

Agenda item:

Roads and Rights of Way Committee

8

Dorset County Council



Date of Meeting	1 July 2013
Officer	Director for Environment
Subject of Report	Application for a definitive map and statement modification order to upgrade Bridleway 26, Osmington to byway open to all traffic (part of the South West coast Path National Trail)
Executive Summary	In response to an application to upgrade Bridleway 26, Osmington 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 December 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. Any relevant evidence provided has been discussed in this report.
	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>Recommendations</p>	<p>That:</p> <ul style="list-style-type: none"> (a) The application be refused; (b) An order be made to modify the definitive map and statement of rights of way to record Bridleway 26, Osmington as shown B1 – C – D – E on Drawing 12/40/1 as a restricted byway; and (c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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>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. In addition, the part of the claimed route between points A and B1 is already recorded on the List of Streets and sufficient evidence exists as to its status being that of a public carriageway; (b) The available evidence shows, on balance, that part of a highway shown on the definitive map and statement as a bridleway (between points B1 and E) ought to be shown as a byway open to all traffic. 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 (c) The evidence shows, on balance, that part of 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>Appendices</p>	<ul style="list-style-type: none"> 1 - Drawing 12/40/1 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"> ▪ 1880 to 1899 Dorchester and Weymouth Highway Board Records <ul style="list-style-type: none"> – Dorchester Highway Board 26 June 1880 – Weymouth Highway Board (Weymouth Rural District Council) 20 October 1896 – 4 April 1899 ▪ 1845/46 Southampton and Dorchester Railway Plans <ul style="list-style-type: none"> – 1845 plan – Additional plan “Alternative section” – 1846 revised plan – 1846 revised plan including cross section – Enlargement of wording for cross section ▪ 1845/47 Poxwell Turnpike Dispute <ul style="list-style-type: none"> – 1845 plan

	<ul style="list-style-type: none"> - Undated map - Letter from the Trustees of the Mico Charity Estate Trustees to the Trustees of the Weymouth and Dorchester Turnpike Roads 22 September 1845 - Letter from Rev George Pickard to the Trustees of the Mico Charity 30 September 1845 - Letter from Job Gill to the Trustees of the Mico Charity Estate 3 October 1845
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T412) 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. Copies (or photographs) of the documentary evidence can be found on the case file RW/T412, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Phil Hobson Rights of Way Officer</p> <p>Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to upgrade Bridleway 26, Osmington as shown A to E on Drawing 12/40/1 was made by Mr D Oickle on behalf of the Trail Riders Fellowship on 21 November 2005.
- 1.2 The route claimed commences at its junction with the track to Hall's Farm shown as point A on Drawing 12/40/1 and continues north to point B, its junction with Footpath 22, Osmington. The surface consists of tarmac and its width is approximately 12 metres as measured between the adjacent boundaries.
- 1.3 From point B the route turns north west towards point C following a well defined track of approximately 3 metres in width enclosed by hedges to either side, the overall width between these hedges being approximately 6 metres. The surface comprises of earth/mud overlying a mixed stone/chalk/flint base. At point C there is a 3 metre wide field gate with a stile located at its eastern side.
- 1.4 From point C the route turns north and the track remains well defined and approximately 3 metres wide. There is a hedge immediately to the western side of the track whereas to the eastern side there is a wide grass margin extending 10 metres to another hedge.
- 1.5 From point D the route turns north-west, the route remaining well defined and 2.5 metres wide. The route is now unenclosed, passing through open pasture before terminating at its junction with Bridleway 24 and Footpath 23, Osmington, shown as point E.

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/T412.
- 3.3 In summary, the applicant states, "There is a weight of evidence to indicate it is more likely this route carries public carriageway rights rather than any lesser rights".

4 **User evidence (Appendix 4)**

- 4.1 No user evidence has been submitted with the application. The applicant is relying on the documentary evidence submitted with the application.

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/T412)

6.1 Five submissions were received following the application made in 2005. Seven objections and 55 further submissions were received as a result of the consultation that commenced in 2012, a summary of which is contained in the table below.

Name	Comments
Submissions in response to application made in 2005/06 (5)	
Mr M Hart	Concerns as to safety, desirability and suitability.
Mr P Hales (ROWLO) Osmington	Landowner had not made any statutory declarations or erected any notices to deter users. Visually and environmentally undesirable and concerns about security.
The Osmington Society	Never seen MPV [mechanically propelled vehicle] users on route although one individual advised him of an encounter with 12 motorcyclists.
Capt J Jones	Opposed to application but offers no evidence for consideration.
The Sutton Poyntz Society	Opposed to application, safety, desirability, but offer no evidence for consideration.
Objections in response to consultation 2012 (7)	
Mr M Hart	Objects on grounds of desirability, suitability and safety
R Starling	Has never witnessed any MPV use other than agricultural.
H Critchell	Has never witnessed any MPV use other than agricultural.
Dr A Heathershaw	Has never witnessed any MPV use other than agricultural.
Mrs E Brierley	Has never witnessed any MPV use other than agricultural.
A Mackinder	Has never witnessed any MPV use other than agricultural.
Ms M Tepper	Has never witnessed any MPV use other than agricultural.
Submissions in response to consultation 2012 (55)	
Name	Comments
Bidwells (Agent for Landowner)	Acknowledgement of consultation letter, no evidence for consideration.
Cyclist's Touring Club	No recollection of any MPV use. Recall notices stating private unsuitable for motor vehicles. Does not believe the application satisfies any exemption within NERC [see Law, Appendix 2, paragraph 7.1].
Mr G Plumbe	No comments unless it is considered that the route is a byway open to all traffic

Name	Comments
Cdr W Norman	Has resided adjacent the claimed route since 1962 and during this time has not witnessed any public MPV use.
C Pinder (Senior Archaeologist)	No finds, features or historical buildings on or in vicinity of route but has concerns as to possible increased use leading to damage to surrounding area.
K Gocher (Ramblers' Association)	Provides no documentary evidence for consideration, does not support the application but would not object to the route being recorded as a restricted byway.
South West Coast Path Association	Provides no documentary evidence for consideration, do not support the application but would not object to the route being recorded as a restricted byway.
Mrs S Biddiss	Used route regularly for 20 years, has never witnessed any MPV use other than agricultural.
D Squibb	Has never witnessed any MPV use other than agricultural.
Mrs R Evans	Has never witnessed any MPV use other than agricultural.
T Bevins	Has never witnessed any MPV use other than agricultural.
Mr & Mrs P Riley	Have never witnessed any MPV use other than agricultural.
Mrs S Ayling	Has never witnessed any MPV use other than agricultural.
D Thomas	Has never witnessed any MPV use other than agricultural.
A Bugler	Has never witnessed any MPV use other than agricultural.
Mrs R Porter	Has never witnessed any MPV use other than agricultural.
I Locke	Has never witnessed any MPV use other than agricultural.
P Critchell	Has never witnessed any MPV use other than agricultural. Has occasionally challenged people attempting to use the route.
R Backwell	Has never witnessed any MPV use other than agricultural.
Mrs M Morris	Has never witnessed any MPV use other than agricultural. Route is unsuitable for such use.
M Pressly	Has never witnessed any MPV use other than agricultural.
Mrs C Pressly	Has never witnessed any MPV use other than agricultural.
T Maidment	Has never witnessed any MPV use other than agricultural.
C & E Bird	Has never witnessed any MPV use other than agricultural.
S Emblen	Has never witnessed any MPV use other than agricultural.

