

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 Bridleway 10 (part), Gussage All Saints (James Cross Lane) to byway open to all traffic
Executive Summary	In response to an application to upgrade Bridleway 10 (part), Gussage All Saints to a byway open to all traffic this report considers the evidence relating to the status of the route.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	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 October and November 2012, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.

	<p>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: (a) The application be refused; (b) An order be made to modify the definitive map and statement of rights of way to record part of Bridleway 10, Gussage All Saints as shown A – B – C on Drawing 12/33 as a restricted byway; and (c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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>
<p>Reasons for Recommendations</p>	<p>(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 a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way. 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 claimed route; and (c) The evidence shows, on balance, that the route claimed should be recorded as a restricted byway. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p>
<p>Appendices</p>	<p>1 - Drawing 12/33 2 - Law 3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents: <ul style="list-style-type: none"> ▪ 1798 Gussage All Saints Inclosure Award ▪ 1814 Gussage Saint Michael Inclosure Map and Award ▪ 1816 Gussage St Michael Quarter Sessions Highway Certificate and plan ▪ 1910 Finance Act map ▪ 1843 Gussage All Saints Tithe map

Background Papers	<p>The file of the Director for Environment (ref. RW/T405)</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/T405, which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to upgrade Bridleway 10 (part), Gussage All Saints as shown on Drawing 12/33 (Appendix 1) was made by David Oickle on behalf of the Trail Riders' Fellowship on 16 November 2005.
- 1.2 The route claimed commences at the junction of the county road C103 shown as point A on Drawing 12/33 and continues over a red brick bridge as a lane edged with mature, well cut hedges on both sides in a north north easterly direction via a locked barrier at point B to its junction with Byway 9, Gussage St Michael at point C. The surface of the route is crushed stone and chalk with grass verges in places. The bridleway continues north north east alongside Ackling Dyke.
- 1.3 The claimed route is part of the Ackling Ditch/ Dyke monument that follows the roman road from Dorchester to Old Sarum (Salisbury). The whole feature has been part of the landscape of the Cranborne Chase for over 2000 years.
- 1.4 The claimed route is owned by the J W H and P Felton Voluntary Settlement 1986 and the occupier is Mr Felton, College Farm Partnership.
- 1.5 The width at point A is 20 metres, along its length the width varies between four and ten metres, widening at point C to 14.5 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/T405.
- 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".

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/T405)

Name	Comments
Mrs K Bradbury Clerk to the Vale of Allen Parish Council	"There is no history of use by motorised vehicles along this bridleway. The 1901 edition of the Ordnance Survey Map for Gussage All Saints show James Cross Lane as Roman Road/Ackling Dyke with no other designation attached other than the legend 4ft R.H. at either end where it comes to the edge of the map".
Rosemary Tong Clerk to Gussage St Michael Village meeting	Attaches a list of named local residents who claim never to have "seen the lane used by mechanised vehicles, except for farming activity. Between them, the residents listed have an extremely long and thorough experience of the lane, dating back to 1925. We believe that this is compelling evidence in support of the objection."
John Bartlett, College Farm (Witness statement)	States "At all times since 1989 there has been a gate about 50 yards to the north of the southern end of the claimed route. This gate has been padlocked and keys have been held by me, my neighbour Richard Friend and one other third party. The gate allows the public to continue to use track but the width is limited to enable it to be used as a bridle path..... It is my belief that the route should not have mechanically propelled vehicular rights and further the none of the exceptions set out in the letter marked (a), (b), (c), (d), or (e) apply".
Wilsons Solicitors on behalf of Mr Felton, Landowner	States that none of the exceptions in the Natural Environment and Rural Communities Act 2006 section 67 (2) applies and therefore "no evidence to support a successful applicationto upgrade the existing bridleway to a byway open to all traffic".
Philip Rymer Shaftesbury Estates	"We feel certain the application does not meet any of the five exceptions to the general extinguishment of rights of way for mechanically propelled vehicles as set out in your [consultation] letter"
B L R Stannah	Path is occasionally used by mountain bikes and "rarely a motorcycle has been noted. The route is closed to other users by a locked barrier gate near position B....the gate is opened for farming operations."
Richard Friend, R Shepard Partnership	"Currently the bridleway has a lockable barrier across at a point: 70 meters north of the lower end of the section concerned, which was erected in 1990....so there can be no legal claim to motor vehicle users since 1990 (apart from local farming related activities."

