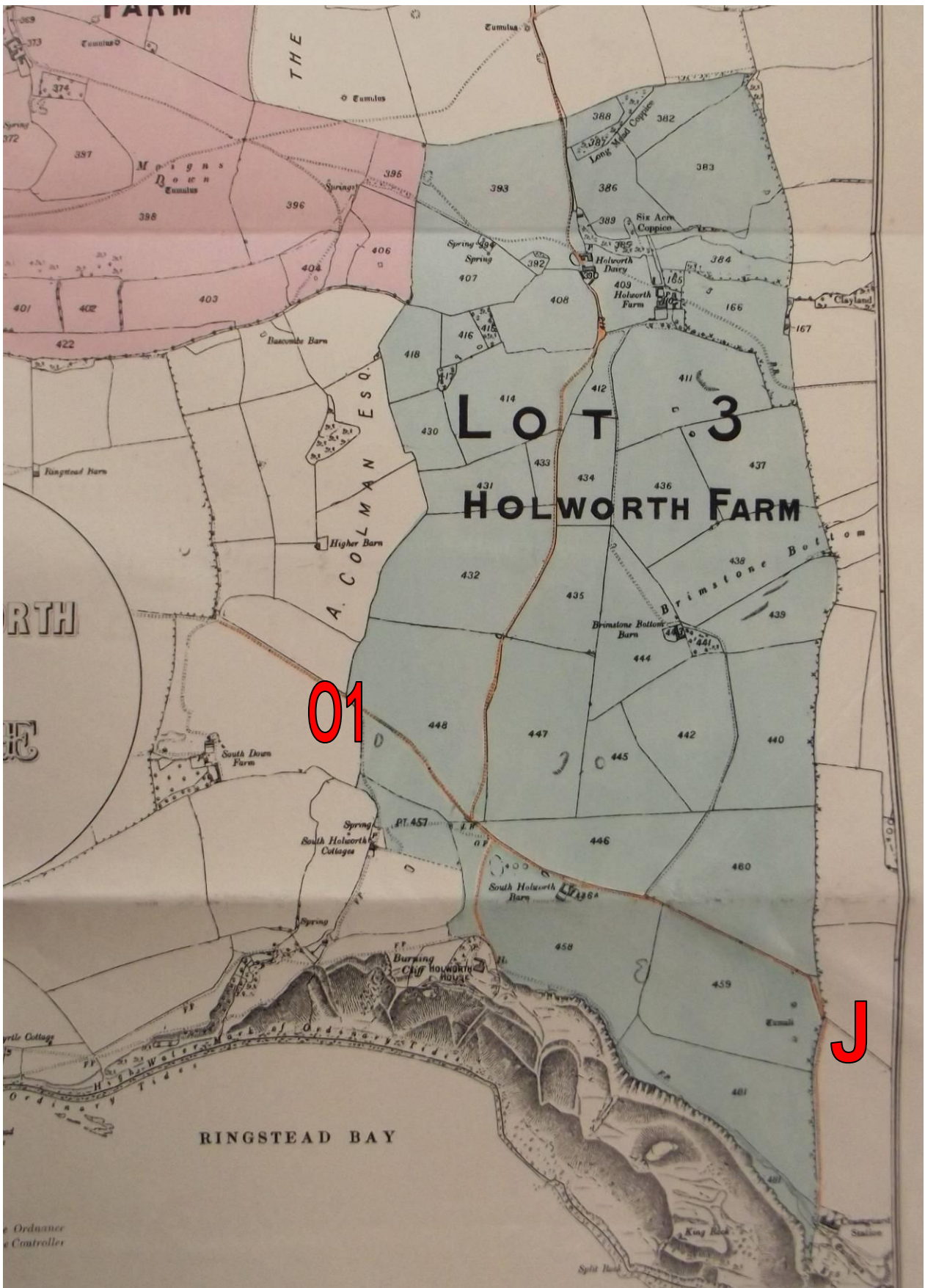


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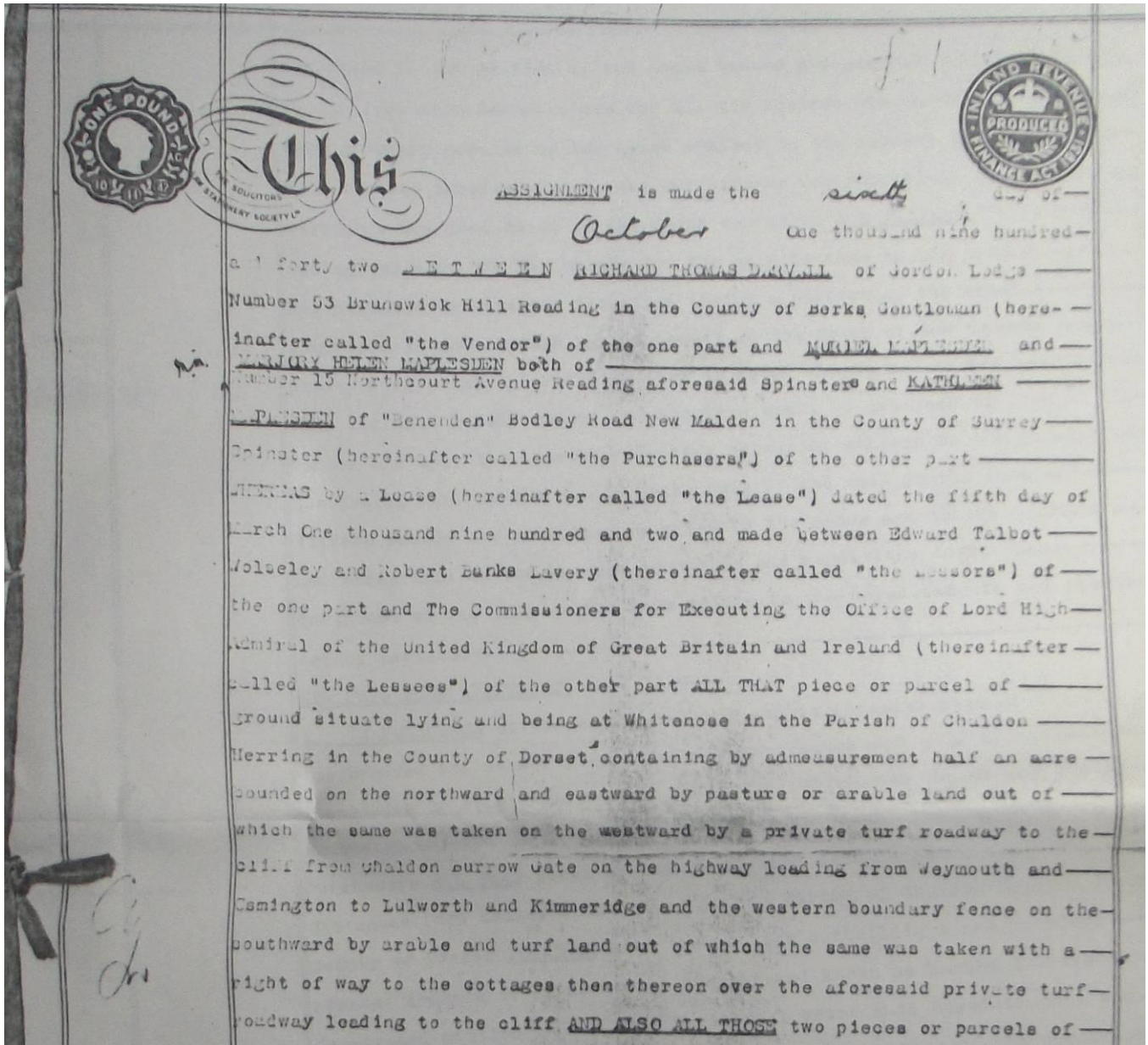
1914 Southdown Farm Sale Documents



1918 Holworth Farm, Warmwell Estate Sale documents



1942 Assignment of 3, Whitenoth Cottages



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1970 Statements
Walter Miller

Mr Walter Miller of Lilac Cottage, East Chaldon, will say:-

I have lived in East Chaldon for 50 years and have been Chairman of the Chaldon Herring Parish Council for the last 40 years. I have known the way from Dagger's Gate to the unclassified county road which lies just to the west of South Holworth Farm, the route of which way is marked green on the plan attached hereto, for about the last 75 years.

