

Agenda item:

# Roads and Rights of Way Committee

6

## Dorset County Council



Date of Meeting	23 November 2012
Officer	Director for Environment
Subject of Report	<b>Application for a definitive map and statement modification order to upgrade part of Bridleway 8, Pentridge to a byway open to all traffic (Earthpits Lane)</b>
Executive Summary	In response to an application to upgrade part of Bridleway 8, Pentridge to a 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 July and August 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> <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> <p>(a) The application be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to record part of Bridleway 8, Pentridge as shown A – B – C on Drawing 12/19/1 as a restricted byway; and</p> <p>(c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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;</p> <p>(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 motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and</p> <p>(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 12/19/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents: <ul style="list-style-type: none"> <li>▪ 1910 Finance Act Maps – sheets 10.5 and 10.9</li> <li>▪ 1839 Pentridge Tithe Map</li> <li>▪ 1829 Pentridge Inclosure Map</li> <li>▪ 1900 Ordnance Survey Object Names Book</li> </ul> </li> </ul>
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T407)</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>

	Copies (or photographs) of the documentary evidence can be found on the case file RW/T407, which will be available to view at County Hall during office hours.
Report Originator and Contact	Name: Roger Bell Rights of Way Officer Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk

## 1 Background

- 1.1 An application to upgrade part of Bridleway 8, Pentridge, Earthpits Lane, to a byway open to all traffic from Bowling Green Lane to Morgan's Lane as shown A – B – C on Drawing 12/19/1 attached as Appendix 1, was made by Mr David Oickle on behalf of the Trail Riders' Fellowship on 16 November 2005.
- 1.2 The route claimed commences at the junction with Bridleway 4, Pentridge, known as Bowling Green Lane at point A on Drawing 12/19/1. The route then travels in a south south westerly direction with a grassed surface and is wide and appears to be well used. There are banks with hedges along both sides. Mature trees grow within the hedges. Along its western side the hedge becomes a small linear woodland. From point B the claimed route turns south and the character and surface remain the same throughout. At point C, near the farm buildings, the claimed route is more heavily used and poorly drained. The route ends at the junction with Bridleway 11, Pentridge where it also joins the County Road (D40110), which forms the southernmost section of Earthpits Lane.
- 1.3 The width is 8 metres throughout its length, widening to 10 metres at point C.

## 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/T407.
- 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 to support our claim that this road carries vehicular rights".

## 4 Additional evidence in support of the application

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

## 5 Evidence opposing the application (copies available in the case file RW/T407)

Name	Comments
Gascoyne Holdings Limited (Cranborne Estate Offices)	"The application falls outside of the permitted dates as set out in the Natural Environment and Rural Communities Act 2006s 67(1) and therefore fails?"

Name	Comments
Lisa Goodwin, Clerk to the Sixpenny Handley with Pentridge Parish Council	Comments on the applicant's historical evidence, "Even ignoring the obvious differences between vehicles used more than 100 years ago and today we do not consider that the maps provided by the applicant consistently show routes which are or were passable by vehicles of any type". The Clerk also 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".
Mr Tarka King	He has researched historic records back to the 17 <sup>th</sup> Century. He says that "There are markings of paths and farm tracks leading to fields which would have been used by horse and carts for agricultural purpose but a clear 'thoroughfare' through the village is not defined anywhere. No such 'through-way' has ever been closed".
Dr J Gillespie Smith	She can "testify to the use of the bridleways during the last 75 years... My family came to the village in 1937... I have not seen motor powered vehicles being used on the relevant bridleways except for use by farmers and farm employees". She continues "I consider that the historical evidence provided by the DMMO applicant appears to be invalid. Some of the maps provided by the applicant either show incomplete routes (e.g. 1765 and 1796 Isaac Taylor maps and OS 1906 map) or indicate routes closer to footpath status. The applicant's historic evidence appears to be unreliable".
Mrs Margaret Owen	She has not seen public vehicular use of this route in nearly 50 years. The bridleways were ancient routes primarily for local people to access their farms, neighbours, animals and work.
Iris David	She has "been riding horse on these bridleways for approximately 60 years" and the claimed route has "not been used by any mechanically propelled vehicles apart from farm machinery".
Rachel Bartlett Gill Edmonds J Edmonds Angela Farmer Mrs Valerie Gardner Mrs Jane King John & Anne McCall Mrs Julie Murphy Jill Preston Annette Ratuszniak Dr M C Swan Dr Maureen I A Swan Mrs S M Taylor James & Jessica Winby	Issues were raised such as: - <ul style="list-style-type: none"> <li>• Safety</li> <li>• Damage to the surface</li> <li>• Disruption to residents, wildlife and the natural environment</li> <li>• Noise</li> <li>• Pollution</li> <li>• Suitability</li> <li>• Dangerous junctions</li> <li>• Disruption and damage to the historical environment</li> <li>• Current and past use</li> </ul>