Name	Comments
June Allison Pauline Dillway George Dillway A J Grover A M Grover R Harrington Richard Hill Christopher J King Sally Marlow D Norman Miss J Rickman Matthew Simpson, Sarah Munro and Lily Simpson Lindy and Martin Wale Reverend John Williams L J Waterfield Margaret Wickham	Issues were raised such as: - <ul style="list-style-type: none"> ▪ 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 ▪ Economic impact

7 **Other submissions received** (copies available in the case file RW/T405)

Name	Comments
Claire Pinder, Senior Archaeologist, Dorset County Council	“The affected route appears to run along the top of the Roman Road, Ackling Dyke.....Ackling Dyke survives in the good condition in the form of an earthwork and is a Scheduled Monument.....with a high level of statutory protection”.
British Horse Society	No evidence to support the claim but “if upgraded to a Restricted Byway, this would allow access to carriage drivers.”
East Dorset District Council Graham Plumbe Natural England Ramblers’ Association	No evidence given.

7 **Analysis of documentary evidence**

The most important documents in this case are those relating to the 1910 Finance Act .

Finance Act 1910

- 7.1 The Ordnance Survey 1902 large scale map (1:2500) was used as base map for the Finance Act valuation. The information on Sheet 15.12 reveals that the claimed route was excluded from valuation throughout its length between points A and C. The claimed route 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.

Inclosure Awards

- 7.2 The **1798 Gussage All Saints Inclosure Award** records:

“One other public Road of the breadth of forty Feet being part of the ancient Road called the Fossway beginning at the Northwest Corner of outer Parsonage Field and extending from thence in a northern Direction to a certain field or croft called James Croft belonging to the vicar of the said Parish of Gussage All Saints and after passing by the side of said fields or Croft continuing in the like Direction to the Northwest Corner of the Lord’s Down”.

- 7.3 There is no Inclosure Map covering this award but there does not appear to be another route in the area that matches this description. This strongly suggests therefore that this refers to the claimed route and that it was already an existing highway before this Inclosure award.
- 7.4 No stopping up order has been found. This indicates that public vehicular rights continue to exist along the claimed route (A – C). Therefore it provides very strong evidence as to the claimed route’s status being that of a public carriageway.
- 7.5 The **1814 Gussage Saint Michael Inclosure Map** shows the claimed route in the same manner as the other public carriageways and at the southern end the annotation “To Gussage All Saints” indicates its direction; however it is not given a number.
- 7.6 The **1814 Gussage Saint Michael Inclosure Award** does describe Byway 9, Gussage Saint Michael (as shown from point C westwards on Drawing 12/33) as a “Public Carriage Road of the breadth of thirty feet” numbered “I” “eastward to the Roman Road in the Parish of Gussage all Saints”.
- 7.7 This is the evidence for the public vehicular rights along Byway 9 and is strong evidence that the claimed route that it joins at the eastern end had the same rights at that time.
- 7.8 The **1816 Gussage St. Michael Quarter Sessions Highway Certificate** confirms the setting out of this Public Road and describes the claimed route as “the Roman Road leading to Wimborne Saint Giles”. The plan shows the claimed route in the same manner but uncoloured and wider than Byway 9. The Certificate therefore adds weight to both Inclosure awards and map, indicating that the claimed route had public vehicular rights.

Tithe

- 7.9 The **1843 Gussage All Saint Tithe plan** depicts the claimed route as shown between points A to C and is shown as the other routes that are now recorded as public roads and has no apportionment number.
- 7.10 By themselves Tithe documents rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do 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.
- 7.11 On their own these Tithe documents provide some support to the application as evidence to the physical existence of the route at the time. However, in light of the Gussage All Saints Inclosure Award it is considered that, in this case, more weight should be attributed to them.

