

Agenda item:

Roads and Rights of Way Committee

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Dorset County Council



Date of Meeting	7 March 2013
Officer	Director for Environment
Subject of Report	Application for a definitive map and statement modification order to upgrade part of Bridleway 4, Pentridge (Bowling Green Lane) to byway open to all traffic and to add a byway open to all traffic from Bridleway 4 to the boundary with Hampshire
Executive Summary	In response to an application to upgrade part of Bridleway 4 Pentridge to a byway open to all traffic and to add its continuation east north east to the County boundary with Hampshire as a byway open to all traffic, this report considers the evidence relating to the status of the claimed route and of the remaining part of Bridleway 4.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence: The applicant submitted documentary evidence in support of his application. Documentary evidence has been researched from sources such as the Dorset History Centre, and the National Archives. A full consultation exercise was carried out in November 2012, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. An additional consultation was carried out in January 2013 as the claimed route was found to be slightly different from the recorded route of the bridleway.</p>

	<p>In addition notices explaining the application were erected on site. Any relevant evidence provided has been discussed in this report.</p>
	<p>Budget/ Risk Assessment: 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 <ul style="list-style-type: none"> (i) Upgrade Bridleway 4, Pentridge as shown A – B – C – D – E – F to restricted byway; (ii) Add the route as shown E – G as a restricted byway on Drawing 12/17/1; and (c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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 <ul style="list-style-type: none"> (i) In respect of the part of the route as claimed between points A – E and its continuation E – F, a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way; and (ii) In respect of the part of the route claimed E – G a right of way for vehicles subsists or is reasonably alleged to subsist. <p>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 mechanically propelled vehicles and therefore an order should be made for a restricted byway over the whole of the claimed route A – B – C – D – E – G and the route E – F; and</p> (c) The evidence shows, on balance, that these routes should be recorded as restricted byways. 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 12/17/1 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"> ▪ 1910 Finance Act Maps – sheets 10.5,10.6 & 10.9 ▪ 1839 Pentridge Tithe Map and apportionment ▪ 1829 Pentridge Inclosure Map ▪ 1900 Ordnance Survey Object Names Book 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/T403)</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/T403, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer Tel: (01305) 221670 Email r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade a bridleway at Pentridge to byway open to all traffic was made by Mr Mark Mason on behalf of the Trail Riders' Fellowship on 13 October 2005. The route claimed forms part of the recorded route of Bridleway 4 and a continuation east north east to the Hampshire County boundary and is as shown A – B – C – D – E – G on Drawing 12/17/1 attached as Appendix 1.
- 1.2 The initial public consultation was carried out in respect of the definitive route of Bridleway 4 (A – B – C – D – E – F). However, it was subsequently established that the definitive line was not that claimed and a further consultation exercise was therefore completed.
- 1.3 The claimed route commences at the junction with a bend on the county road and Footpath 23, Pentridge, known as Peaked Post, as shown at point A on Drawing 12/17/1. The route then continues in a north-westerly direction with an earth and grassed surface and edged with banks with hedges and mature trees along both sides to point C. The claimed route then changes to an east north east direction and at point D becomes more open with a grass surface and low banks on both sides giving views of the downland. At point E the claimed route continues to Bokerley Ditch at the County boundary at point G. This is the route currently in use by the public. The definitive line of Bridleway 4 continues slightly further south in an easterly direction, through the fence line and running parallel through a pasture field to point F at the County boundary, approximately 32 metres south of the claimed route.
- 1.4 The claimed route continues into Hampshire as a byway open to all traffic.
- 1.5 The claimed route and the surrounding area is owned by D G Corbin & Sons and E J & P D White of Whitey Top Farm.
- 1.6 The width of the claimed route varies between 10.6 metres and 3.6 metres.

2 Law

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

3 Documentary evidence (Appendix 3)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.
- 3.2 The applicant's 'Analysis of Documentary Evidence' submitted with the application can be viewed in full in the case file RW/T403.
- 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. Therefore we believe there is sufficient evidence submitted to support our claim".

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4 User evidence (Appendix 4) (copies available in the case file RW/T403)

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/T403)

Following first consultation:

Name	Comments
Lisa Goodwin, Clerk to the Sixpenny Handley with Pentridge Parish Council	The Clerk discusses the Natural Environment and Rural Communities Act 2006 (NERC) (see Law – Appendix 2) and states that “It therefore appears that even if the historical evidence were to indicate earlier rights, then those rights would be extinguished by NERC……. The Parish Council considers there is insufficient evidence to support the application”.
Mr Graham and Mrs Janet Symonds Mr Gerald Corbin Mrs Valerie Gardner Dr M C Swan Gill Edmonds Julie Murphy Cllr Edward Heron (Hampshire County Council) James Edmonds	Issues were raised such as: - <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Security • Noise • Pollution • Suitability • Dangerous junctions • Disruption and damage to the historical environment • Current and past use

Following second consultation:

Valerie Gardner	“The modified route is not one used by the public as it crosses land regularly used for grazing by Whitey Top Farm.” She suggests that it may have moved when Martin Down became a Nature Reserve in the early 1950s.
Gill Edmonds	Used for farming operations. Also raised issues of <ul style="list-style-type: none"> • Safety • Suitability

Nicola Hopkins, Natural England (AONB area)	The [used] path is bordered by steep banks up to field level approximately 1m higher in places than the path surface on each side. Regarding Valerie Gardner's suggestion about the movement of the bridleway being due to the establishment of the Nature Reserve, she comments that the location of the Scheduled Ancient Monuments "and the nature of the bridleway on the ground do not suggest that the route has been altered (from points E to F) as a result of the designation of the NNR".
Tarka King	Issues were raised such as: - <ul style="list-style-type: none"> • Width of the current used route • Suitability • Wildlife • Fencing Issues • Stile at Point E
Oliver Symonds & Katherine Jane Beeks	Issues were raised such as: - <ul style="list-style-type: none"> • Damage to the historical environment • Damage to the surface • Safety • Disruption to wildlife and the natural environment • Suitability • Necessity