6 **Other submissions received** (copies available in the case file RW/407)

Name	Comments
Claire Pinder, Senior Archaeologist, Dorset County Council	“There are at present no recorded archaeological finds or features or historic buildings on or in immediate vicinity of the route affected by this proposal. This area is full of important and sensitive archaeology, particularly of the prehistoric period”.
British Horse Society East Dorset District Council Graham Plumbe Natural England Ramblers	No evidence given.

7 **Analysis of documentary evidence**

**Finance Act 1910**

7.1 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 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.

**1839 Pentridge Tithe Map and Apportionments**

7.2 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. The claimed route is shown wider than the road through Pentridge village to the south west.

7.3 The route is numbered ‘122’ 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 “Earth Pit Lane”. Under the heading “State of Cultivation” nothing is written. The area is 3 acres, 1 rood and 17 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.

7.4 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.

### **Inclosure Award**

- 7.5 **The 1829 Pentridge Inclosure Map and Index** shows the whole length of the claimed route bounded by solid lines. The fields on the eastern side are annotated '31' and '32' and the fields annotated '30', '36', '38' and '39' to the west and are categorised in Schedule A in the Index under the heading "Quality" 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 was a pre-existing highway at the time of enclosure.

### **Analysis of other supporting documents**

#### **Ordnance Survey Object Name Book**

- 7.6 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 that "Earthpits Lane" to be "A public road leading from Pentridge to Bockerley Down". This suggests that, at this time, the Ordnance survey maps and the object name book confirms public vehicular rights.

#### **Ordnance Survey maps**

- 7.7 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 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.
- 7.8 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.
- 7.9 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. However, between points A and B the eastern boundary is shown with a pecked line and this may indicate that this section was unfenced. The name "Earthpits Lane" is clearly marked alongside. The lane is not marked 'FP' or 'BR' and so this may suggest that the route was considered to have higher public rights. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).

- 7.10 The **1902 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 similarly, although the larger scale map shows more detail. The northern part between points A and B is shown as double pecked lines (track) with a solid line (bank, hedge or fence) to the west and open to the east. South of point B the route is shown with a solid line to the west (bank, hedge or fence) and a pecked line to the east (unfenced) for much of its length and nearer to the village the route 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.
- 7.11 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 '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 'Earthpits 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.

### **Commercial Maps**

- 7.12 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.
- 7.13 **Taylor's Map of Dorset 1765** depicts a route that generally corresponds with that of the claim. **Taylor's Map of 1796** shows the route quite distinctly 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.
- 7.14 The **1826 Greenwoods' Map, 1848 Pigot's Map of Dorset, 1900s Visitors' map for the Environs of Bournemouth by Gall & Inglis, 1930 Bacon's Motoring & Cycling Road Map – Bournemouth District, 1937 Johnston's Motoring & Hiking Map, 1940s Geographia Large Scale Road Map of Dorsetshire & 1950s Ward Lock's Guide – Bournemouth, Poole and District** all show the claimed route in the same way as Taylor's map. The route is shown in the same manner as other roads known to be public carriageways in the vicinity.
- 7.15 **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 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 an 'inferior', 'indifferent' or 'serviceable' road.