This way was known locally as the "Roman Road" or "Gypsy Track", the latter name arising from the fact that gypsies used to drive and park their caravans along it. The section which passes through the Warrens I know of as "The Warren Road".

My mother and father, who were both born in Lulworth, went to live in Rose Cottage, Ringstead in 1888. My father was a rabbitier and fisherman by trade. He rented warrens in Holworth from a tenant of the Warmwell Estate. He used part of this way for transporting in his donkey cart his gear to the warrens and many times I accompanied him on such trips. My parents used to drive in their donkey cart along part of this way to visit their parents in Lulworth, and on Sundays when my grandparents used to drive over in their donkey cart to see us they would come along part of this way. My father used the way for all purposes. If he wanted to go to Lulworth for fishing gear he would drive ^{there} in his cart and part of his journey would be along part of this way. My father left Ringstead in 1921 and went to live in Lulworth but he still used this way with a cart until about 1931. For instance, he would use it to visit my now deceased brother who was then living in Rose Cottage.

On many occasions when I was living in Rose Cottage I drove and was driven in various types of horse vehicles to Lulworth and part of my journey lay along part of this way. I also drove and was driven in carts to Weymouth from Rose Cottage and again part of my journey was on part of this way. After I went to live in Chaldon I often drove in a cart from there to Rose Cottage and part of my journey would be on part of this way. The last time I drove a cart up from Chaldon to Rose Cottage was in about 1939.

I have ridden a bicycle many times along the way. The last time I bicycled on it was about 20 years ago. Friends have driven me along it in a car.

I have seen other people, villagers of East Chaldon, and other locals driving horse drawn vehicles such as wagonettes along various parts of this way. Between 1906 and 1915 a Mr Beazley who was a grocer in Lulworth used to deliver in a cart groceries to my mother and the residents of the White Nothe Cottages. Up to the First World War the farmer from Holworth used to take his butter and other goods to Lulworth to sell them. For this purpose he used to drive to Lulworth in a cart and part of his journey was along part of this way. On the whole, villagers of East Chaldon never used it with vehicles a great deal.

Up to the First World War it had been an annual event for some years for the villagers of West Lulworth to go up to the way to pick blackberries which were made into jam and sold for charitable purposes. They were driven up onto the way in a wagonette by a certain Johnny Chaffey who was a cab driver. There was no question of having to obtain permission to go onto the way for that purpose. During the time I used the way I never saw any notices along it prohibiting the public from driving vehicles on it, nor were there any locked gates across it. There were a few ten foot field gates across it but they were all openable and carts could easily pass through them. Up to the 1950's I had never heard of anyone with a vehicle being turned off or being prevented from using this way. I regarded it as a public road and it was so accepted by all the locals; no one would have dreamt of obtaining permission to use it.

Just before the First World War the Post Office erected telegraph poles along part of this way. These poles carried the wires for the coastguard's telephones. I understand that the Post Office would only erect their poles along public roads as it saved them having to pay the owners of the land for the right to erect them.

During the time that I used this way, its surface was mainly grassy, but firm, with 2 ruts. The grass was kept short by the rabbits.

After the First World War the use of this way by cars gradually increased. People would use it to drive from Lulworth to Weymouth. Some drivers found that having to alight from their cars to open and shut the gates was too much bother so they would turn back. I have seen cars along various sections of this way.

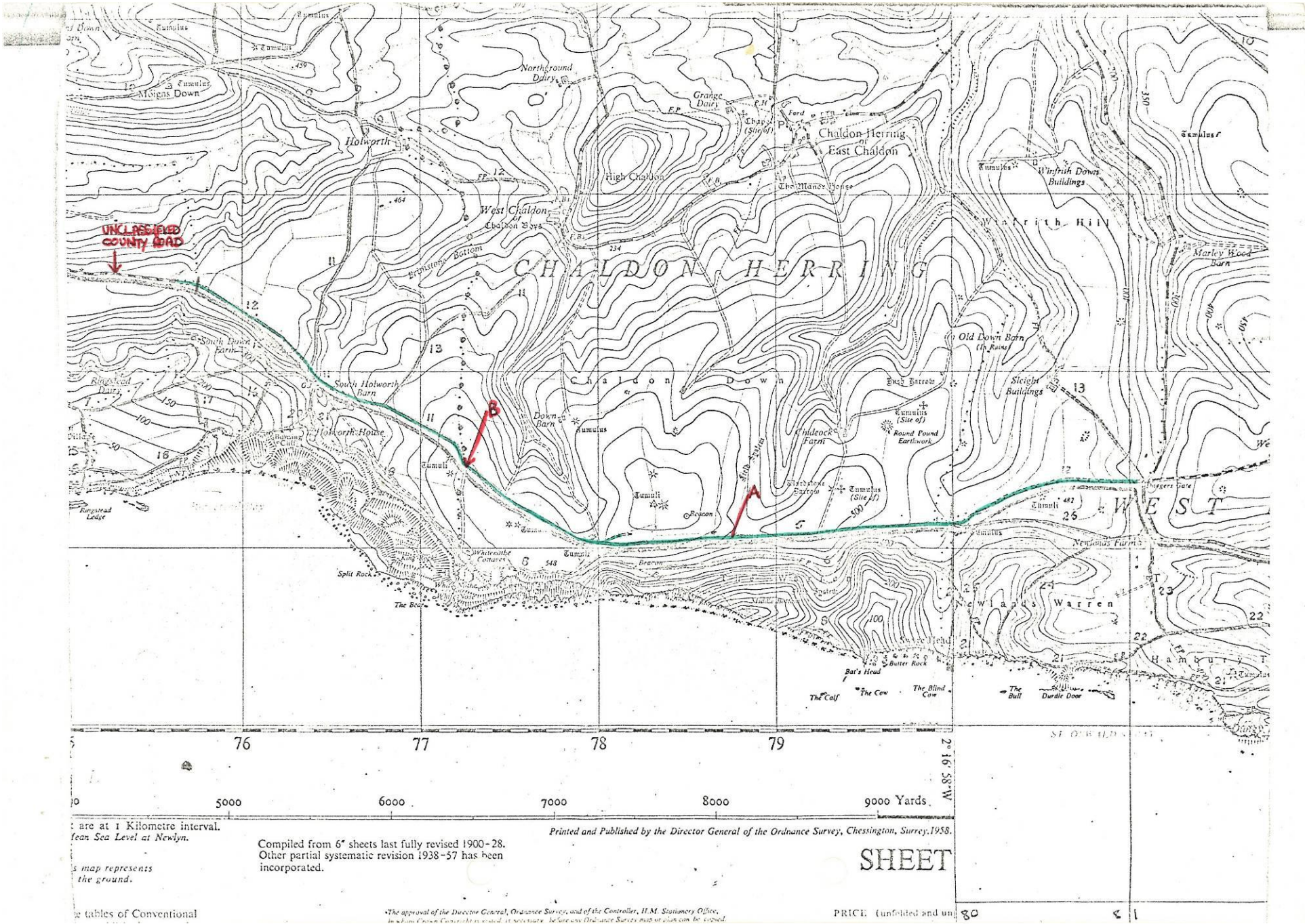
Page 60 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)

After the Second World War Durdle Camp became a holiday camp. Visitors from there used to drive in their cars along this way to Weymouth. They tended not to close the gates and this led to cattle straying from one farm to another. Around 1951, after consulting the County Council, the Chaldon Herring Parish Council agreed to the section of the way which is known as Bridleway No. 5, Chaldon Herring on the Definitive Map, being turned into a bridleway. For my own part I was ~~leathe~~ ^{RELUCTANT} to agree to this as I considered, and still do consider, this section and indeed all the way as part of my heritage and a public road, but as the Parish Council looked at the matter the abuse of this section by car drivers warranted this action. Around this time the gate, which is at the position marked A on the plan attached hereto, was staked, and in 1958 the field gate at the position marked B on that plan was locked and a hunting gate erected alongside it. These two actions prevented vehicles from being driven along the complete length of this way. No-one from around here would think of driving a car along it now.