7 **Other submissions received** (copies available in the case file RW/403)

Following first consultation:

Name	Comments
Graham Plumbe Alan Clarke (Cyclists Touring Club) Ramblers' Association East Dorset District Council British Horse Society	No evidence given.
Claire Pinder, Senior Archaeologist, Dorset County Council	"This area is full of important and sensitive archaeology, particularly of the prehistoric period. One of the most significant monuments here is the Dorset Cursus, a Neolithic monument over six miles long..... The route crosses the cursus between point C and point D on your map..... Near point E on your map runs between two Bronze Age round barrows which are scheduled monuments.....Point F where it crosses a section of Bokerley Dyke. (also scheduled)

Following second consultation:

Natural England	No evidence given.
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8 Analysis of documentary evidence

Finance Act 1910

- 8.1 The most important documents in this case are those relating to the Finance Act. The maps reveal that the claimed route was excluded from valuation throughout its length from point A to point E and continues to be excluded following the definitive route of the current bridleway to point F. The route A – F is depicted in the same manner as other public carriageways to which it connects. Without evidence to the contrary the exclusion of a route from valuation provides very strong evidence that it was a public carriageway and supports the existence of higher public rights in respect of the claimed route between points A and E.

1839 Pentridge Tithe Map and Apportionments

- 8.2 This map shows the whole of the claimed route, which is coloured brown as the other routes on the map that are currently either public rights of way or county roads.
- 8.3 The route is numbered '118' and the tithe apportionment describes the owner as The Earl of Shaftesbury and that it was leased to John Weare. The occupier was William Herrington, Junior. Under the heading "Name and description of lands and premises" is written "Road to Woodyates & Bockerley". Under the heading "State of Cultivation" nothing is written. The area is 3 acres, 2 roods and 35 perches. As in this instance the route is clearly apportioned and is indistinguishable from the other public carriageways that can be clearly identified upon it, the tithe apportionment and plan provide good supporting evidence to the claimed public vehicular rights.
- 8.4 It is considered that the route is unlikely to be a private road as it connects with other public routes, including a through route across the County boundary, where it continues as a public vehicular highway.
- 8.5 Although tithe apportionments were not concerned with identifying public highways, public highways can often be identified as they form the boundaries to apportionments. In many cases, particularly in the case of footpaths and bridleways, public highways were included within apportionments as a crop, such as hay, could be taken from the surface. In this instance this is not the case and the route constitutes an apportionment in itself.

Inclosure Award

- 8.6 **The 1829 Pentridge Inclosure Map and Index** shows the claimed route bounded by solid lines between points A and D, widening at point D. The route then becomes part of a large area coloured pink and numbered '34'. Number 34 is categorised in Schedule A in the Index under the heading "Quality" as "pasture". The fields on the eastern/southern side are also coloured pink, annotated '27', '28', '35', '37', '39' and each one categorised as "arable". Other numbered and coloured areas on the map are listed but it does not mention public rights of way or roads. This suggests that the claimed route between points A and D was a pre-existing highway at the time of enclosure.

Analysis of other supporting documents

Ordnance Survey Object Name Book

- 8.7 Object Name Book folders contain information relating to the names of objects depicted on Ordnance Survey mapping of England and Wales, together with the authority for their spelling. Their primary purpose is to list and define the location and extent of named objects and area features. The 1900 book covering the Pentridge area states "Bowling Green Lane" to be "A public road leading from the Salisbury main road to Bockerley Down". This suggests that, at this time, the Ordnance survey maps and the object name book confirm public vehicular rights.

Ordnance Survey maps

- 8.8 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition of the 1 inch:1 mile scale map, are drawn at a scale of 2 inches:1 mile and therefore generally contain more detail than the later 1 inch:1 mile scale maps. The drawing that includes the area of Pentridge parish was completed in **1807** and clearly depicts the route claimed throughout its length from A to D as defined by two parallel solid lines, suggesting that it was fenced or hedged along this length and from D to G across Martin Down, which is shown as unfenced. This is depicted in exactly the same manner as other public roads in the vicinity.
- 8.9 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also depicts the claimed route throughout its length between points A and G. It is defined in the same manner as the earlier drawing, suggesting that from A to D it was bounded by hedges or fences and from D to G was unfenced. The route is shown to be open at either end and throughout its length with no indication of the presence of any gates or other barriers. Although not conclusive to status it is shown in a similar manner to other routes in the vicinity that are known to be public carriageways.
- 8.10 The **1887 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) show a similar picture to the earlier 1811 map. The route is that as claimed and is shown between points A and D as double solid lines, indicating that it was fenced and between points D, E and G as double pecked lines, indicating an unfenced route. The route is annotated alongside with the name "Bowling-Green Lane". The lane is not marked 'FP' or 'BR' and so this may suggest that the route may have been considered to have higher rights. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.11 The **1901 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches:1 mile) and the **1902 Second Edition Map** at a scale of 6 inches:1 mile (1:10560) depict the claimed route similar to each other, although the larger scale map shows more detail. The western part between points A and E is shown with double solid lines (bank, hedge or fence) as the earlier First Edition. However, the double pecked lines of the unfenced track veer slightly southwards from E to F before crossing the County boundary. There are no annotations of 'F.P.' or 'B.R.' alongside but the route is named "Bowling Green Lane".