- 7.16 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 it.

### **Aerial photographs**

- 7.17 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.

### **1949 National Parks and Access to the Countryside Act**

#### **Parish Survey**

- 7.18 The **1951 Pentridge Parish Survey** map of rights of way shows the claimed route as C.R.B. 25. (CRB is described in the advice used as a practical guide for parish councils as a “Public Carriage or Cart Road or Green (unmettalled) Lane mainly used as a Bridleway”.) The Schedule accompanying the map describes CRB 25 as a “Green Lane” and the status altered to ‘BR’.
- 7.19 Its condition is described as “Metalled with ditch for 175 yds then cobbles\* for 100 yds then turf, Good. \*Liable to be flooded in Winter, Oct-April”. It is also noted that it was “Scheduled as a Green Lane by Parish Meeting 17 July 1933”. The minutes of the meeting are not available for inspection.
- 7.20 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.

#### **Draft, provisional and first definitive map**

- 7.21 The **1959 draft map** for the east area shows the claimed route as part of Bridleway 25.
- 7.22 The **1964 provisional map** and **1967 first definitive map** show the claimed route as part of Bridleway 8.

#### **Special Review**

- 7.23 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 8 be reclassified as RUPP(BOAT)”, the claimed route.
- (a) 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”.

- 7.24 On 3 June 1972 the Parish Council wrote “for clarification of the status of this part of Right of Way No 8 since my Parish Council claim that it has always been a carriage road. If your Council need evidence, please inform me”.
- 7.25 On 6 October 1972 the Parish Council wrote regarding “the matter of the Right of Way Pentridge No 8 Earthpits lane to Bokerly Gap and I have been instructed to inform you that, with regard to the Northern section across Bokerly down prior to 1945 one could go anywhere on the down land without hindrance of cultivations and the old green road went in a direct line from the junction of Earthpits Lane and Bowling Green Lane across the down land to Bokerly Gap, a gap in the ancient battlements of Bokerly Dyke to allow vehicles to pass through the Dyke.” This local knowledge would suggest that public vehicular rights existed along Earthpits Lane and continued north east to Bokerly Gap and that the Parish Council were keen to have the rights recorded on the definitive map and statement.
- 7.26 In 1973 a **Special Review** Committee considered the status of the whole of Bridleway 8. Although Pentridge Parish Council had claimed the whole of Bridleway 8 as a byway open to all traffic the Committee considered that “this section is part of an old road system. The section south of Bridleway 4 at 039189 is suitable for vehicular traffic, but the section North of Bridleway 4 has been ploughed out”. They suggested that “only the Southern section to BR 4 should be shown as a byway in the Review and the remaining section should retain its present status of bridleway as it has been ploughed out”.
- 7.27 The Committee’s decision was to “Show the section south of BR 4 as a Byway. Retain the section north of BR 4 as a Bridleway”. The southern section referred to is the route currently claimed A – C and shows that the Committee at that time accepted that it should have public vehicular rights, however, they rejected this status for part north of point C as the legislation at the time took into account different criteria for its upgrading, including suitability.
- 7.28 The revised draft map 1974 therefore shows the claimed route as Byway 8.
- 7.29 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 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 **Gascoyne Holdings** is correct that this application does not meet any of the five exceptions laid out within the NERC Act, and the claimed route cannot be recorded as a byway open to traffic. However, it should be recorded as a restricted byway if vehicular rights are found to exist.

8.2 **Pentridge Parish Council** asserts that vehicles have changed over time and doubts the ability of the routes to be capable of vehicular use now. However, the maxim "*Once a highway always a highway*" would apply, unless rights have been legally removed by a stopping up order. No such legal order has been found.