Name	Comments
C Hubbard	Has never witnessed any MPV use other than agricultural.
Mrs J Backwell	Has never witnessed any MPV use other than agricultural.
Mr & Mrs D Caddy	Have never witnessed any MPV use other than agricultural.
G Embley	Has never witnessed any MPV use other than agricultural.
Natural England	Part SSSI and part of South West Coast Path. Refers to past correspondence with the County Council in respect of use by four wheel drive vehicles and that regular vehicular use could lead to damage to site.
Mrs D Emblen	Has never witnessed any MPV use other than agricultural.
D Daw	Opposes use of vehicles, comments relate to issues of suitability, desirability or safety.
W Craig	Has never witnessed any MPV use.
Miss M Kemp	Sees no merit in the application, no evidence for consideration
T Blake	Has never witnessed any MPV use other than agricultural.
M Hart	Stopped one motorcyclist 2011 and another several years before that.
B Harrison	Has never witnessed any MPV use other than agricultural.
M Burgess	Has never witnessed any MPV use other than agricultural. Other comments relate to suitability, desirability or safety.
S Miller	Has never witnessed any MPV use other than agricultural.
W Norman	Has never witnessed any MPV use other than agricultural.
J Desmond	Has never witnessed any MPV use other than agricultural.
T Maggs	Challenged 'unauthorised' users, no dates given.
T Newton	Has never witnessed any MPV or carriage use other than agricultural.
Cllr T Seall	Has never witnessed any MPV use other than agricultural.
C Bird	Has never witnessed any MPV use other than agricultural.
M Seall	Has never witnessed any MPV use other than agricultural.
B Alsop	Has never witnessed any MPV use other than agricultural.
Mrs L Hood	Has never witnessed any MPV use other than agricultural.

Name	Comments
The Osmington Society	Does not contest that the evidence indicates the route is a byway but do not believe that the application satisfies any of the exemptions to presumed extinguishment of MPV rights under NERC. Upgrading should be to restricted byway status.
H Ballard	Has never witnessed any MPV use.
E Craig	Have never witnessed any MPV. Other comments relate to issues of suitability, desirability or safety.
Mrs M Parker	Route never used by MPVs. Is aware of motorcyclists being challenged, no dates provided.
P Stein	Has never witnessed any MPV use other than agricultural.
J Carey	Has never witnessed any MPV use other than agricultural.
J Hayes Sr Ranger DCC	Is not aware of any MPV use.
Many of the above submissions	<p>Issues were raised such as: -</p> <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Noise • Pollution • Suitability • Disruption, damage to the historical environment • Current and past use

7 Other submissions received

7.1 No further relevant submissions have been received in respect of this application.

8 Analysis of documentary evidence

Highway Board Minutes

8.1 There are several references to the **White Horse Hill Road, Osmington** contained within the **Dorchester Rural District Highway Board Minutes** and in addition the **Weymouth Rural District Council Highway Authority Minutes**.

8.2 On **26 June 1880** the **Dorchester Rural District Surveyor** presented to the Board a list of those roads within the area that he thought may be considered as being “unnecessary” in respect of a proposed application in accordance with **Section 24 of the Highways and Locomotives (Amendment) Act 1878**. The Surveyor reported that these roads were subject to “only a small quantity of public traffic” passing over them and requested that the Board determine whether or not they were suitable for consideration under the Act “it being difficult to define unnecessary highways under the Act”.

- (a) The list of 'unnecessary' roads includes one road in Osmington referred to as the "White Horse Hill Road". The Board determined that ***"a copy of the report be sent to every member of the Board and that each Waywarden be requested to give a written report to the next Board meeting on the roads in his own Parish affected by the application"***.
- 8.3 At their meeting of **18 September 1880** the **Dorchester Board** discussed the matter of the 'unnecessary roads'. The Chairman suggested that the District should be divided into sub-districts and a Committee appointed for each sub district. It was resolved that the sub-committees for these sub-districts be appointed and that their reports [on unnecessary roads] be sent to the Board at their next meeting to be held in November. Osmington parish was placed within the new Weymouth District.
- 8.4 At their meeting held on **27 November 1880** the Vice Chairman of the Board questioned the legality of extending the timescale for the submission of the reports on 'unnecessary roads' from the newly appointed sub-committees on the grounds that the Board, in extending the time, had rescinded the resolution passed at the meeting held in September. No reports had been received from the sub-committees and the time for receiving the same was extended to the meeting to be held in February.
- 8.5 At their meeting held on **19 February 1881** the minutes of the committees appointed to make inquiries as to the Roads considered unnecessary were read. It was resolved that the report be printed and circulated and the matter stand over till September. At the meeting held on **17 September 1881** it was ordered that the matter stand over for a further six months.
- 8.6 There are no further entries in respect of the matter of 'unnecessary roads' within the Dorchester Highway Board Minute book.
- 8.7 At the meeting of the **Weymouth Rural District Council** sitting as the **Highway Authority** held on **20 October 1896** the Surveyor, under the heading of paths and roads at Osmington, reported that ***"the roadway complained of by the Parish Council (where the water crosses the road at the bottom of White Horse Hill) should be improved for foot passengers by the construction of a footway.....what I would recommend is that a 12 inch pipe be laid and a footway 6 ft wide be constructed with a few loads of chalk near the same. This in my opinion would be sufficient to meet the case"***. The Surveyor's report was adopted and the Surveyor was instructed to see that the works were carried out.
- 8.8 At their meeting held on **28 March 1899** the Clerk read a communication from the County Council requesting information as to what roads in the District the Council consider should be dealt with under Section 6(1a) of the **Locomotives Act 1898**. It was decided to leave the matter in hand until the meeting in April.

- 8.9 At their meeting held on **4 April 1899** the Surveyor provided a list and description of the roads within the parishes of the district considered as suitable candidates in respect of **Section 6(1a) of the Locomotives Act 1898**. The list included a road in Osmington described as leading ***“from the Main Road near the Schools through the Village to the little Brook crossing the road at Sergeants Field, & known as White Horse Hill Road”***. The Clerk was instructed to make representation to the County Council in accordance with the remarks set out opposite the several roads in red ink and a further resolution stating ***“that all traction engine traffic be restricted when causing damage to the District Roads, after the breaking up of severe frosts”*** was carried unanimously.
- 8.10 The Highway Board records provide strong evidence as to the status of some, if not all, of the claimed route being that of a public carriageway and of maintenance undertaken on it through the provision of a new drainpipe and footway for pedestrian users, the location of which is shown as point B1 on Drawing 12/40/1.
- 8.11 In **1880** the **White Horse Hill Road** was included in a list of proposed ‘unnecessary roads’ in respect of **Section 24 of the Highways and Locomotives (Amendment) Act 1878**. Due to the small amount of traffic using it the **Dorchester Highway Board** sought approval under the Act to stop its maintenance. However, it should be noted that even if such a request was granted it did not extinguish the public rights over the road, only the duty of the Board to maintain it and, in addition, no evidence has been discovered to suggest that the proposal was carried out.
- (a) Although it can be argued that Section 24 of the Act could apply to any highway to which the public had access it is generally accepted that it was used in respect of public carriageways rather than footpaths or bridleways. This conclusion is reinforced by the action taken by the **Weymouth Rural District Council** in **1899** when the same road was included in a list with respect to **Section 6 (1a) of the Locomotives Act 1898**, under which the **Highway Authority** sought to restrict or prohibit the use of the road by locomotives over that section of the road that is presently recorded as a public carriageway, the D21217 and known as Church Lane, Osmington from its junction with the county road the A353 and also that part of the claimed route from point A to the ‘brook’ located at point B2.