Analysis of other supporting documents

Ordnance Survey maps

- 7.12 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 Gussage All Saints parish was completed in **1807** and clearly depicts the route claimed throughout its length from A to C. It is defined by two parallel solid lines, suggesting that it was fenced or hedged throughout its length and is depicted in exactly the same manner as other public roads in the vicinity.
- 7.13 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 C. It is defined in the same manner as the earlier drawing, suggesting that for the whole of its length it was bounded by hedges or fences. 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 as other routes in the vicinity that are known to be public carriageways.
- 7.14 The **1887 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route as double solid lines and annotated "James Cross Lane" and "ROMAN ROAD" alongside. The lane is not marked 'F.P.' or 'B.R.' and so this may suggest that the route was considered to have higher public rights than that of footpath or bridleway. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3). The presence of a dotted line along the western side of the lane indicates the parish boundary between Gussage All Saints and Gussage St Michael and the annotation "4 ft R.H." gives the position of the boundary as four feet from the root of the hedge.

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- 7.15 The **1902 Second Edition Ordnance Survey Map** at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1887 edition, although the larger scale map shows more detail.
- 7.16 The **1902 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route annotated “James Cross Lane” alongside. It is shown with double solid lines, indicating that it is fenced or hedged on both sides. There are no annotations of ‘F.P.’ or ‘B.R.’ alongside but the route is named.
- 7.17 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 on both sides by hedges or fences. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation such as ‘B.R.’ or ‘F.P.’, 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 “James Cross Lane”, which may also suggest the public nature of the route. Although the Ordnance Survey maps provide evidence in support of the application they 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

- 7.18 The applicant makes reference to a number of **small scale maps** of Dorset held at the Dorset History Centre and has provided extracts from a variety of Bartholomew and other commercial maps in support of the application.
- 7.19 **Taylor’s Map of Dorset 1765** depicts a route that generally corresponds with that of the claim and the key defines it under ‘Roads enclosed with Hedges’. **Taylor’s Map of 1796** shows the route similarly and, although it has no key, the route is shown in the same manner as other roads known to be public carriageways in the vicinity.
- 7.20 The following maps show the claimed route in the same manner as other roads known to be public carriageways in the vicinity:
- **1773 Map of Dorset by J Bayly**
 - **1805 Map of Dorset by J Stockdale**
 - **1826 Greenwood Map of Dorset**
 - **Early 1900s Map of Dorset by George Richmond**
 - **1900s Visitors’ map for the Environs of Bournemouth by Gall & Inglis**
 - **1920s Bacon’s Motoring and Cycling Road Map**
 - **1936 Johnston Motoring & Touring map**
 - **1940s Geographia Large Scale Road Map of Dorsetshire**
 - **1950s Ward Lock’s Guide – Bournemouth, Poole and District**

- **Undated English roads at a glance Map 3 by George Philip and Son Ltd**

7.21 **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 **1944 to 1959** 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.

7.22 The extracts from the **Small Scale Maps of Dorset** submitted in evidence by the applicant are mainly of a commercial nature and in all probability 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. However, they do all show the route clearly and prominently and consequently it is considered that this evidence, whilst providing nothing conclusive, supports the claim, although no significant weight has been attached to them.

1949 National Parks and Access to the Countryside Act

Parish Survey

7.23 The **1951 Gussage All Saints Parish Survey** of rights of way shows the claimed route numbered 28 and recorded as a CRB (Cart Road Bridleway) in the parish notes (see note in Table of Documentary evidence at Appendix 3).

7.24 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). This may explain why the designation 'CRB' was subsequently changed to 'BR' (bridleway) in the Schedule.

7.25 The **1959 draft map** for the east area shows the claimed route as part of Bridleway 10.

7.26 The **1964 provisional map** and **1967 first definitive map** show the claimed route as part of Bridleway 10.

7.27 In **1973 a Special Review** Committee considered the status of the claimed route to decide how the route should be shown on the revised draft map:

"The Committee felt that the fact that the route of a Roman Road was known did not of itself prove that the way should be classified as a byway open to all traffic. However in this case:

- (a) the way links two county roads
- (b) sufficient evidence of user by vehicles has been produced
- (c) the way is indicated to be suitable for a byway open to all traffic by the report prepared by The County Surveyor's Department.

Therefore show as a byway open to all traffic (BOAT)".

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7.28 The 1974 revised draft map therefore shows the claimed route as Byway 10, Gussage All Saints.