The surface of the section of the way which runs through the field lying to the west of the staked gate was first broken up about two years ago this next cropping.

Signed.. **Walter Miller**

Dated *July 1st 1970*



Contour lines are at 1 Kilometre interval.

Vertical datum is Mean Sea Level at Newlyn.

This map represents the ground.

Refer to the tables of Conventional

Compiled from 6" sheets last fully revised 1900-28. Other partial systematic revision 1938-57 has been incorporated.

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Miss D Peacock

Miss D Peacock of Garden Cottage, Milton Road, Milborne St Andrew will say I first went to one of the White Nothe cottages for a holiday in the autumn of 1919 and thereafter, apart from the war years, I have been going there for holidays several times a year. My knowledge of the way from Daggars Gate to the unclassified County road which lies just to the west of South Holworth Barn, the route of which way is coloured green on the map attached hereto, covers those years.

Both before and after the war I have many times seen people driving cars along various sections of this way. As far as I knew these people were ordinary members of the public.

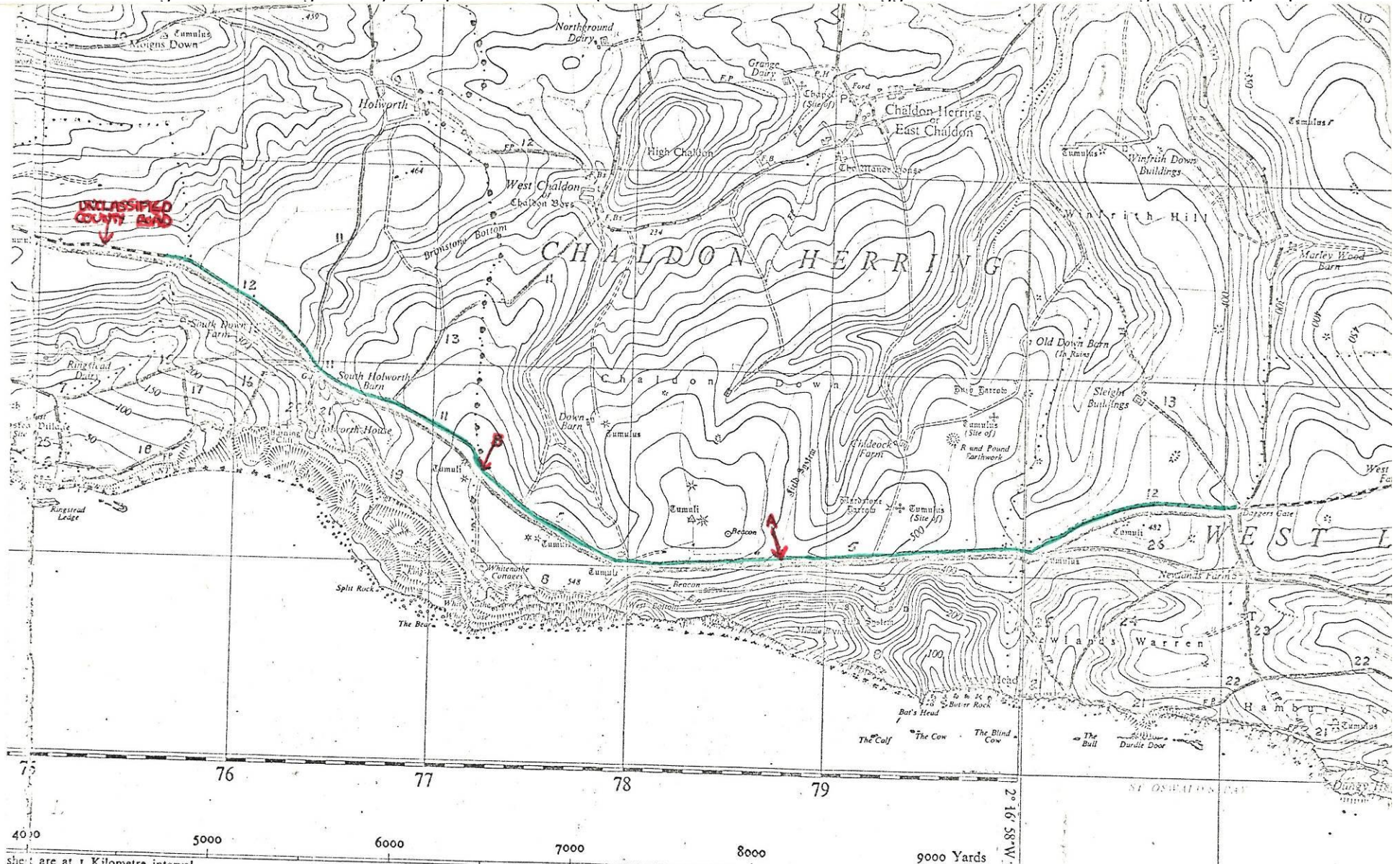
I have very often cycled to Weymouth from White Nothe, and in doing so part of my journey would lie along part of this way. I have also cycled to Lulworth from White Nothe and again part of my journey would lie along part of this way.

I have always believed this way to be a public right of way for vehicles although I did have doubts as to whether it was when a notice prohibiting vehicles from using the way was erected by the Daggars Gate entrance.

With the staking of the field gate, which is situated at the point marked A on the plan attached hereto, in about 1951, and the locking of the field gate, which is situated at the point marked B on that plan, and the erection alongside it of a hunting gate in about 1958, public vehicular usage of the complete length of this way has been prevented, and therefore has died away.

Signed **D Peacock**

Dated July 13th 1970



sheet are at 1 Kilometre interval.
 ve Mean Sea Level at Newlyn.
 n this map represents
 es of the ground.

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reference table of Conventional
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 Reference to the Director General, Ordnance Survey, will be made in the text wherever necessary.

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Miss I Peacock

(5)

Miss I R Peacock of 5 White Nothe Cottage will say

I first went to one of the White Nothe cottages for a holiday in the autumn of 1919 and, thereafter, apart from the war years, I went there for holidays up to 1949 when I bought No. 5 White Nothe Cottage where I still live. My knowledge of the way from Daggers Gate to the unclassified County road which lies just to the west of South Holworth Barn, the route of which way is coloured green on the map attached hereto, extends over all those years.