Railway Plans

- 8.12 In **1845** the **Southampton and Dorchester Railway** proposed to construct a branch line from Moreton to Weymouth via Warmwell, Poxwell, Osmington and Preston. Reference to the accompanying plan shows that three possible routes were considered between Poxwell and Preston. Two of the routes proposed would pass through Osmington, one through the centre of the village (the Main Line) and a second, an alternative route, passing to the north of Osmington and crossing the claimed route at a point a short distance to the south of point B2. Reference to the plan reveals that the Main Line crossed a road, Church Lane, Osmington numbered “24”, whilst the alternative route crossed the claimed route, which was numbered “27a”. The latter crossing point was located approximately 4 miles 6.5 furlongs from the proposed terminus of the line at Weymouth.

- 8.13 On an additional plan entitled “Alternative Section”, which deals with the second route, the point at which the railway would have crossed the claimed route can be confirmed as being located approximately 4 miles 6.5 furlongs from Weymouth and the plan identifies this point as being a **“Parish Road from Osmington level unaltered Height of Bridge 15ft for the space of 10ft Width [of Bridge] 16ft”**.
- 8.14 The accompanying book of reference identifies the owner of the road numbered 24 as being “The Surveyor of Highways” but does not include an entry or description for the feature (the claimed route) numbered 27a or the adjacent property numbered 27. Whilst this may appear puzzling, the column within the Book of Reference entitled “Numbers referring to the plan” has a further hand written annotation “of the main line” and it is possible that, the book of reference may have only included those features affected by the Main Line and not the alternative routes. No additional Book of Reference has been discovered.
- 8.15 In **1846** the **Southampton and Dorchester Railway** submitted a further, revised plan, which contains details of the route finally selected and which, in respect to the area within the vicinity of Osmington, was to follow the alternative route as shown on the earlier plan and discussed at paragraphs 8.13 and 8.14 above. The railway would have crossed a road, the claimed route, just to the south of point B2 the road again being numbered 27a. Whilst there is no accompanying Book of Reference the road is annotated on the plan as being a **“Parish Road level unaltered, Arch Span 25ft Height 15ft”**.
- 8.16 **The Railway Plan and Book of Reference** provide very strong evidence to the fact that the part of the claimed route as shown from point A to approximately point B2 was recognised as a public carriageway. Of particular note are the revised dimensions of the proposed bridge, which, under **Section 49 of The Railway Clauses Consolidation Act 1845** required the width of every bridge crossing a public carriageway to be no less than 25 feet and the height of the arch from the surface of the road to be no less than 15 feet.

Tithe Apportionment and Plan

- 8.17 Reference to the plan accompanying the **Osmington Tithe Apportionment 1840** shows that all of the routes currently recorded as public carriageways are colour-washed in brown. Both Church Lane, Osmington, south of and adjacent the claimed route shown at point A and the claimed route itself between points A and E are shown in this manner. The route is also shown to continue westwards from point E along the ridgeway and continuing into the parish of Preston & Sutton Poyntz. With the exception of a short section of the eastern boundary shown between points B2 and B3, between points A and D the route is defined by solid lines to either side and appears to be un-apportioned, suggesting that it was not subject to tithe, indicating that it may have been considered to be a public highway. From D to E the route passes through a parcel of land numbered “230” and named within the apportionment as “The Down”, its state of cultivation being described as “Pasture”.

- 8.18 By themselves Tithe Apportionments rarely, if ever, 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. In this particular case the Tithe Apportionment provides evidence of the physical existence of the route at the time. However, in light of the evidence provided by the Highway Board Minutes, Railway Plans and the documents in respect of the turnpike diversion dispute, it is considered reasonable to apply additional weight to this evidence and conclude that it lends additional support towards the existence of the claimed rights.

Turnpike Diversion Plans

- 8.19 In **1830** the **Weymouth, Melcombe Regis and Dorchester Turnpike Trust** diverted part of the old Turnpike road, which ran from Osmington church to Poxwell Church and is currently recorded as a public bridleway from Osmington to Pixon Barn, point M, and as both a public bridleway and public carriageway from point M eastwards towards Poxwell Church. The documents discovered suggest that the land occupied by the former turnpike route was to be exchanged for the land acquired for the new route. A long dispute followed, relating to, amongst other things, the status and obstruction of the old turnpike. It was argued that it was an ancient highway prior to being made a turnpike and therefore the land it occupied could not be exchanged, as on abandonment by the Turnpike Trust it reverted to its former status of an ordinary highway.
- 8.20 In connection with the dispute, which involved at least two court appearances, a number of plans were produced of the area around Osmington and Poxwell that depict the routes of both the former and new turnpikes and, in addition, several other roads within the area. In addition to the two turnpike routes the **1845 plan** clearly shows the claimed route, the White Horse Hill Road, extending north from Osmington and connecting to the ridgeway road, which is coloured green and shown as leading “To Culliford Tree”.
- 8.21 The **1847 plan** describes the ridge road as a parish road from Winfrith to Culliford Tree whilst a further plan, which is undated but most likely from the same period, describes it as leading “**to Culliford Tree, Martin’s Town and Bridport**” and also depicts the White Horse Hill Road, which is annotated as leading “**to Culliford Tree and Dorchester**”.
- 8.22 The plans also identify several landholdings adjacent the ridge road. Of particular note is that belonging to the **Mico Charity Estate** located adjacent the ridge road a short distance to the east of point E. Access to this land was the subject of an exchange of letters between the trustees of the **Mico Estate**, the **Weymouth and Dorchester Turnpike Trust**, **Mr Job Gill** and the **Rev George Pickard**, the brother of the former owner of the land at the time the diversion of the turnpike road was proposed.

- 8.23 The correspondence refers mainly to the proposed stopping up of the route of the old turnpike but provides some useful information in respect of the claimed route. In brief, on **22 September 1845** the **Trustees of the Mico Charity** wrote to the **Trustees of the Weymouth & Dorchester Turnpike** in respect of their forthcoming meeting at which they were to discuss an application made by the **Rev G Pickard** to stop up the ancient highway that led from the Mico Estate to the Turnpike Road by the Church at Poxwell. They referred to the earlier court cases, stating that the route was an ancient highway the use of which they had enjoyed unhindered **“within the memory of man”** and that they would resist by every means in their power the attempt by Mr Trenchard to deprive them of a right that they had always enjoyed.
- 8.24 On **30 September 1845** Mr Pickard responded to the Mico Charity Trust disputing the period over which the old turnpike road had been closed to the public and to the claim of its status being that of an ancient public highway. However, of particular interest to this case is his reference to the several other roads that provided access to all parts of the Mico Charity Estate.
- (a) The first of these he describes as being **“a few hundred yards beyond Poxwell on the Weymouth Road, there is a road over the hill which is and always has been leading to the higher part of the Mico Charity Estate, which road is regularly used by Mr Andrews of Upton with his horses and wagons”**. This road is that shown on the turnpike diversion plans and described as **“a parish road from Winfrith to Culliford Tree”** also referred to as the **Down Road**, which then led into the ridge road.
- (b) Mr Pickard describes three further roads, one leading from Owermoigne and one from Broadmayne and another road **“out of the Parish of Osmington leading past the other part of the Mico Estate and on to the upper part of the same near the White Horse”** before concluding **“thus from every possible point there is free and easy access to the Mico Estate without the piece of road in question, which, I beg to say, never did exist as a public road until it was made a turnpike”**.
- 8.25 **Mr Job Gill** responded to Mr Pickard’s letter on **3 October 1845**. He describes himself as **“Yeoman and Rentor of the Mico Charity Estate in the Parish of Osmington”**.
- (a) In respect of the alternative roads suggested by Mr Pickard to be available to the Estate, Mr Gill states that the first of these, the Down Road, **“is impassable for loaded wagons, from the said Turnpike Road to the Charity Estate; and, consequently, can be of no use to that property”**.
- (b) With respect to the roads from Owermoigne and Broadmayne Mr Gill states that he was not aware of the existence of the former and in respect of the latter **“the distance is so great that it is useless as contrasted to the utility of the road obstructed by Poxwell Church”**.