(a) The Parish Council's point that even 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.

8.3 **Mr Tarka King** states that he has compared historic records back to 17<sup>th</sup> Century, however, he has not given details of the documents researched.

8.4 **Dr Gillespie Smith** says that she has not seen users of mechanically propelled vehicles, however, the claim does not rely on user evidence. She also casts doubt on the "validity" and "reliability" of the historic maps submitted by the applicant. The documentary evidence provided has been discussed above at paragraph 7.

8.5 **Mrs Owen** comments that she has not seen public vehicular use of this route but this claim does not rely on user evidence. Her description of the bridleway as an "ancient" route "primarily for local people to access their farms, neighbours, animals and work" describes typical public use.

8.6 **Iris David** has not seen use by mechanically propelled vehicles apart from farm machinery but, again this claim does not rely on user evidence.

8.7 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.

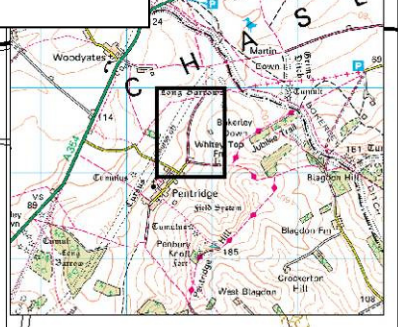
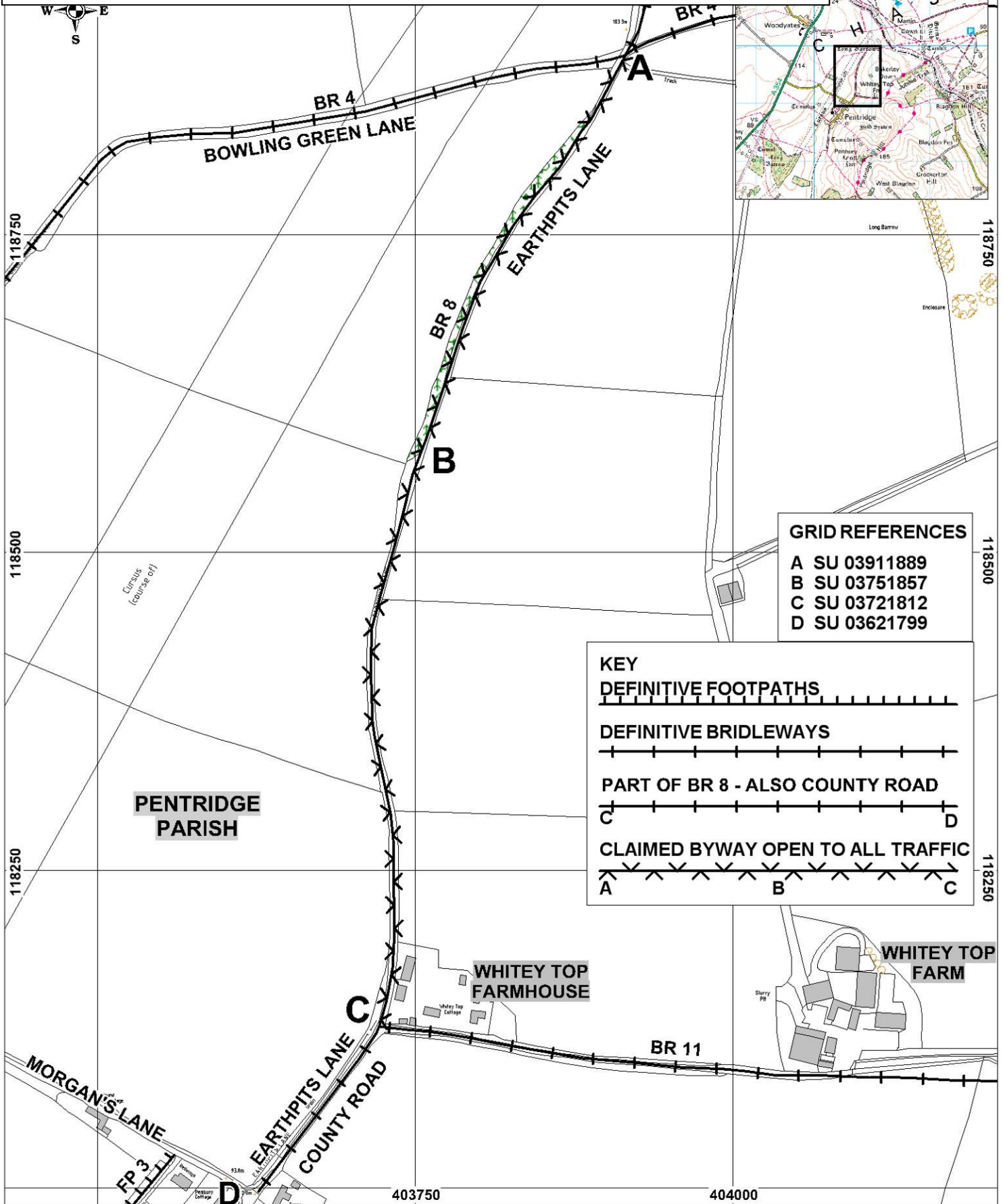
## 10 Conclusions