8.12 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route 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, at least on one side, for the majority of its length by hedges or fences. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation such as 'F.P.' or 'B.R.', which suggests that if it were considered to be a public highway it would be of a higher status than a footpath or bridleway. It is also clearly annotated with its name 'Bowling Green Lane', which may also suggest the public nature of the route. Although the Ordnance Survey maps after 1902 show that the used route altered slightly at the eastern end they do provide evidence in support of the application for the majority of the route but do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

Commercial Maps

8.13 The applicant has provided extracts from a variety of Bartholomew and other commercial maps in support of the application.

8.14 The following maps show the claimed route in the same manner as other roads known to be public carriageways in the vicinity:

- **1825/6 Greenwood Map of Dorset**
- **1848 Pigot & Co Map of Dorset,**
- **1906 Ordnance Survey 1 inch:1 mile map**
- **1930s Bacon's Map of Dorsetshire**
- **1950s Ward Lock's Guide – Bournemouth, Poole and District**

8.15 **Bartholomew's maps** are based on Ordnance Survey data and were extremely popular and widely referred to by the public. They provided information on first, second and 'indifferent' classes of roads as well as footpaths and bridleways. The extracts from the **Bartholomew Maps** submitted in support of the application cover a period from 1948 to 1960 and depict the route quite prominently in exactly the same manner as other public roads in the area. Reference to the accompanying map keys indicates that the route was designated as a 'serviceable' road.

Aerial photographs

8.16 The **Aerial photographs** spanning 1947 to 2009 do not provide any conclusive evidence as to the status of the route. However, they do provide evidence as to the existence of the route throughout this period. The 1947 RAF black and white aerial photographs shows several used routes leading from point E to the County boundary. The northern and most clearly defined route corresponds to the claimed route and most southerly route corresponds to the current definitive line.

1949 National Parks and Access to the Countryside Act

Parish Survey

- 8.17 The **1951 Pentridge Parish Survey** map of rights of way shows routes claimed and numbered 26, 27 and 29. However, the eastern end of number 29 follows the route shown on the base map used at the time, as shown E – F on Drawing 12/17/1, rather than the route currently claimed.
- 8.18 The Schedule accompanying the map describes CRB 26 as a “CRB Green Lane”, 27 as “F. BP. Not metalled” and 29 as “C.R.B. unmetalled”. (CRB is described in the advice used as a practical guide for parish councils as a “Public Carriage or Cart Road or Green (unmetalled) Lane mainly used as a Bridleway”.) The status for all three has been later altered to ‘BR’.
- 8.19 The condition of the routes is described by the surveyor as “good” or “good – few cart ruts” and all three having “no gates”. The reason for believing path 26 to be public is that it had been “dedicated by continual use for over 100 years” and for path 29 that it had been “dedicated by public use for over 100 years”.
- 8.20 The part of the route numbered 27 was from Peaked Post to the present junction with Bridleway 5 (as shown A – B on Drawing 12/17/1). The notes mention that it had been “Scheduled as a Bridle Path at Parish Meeting 17 July 1933” but add “Resolved at Parish Meeting 12th March 1951 that, from starting point to 150 yds NE, be included in path No. 26: - Bowling Green Lane.”
- 8.21 An additional note is added on the typewritten version for path 29, which includes a statement from a local farmer, who says: “I hereby declare that to my knowledge the above track has been used as a public right of way for vehicles and cattle for over 70 years. Sgd E. Issac Bushay Farm Pentridge 26 March 1952”.
- 8.22 The County Council decided to abandon the designations ‘CRB’ and ‘CRF’ in 1958 and in future these ways would be shown as either footpaths or bridleways (see Appendix 3, Table of Documentary Evidence). This may explain why the designation ‘CRB’ was changed to ‘BR’ on the Schedule.
- 8.23 The evidence from the Parish Survey shows that, at the time the Parish Council considered that the claimed route had public vehicular rights.

Draft, provisional and first definitive map

- 8.24 The **1959 draft map** for the east area shows the claimed route between points A – B – C – D – E – F as Bridleways numbered part of 27, 26 and 29.
- 8.25 The **1964 provisional map** and **1967 first definitive map** show the same route and numbered as Bridleway 4.

Special Review

- 8.26 On 14 August 1971 Pentridge Parish Council asked for 14 public rights of way to be upgraded to ‘RUPP’ (Road Used as a Public Path) or ‘BOAT’ status and this included that “BR 4 be reclassified as RUPP(BOAT)”, the majority of the claimed route.

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- 8.27 The letter concludes “The claims made are the result of pressure applied by the Parishioners, who have been using these thoroughfares as BOATs and not as BRs for the past twenty years”.
- 8.28 In 1973 a **Special Review** Committee considered the status of Bridleway 4 claimed by Pentridge Parish Council as a byway open to all traffic. The Committee considered that “This is part of an old road system and is suitable for vehicular traffic”. The Committee’s decision was to “Show as byway open to all traffic”.
- 8.29 The revised draft map 1974 therefore shows the part of the claimed route A – B – C – D – E (and continuing to point F) as Byway 4.
- 8.30 Objections to the revised draft map were received in 1975 by the two landowners at that time, the Marquess of Salisbury Estates and H Tozer & Sons Ltd. The objections both stated that the owners had never dedicated or had any intention of dedicating the land as a byway. However, the review was abandoned in the east of the County following the Wildlife and Countryside Act 1981 and because there were outstanding objections to the proposed byway status it remained a bridleway and the evidence regarding the status of the claimed route as a vehicular route was not investigated at that time.
- 8.31 The early rights of way maps (1958 – 1967) reflect the decision of the County Council not to record routes other than footpaths and bridleways. It is clear that at the time of the Review the Parish Council was continuing their claim to upgrade the route as they believed it to have public vehicular rights but the change in the law stopped further investigation.
- 8.32 Although the fact that most of the claimed route is recorded upon the **current definitive map** (sealed **1989**) as a public bridleway is conclusive evidence as to the existence of these rights, it is not prejudicial to the existence of any higher public rights over the route.