- (c) Mr Gill concludes by stating ***“the only road practicable at present, in consequence of the obstruction of the Old Turnpike Road, and by which the Upper Part of the Charity Estate can be approached, is the road leading from the village of Osmington to the White Horse, and it requires at least ten horses to take a load to that part of the Estate, which number of horses I do not keep”***.

8.26 These documents provide good supporting evidence to both the status of the claimed route and its extent. It is reasonable to conclude that the road from Osmington to which both Mr Pickard and Mr Gill refer is that of the claim, the White Horse Hill Road. Neither Mr Pickard nor Mr Gill refer to any private or permissive rights existing over any of these roads, which strongly suggests that they were all regarded as being public. Furthermore, due to the use of them with wagons this leads to the conclusion that they were all regarded as being public carriageways. In support of this conclusion Mr Pickard states ***“thus from every possible point there is free and easy access to the Mico Estate”*** and in addition the Down Road is described as a parish [public] road from Poxwell to Culliford Tree on the turnpike diversion plans. The fact that the Down Road continues past the Mico Estate and through its junction with the claimed route at point E to Culliford Tree indicates that the claimed route was not a cul-de-sac but a through route, which is supported by Mr Gill’s statement that, as the old turnpike was obstructed, this route was the only practicable one albeit that a large team of horses was required to haul a loaded wagon up it.

Finance Act 1910

- 8.27 The claimed route is clearly visible on the Ordnance Survey 25 inches:1 mile scale map used as the base map for the **Finance Act plans**. The claimed route between points A and E passes through **Hereditament 59**. No part of the route is excluded for the purpose of valuation although the accompanying **Field Book** records that a deduction of £10 was given in respect of public rights of way or user.
- 8.28 Although the exclusion of a way within these documents provides strong evidence towards the conclusion that the route was regarded as a public carriageway the reverse is not necessarily true. Whilst there were severe penalties for wrongfully claiming tax relief there were no penalties for not acknowledging the existence of public highways. Consequently, in this instance, the documents provide no evidence for or against the claimed status of the route and are therefore considered as being neutral.

List of Streets

- 8.29 The **schedule of roads** on the List of Streets records that part of the claimed route as shown between points A and B1 is a part of an unclassified road that commences from its “junction with the A353 near Osmington School to Halls Farm Entrance”. It is recorded as comprising of 0.49 miles (0.79km) of paved road and has the reference number D212/17.

- 8.30 The fact that there is no record as to when the road was formally adopted suggests an historical origin. As the practice within Dorset has been to record only public carriageways on the List of Streets this evidence, in conjunction with the other documents examined is considered as providing strong support to the status of that part of the claimed route from A to B1 being that of a public carriageway.

National Parks and Access to the Countryside Act 1949

Parish Surveys

- 8.31 The precise date that the **Osmington Parish Survey** was undertaken is not known. However, the majority of the application route is clearly shown on the Survey map, being given the number 16 for identification and commencing from point B through to its junction with Bridleway 24, Osmington, located a short distance to the east of point E as shown on Drawing 12/40/1. That part as shown between points A and B was unrecorded.
- 8.32 The accompanying **schedule** contains little information but defines the route as a “**Carriageway**”, with what appears to be a later annotation of “**CRB**” (Cart or Carriageway used mainly as a Bridleway). It is described as commencing from “**Osmington Village**” leading to “**Top of White Horse Hill**”, its condition being described as “**poor**”.

Draft, Provisional and First Definitive Map

- 8.33 The information collated during and immediately following the parish surveys was used in the production of the draft map of public rights way, which in turn resulted in the publication of the provisional and first definitive maps.
- 8.34 The majority of the claimed route as shown between points B and E was recorded as **CRB 16** on the **draft map** for the **south area**, which was published in January 1955. That part of the claimed route between points A and B was unrecorded.
- 8.35 On both the **provisional map** published in 1964 and the **first definitive map** published in 1966 the claimed route as shown A to E was recorded as **Bridleway 26**.
- 8.36 As there is no record of any objections to the original claim and designation of the route as a carriageway or CRB it is presumed that the change in status of the route was due to the determination in 1958 of the National Parks Sub-Committee 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.).

Special Review – Revised Draft Map – Current Definitive Map

- 8.37 **Bridleway 26, Osmington** was subject to an investigation during the **Special Review of Rights of Way (1973)**. The Special Review Committee were advised that the route was recorded on the draft map as a ***“Carriage Road Bridleway 16 but subsequently recorded as a Bridleway 26 on the [first] Definitive Map”***. They were further advised that the section “is a farm track and is only suitable for use for heavy farm vehicles”. They were further advised that **“DRWG [Dorset Rights of Way Group] have submitted claim to have this path upgraded and have produced 6 user evidence forms”**.
- 8.38 Of the six users who provided evidence of use four did not claim any use in a vehicle throughout their respective periods of use. However, Mr Burden of Osmington, who stated that he had used the route for pleasure throughout his lifetime, claimed to have used the route on foot and with a motorcycle. Mrs Miller of Netherton Farm, Osmington, who stated that she owned the land, claimed to have used the route for both pleasure and work over a period of 55 years on foot and with a tractor.
- 8.39 On 8 August 1973 the Committee determined that the route be retained as a bridleway as ***“public vehicular rights not shown to exist thereover”***. As a consequence the claimed route (A to E) remained unaltered and was recorded on the **revised draft map (1974)** as **Bridleway 26, Osmington**.
- 8.40 The evidence derived from the records leading to the publication of the first definitive map provide some support towards the claimed public rights over the route A to E, as it indicates that the Parish understood that their survey was to include the recording of all footpaths, bridleways and RUPPs (CRBs & CRFs). The recording of the route as a CRB suggests that during the survey and investigations that led to the publication of the draft map the Parish Council had discovered evidence or had knowledge of the reputation of the route being that of a public vehicular highway. This conclusion is supported by the evidence provided by two of the users during the Special Review in 1973 in respect of their use of the route in vehicles.

Other Documents

Ordnance Survey Maps

- 8.41 The **Ordnance Survey Drawings**, which were made in preparation for the publication of the first edition of the one inch map, are drawn at a scale of 2 inches to one mile and therefore generally contain more detail than the later one inch maps. The drawing that includes the area of the claimed route was completed during **1805/06** and the claimed route, A to E is clearly depicted, being defined by a combination of broken and unbroken parallel lines.
- 8.42 The **Ordnance Survey First Edition map of 1811** at a scale of 1 inch: 1 mile shows the whole of the claimed route, defining it in the same or a very similar fashion to the earlier drawing.