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 12/19/1.

- 10.3 It is considered that the most important piece of documentary evidence is that provided from the **1910 Finance Act**. The Finance Act plan shows the 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 It is also considered that the **1839 Pentridge Tithe Map and apportionments** and **1829 Pentridge Inclosure Map and Index** show the claimed route as part of the highway network as a through route and access to newly enclosed fields and titheable land.
- 10.5 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** and **Ordnance Survey maps** that support the existence of higher public rights than the currently recorded bridleway status.
- 10.6 The **1765 & 1796 Taylor's Maps of Dorset, 1826 Greenwoods, 1848 Pigot's, 1900s Gall & Inglis, 1930 Bacon's Motoring & Cycling, 1937 Johnston's Motoring & Touring, 1940s Geographia and 1950s Ward Locks Guide** also all show the claimed route as a significant route.
- 10.7 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.
- 10.8 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 12/19/1 and an order should be made.
- 10.9 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.
- 10.10 Therefore it is recommended that an order be made to record the claimed route as a restricted byway.
- 10.11 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**  
November 2012

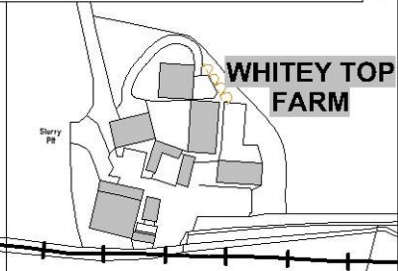


**GRID REFERENCES**

A	SU 03911889
B	SU 03751857
C	SU 03721812
D	SU 03621799

**KEY**

	DEFINITIVE FOOTPATHS
	DEFINITIVE BRIDLEWAYS
	PART OF BR 8 - ALSO COUNTY ROAD
	CLAIMED BYWAY OPEN TO ALL TRAFFIC



**WILDLIFE AND COUNTRYSIDE ACT 1981**  
 APPLICATION TO UPGRADE BRIDLEWAY 8 (PART),  
 PENTRIDGE TO BYWAY OPEN TO ALL TRAFFIC -  
 EARTHPIPS LANE  
 THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/19/1  
 Date: 08/06/2012  
 Scale 1:4000  
 Drawn By: ACH  
 Cent X: 403818  
 Cent Y: 118483

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.

- 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 may be recorded as a restricted byway rather than a byway open to all traffic.