9 **Analysis of user evidence supporting the application**

- 9.1 All three witnesses state that they used the route, either individually or with other users, shown between points A and G on Drawing 12/17/1 and that this use was on a motorcycle and was for pleasure. The applicant comments that the claimed route is a “good, well surfaced wide lane, once a through route, links with B.O.A.T. in Hampshire”.
- 9.2 The dates of use cover a period from 1990 to 2005.
- 9.3 None of the users mentions there being any gates or other obstructions on the route. Mr Diamond and Mr Teuber remark that parts of the route is overgrown but passable.
- 9.4 Their frequency of use varies from 3 – 4 times a year to 10 – 12 times a year.
- 9.5 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.

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9.6 In this case, the date that the application was made in 2005 is the date of bringing that use into question. However, the user evidence spans only 16 years at most, is minimal and therefore is considered to be insufficient, on its own, to establish public rights but is supportive of the documentary evidence.

10 **Analysis of evidence opposing the application**

10.1 The Parish Council's point that if the historical evidence indicates earlier vehicular rights, then those rights would be extinguished by the NERC Act is correct. However, if the evidence indicates that the claimed route has public mechanically propelled vehicular rights that were extinguished by the provisions of the NERC Act then the route should be recorded as a restricted byway.

10.2 Valerie Gardner's suggestion that the route may have changed at the time of the establishment of the Nature Reserve has been checked with Natural England and there is no evidence that this was the case.

10.3 Nicola Hopkins, Natural England AONB, describes the sunken nature of the used route and believes it to have been in that position for a long time. This may be so, as the path has been shown on maps since 1901. However, there is also a great deal of documentary evidence between 1807 and 1901 to show that it used to be on a different alignment.

10.4 The majority of the other submissions relate to issues that cannot be taken into account when determining whether or not the claimed rights exist.

11 **Analysis of other submissions**

11.1 The other letters contain no evidence to be considered.

12 **Conclusions**

12.1 In respect of the part of the route between points A – B – C – D – E, currently recorded as a bridleway it is necessary for members to decide whether, on the balance of probability, the highway shown in the map and statement as a bridleway ought to be shown as a highway of a different description.

12.2 In respect of the part of the claimed byway not shown in the definitive map and statement between points E – G, it is necessary for members to decide whether, on the balance of probability, it subsists or can be reasonably alleged to subsist.

12.3 The cumulative weight of the documentary evidence analysed in paragraph 7 earlier than 1887 provides very strong evidence towards the existence of public vehicular rights over the whole of the claimed route as shown between points A – B – C – D – E – G on Drawing 12/17.