7.29 **Objections to the revised draft map** were received in **1975** by Humberts, Flint and Rawlence & Squarey. However, the review was abandoned in the east of the County following the Wildlife and Countryside Act 1981 and because there were 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.

7.30 Although the fact that the whole 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.

8 **Analysis of evidence opposing the application**

8.1 The Vale of Allen Parish Council's statement regarding the lack of use by motorised vehicles is correct. However, other evidence submitted as a result of the consultation indicates that there may have been some public vehicular use of the route, albeit rarely.

(a) Regarding the designation of the claimed route on the 1902 Ordnance survey map, the Ordnance Survey maps would not usually have indicated the status of a road, except for labelling with a name. In this case the claimed route is named as 'James Cross Lane' and is not labelled 'F.P.' or 'B.R', which therefore supports a higher public status.

(b) The annotation "4ft R.H" on the same map is explained in paragraph 7.14. This notation has no bearing on public rights.

8.2 The Gussage St Michael Parish Clerk notes that residents have never seen the lane used by mechanised vehicles, except for farming activity. This may be the case as the application is based on historical documentary evidence and no user evidence has been submitted.

8.3 John Bartlett, B L R Stannah and Richard Friend state that a gate or "lockable barrier" was erected in 1989/1990, so therefore no mechanical vehicular use could have been established since that time. However, there is gap alongside that may have been usable by motorcycles as it should have been wide enough for a horse to pass through and Mr Stannah does note use by motorcycles.

(a) Without lawful authority the padlocking of the gate or barrier constitutes an unlawful obstruction as it prevents use over the full extent of the bridleway by the public.

8.4 Wilsons Solicitors and the Shaftesbury Estates are correct that none of the exceptions in the Natural Environment and Rural Communities Act 2006 apply and therefore public mechanically propelled vehicular rights have been extinguished and the claimed route cannot be upgraded to byway open to all traffic.

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

9 **Analysis of other submissions**

9.1 The other letters contain no evidence to be considered.

10 **Conclusions**

10.1 As the route is 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.

10.2 The cumulative weight of the **documentary evidence** analysed in paragraph 7 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 on Drawing 12/33.

10.3 It is considered that the most important piece of documentary evidence is that provided from the **1910 Finance Act** plan, which shows the claimed route to be excluded from valuation throughout its length. 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.

10.4 The **1798 Gussage All Saints Inclosure Award, 1814 Gussage Saint Michael Inclosure Award and Map** and the **1816 Gussage St. Michael Quarter Sessions Highway Certificate** acknowledged the existence of a public vehicular highway as shown between points A and C in the parish of Gussage All Saints.

10.5 It is also considered that the **1839 Gussage All Saints Tithe Map and apportionments** show the claimed route as part of the highway network as a through route and access to newly enclosed fields and titheable land.

10.6 The **Special Review** provides further supporting evidence as the Special Review Committee acknowledged that the route should be recorded as a byway open to all traffic.

10.7 In addition the **1807 Ordnance Survey drawings** and other **Ordnance Survey maps**, although not conclusive as to status, support the existence of higher public rights than the currently recorded bridleway status.