**Table of documentary evidence**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1765	Isaac Taylor's Map of Dorset	Shows the claimed route in a similar manner
1795	Isaacs Taylor's Map of Dorset	Shows the claimed route in a similar manner
1807	Ordnance Survey drawings 2 inches:1 mile	Shows the claimed route
1811	Ordnance Survey 1 inch:1 mile	Shows the claimed route
1826	Greenwoods' Map	Shows the claimed route
1828/9	Pentridge Inclosure map	Shows the claimed route
1839	Pentridge Tithe map	Shows the claimed route annotated no.122 which related to 'Earth Pit Lane'
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 6 inches:1 mile Sheets 10NW & 10 SW	Shows the claimed route and has no annotation 'FB' or 'BR' marked alongside
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 Names Book	Earthpits Lane described as "A public road leading from Pentridge to Bockerley Down"
1901	Ordnance Survey Second Edition 25 inches:1 mile	Shows the claimed route similarly to smaller scale map above but in clear detail
1902	Ordnance Survey Second Edition 6 inches:1 mile	Shows the claimed route and has no annotation 'FB' or 'BR' marked alongside
1900s	Visitors' map for the Environs of Bournemouth Gall & Inglis	Shows the claimed route
1906	Ordnance Survey Second Edition 1 inch:1mile (coloured)	Shows the claimed route
1910	Finance Act Map	Claimed route is excluded from taxation

Date	Document	Comment
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1930s	Bacon's Motoring & Cycling Road Map – Bournemouth District	Shows the claimed route as a road
1937	Johnston's Motoring & Hiking Map	Shows the claimed route
1940s	Geographia Large Scale Road Map of Dorsetshire 2 miles:1 inch	Shows the claimed route as a road
1944	Bartholomew's half inch map	Shown as a 'Serviceable Road'
1945	Ordnance Survey 1 inch:1 mile New Popular map	Shows the claimed route as a minor road
1947	RAF Aerial Photograph	Shows the claimed route
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.	
1950s	Ward Lock's Guide – Bournemouth, Poole and District	Shows the claimed route as other roads are also shown
1951	Bartholomew's half inch map	Shown as a 'Serviceable Road'
1951	Pentridge Parish Survey	Shown as part of C.R.B. 25 on map and in the parish notes described as a 'Green lane'
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 part of Bridleway 25
1959	Bartholomew's half inch map	Shown as a 'Serviceable Road'
1964	Provisional Map	Shown as part of Bridleway 8
1967	First Definitive Map	Shown as part of Bridleway 8
1968	Hampshire County Council letter.	Mentions Bridleway 8 in relation to judgment of RUPPs in Martin, Hampshire