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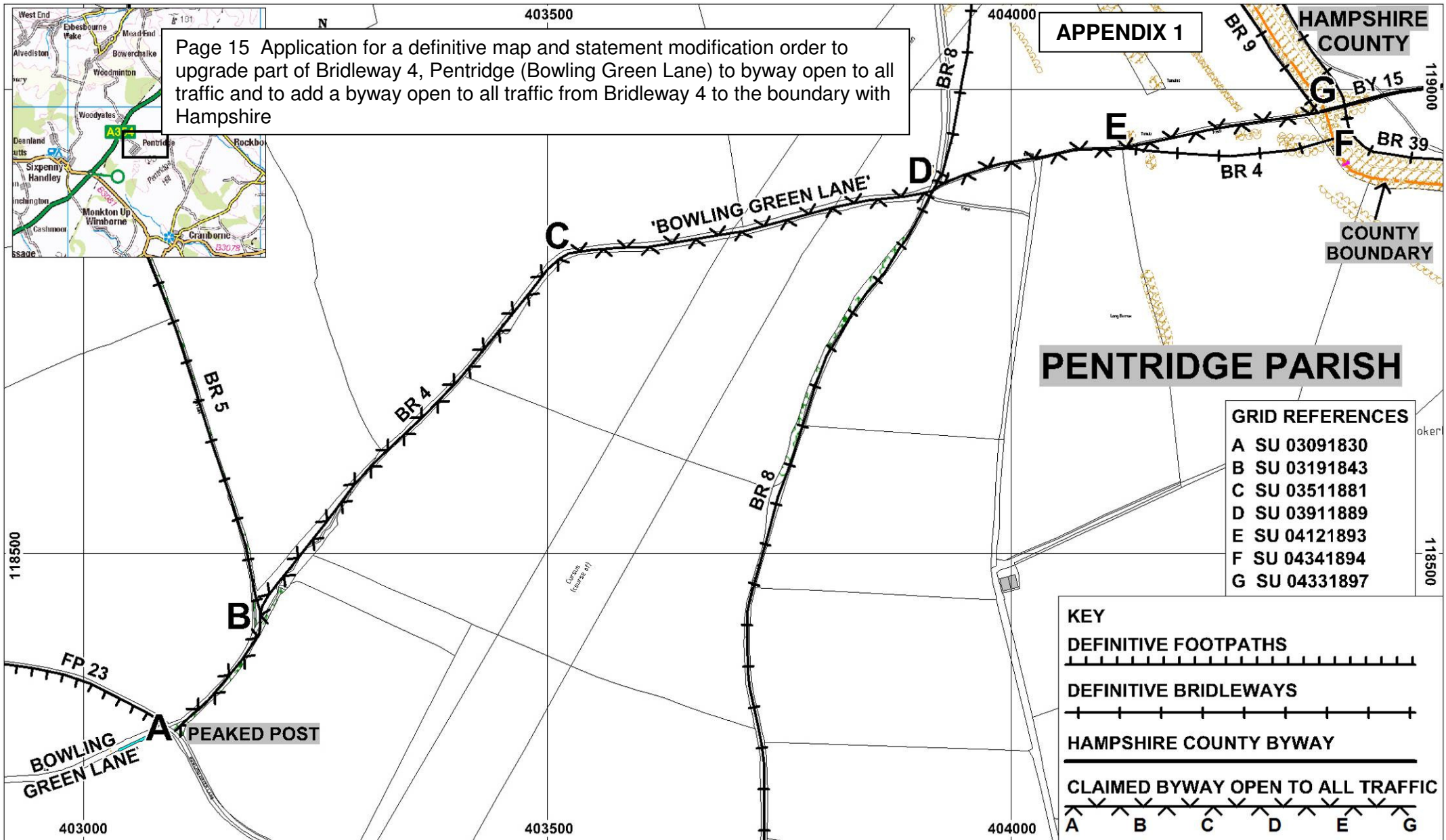
- 12.4 It is considered that the most important piece of documentary evidence is that provided by the **1910 Finance Act**. The Finance Act plan shows the majority of the route A – E to be excluded from valuation throughout its length. It also shows the part of the route E – F in accordance with the Parish Survey and Ordnance Survey maps. Private roads were not excluded from valuation and consequently, without the discovery of any evidence to the contrary, this would strongly suggest that the claimed route was considered to be a public carriageway.
- 12.5 It is also considered that the **1839 Pentridge Tithe Map and apportionments** and **1829 Pentridge Inclosure Map and Index** show the whole of the claimed route as part of the highway network as a through route and access to newly enclosed fields and titheable land.
- 12.6 In addition the Ordnance Survey documents, including the **Ordnance Survey Object Name Book**, which describes the route as a public road and the **1807 Ordnance Survey drawings** support the existence of higher public rights than the currently recorded bridleway status. The **Ordnance Survey map 1887** shows the whole of the claimed route A – G and, although the later editions show a slight change at the eastern end, the lack of annotation also supports the existence of higher public rights.
- 12.7 The **1825/1826 Greenwoods' Map, 1848 Pigot's Map of Dorset, 1906 Ordnance Survey 1 inch: 1 mile, 1930 Bacon's Motoring & Cycling Road Map – Bournemouth District** and the **1950s Ward Lock's Guide – Bournemouth, Poole and District** also all show the claimed route as a significant route.
- 12.8 The **Special Review** documents, including the Parish Council letters and the Special Review Committee decision, show that public vehicular rights were considered to exist at that time along the route A – E – F.
- 12.9 The documentary evidence alone is considered sufficient to demonstrate, on balance, that a public right for vehicles exists in respect of the part of the claimed route as shown between points A – B – C – D – E on Drawing 12/17/1 and that a public right for vehicles subsists or can be reasonably alleged to subsist in respect of the part of the route as shown between points E – G and an order should be made.
- 12.10 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.
- 12.11 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 date of the application in 2005.

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- 12.12 There is some evidence of use by three users on motorcycles. However, it is considered as being insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, necessary for presumed dedication under Section 31 of the Highways Act 1980, nor would it satisfy the common law requirements to infer a dedication of public vehicular rights.
- 12.13 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.
- 12.14 Therefore it is recommended that an order be made to record the whole of the claimed route as a restricted byway.
- 12.15 In respect of the route E – F, currently part of Bridleway 4, the documentary evidence from the Finance Act plan, Parish Survey and definitive maps is also sufficient to demonstrate, on balance, that a public right for vehicles exists. As the provisions of the Natural Environment and Rural Communities Act 2006 also apply to this route, the public mechanically propelled vehicular rights have been extinguished. Therefore an order should be made to record this route as a restricted byway also.
- 12.16 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Miles Butler
Director for Environment

February 2013



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 4 (PART), PENTRIDGE TO BYWAY OPEN TO ALL TRAFFIC AND ADD BYWAY OPEN TO ALL TRAFFIC FROM BRIDLEWAY 4 TO COUNTY BOUNDARY 'BOWLING GREEN LANE'

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/17/1
 Date: 21/01/2013
 Scale 1:5500
 Drawn By: ACH
 Cent X: 403690
 Cent Y: 118641

GEOGRAPHICAL INFORMATION SYSTEMS

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LAW

General

1 Wildlife and Countryside Act 1981

1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist or 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. Such events would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists or that 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 add a right of way to the definitive map and statement if the balance of evidence shows either:

- (a) that a right of way subsists or
- (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

1.5 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.

1.6 An order can be confirmed if, on the balance of probability, it is shown that the route does exist or should be recorded with the proposed status.

1.7 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
 - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.