- 8.43 The **1888 Ordnance Survey First Edition map**, at a scale of 6 inches:1 mile, depicts a route that corresponds with that of the claim throughout its length from A to E. The route is defined by two parallel unbroken lines from A to D and by two parallel broken lines from D to E. Approaching point E the route branches into two, one continues to point E and the other turns to the northeast, joining Bridleway 26, Osmington a little to the east of point E. The route has no annotation such as 'F.P.' or 'B.R.' and there is no indication of the presence of gate or barrier across the route. Adjacent the route, a little to the northwest of point D, is what appears to be a quarry or pit.
- 8.44 The **1903 Second Edition map** at the same scale also depicts the route throughout its length, A to E. However, at the point where the route is shown to split on the First Edition map, only the spur heading north east is shown and not the direct link to point E. In all other respects the manner in which the route is depicted and the features shown are the same as on the First Edition map.
- 8.45 The **1902 Ordnance Survey Second Edition map** at a scale of 25 inches: 1 mile shows the course of the route to follow that as shown on the Ordnance Survey 6 inch:1 mile scale map above. In all other respects the features shown and outlined are the same as or very similar to those on the 6 inch:1 mile scale maps.
- 8.46 The applicant also provided extracts from several other Ordnance Survey maps in support of the application. The **Ordnance Survey One inch Maps of 1892 and 1912** depict the route in the same or very similar manner. Although there is no accompanying key the route is defined in the same style as minor public roads in the vicinity. The **Ordnance Survey One inch Maps of 1906, 1919 and 1945** depict the route in a similar fashion as the earlier maps. However, these do have accompanying keys, which define the route as a "minor" or "third class road".
- 8.47 The **Ministry of Transport Road Map of Weymouth, Yeovil and Taunton 1923**, was produced by the Ordnance Survey and based on the Ordnance Survey 1 inch to 1 mile map of 1903-08 (being reduced to a scale of ½" inch to one mile). The map was produced as a result of the classification of roads in Great Britain undertaken by the Minister of Transport under Section 17(2) of the Ministry of Transport Act 1919. These maps were produced to provide general information as to the classification system for roads, which was dictated by the value of a road as a means of through communication, but did not guarantee the condition of any given road. Roads were classified as Class 1, Class 2 and "all other roads". Other roads were not numbered and were uncoloured. The fact that a road was uncoloured did not necessarily mean that it was inferior, many being described as excellent, but being less important channels of communication were not classified.
- 8.48 Reference to the map key reveals that the claimed route was considered as an 'other road'. Although it should be noted that the map does carry the usual disclaimer "the representation upon this map of a Road, Track or Footpath, is no evidence of the existence of a right of way". Consideration ought to be given to the authority under which the map was produced, namely the Ministry of Transport.

8.49 The early **Ordnance Survey Drawing 1805/06** and the **1 inch Map, 1811** indicate that at this time the route did physically exist and would have been capable of the passage of horse drawn carts and carriages. With the exception of a minor deviation in the vicinity of point E, by the time of the publication of the **First Edition Six Inch Map in 1888** it can be seen that the majority the route remains on the same line. The route lacks any annotation such as F.P or B.R. that may have suggested the route was considered to be a footpath or bridleway and the manner in which it is shown also indicates that it was capable of the passage of vehicles. The evidence provided by the **Second Edition Six Inch 1903 Map** and the **Second Edition 25 Inch 1902 Map** supports the conclusions reached in respect of the earlier maps The later **Ordnance Survey 1 inch Maps of 1906, 1919 and 1945** suggest that the route was considered to be a minor or third class public road and the **Ministry of Transport Road Map of Weymouth, Yeovil and Taunton 1923** also defines the route as a minor road.

8.50 In conclusion it is considered that the evidence provided by the **Ordnance Survey maps** provides some support to the claimed rights.

Commercial Maps

8.51 The applicant provided a number of extracts from various commercially produced maps of Dorset at both large and small scales some of which are held at the Dorset History Centre Ref DC/BTB:R5. Several other maps have also been submitted and or examined as part of the investigation.

8.52 The following commercially produced maps of Dorset all show the claimed route in a similar manner to other roads in the vicinity the majority of which, if not all, are known to be public carriageways.

- **1765 Taylor's Map of Dorset**
- **1773 Map of Dorset by J Bayly**
- **1787 J Cary Map of Dorset**
- **1796 Taylor's Map of Dorset (Key - Road)**
- **1801 C Smith New Map of Dorset (Key - Crossroad)**
- **1805 Map of Dorset by J Stockdale**
- **1815 J Arrowsmith's Map of Dorset**
- **1826 Greenwood Map of Dorset (Key - Crossroad)**
- **1846 Gazetteer Dorset (Key - Byeroad)**
- **1848 Pigot & Son Map of Dorset (Key - Crossroad)**
- **1863 Cruchleys Railway Map of Dorset**
- **1900s Map of Dorset by George Richmond**
- **1900s Weller Despatch Atlas**
- **1900s Wallis**
- **1900s G Philip & Son Botanical Map of Dorset**
- **1900s G Philip & Son Geological Map of Dorset**

- **1900s Bacon's New Revised Map (Key - Other Road)**
- **1900s Bacon's Geographical Map (Key - Main or Crossroad)**
- **1900s W & A K Johnston 3" Map of England**
- **1924 Harding's Map of Dorchester District (Key - Other Road)**
- **1930s Bacon's Motoring and Cycling Road Map (Key - Minor Road)**
- **1936 Johnston Motoring & Touring map**
- **1940s Geographia Road Map of Dorsetshire (Key - Other Road)**

Bartholomews Maps

- 8.53 The applicant also provided several extracts from **Bartholomew Maps published in the years 1911, 1920, 1944 and 1951**. They are all produced at a scale of 2 miles:1 inch and depict a route that corresponds with that of the claim. Reference to the accompanying keys reveals that the route is defined on the 1911 and 1920 maps as an "inferior road". The maps from 1944 and 1951 define it as a combination of "good" and "serviceable" roads.
- 8.54 The extracts from the **commercially produced maps of Dorset**, examined or submitted in evidence by the applicant, or discovered during the investigation will have, in all probability, derived their data from other surveys such as the Ordnance Survey. Few are wholly independent surveys and several have no accompanying key. However, it is of note that those that do have keys all define the route as a minor road or crossroad. In addition, all of the maps examined show the route, or one that generally corresponds to it, in a similar and consistent manner throughout a period of approximately 200 years. Consequently, they do provide supporting evidence as to the physical existence of the route over this period and in light of all other available evidence examined may be considered to provide some support to the application.

Aerial Photographs

- 8.55 The **Aerial Photographs** from the years **1947, 1972, 1997 and 2009** all show the route clearly, it being very well defined by two parallel hedges between points A and D, from which point the route is clearly discernable as it continues in a north-westerly route to point E. The photographs indicate that there has been little, if any, change to the physical characteristics of the route throughout this period.

9 Analysis of user evidence supporting the application

- 9.1 Although the submissions received in response to the consultation suggests that some limited use of the way by the public in vehicles has taken place this has not been corroborated by the users themselves. The applicant has not provided any user evidence in support of the application and is relying wholly on the documentary evidence submitted or discovered during the investigation.