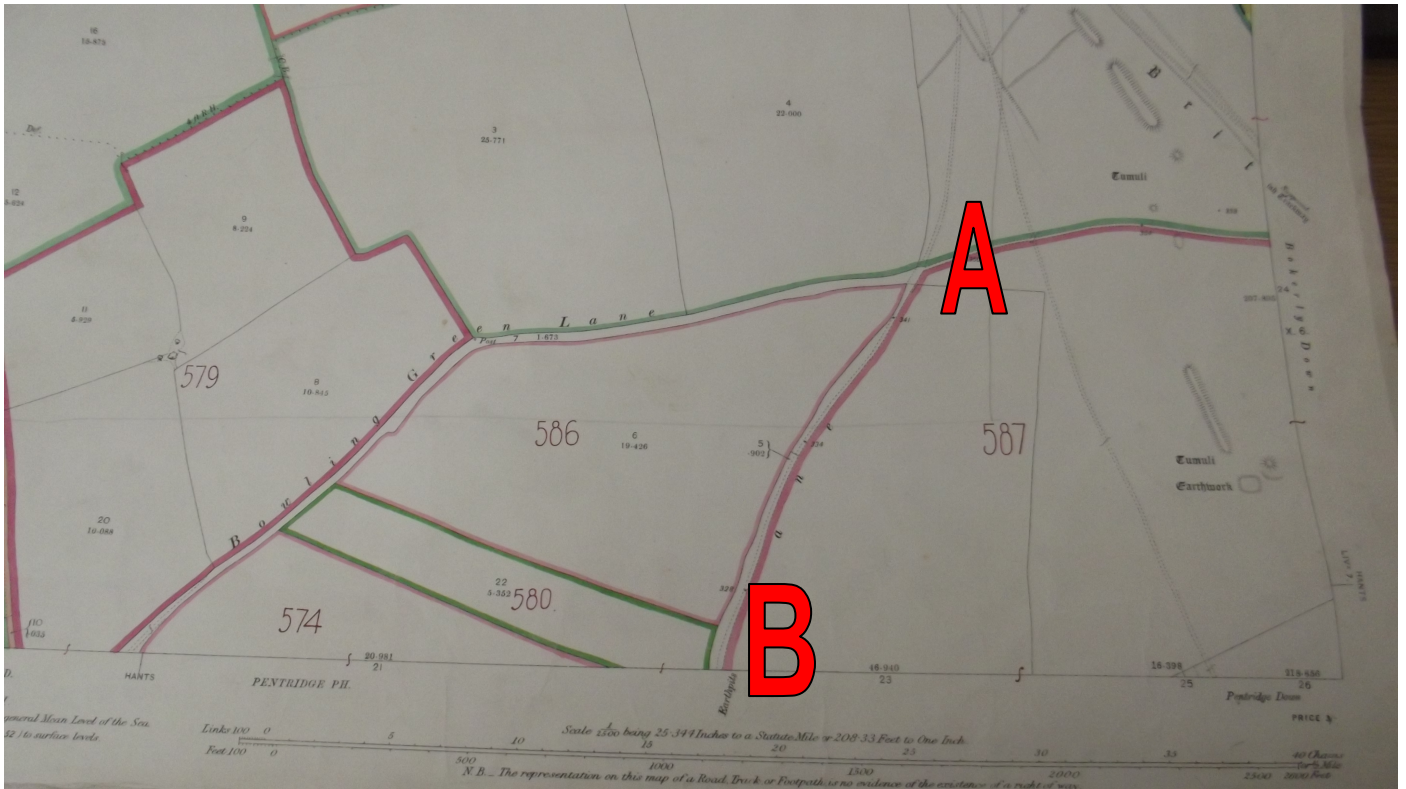
<b>Date</b>	<b>Document</b>	<b>Comment</b>
1971 to 1973	Pentridge Parish Council letters to Dorset County Council	A number of letters from the parish Council relating to reclassifying rights of way to RUPPs, including the claimed route
1972	Aerial Photograph	Shows the claimed route
1973	Special Review	The Committee's decision "Show the section south of BR 4 as a Byway" (the claimed route) "Retain the section north of BR 4 as a Bridleway".
1974	Revised draft map	Shows the claimed route as Byway 8.
1975	Objections to the revised draft map	Objections to the revised draft map were received in 1975 by the two landowners. However, the Review was abandoned in the east of the County following the Wildlife and Countryside Act 1981.
1989	Current definitive map	Shows the claimed route as part of Bridleway 8.