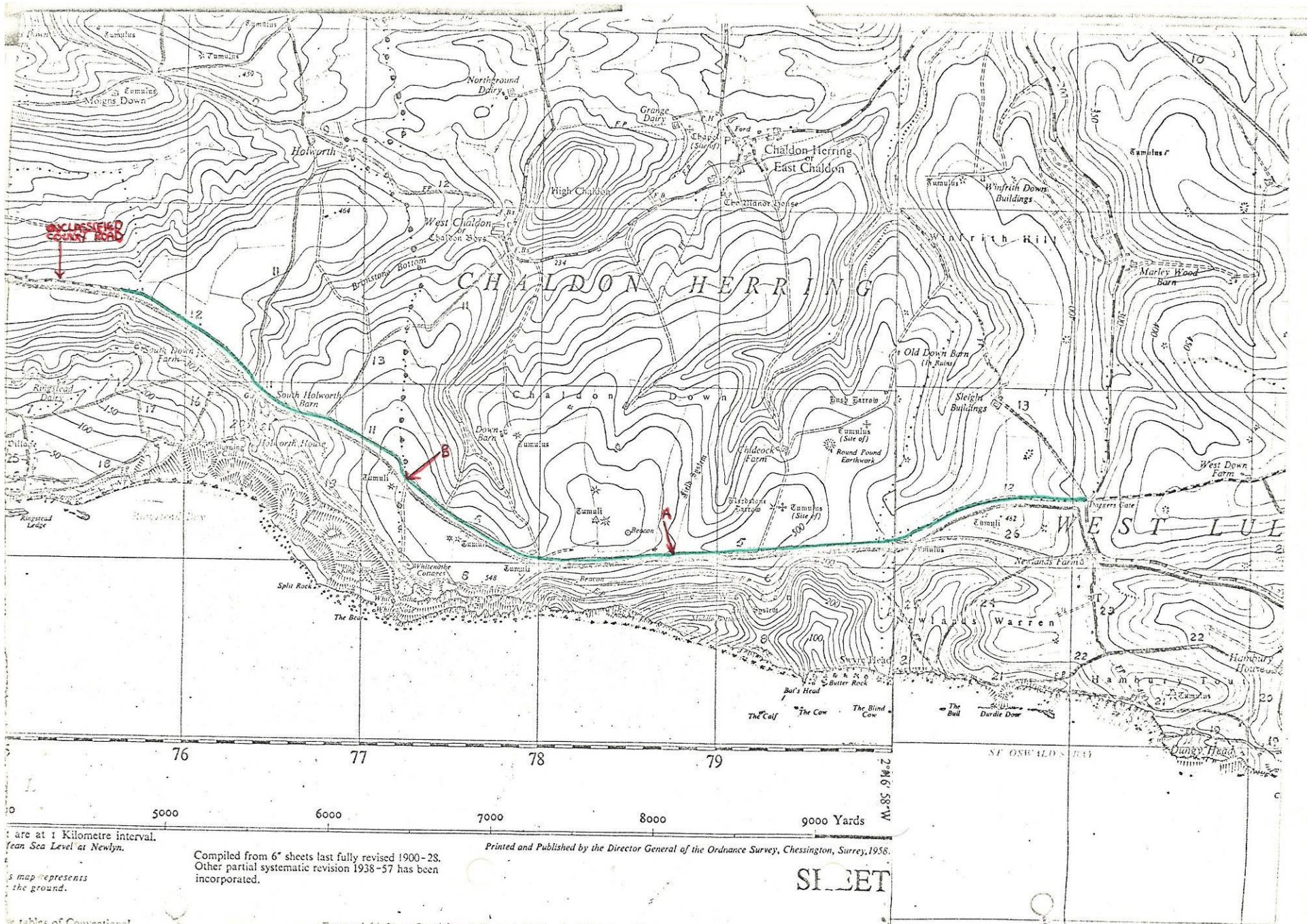
Both before and after the war I have many times seen members of the public driving cars along various sections of this way. They have often stopped and asked me information about the area.

I have cycled along this way many times ^{but not of late years.} I have never doubted that it was other than a public right of way for vehicles.

Of course, with the staking of the gate, which is situated at the point marked A on the map attached hereto, and the locking of the field gate which is situated at the point marked B on that map, the public vehicular usage of the complete length of this way has been prevented and thus has died away.

Signed **I R Peacock** -----

Dated 14th July 1970.



are at 1 Kilometre interval.
fean Sea Level at Newlyn.

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Mrs I Marks

(4)
Mrs Isobel Powys Marks of Lilac Cottage, Mappowder will say:

In 1924 my aunts went to live at Chydyok, East Chaldon, and from that time until about 1957 I used to visit them fairly frequently. Thus I came to know well the way from Daggars Gate to the Unclassified county road which lies just to the west of South Holworth Barn, the route of which way is coloured green on the map attached hereto.

I learnt to ride a horse along this way and I have walked along it many times. I have never ridden in a vehicle along it. However, in the 1930's I saw cars being driven along various sections of it, and I think I saw carts also being driven along it. As far as I know the drivers of the cars were ordinary members of the public.

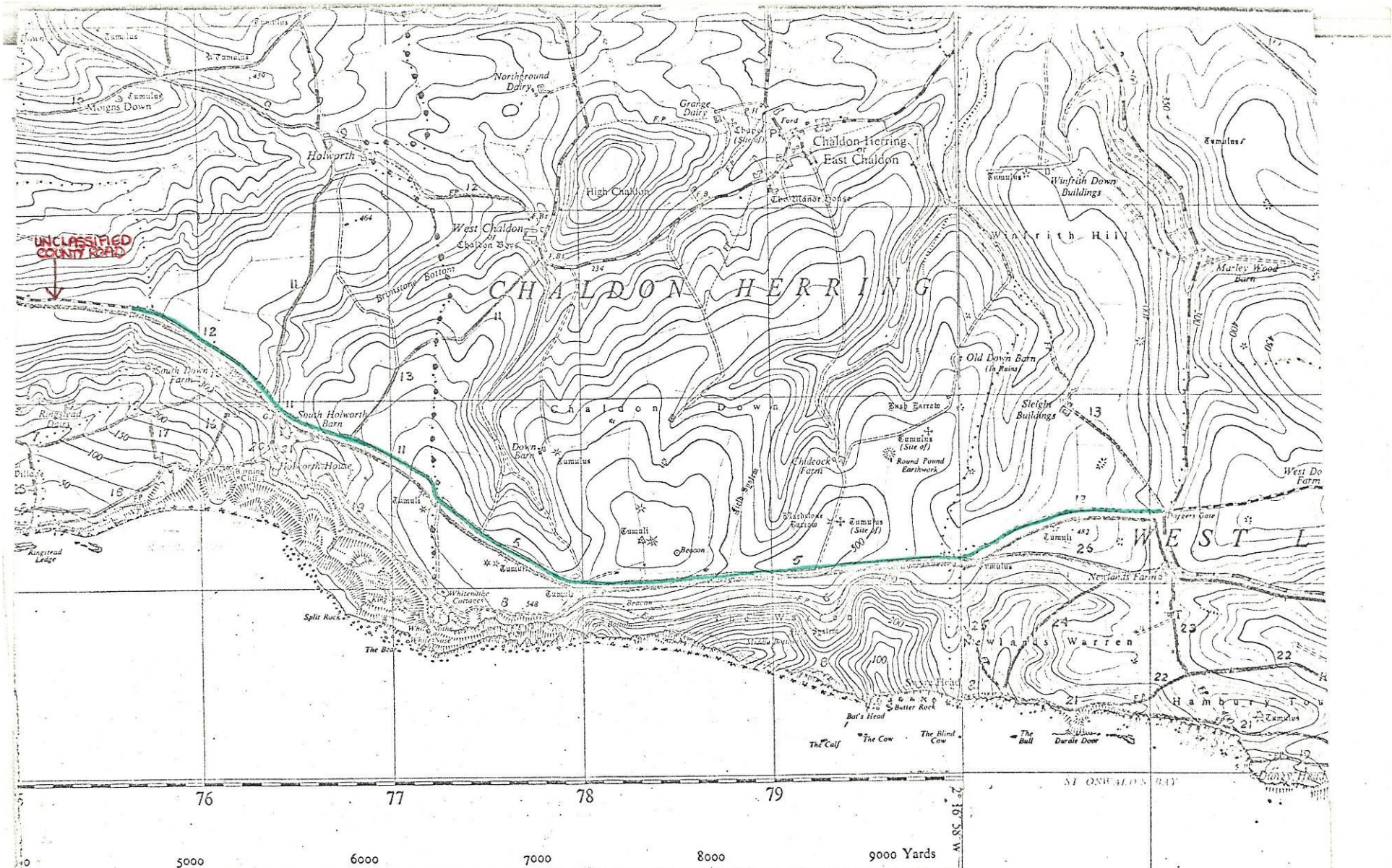
I remember the way as having a firm, well-worn and rutted surface, consistent with vehicular usage, although in parts it was grassy.

There were gates across the way but they were all easily openable. I never saw any notices along the way which prohibited the driving of vehicles along it, and I never heard of anyone in a vehicle being turned off it.

I always regarded this way an unmade public road.

Signed. **Isabel P Marks**

Dated *July 1st 1970*.....



are at 1 Kilometre interval.
near Sea Level at Newlyn.

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incorporated.

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Mr F Powys

Mr Francis Powys of Restfield, Buckland Newton will say

I was born in East Chaldon sixty-one years ago and I lived there until I was twenty-one years of age. During those years when I lived in East Chaldon I came to know very well the way from Dagers Gate to the unclassified county road which lies just to the west of South Holworth Barn, the route of which way is coloured green on the map attached hereto.

I learnt to ride a horse along it and I bicycled along it many times. I never rode along it in a cart or car but I used to see fairly frequently pots, dog-carts and gypsies' caravans being driven along various sections of it, especially in the summer months. The drivers of these pots and dog carts were ordinary members of the public. In the late 20's and early 30's I saw cars being driven along sections of it. I recall especially once seeing a Model T Ford being driven along it. Again the drivers of these vehicles were ordinary members of the public.