10.8 The **commercial maps** from 1765 onwards also all show the claimed route as a significant route.

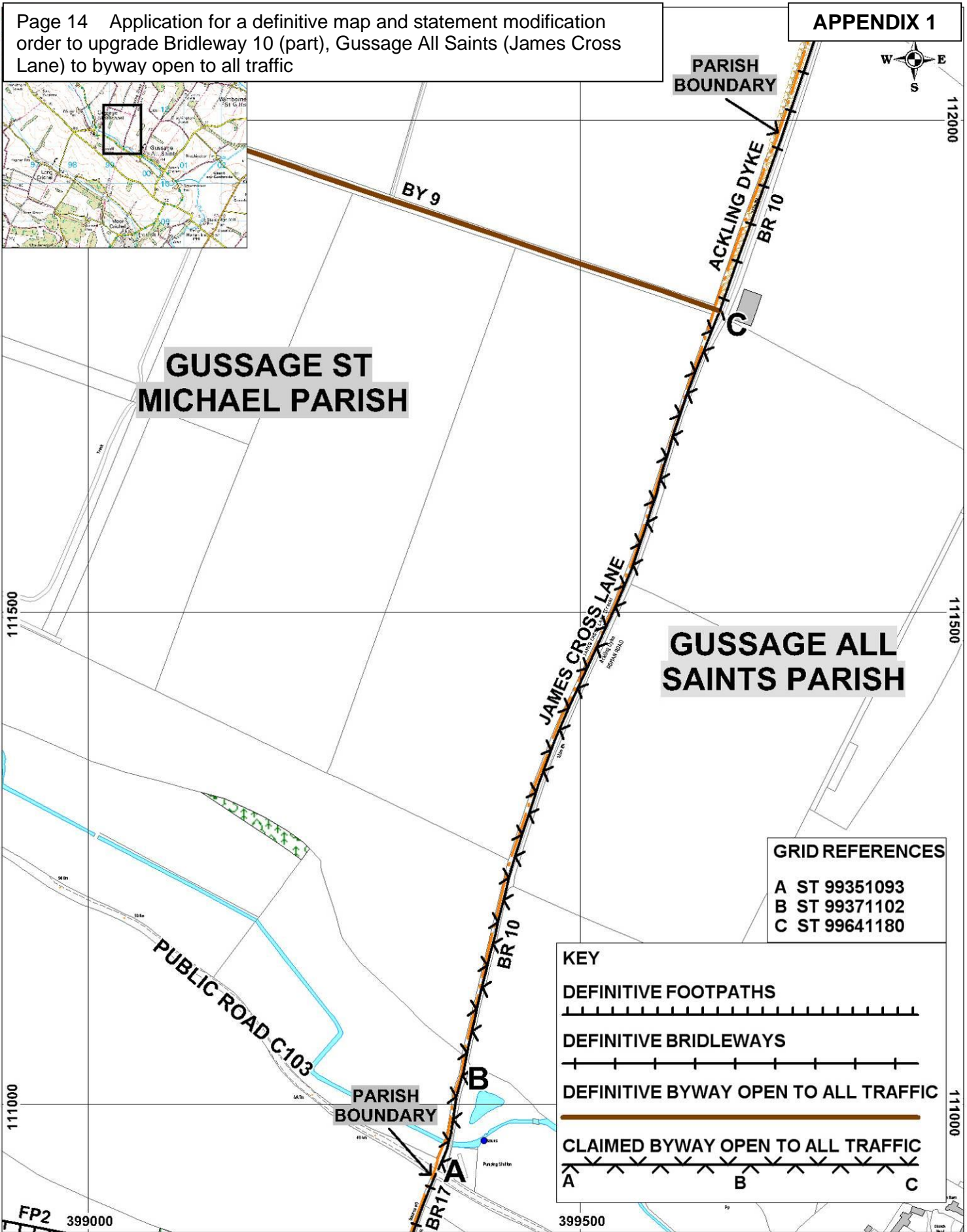
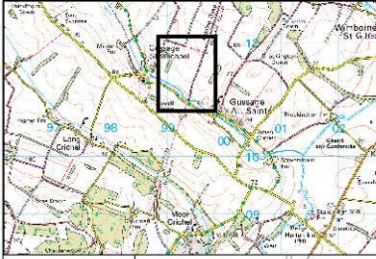
10.9 In the absence of user evidence the documentary evidence alone is considered sufficient to demonstrate, on balance, that a public right for vehicles exists in respect of part of the claimed route, as shown between points A – B – C on Drawing 12/33 and an order should be made.

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- 10.10 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.
- 10.11 Therefore it is recommended that an order be made to record the claimed route as a restricted byway.
- 10.12 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 10 (PART),
GUSSAGE ALL SAINTS, JAMES CROSS LANE TO BYWAY
OPEN TO ALL TRAFFIC.
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/33
Date: 27/09/2012
Scale 1:5000
Drawn By: ACH
Cent X: 399401
Cent Y: 111492

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 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 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.

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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.