**Extracts from key documents**

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

**1910 Finance Act Maps**

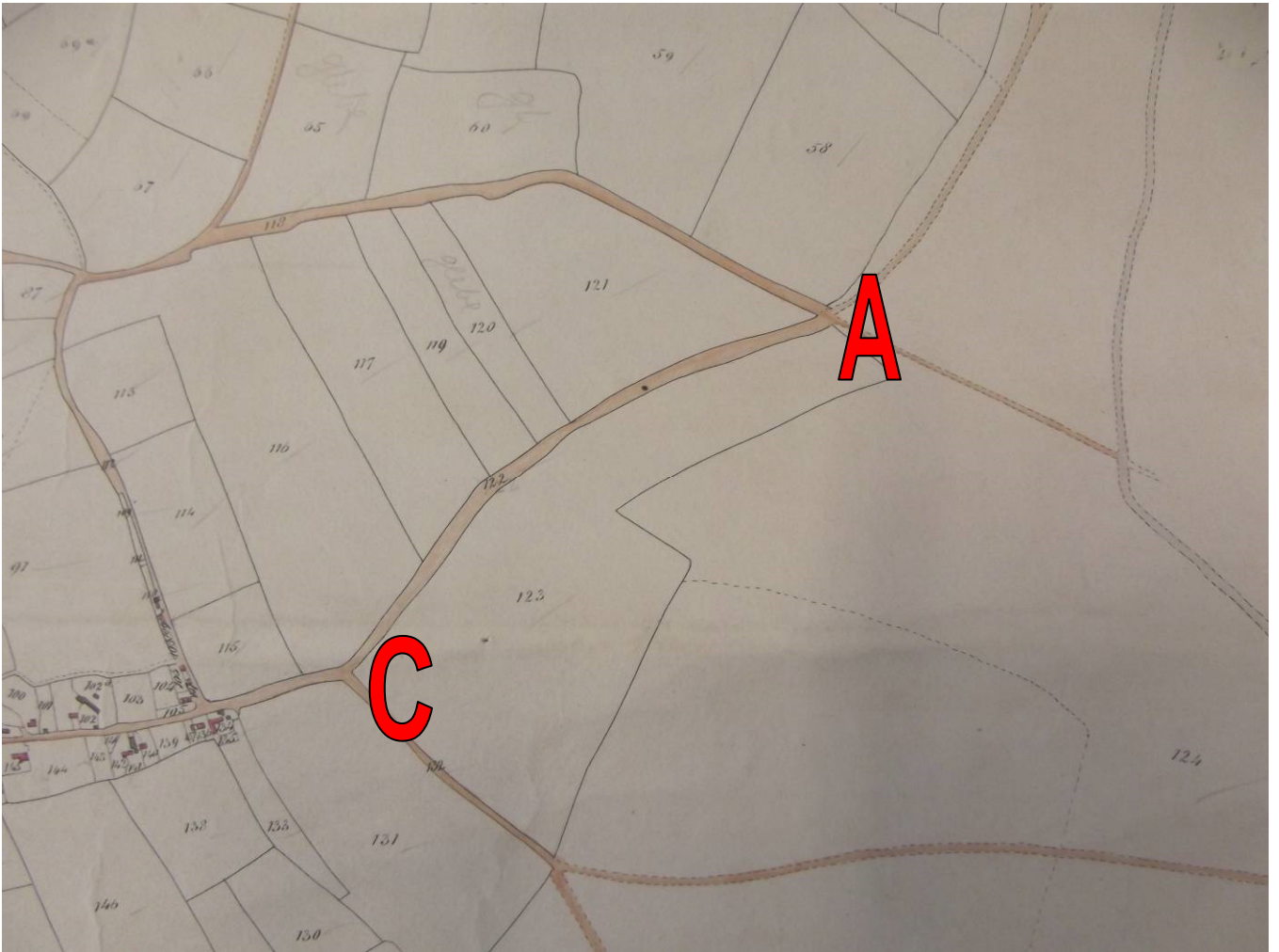
**Sheet 10.5**



and 10.9



**1839 Pentridge Tithe map**



**1829 Pentridge Inclosure map**



1900 Ordnance Survey Object Names Book

		<del>Bokerley Farm</del>	<del>Bokerley Farm</del> (change of name) The Cottage (obsolete)
✓		Bowling Green Lane	Bowling Green Lane (change of name) Bowling-green Lane (obsolete)
✓		Earthpits Lane	Earthpits Lane

x	5	6	a public road leading from Pentridge to Bokerley Down No apostrophe used
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