I always took this way to be a public road; indeed all the inhabitants of East Chaldon took it to be such a road. There was no question of having to ask permission to drive vehicles along it. Mr Dymont of West Chaldon, who rented part of the land over which the way ran, was the type of man, who, if one had had no right to drive a vehicles along it, would have turned one off.

An old shepherd by the name of Smith whom I used to know used to call this way the "White Road". Why he did so I do not really know. In fact the surface of the way was covered with short green grass but was very firm and rutted, although the ruts were not very deep.

I never heard of the way being obstructed. There were some gates across it but these were easily openable. I never saw any notices along the way prohibiting the driving of vehicles on it.

SIGNED: FRANCIS POWYS

Dated 3/7/20



Scale at 1 Kilometre interval, in Sea Level at Newlyn.

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map represents the ground.

Tables of Conventional published separately.

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This map is also available

Mr W Whittle

⑥

Mr W Whittle of No. 20 West Lulworth will say

I was born in East Lulworth 83 years ago. I have known the way from Daggars Gate to the unclassified county road which lies just to the west of South Hoiworth Barn, the route of which way is coloured green on the attached map, since I was a schoolboy. I know it as the "Warren Road". When I was a schoolboy a Mr C Baggs of Lulworth used to rent warrens in the Middle Bottom area. He used to employ a Mr W Chaffey of Lulworth to collect the rabbits from the warrens in his (ie Mr Chaffey's) donkey and cart. Mr Chaffey's journeys to collect these rabbits lay partly along this way, and many times I accompanied Mr Chaffey.

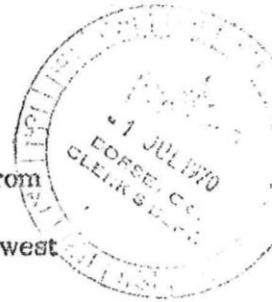
My vehicular use of this way was confined to these journeys. I have walked along it many times. On Sundays I used to walk to St Catherine's Chapel along it.

I have always regarded it as a public road. I always understood that it formed part of the old road (a Roman Road I believe) from Burngate Farm to Weymouth.

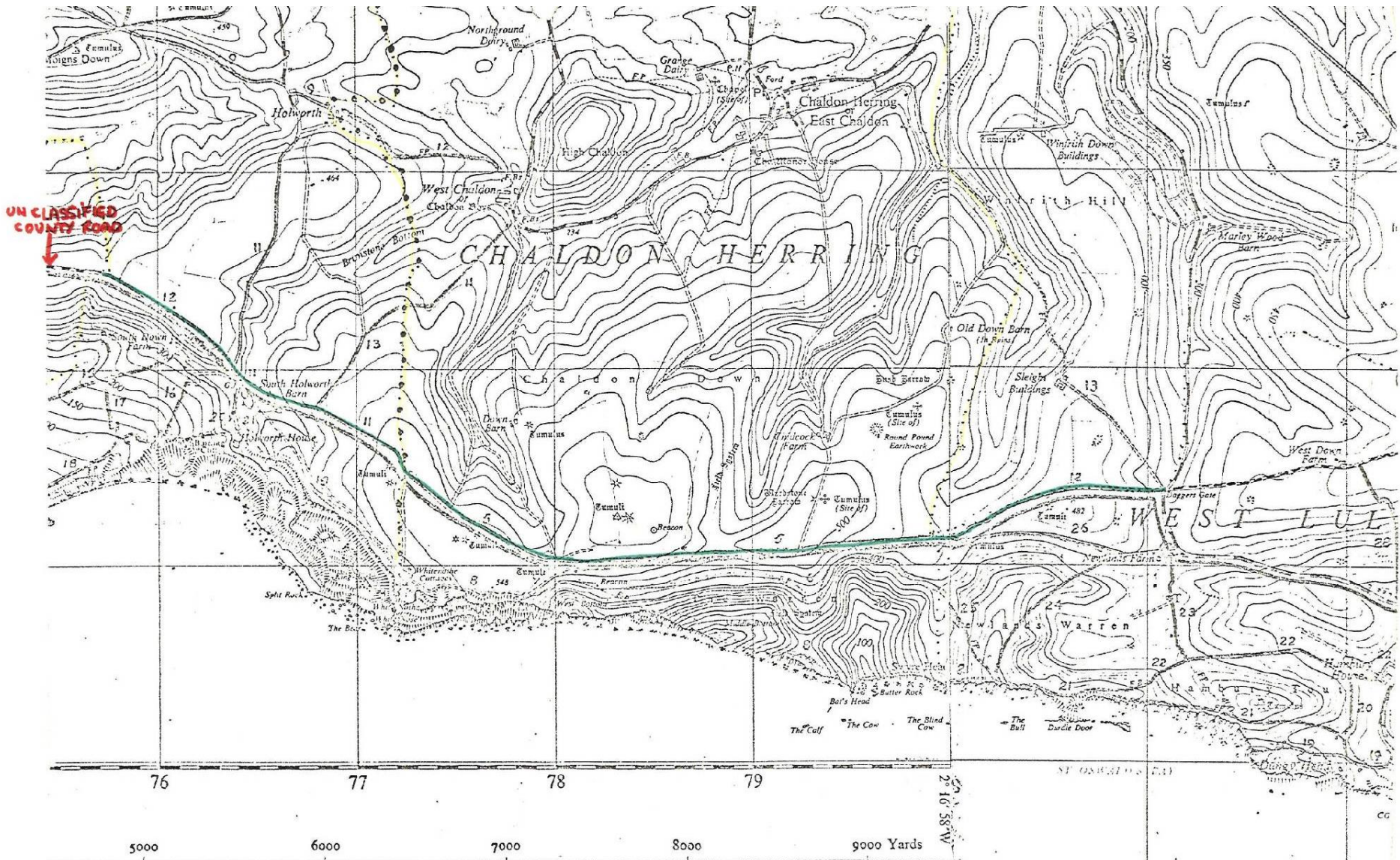
I have worked for tenants of the Weld Estate. They never gave me any instructions about using the section of the way which passed over the Estate's land.

Signed **W Whittle**

Dated June 30 1970



Page 71 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)



metre interval.
Newlyn.

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incorporated.

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Page 72 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)

1973 Special Review Committee

DORSET COUNTY COUNCIL
 REVIEW OF DEFINITIVE MAP OF RIGHTS OF WAY

REF RW/ ~~SE 26~~
 SE27

~~Municipal Borough/Urban District~~ Parish of Winfrith Newburgh ✓
 Copies to - West Lulworth Parish and Owermoigne Parish ✓

APPENDIX

Evidence has been obtained that the way from the County road at MR756825 in the Parish of Owermoigne running generally south-eastwards (bridleways Nos. 12 and 11) then eastwards through the Parishes of Chaldon Herring (bridleway No. 5) and West Lulworth (bridleway No. 27) thence along the Parish boundary of Winfrith Newburgh (bridleway No. 12) to Daggars Gate at MR 810813 is an old road (carriageway) and it has been suggested therefore that this should be shown as a RUPP with Byway status.

See 6 below

4. Official number of path or way if already shown on Definitive Map	<i>Now CR 27</i>
5. From <i>Parish Boundary</i>	Map Ref. <i>BR 27</i>
To <i>BR 12</i>	Map Ref. <i>801811</i>
	Map Ref. <i>803812</i>
6. Precis of Claim	

A section at present shown on the Definitive Map as bridleway 27 has been entered on the OS map as a suggested byway, as a result of strong evidence obtained after the ~~present~~ perusal of old maps and the interviewing of a large number of local residents. The section extends from the Chaldon Herring parish boundary at 801811 eastwards at a junction with BR 5, eastwards to a junction with BR 12 at the Winfrith Newburgh Parish boundary at 803812.

Refer back to RWSE 8(1)

1979 Statutory declarations
Mrs G Parsons

I, GWENDOLINE MAI Y PARSONS of 53 Alton Road
Branksome Bournemouth in Dorset do solemnly and
sincerely declare as follows:-

1. My father was the leaseholder of number 7
Coastguard Cottages, Whitenothe, Chaldon Herring in
the County of Dorset from 1940 until 1946 and used
that property as his only residence.