- 9.2 During the investigation as part of the Special Review in 1973 two witnesses provided evidence of use in vehicles. Mr Burden stated that he had used the route for pleasure throughout his lifetime on foot and with a motorcycle. Mrs Miller, who claims to have owned the land, also stated that she had used the route for a period of 55 years both for work and pleasure on foot and in a tractor.
- 9.3 Both witnesses stated that they believed the route to be public and neither had ever been prevented from using the route nor had they seen or been aware of any notices or signs to the contrary. They both used the route at anytime or all times and were aware of gates on the route but do not state whether or not they were locked. They both state that the route was used by other people, including friends or relatives, but do not say by what means.
- 9.4 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.
- (b) As no earlier date of challenge has been identified or corroborated that would be considered sufficient to have brought the use of the route with vehicles into question the date of the application, 21 November 2005, will be taken as the date that rights for mechanically propelled vehicles were brought into question.

10 **Analysis of evidence opposing the application**

- 10.1 Of the 7 objections received one relates to issues of desirability, suitability or safety and therefore cannot be taken into consideration in determining this application.
- 10.2 The remaining objections rely on the individual's personal experience of not witnessing any use of the route by vehicles other than agricultural vehicles. However, whilst this may be the experience of the individuals concerned it is unlikely that they kept the route under constant observation and other submissions and documents examined during the investigation do provide evidence of public use in vehicles.
- 10.3 Likewise, the majority of the remaining submissions relate to the lack of any observation of the use of the route with vehicles or issues that cannot be taken into account when determining whether or not the claimed rights exist.
- 10.4 The comments of Natural England are noted but relate to management issues that may arise if the application were successful. However, they are not issues that can be taken into account when determining whether or not the claimed rights exist.
- 10.5 The Osmington Society is of the opinion that the evidence submitted indicates that the route is, on balance, a byway open to all traffic. However, they are of the opinion that the application does not satisfy any of the exemptions to presumed extinguishment contained within the Natural Environment and Rural Communities Act 2006 and conclude that the route ought to be upgraded to a restricted byway.

11 **Analysis of other submissions**

11.1 The remaining submissions relate to, for example, requests for further information and contain no evidence to be considered.

12 **Conclusions**

12.1 As the whole of the claimed route is already recorded upon the definitive map and statement as a public bridleway it is necessary for members to determine whether, on the balance of probability, the highway shown on the definitive map and statement as a bridleway ought to be shown as highway of a different description.

12.2 It is considered that the most significant pieces of evidence are those derived from the **Dorchester and Weymouth Highway Board Records 1880 to 1899**, the **Southampton and Dorchester Railway Plans 1845/46** and the papers relating to the **Poxwell Turnpike Dispute 1845/47**. The record of maintenance and repair to the route (1896), its inclusion within a list of 'unnecessary roads' (1880) and an attempt to restrict the weight of locomotives using the route (1899) contained within the **Highway Board Records** provide very strong evidence to the conclusion that the route was a public carriageway.

12.3 This is reinforced in the knowledge that the **Southampton and Dorchester Railway** were to provide a bridge across the route, the dimensions of which were revised in light of the **Railway Clauses Consolidation Act 1845** and which were legally required when crossing public carriageways. The plans associated with the **Poxwell Turnpike Dispute 1845/47** and the statements of the individuals involved provide further strong evidence to the effect that the route was considered to be a public carriageway.

12.4 The **Osmington Tithe Apportionment 1840** provides evidence to the physical existence of the route at the time and in light of other evidence discovered is considered as providing supporting evidence towards the claimed rights.

12.5 The designation of the route as a **carriageway**, later altered to "**CRB**" in the **Osmington Parish Survey** and on the **draft map 1955** suggests that the route was regarded as a public vehicular highway and, in light of all other available evidence, is considered as providing further support to the application.

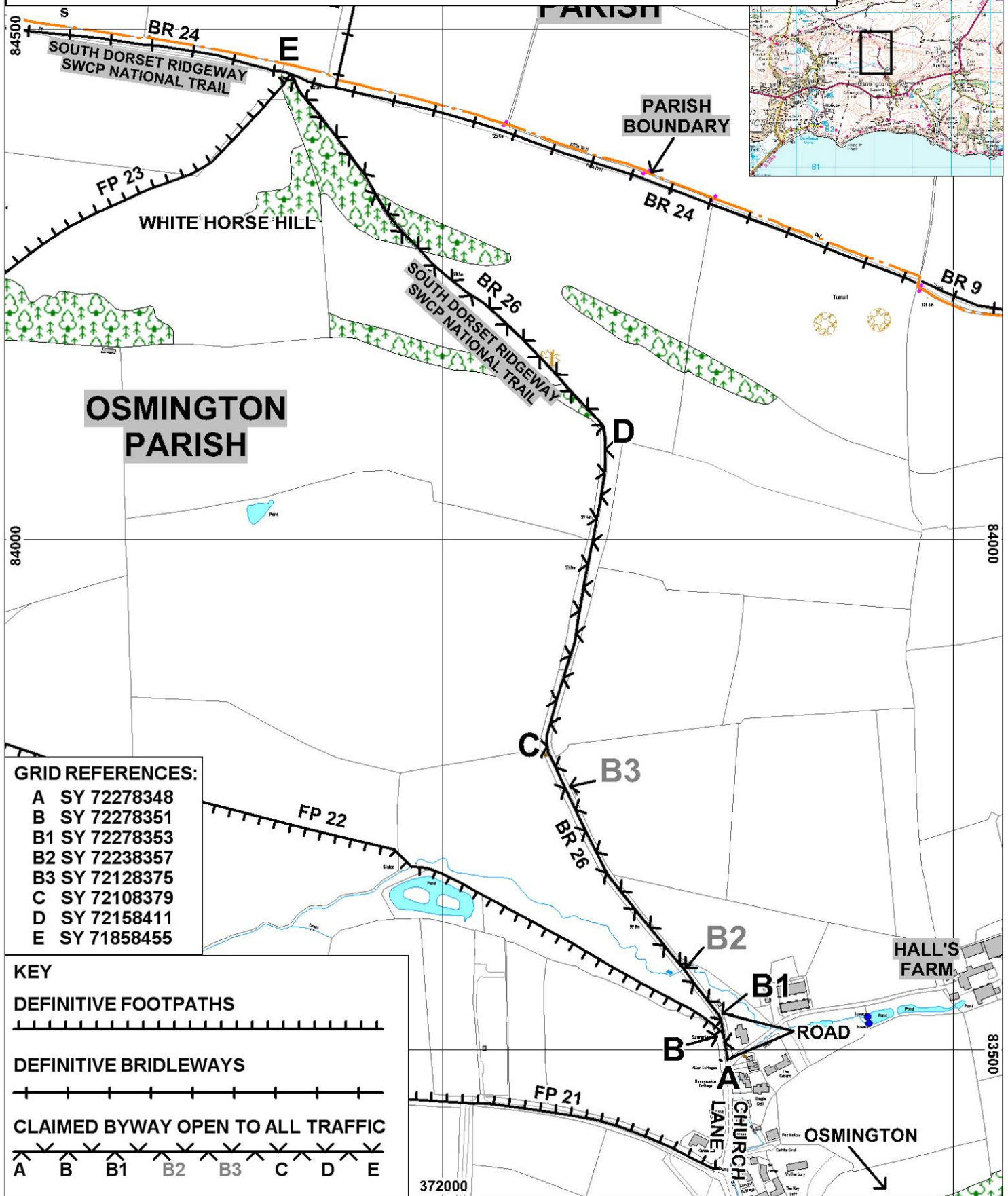
12.6 The evidence provided by the **Ordnance Survey and commercial maps**, whilst providing no conclusive evidence towards the status of the claimed route, do provide evidence as to the route's physical existence throughout the period they encompass and, in light of all other available evidence, may also be considered as providing some additional support to the application.