- (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

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

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

Case specific law

4 Inclosure Consolidation Act 1801

- 4.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.
- 4.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.
- 4.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.
- 4.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.
- 4.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

5 Finance Act 1910

- 5.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.
- 5.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

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6 National Parks and Access to the Countryside Act 1949

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

7 Natural Environment and Rural Communities Act 2006

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

Table of documentary evidence

Date	Document	Comment
1795	Isaac Taylor's Map of Dorset	Shows part of the route
1807	Ordnance Survey drawings scale 2 inches:1 mile	Shows the claimed route as other public roads. From A – D fenced or hedged, and D – F, across Martin Down, unfenced.
1811	Ordnance Survey map scale 1 inch:1 mile	Shows the claimed route fenced to D and then unfenced
1826	Greenwoods' Map	Shows the claimed route
1829	Pentridge Inclosure map	Shows the claimed route A – D.
1839	Pentridge Tithe map and apportionment	Shows the claimed route annotated as '118'. Apportionment describes claimed route as 'Road to Woodyates & Bockerley'.
1848	Pigot's Map of Dorset	Shows the claimed route
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1887	Ordnance survey First Edition map scale 6 inches:1 mile Sheets 10NW & 10 SW	Shows the claimed route partly fenced and partly unfenced and named "Bowling-green Lane". Has no annotation of 'FP' or 'BR'.
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.	
1900	Ordnance Survey Object Name Book	Describes the claimed route as "A public road leading from the Salisbury main road to Bockerley Down"
1901	Ordnance Survey Second Edition map scale 25 inches:1 mile	Shows the claimed route A – E and on different alignment E – F . Named "Bowling Green Lane" alongside. Has no annotation of 'FB' or 'BR'.
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile	As above but to a smaller scale
1906	Ordnance Survey Second Edition 1 inch:1mile (coloured)	Shows the claimed route

Date	Document	Comment
1910	Finance Act plans	The majority of the claimed route is excluded from taxation A – E (on different alignment E – F)
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1930's	Bacon's Motoring & Cycling Road Map – Bournemouth District	Shows the claimed route
1947	RAF Aerial photographs	Shows the claimed route with several tracks at eastern end between F and G
1948	Bartholomew's half inch map	Shown as a 'Serviceable 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.	
1950's	Ward Lock's Guide – Bournemouth, Poole and District	Shows the claimed route as other roads are also shown
1951	Pentridge Parish Survey	Shows the claimed route as CRBs 26, 27 and 29 from A – E
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.)	
1959	Draft Map	Shown as Bridleways 26, 27 and 29 from A – E (and E – F)
1960	Bartholomew's half inch map	Shown as a 'Serviceable Road'
1964	Provisional Map	Shown as Bridleway 4 (A – E – F)
1967	First Definitive Map	Shown as Bridleway 4 (A – E – F)
1971 to 1972	Pentridge Parish Council letters to Dorset County Council	A number of letters from the parish Council relating to reclassifying rights of way to RUPPs, including Bridleway 4
1972	Aerial photograph	Shows the claimed route and alternatives at eastern end

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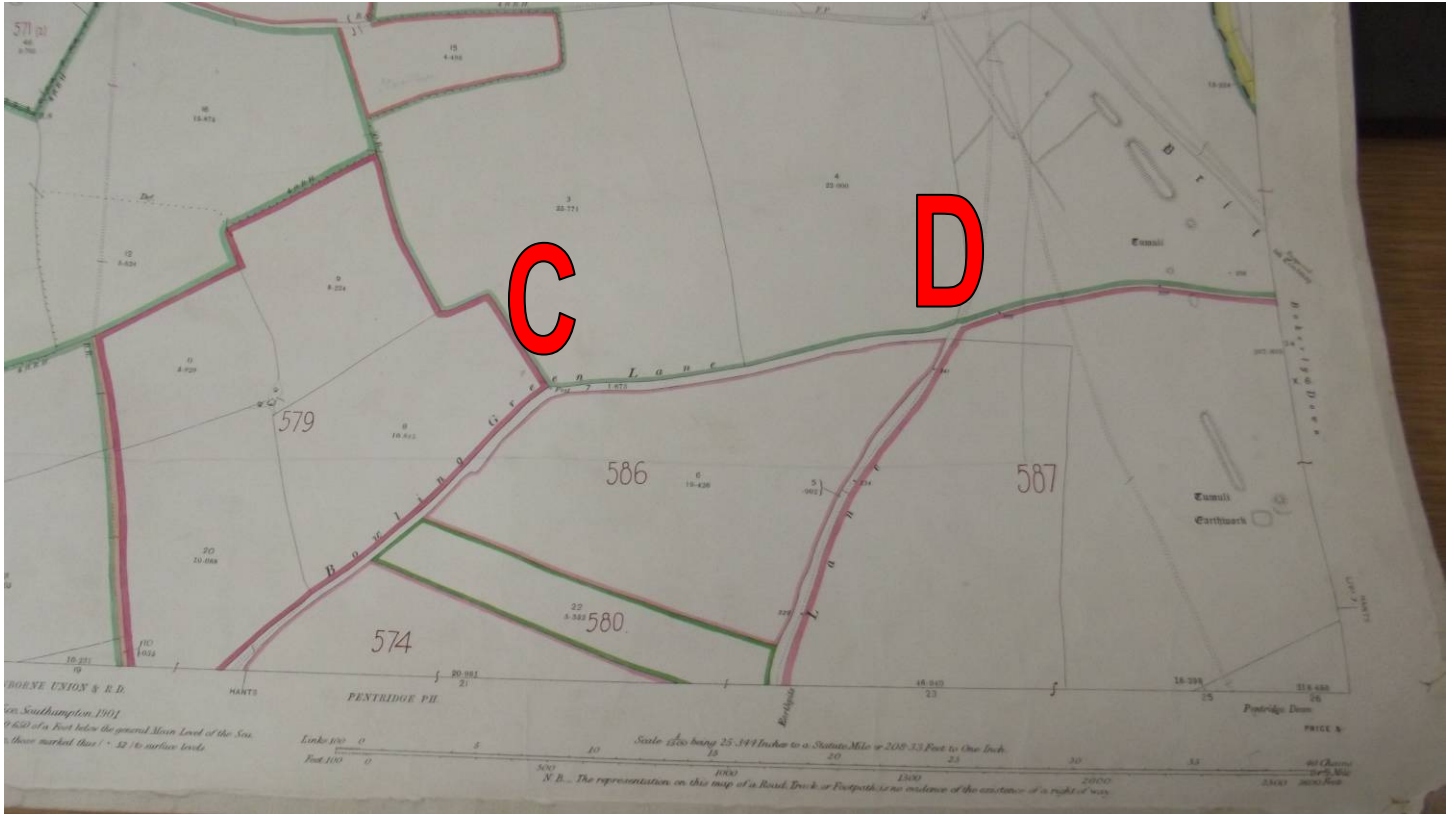
Date	Document	Comment
1973	Special Review – considered the status of the route A – E – F	The Committee's decision: Show as a byway open to all traffic
1974	Revised draft Map	Shows the claimed route A – E (and E – F) as Byway 4.
1975	Objections to the revised draft map	Made by the two landowners.
1981	Wildlife and Countryside Act 1981	Led to the Review being abandoned in the east of the County. Any proposals with outstanding objections were dropped without investigation.
1989	Current definitive Map	Shows the claimed route A – E and continuation E – F as Bridleway 4. Part E – G unrecorded.