2. My father owned a Morris Minor car and obtained
access to the property over the route which I have
shown by the colour green on the plan now produced
and shown to me marked "G.M.P.1." from Holworth
southwards for approximately three quarters of a
mile to Seabarn Dairy then going in a south easterly
direction for just over a further half a mile until
the track crossed the parish boundary. The track
to the cottages then follows the line of the parish
boundary due south. During the period above
mentioned various tradesmen, including the coal and
oil merchants, obtained access to number 7 Coastguard
Cottages aforesaid by the use of the same track

3. From 1945 onwards I have held the lease of
number 2 Coastguard Cottages, Whitenothe, which I
STAYED THERE FOR ABOUT ONE MONTH AT EITHER END OF MONTH IN THE SUMMER OF EVERY
YEAR AND ALSO STAYED AT BRISTOL AND OTHER PLACES FOR SHORT PERIODS Although

I do not myself own a motor vehicle I ~~have been~~ WAS NORMALLY
driven there, sometimes by my brother and sometimes
WHO WAS THE TENANT OF NUMBER 1 COASTGUARD COTTAGES
by my friend a Miss Lawrence. We have always
obtained access to number 2 Coastguard Cottages, over
the said track coloured green

G.M.P.
WJ

G.M.P.
WJ

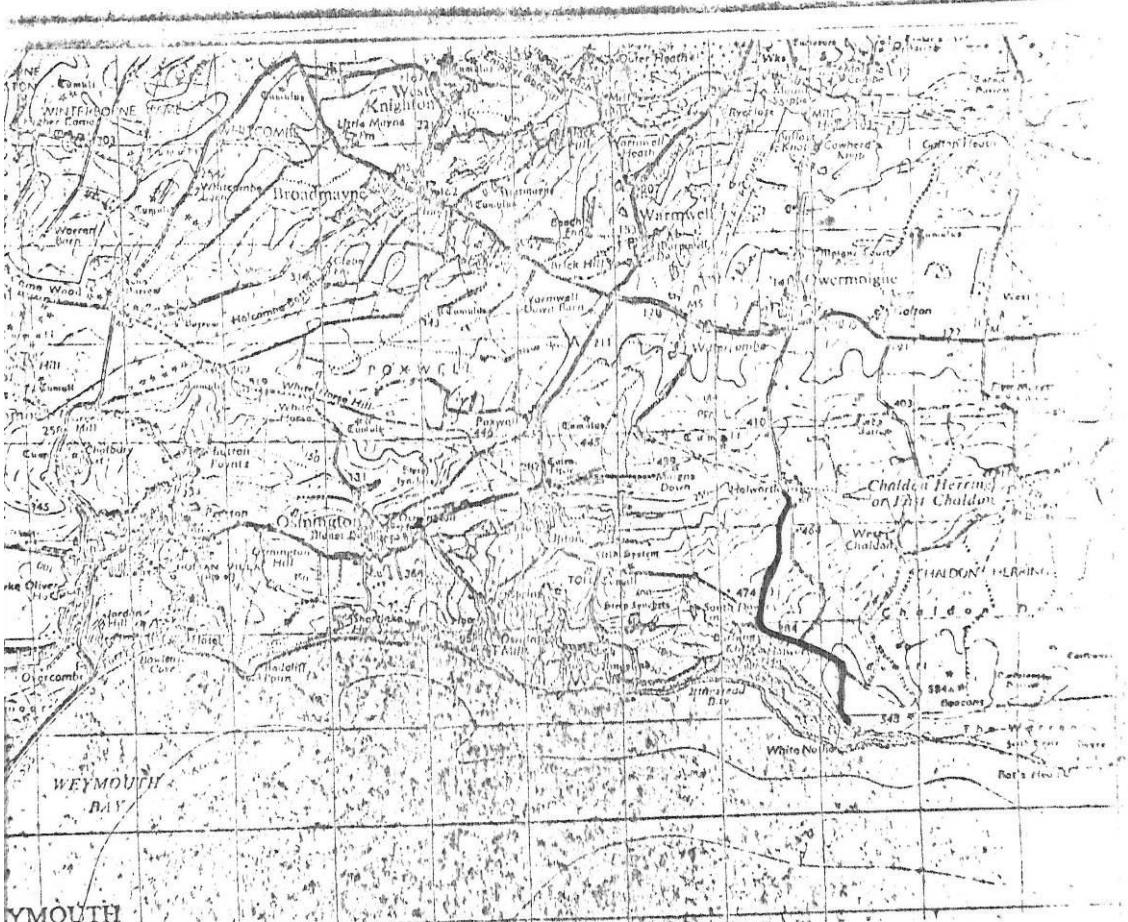
G.M.P.
WJ

AND I make this solemn declaration conscientiously
believing the same to be true and by virtue of the
provisions of the Statutory Declaration Act 1835

DECLARED at Popple }
in the County of Dorset }
this 5th day } G M Parsons
of September 1979 }

Before me: N. P. Aldham

A Commissioner For Oaths/Solicitor

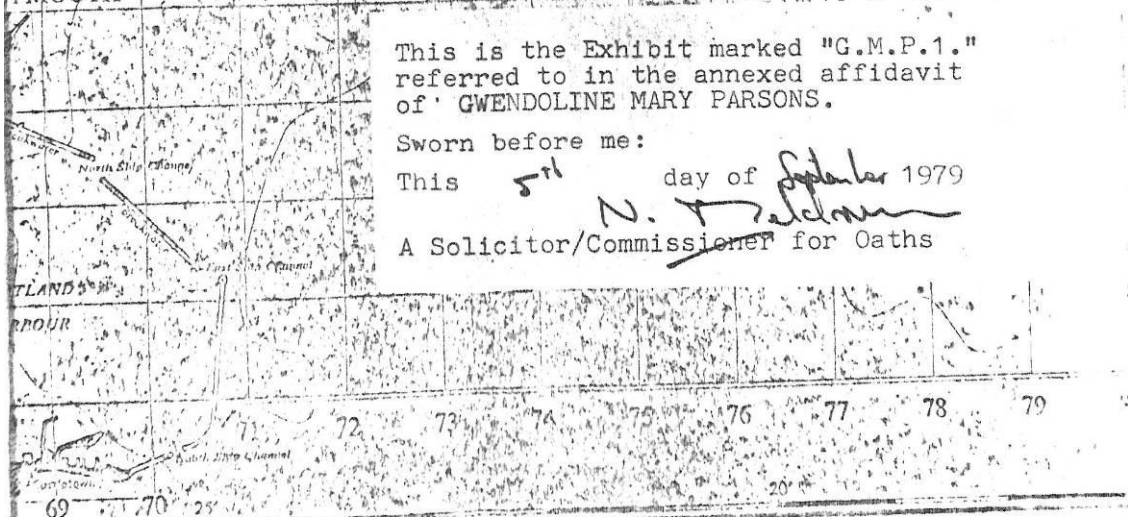


This is the Exhibit marked "G.M.P.1." referred to in the annexed affidavit of GWENDOLINE MARY PARSONS.

Sworn before me:

This 5th day of September 1979

N. T. [Signature]
A Solicitor/Commissioner for Oaths



SCALE 1:63,360 ONE INCH TO ONE MILE



- MISCELLANEOUS
- Church (with Tower or without)
 - Chapel (with or without Tower)
 - Bus or Coach Station
 - Windmill (if stated)
 - Well
 - Orchard
 - Boundary
 - County

HEIGHTS IN FEET ABOVE SEA LEVEL
 5 275 SURVEYED
 1000 NOT SURVEYED
 To convert feet to meters multiply by 0.3048

I, EDITH GERTRUDE TAYLOR of 'The Mu' Brook Lane Albury Guildford in the County of Surrey Widow do solemnly and sincerely declare as follows:

1. I am 83 years of age and have known Coastguard Cottages Whitenothe Chaldon Herring in the County of Dorset since the year 1928. My husband and I used to visit the cottages for holidays, the first occasion being in 1928, and we again visited them the following year and I believe in the year 1931. I recall that we rented 7 Coastguard Cottages from a Mr. Darvall.