12.7 With respect to that part of the route as shown from A to B1 on Drawing 12/40/1, as the route is already recorded upon the List of Streets and sufficient evidence exists as to its status being that of a public carriageway; it is recommended that the application be refused.

- 12.8 With respect to the remainder of the route as shown between points B1 to E on Drawing 12/40/1, the cumulative weight of the documentary evidence analysed in paragraph 8 provides very strong evidence towards the existence of public vehicular rights and is considered sufficient to demonstrate, on balance, that the claimed public rights exist and an order should be made.
- 12.9 If members are not satisfied that the documentary evidence shows, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes a deemed or inferred dedication.
- 12.10 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. However, in this instance no user evidence has been identified during the relevant 20 year period.
- 12.11 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.
- 12.12 Therefore it is recommended that an order be made to record that part of the claimed route as shown B1 – C – D – E on Drawing 12/40/1 as a restricted byway.
- 12.13 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

June 2013



GRID REFERENCES:

- A SY 72278348
- B SY 72278351
- B1 SY 72278353
- B2 SY 72238357
- B3 SY 72128375
- C SY 72108379
- D SY 72158411
- E SY 71858455

KEY

- DEFINITIVE FOOTPATHS
 - DEFINITIVE BRIDLEWAYS
 - CLAIMED BYWAY OPEN TO ALL TRAFFIC
- A B B1 B2 B3 C D E

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 26, OSMINGTON TO BYWAY OPEN TO ALL TRAFFIC (PART OF THE SOUTH WEST COAST PATH NATIONAL TRAIL)

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 12/40/1

Date: 3/06/2013

Scale 1:5000

Drawn By: ACH

Cent X: 372060

Cent Y: 83978

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 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 Finance Act 1910

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

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

5 National Parks and Access to the Countryside Act 1949

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

6 Natural Environment and Rural Communities Act 2006

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

Table of documentary evidence

Date	Document	Comment
1765	Taylor's Map of Dorset	Shows claimed route A to E. Key defines as road (mainly enclosed i.e. hedged)
1773	J Bayly Map of Dorset	Shows claimed route A to E. Key defines as 'Cross Road'.
1787	Cary Map of Dorset	Shows claimed route A to E. No Key
1796	Taylor's Map of Dorset	Shows claimed route A to E.
1801	Smith New Map of Dorset	Shows a route generally corresponding to that of the claim. Key defines as 'Cross Road'.
1805	J Stockdale Map of Dorset	Shows a route generally corresponding to that of the claim. No Key.
1805/6	Ordnance Survey Drawings	Shows claimed route A to E.
1811	Ordnance Survey First Edition map scale 1 inch:1mile	Shows claimed route A to E.
1815	J Arrowsmith's Map of Dorset	Shows claimed route A to E.
1826	Greenwoods' Map of Dorset	Shows claimed route A to E. Key defines as 'Cross Road'.
1840	Osmington Tithe Apportionment & Plan	Shows claimed route A to E.
NOTE: Section 49 of The Railway Clauses Consolidation Act 1845 required the width of every bridge crossing a public carriageway to be no less than 25 feet span and the height of the arch from the surface of the road to be no less than 15 feet.		
1845	Southampton to Dorchester Railway - Weymouth Branch Railway Plan & Book of Reference	Crosses route at B1. Route defined as both public road and parish road. Requirement for bridge noted, dimensions: height 15 ft, width 16 ft.
1845/47	Poxwell Turnpike dispute plans	Route shown on 'map of roads in Poxwell and Osmington' and other plans, one being annotated as leading "to Culliford Tree & Dorchester".
1845/47	Poxwell Turnpike dispute correspondence	Described and alluded to as a public carriage road within correspondence between Mico Charity Estate, Turnpike Trust, Mr Pickard and Mr Gill.
1846	Southampton to Dorchester Railway - Weymouth Branch Railway Revised Plan	Described as Parish Road requiring a bridge, bridge dimensions revised to 25 feet span and 15 feet height (see note above).

Date	Document	Comment
1846	Gazetteer Map of Dorset	Shows claimed route A to E. Key defines as 'bye-road'.
1848	Pigot & Son Map of Dorset	Shows claimed route A to E. Key defines as 'cross-road'.
1863	Cruchley's Railway and Station Map of Dorsetshire	Shows claimed route A to E. No Key.
1880	Dorchester Highway board Minutes	Included within a list of 'unnecessary roads' (Sec 24 of the Highways and Locomotives (Amendment) Act 1878)
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1888	Ordnance Survey First Edition map scale 6 inches: 1 mile	Shows claimed route A to E. Not annotated as either 'F.P.' or 'B.R.'
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.	
1892	Ordnance Survey Map scale 1 inch:1 mile	Shows claimed route A to E.
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.	
1899	Weymouth Rural District Council (as Highway Authority)	Evidence of maintenance, new drainpipe. Listed under Section 6 (1a) of the Locomotives Act 1898 to restrict heavy locomotives from using route.
1902	Ordnance Survey 25 inches to 1 mile 2 nd edition map	Shows claimed route A to E. Not annotated as either 'F.P.' or 'B.R.'
1903	Ordnance Survey 6 inches to 1 mile 2 nd edition map	Shows claimed route A to E. Not annotated as either 'F.P.' or 'B.R.'
1900s	Map of Dorset by George Richmond	Shows claimed route A to E.
1900s	Weller Despatch Atlas	Shows claimed route A to E.
1900s	G Philip & Son Botanical Map of Dorset	Shows claimed route A to E.
1900s	G Philip & Son Geological Map of Dorset	Shows claimed route A to E.
1900s	Bacon's New Revised Map	Shows claimed route A to E. Key defines as 'Other Road'.

Date	Document	Comment
1900s	Bacon's Geographical Map	Shows claimed route A to E. Key defines as 'Main or Cross Road'.
1900s	W & A K Johnston 3" Map of England	Shows claimed route A to E. No Key.
1906	Ordnance Survey map scale 1 inch:1 mile	Shows claimed route A to E. Key defines as 'Minor or 3 rd Class Road'
1910	Finance Act Plans	Shows route A to E. Not excluded from valuation.
1911	Bartholomew Map	Shows claimed route A to E. Key defines as 'Inferior Road'.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1912	Ordnance Survey map scale 1 inch:1 mile	Shows claimed route A to E. No Key.
1919	Ordnance Survey 1 inch Map	Shows claimed route A to E. Key defines as 'Minor or 3 rd Class Road'.
1920	Bartholomew Map	Shows claimed route A to E. Key defines as 'Inferior Road'.
1923	Ministry of Transport Road Map of Weymouth, Yeovil and Taunton	Shows route A to E. Key defines as 'Other Road'.
1924	Harding's Map of Dorchester District	Shows claimed route A to E. Key defines as 'Other Road'.
1930s	Bacon's Motoring and Cycling Road Map	Shows claimed route A to E. Key defines as 'Minor Road'.
1936	Johnston Motoring & Touring map	Shows claimed route A to E.
1940s	Geographia Large Scale Road Map of Dorsetshire	Shows claimed route A to E. Key defines as 'Other Road'.
1944	Bartholomew Map	Shows claimed route A to E. Key defines as 'Serviceable Road'.
1945	Ordnance Survey map scale 1 inch:1 mile	Shows claimed route A to E. Key defines as 'Minor or 3 rd Class Road'.
1947	Aerial Photograph	Shows claimed route A to E. Route very well defined.