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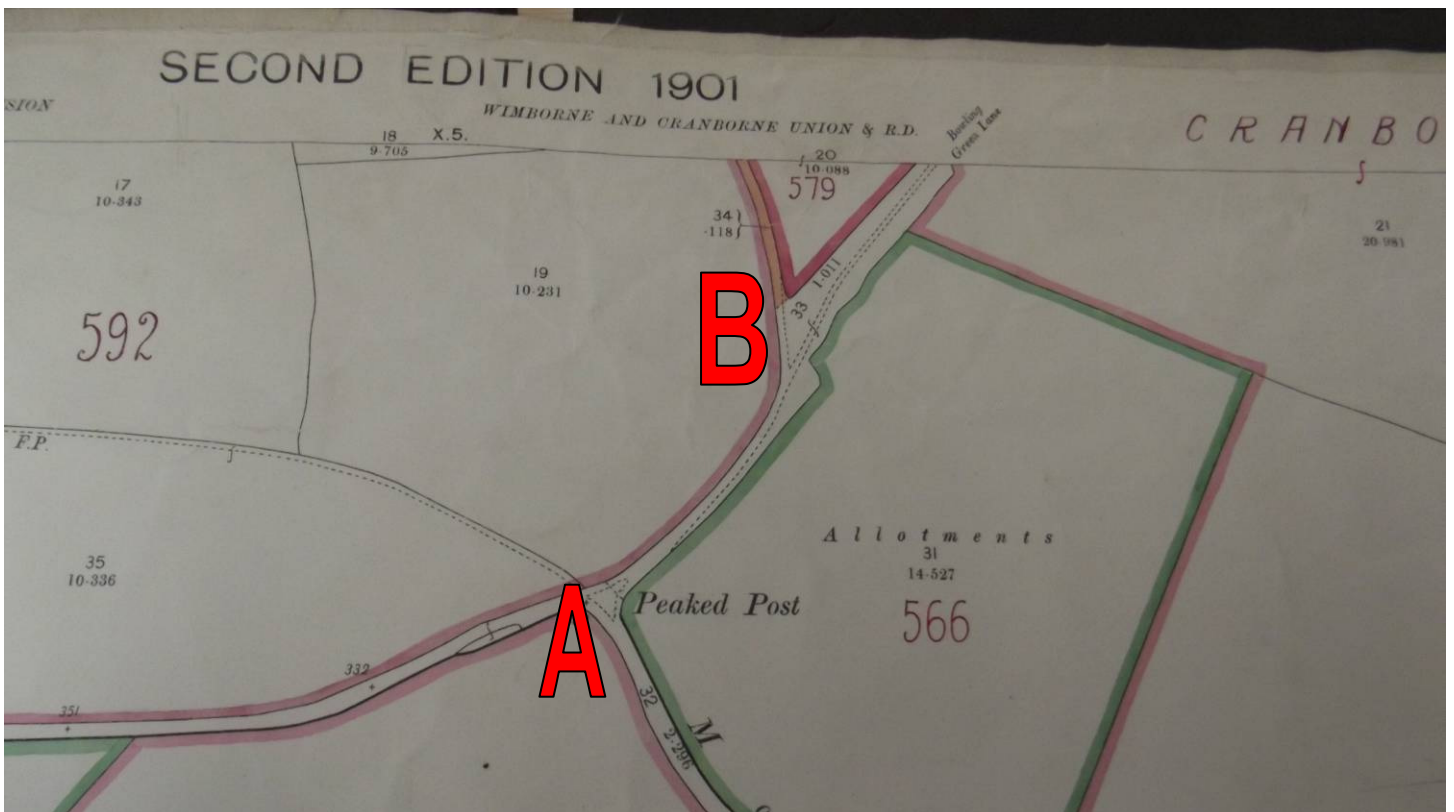
Extracts from key documents

(See the Director for Environment's file RW/T407 for copies of other documents mentioned)