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
1765	Isaac Taylor's map	Shows the claimed route as a "road enclosed with hedges"
1773	Map of Dorset by J Bayly	Shows the claimed route
1796	Isaac Taylor's map	Shows the claimed route (no key)
1798	Gussage All Saints Inclosure award	Describes the claimed route as a "public road of the breadth of forty feet being part of the ancient road called the Fossway"
1805	Map of Dorset by J Stockdale	Shows the claimed route as a road
1807	Ordnance Survey drawings	Shows the claimed route as "other public roads"
1811	Ordnance Survey 1 First Edition scale 1 inch:1 mile	Shows the claimed route as a fenced road.
1814	Gussage Saint Michael Inclosure Map	Shows the claimed route coloured as the other numbered public carriageways and has the annotation "to Gussage All Saints"
1814	Gussage Saint Michael Inclosure Award	Describes Byway 9 as a public carriageway, linking to the claimed route: "eastward to the Roman road in the parish of Gussage All Saints"
1816	Gussage St. Michael Quarter Sessions Highway Certificate and plan	Describes the claimed route as "the Roman Road leading to Wimborne Saint Giles". Shows the claimed route joining the new public road, now Byway 9, Gussage Saint Michaels
1826	Greenwood Map of Dorset	Shows claimed route
1843	Gussage All Saints Tithe Map and Apportionment	Shows the claimed route in a similar manner as all the other ways on the map
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 scale 6 inches:1 mile	Shows the claimed route annotated "James Cross Lane and "ROMAN ROAD". The lane has no 'FP' or 'BR' annotations.
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.	

Date	Document	Comment
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.	
1902	Ordnance Survey Second Edition scale 25 inches:1 mile	Shows the claimed route in detail and named alongside
1902	Ordnance Survey Second Edition scale 6 inches:1 mile	Shows the claimed route and named alongside but no 'F.P.' or 'B.R.' annotations.
1906	Ordnance Survey Second Edition 1inch to 1 mile (coloured)	Shows the claimed route as an unmetalled road.
1910	Finance Act map	Claimed route is excluded from valuation
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
Early 1900s	Map of Dorset by George Richmond	Shows the claimed route as part of the Ackling Ditch
Early 1900s	Visitors' map for the Environs of Bournemouth Gall & Inglis	Shows the claimed route
1920s	Bacon's Motoring and Cycling Road Map	Shows the claimed route as a road but not a main road.
1936	Johnston Motoring & Touring map	Shows the claimed route
Possibly 1940s	Geographia Large Scale Road Map of Dorsetshire	The claimed route is shown but partially obscured by wording
1944	Bartholomew's half inch map	Shows the claimed route as a serviceable road
1945	Ordnance Survey Second Edition scale 1 inch:1 mile (coloured)	Shows the claimed route as a fenced, unmetalled 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.	

Date	Document	Comment
1951	Gussage all Saints Parish Survey Map	Numbered 28 and recorded as a CRB (Cart Road Bridleway)
1951	Bartholomew's half inch map	Shows the claimed route as a serviceable road
1950s	Ward Locks Bournemouth Poole and District Map	Shows the claimed route as a road.
undated	English Roads at a Glance Map 3 by George Philip and Son Ltd	Shows the claimed route (not categorised in key)
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	Recorded as Bridleway 28
1964	Provisional Map	Recorded as Bridleway 10, Gussage All Saints
1967	First Definitive Map	Recorded as Bridleway 10, Gussage All Saints
1973	Special Review	The Committee's decision "show as a byway open all traffic (BOAT)"
1974	Revised Draft Map	Recorded as Byway 10, Gussage All Saints
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 shown with outstanding objections were dropped without investigation.
1989	Current definitive Map	Recorded as Bridleway 10, Gussage All Saints
Various	Small scale maps of Dorset	Shows the claimed route

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Extracts from key documents

(See the Director for Environment's file RW/T405 for copies of other documents mentioned)

1798 Gussage All Saints Inclosure Award

One other public Road of the breadth of forty Feet being part of the an
Parish of Gussage All Saints and after passing by the side of the sa

antient Road called the Popway beginning at the Northwest Corner of outer Parson
said field or Croft continuing in the like Direction to the Northwest Corner of

ing in its usual Course Eastward to an antient Lane on the south side of
ter Parsonage Field and extending from thence in a northern Direction to a certain
Corner of the Lords Down.

to a certain field or croft called James Croft belonging to the Vicar of the said