2. When my husband and I visited the cottage we came by car and used the route which I have shown by the colour green on the plan now produced and shown to me marked "E.G.T.1." from Holworth southwards for approximately three quarters of a mile to Seabarn Dairy, then going in a South Easterly direction for just over a further half a mile until the track crossed the parish boundary. The track to the cottages then follow the line of the parish boundary due South.

3. After 1947 or 1948 my husband and I, but latterly I alone, have visited the cottages regularly for recreational purposes and five years ago I purchased the leasehold interest in 5 Coastguard Cottages. During that period we used the route through the valley from Seabarn Dairy to the cottages but the route from Holworth Farm to Seabarn Dairy remained as before.

4. Although I have not used the route first described since prior to the War I have seen a number of other people use it including Mr. 'Bill' Wintrip and Mr. Leslie Tolley. Mr. Wintrip is the leaseholder of 4 Whitenothe Cottages and Mr. Tolley is the

leaseholder of 6 Whitenoth Cottages.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835

DECLARED at *Dorchester* }
in *the County of Dorset* }
this *eleventh* day }
of *July* 1979. }

E G Taylor

Before me:

G. L. Shute

A ~~Commissioner for Oaths~~/Solicitor

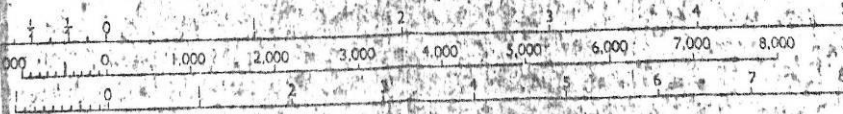


This is the Exhibit marked "E.G.T.1." referred to in the annexed affidavit of EDITH GERTRUDE TAYLOR.

Sworn before me:
This *seventh* day of *July* 1979

L. Shute
A Solicitor/Commissioner for Oaths

SCALE 1:63,360 ONE INCH TO ONE MILE



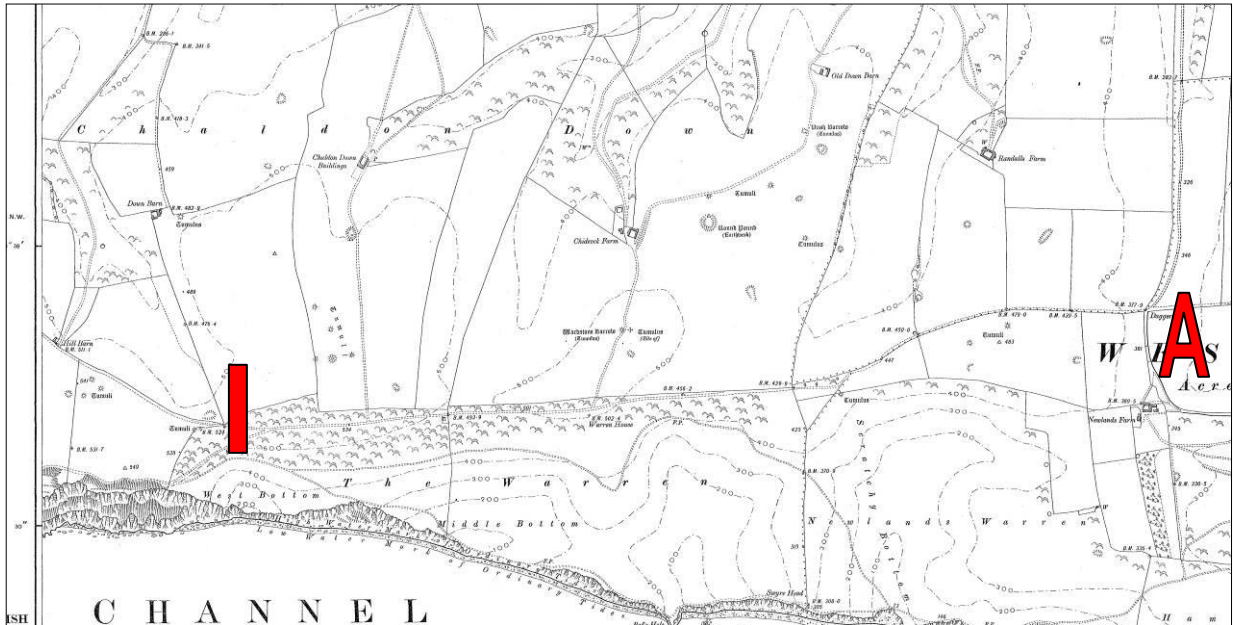
- | | | | |
|---|--|--|--|
| <p>MISCELLANEOUS</p> <ul style="list-style-type: none"> Church with Tower or with Spire Church without Tower or Spire Bus or Coach Station Windmill (in use) Windmill (disused) | | <p>BOUNDARIES</p> <ul style="list-style-type: none"> National County County Borough or County City | |
| <p>RELIEF</p> <ul style="list-style-type: none"> Heights in feet above Mean Sea Level 275 surveyed by leveling 1000 not surveyed by leveling Contours at 50 ft intervals To convert feet to metres multiply by 0.3048 | | <p>MISCELLANEOUS</p> <ul style="list-style-type: none"> Wood Orchard | |

Page 78 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)

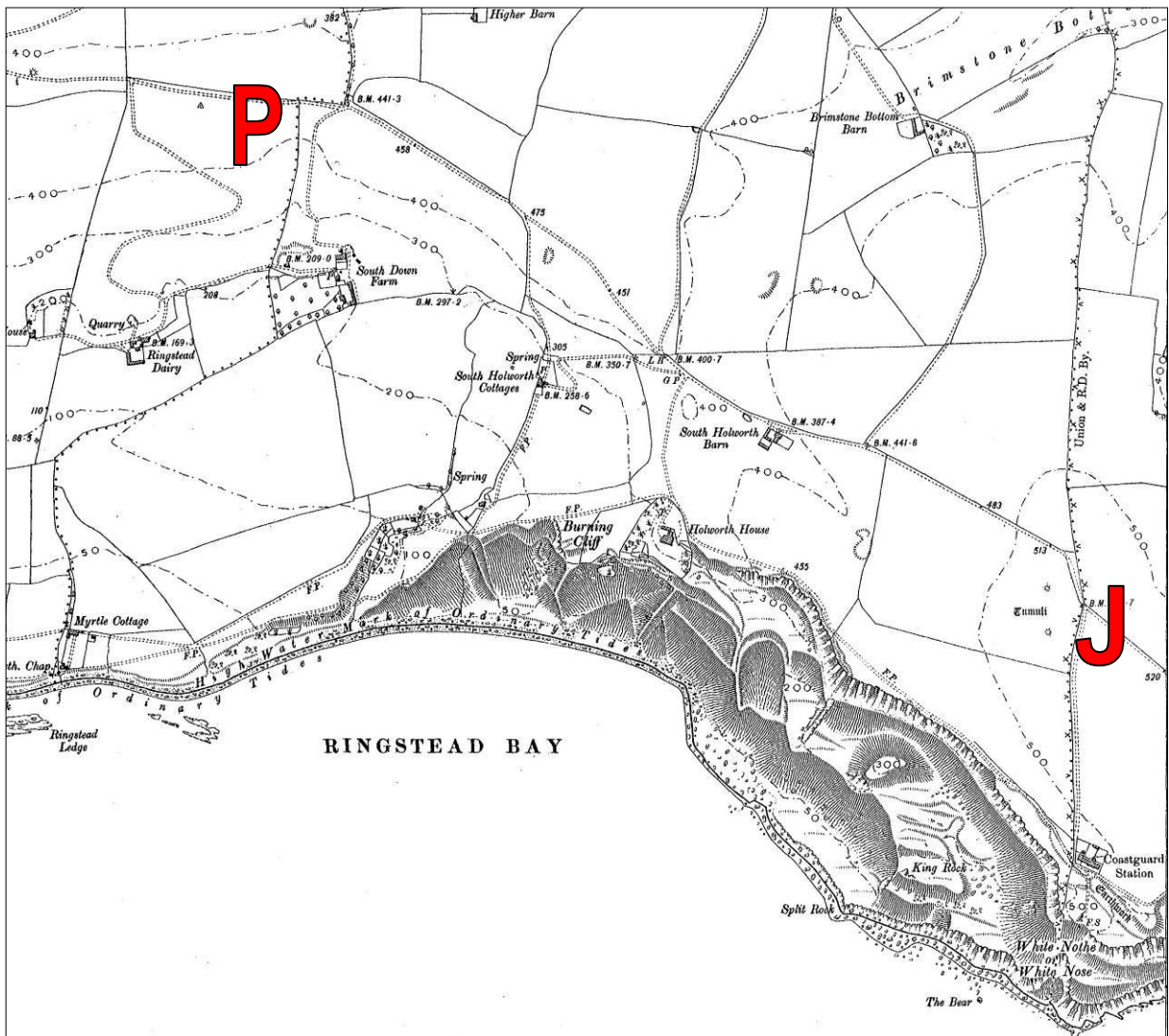
**Ordnance Survey Maps
1811 First Edition scale 1 inch:1 mile**