1910 Finance Act Maps – Sheet 10.5

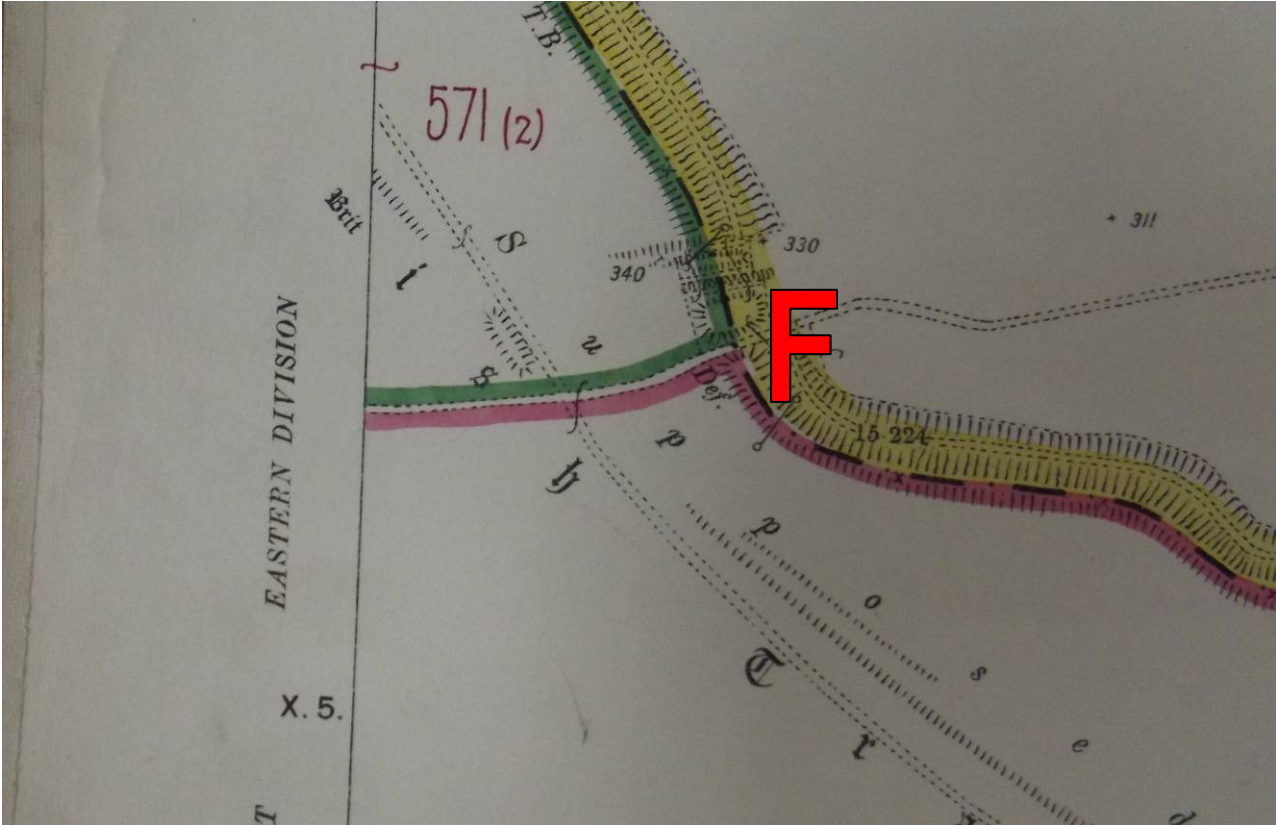


Sheet 10.9



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Sheet 10.6



1829 Pentridge Inclosure Map



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1900 Ordnance Survey Object Name Books

✓ Bowling Green Lane ✓	Bowling Green Lane (change of name) Bowling Green Lane (possible)	see letter As at See fm 23
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gent. reconsulted see letter attached As above See fm 230 attached	x 5 5	A public road leading from the Saltery main road to Bockley Down
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User Evidence
Table summarising user evidence from forms

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Martin Diamond	1990 – 2005	10 – 12 times a year	Motor-cycle	From Bournemouth to Salisbury, for pleasure. Believes owner aware of public use due to obvious track on ground – tyre tread marks. Generally overgrown but easy to pass along. Width approximate 8 – 10 feet but much wider if cut back. Narrows towards Hampshire end.
Mark Mason (Applicant)	2002 – 2005	3 or 4 times a year	Motor-cycle	From Dorset to Hampshire and back, for pleasure. Believes owner aware of public use due to tyre tracks and linking with byway in Hampshire. Good, well surfaced route.
Steven Teuber	1997 – 2005	6 – 8 times a year	Motor-cycle	Used as a circular pleasure ride. Overgrown between Peaked Post and bridleway “crossroads” but passable. Believes owner aware of public use due to motor cycle tracks. Always passable.

Chart of user evidence to show periods of use

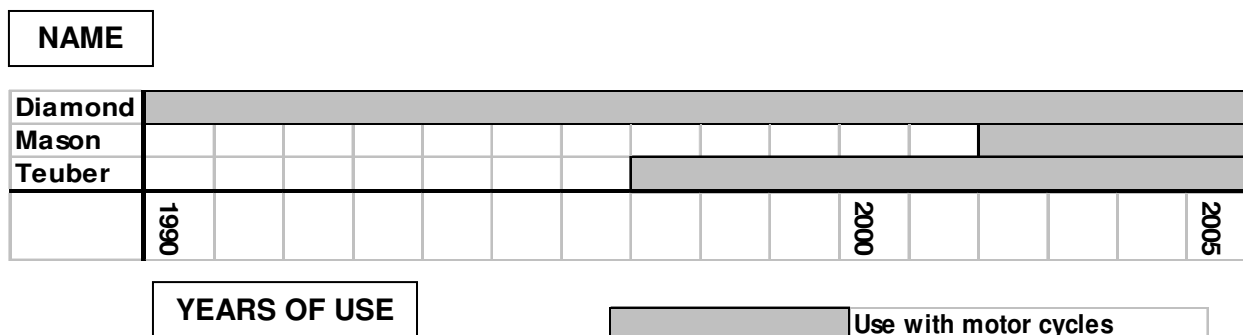


Chart of user evidence to show level of use