1814 Gussage Saint Michael Inclosure Map



1814 Gussage Saint Michael Inclosure Award

eastward to the Roman Road in the Parish of Gussage

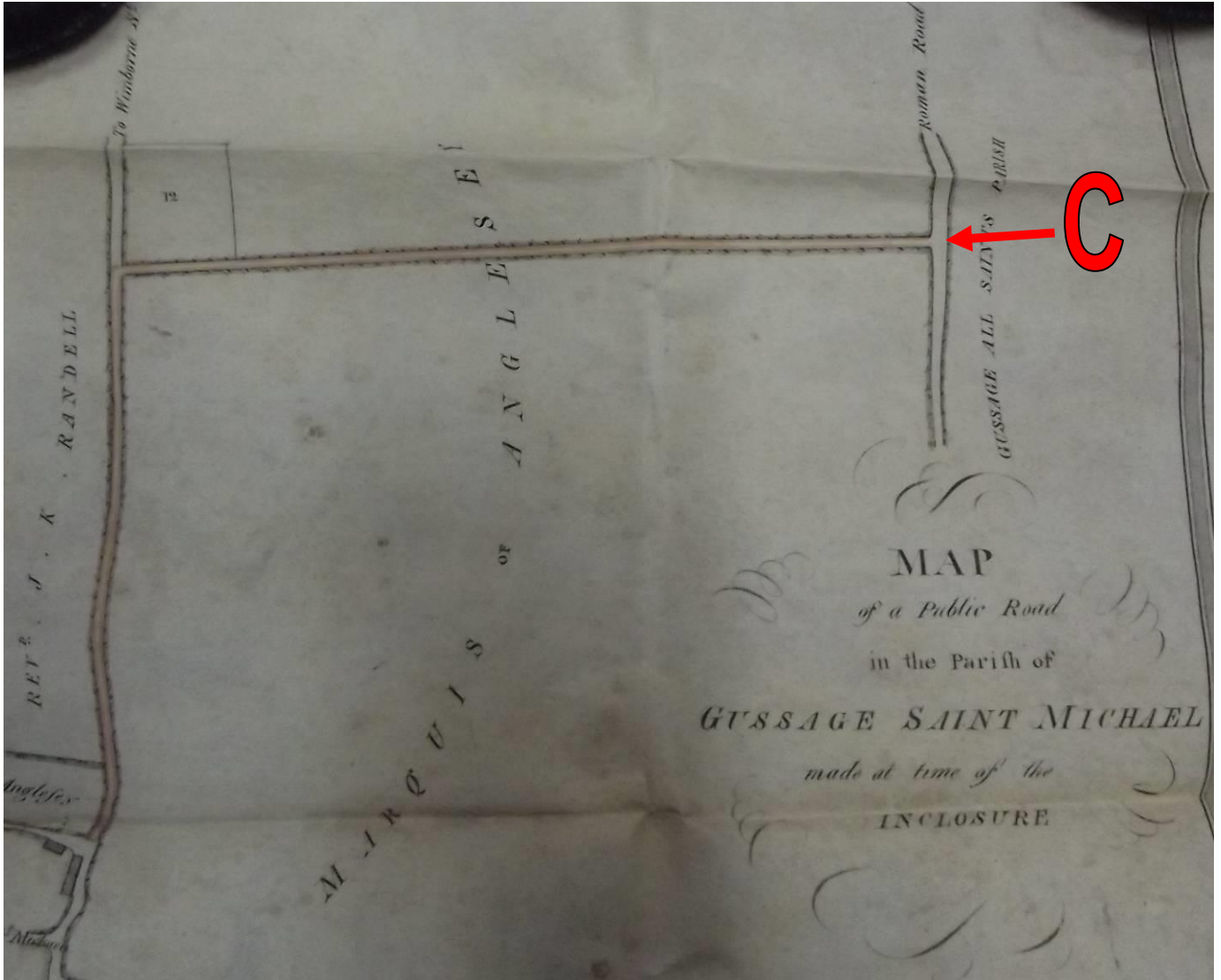
1816 Gussage St Michael Quarter Sessions Highway Certificate and plan

...borne Saint Giles and coloured yellow on the
public carriage Road is fully and sufficiently formed
scals this sixth day of August