1903 Second Edition scale 6 inches:1 mile
Sheet 54 NE



Sheet 54 NW



User Evidence
Table summarising user evidence from forms

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr N Baverstock	1990 - 2006	Approx 10	On motorcycle	Used for pleasure. Others also used the route on motorcycle. No obstructions, notices or stiles, there were unlocked gates on the route. Not stopped using the route. Route was regularly used. Approx 7 metres wide.
Mr M Diamond	1980 - 2005	8 - 10	On motorcycle	Used for pleasure. Others also used the route on foot, horseback, motorcycles and for by fours. No stiles, there were unlocked gates; there was a temporary anti motorcycle/bridle gate which was removed completely. There was a notice saying no cars. A very well used route. Hedges in places but generally open pastures.
Mr M Gardiner	1980 - 2006	Once a year on average	On motorcycle	Used for pleasure. Others also used the route on motor cycles. No obstructions, notices or stiles, there were gates on the route. Often met other motor cyclists, horses and walkers. Was not stopped using the route.
Mr D J Greenslade	1988 - 2006	2 to 3	On motorcycle	Used for pleasure. Others also used the route on foot, horse and motorcycle. No obstructions or stiles, there were unlocked gates and a notice saying no cars. Not stopped using the route.
Mr R T Howe	1980 – early 2006	4 – 5	On motorcycle	Used for pleasure. Others also used the route on motorcycles, on foot and horses. No obstructions, notices or stiles, there were gates on the route. Tracks evident of motorcycles, farm vehicles, horses and walkers. Was not stopped using the route. Wide track with good grass cover on a chalky surface.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr J Long	1994 - 2000	Approx twice a year	Vehicle motorcycle	Used for pleasure. Others also used the route by vehicle – motorcycle. No obstructions, notices or stiles, there were lots of gates, all unlocked. Part owned by the National Trust. Once spoke to a National Trust warden in approx 1996. Passed numerous walkers without a problem.
Mr M Mason	2003 - 2006	3 or 4 times a year	On motorcycle	Used for pleasure. Others also used the route on motorcycles. No obstructions or stiles, there were open gates on the route and a notice by the car park saying "No cars". Not been stopped using the route.
Mr D Oickle	1990 - 2006	3 – 4 times a year	On foot and motorcycle	Used for pleasure. Others also used the route on foot, horseback and motorcycle. No obstructions or stiles, there were unlocked gates and a notice saying "No cars" at the west end at National Trust car park. Many members of the public used it. At least 20 feet wide where hedged/fenced with large sections being open pasture.
Mr T Stapleton	1966 - 2006	6 times a year	Bicycle - motorcycle	Used for pleasure. Others also used the route on motorcycle. No obstructions or stiles, there were unlocked gates on the route. Not stopped using the route. Has spoken to farm workers. A notice at western end saying "No cars". 4 to 5 metres wide.
Mr S Teuber	1997 - 2006	2 – 3 times a year	On motorcycle	Used for pleasure. Others also used the route on motorcycle, horseback and on foot. No obstructions or stiles, there were unlocked gates on the route and a notice saying "No cars". Visible tracks left by tyres, horses and footprints. Crosses pasture becoming doubles hedged at one end. Normally good condition.

Page 82 Application for a definitive map and statement modification order to upgrade bridleways at Winfrith Newburgh, West Lulworth, Chaldon Herring and Owermoigne to byway open to all traffic (one continuous route from Dagger's Gate to the Owermoigne/Osmington parish boundary)

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr W J Williamson	1996 - 2006	5 or 6 times a year	Vehicle motorcycle	Used for pleasure. Others also used the route on foot, with horses and motorcycles. No obstructions or stiles, there was a "No cars" notice at National Trust car park at the west end and there were unlocked gates. Not stopped from using the route. Visible tracks and passed farm buildings and workers. Wide enough for four wheeled vehicles to pass each other along most of the route.

Chart of user evidence to show periods of use

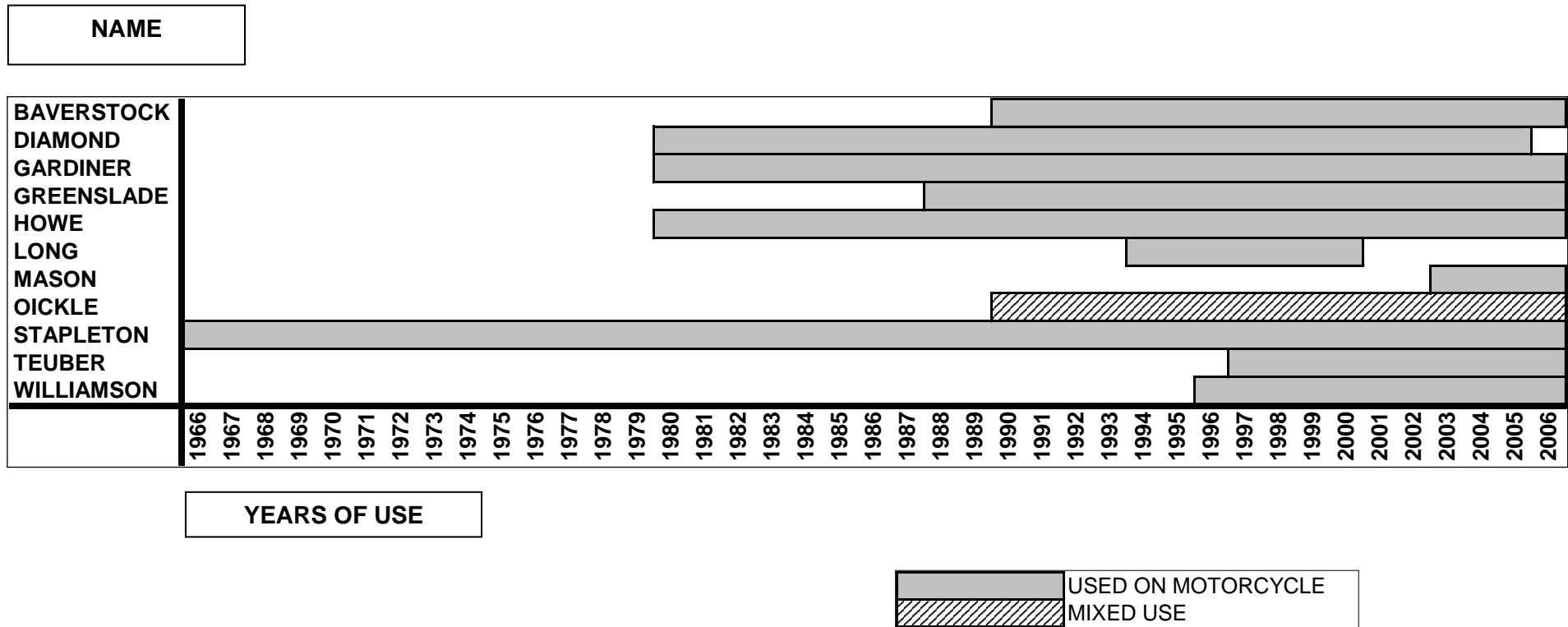


Chart to show level of use