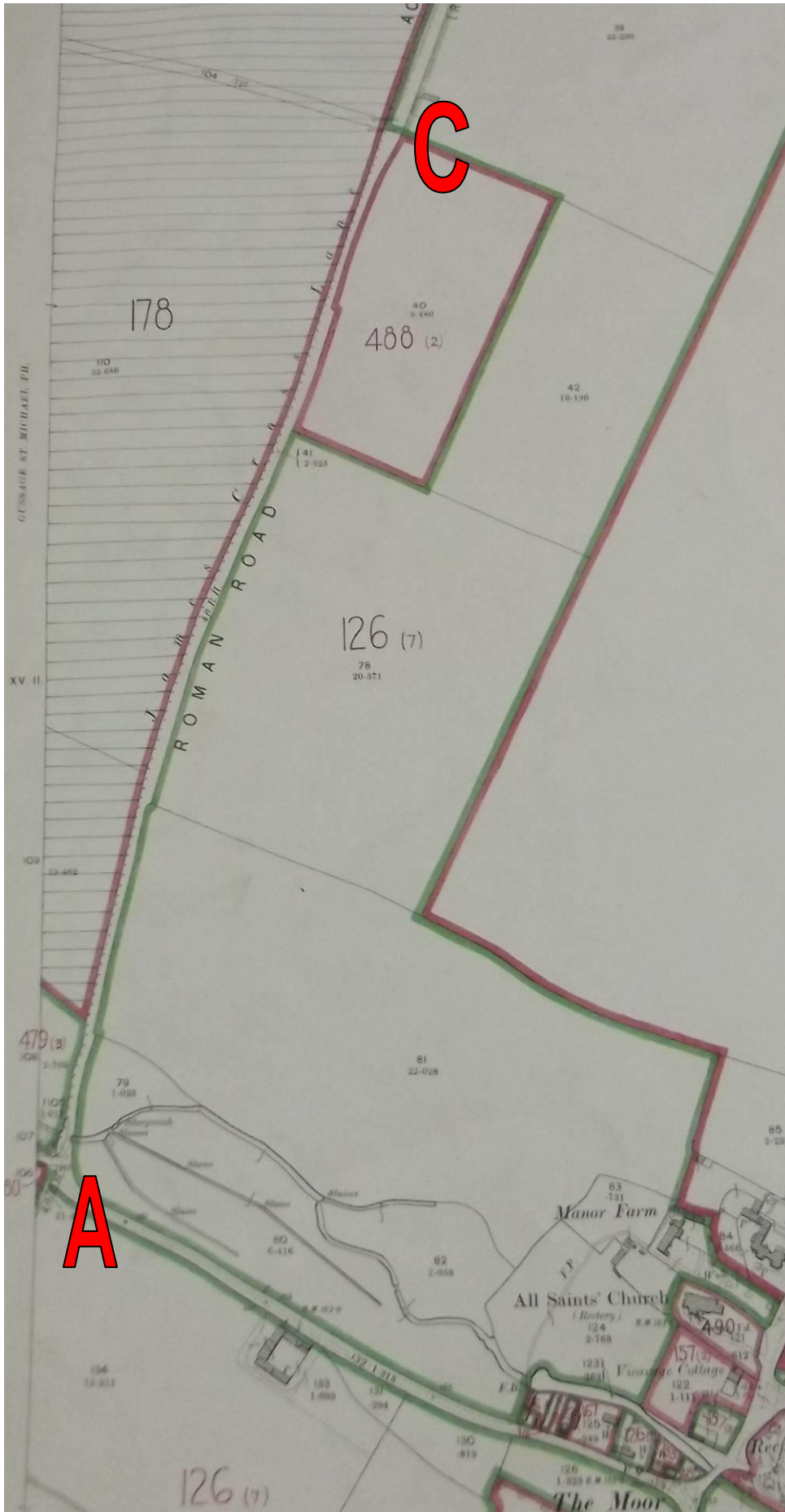
...ction to the South corner of an allotment N°12 on the
in an Easterly direction till it enters the Roman Road
coloured yellow on the above plan And we do certify
sufficiently formed and completed Witnesses our
day of August one thousand eight hundred and sixteen

... of an allotment N°12 on the map belonging to
till it enters the Roman Road leading to
plan And we do certify that the said
a completed Witnesses our hands as at
one thousand eight hundred and sixteen

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1910 Finance Act map



1843 Gussage All Saints Tithe map