Date	Document	Comment
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 and horseback but also with vehicles should be recorded as a CRB.	
1951	Bartholomew Map	Shows claimed route A to E. Key defines as 'Serviceable Road'.
1955	Parish Survey & draft map south area	Recorded as Carriageway, later amended to CRB 16 (Carriage or Cart Road Bridleway)
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
Undated	List of Streets	That part of claimed route from A to B1 recorded as adopted highway.
1964	Provisional Map	Recorded as Bridleway 26.
1967	First Definitive Map	Recorded as Bridleway 26.
1972	Aerial Photograph	Shows claimed route A to E. Route very well defined.
1973	Special Review	Subject to claim for vehicular rights, not upheld.
1974	Revised Draft Map	Recorded as Bridleway 26.
1989	Current Definitive Map	Recorded as Bridleway 26.
1997	Aerial Photograph	Shows claimed route A to E. Route very well defined.
2009	Aerial Photograph	Shows claimed route A to E. Route very well defined.

Extracts from key documents

(See the Director for Environment's file RW/T412
for copies of other documents mentioned)

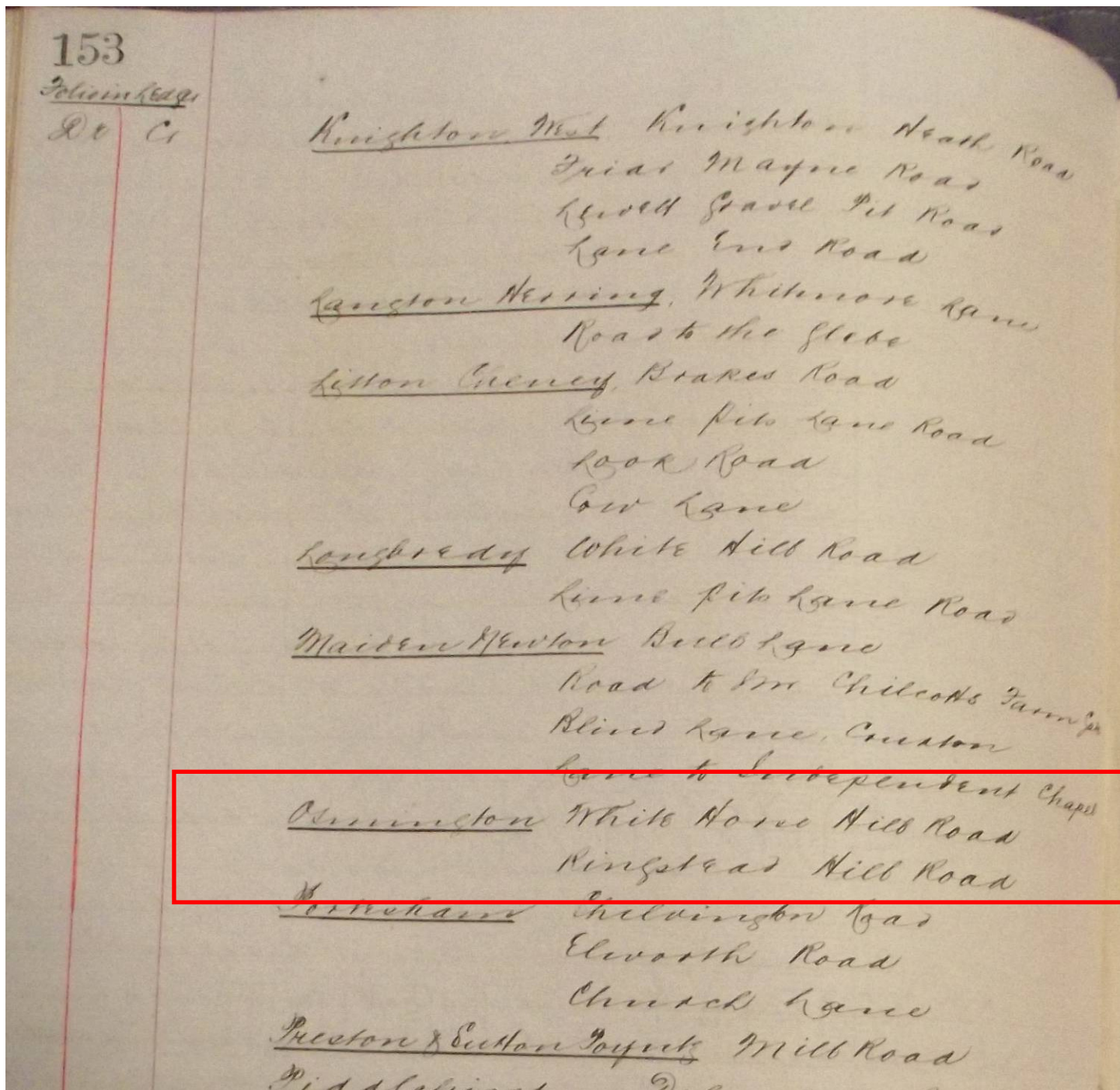
1880 to 1899 Dorchester and Weymouth Highway Board Records

Dorchester Highway Board 26 June 1880

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*The Surveyors report as to the Roads
considered by him to be unnecessary and
for which application should be made under the
24th Section of 11 and 12 Victoria cap 77 of which
the following is a copy was read
To the Dorchester Highway Board
Gentlemen*

*In accordance with your instructions
given on the 8th ulto I beg to report to you
certain Roads in each Parish over which
only a small quantity of public traffic passes
so that the same may be taken into consideration
by you as to whether or not they come under
the 24th Sec of The Highway and Locomotive
(Amendment) Act 1878 it being difficult
to define unnecessary highway under
the act above referred to*



Weymouth Highway Board (Weymouth Rural District Council) 20 October 1896

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A Meeting of the
Highway Authority
held this 20th October, 1896,
these were present.

The Chairman (Mr. W. C. Jesty)
The Vice Chairman (Mr. G. Scutt)
Messrs J. B. Cole,
J. Y. Lovell,
A. J. Scutt,
J. O. Kent,
J. Otter,
J. White.

The Minutes of the last meeting were
read and confirmed.

Paths and Roads at Osmington

The Surveyor now reported as follows. —
"I have met the Vice Chairman and Mr. Cole, D.C.
"for Osmington relative to the Roads and Footways
"in the Parish. They are of opinion that the
"roadway complained of by the Parish Council
"(where the water crosses the road at the bottom
"of White Horse Hill) should be improved for
"foot passengers by the construction of a
"footway it being very bad for them to
"cross over being so dirty, and at times

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"flooded with water making it quite
"impassable. What I would recommend
"is that a 12 inch pipe be laid and a foot-
"way left side constructed with a few loads
"of chalk over the same. This in my
"opinion would be sufficient to meet the
"case."

"As regards the Footway near the Post
"Office and also opposite Butcher Vagg's (and
"which consists of stone pitching very un-
"even and full of holes) we are of
"opinion that if a Mason was employed
"for three or four days in executing
"the necessary repairs it would meet
"the case complained of."

Mr. Lovell proposed the adoption of the report,
which was recorded by Mr. Cole and carried
unanimously, the surveyor being instructed
to see the works carried out.

4 April 1899

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The Locomotives Act. 1898..

The Surveyor now furnished the following list of the Roads in the various Parishes of the Weymouth Rural District Council, and suggested that each Road should be considered by the Council generally.

Description of Roads

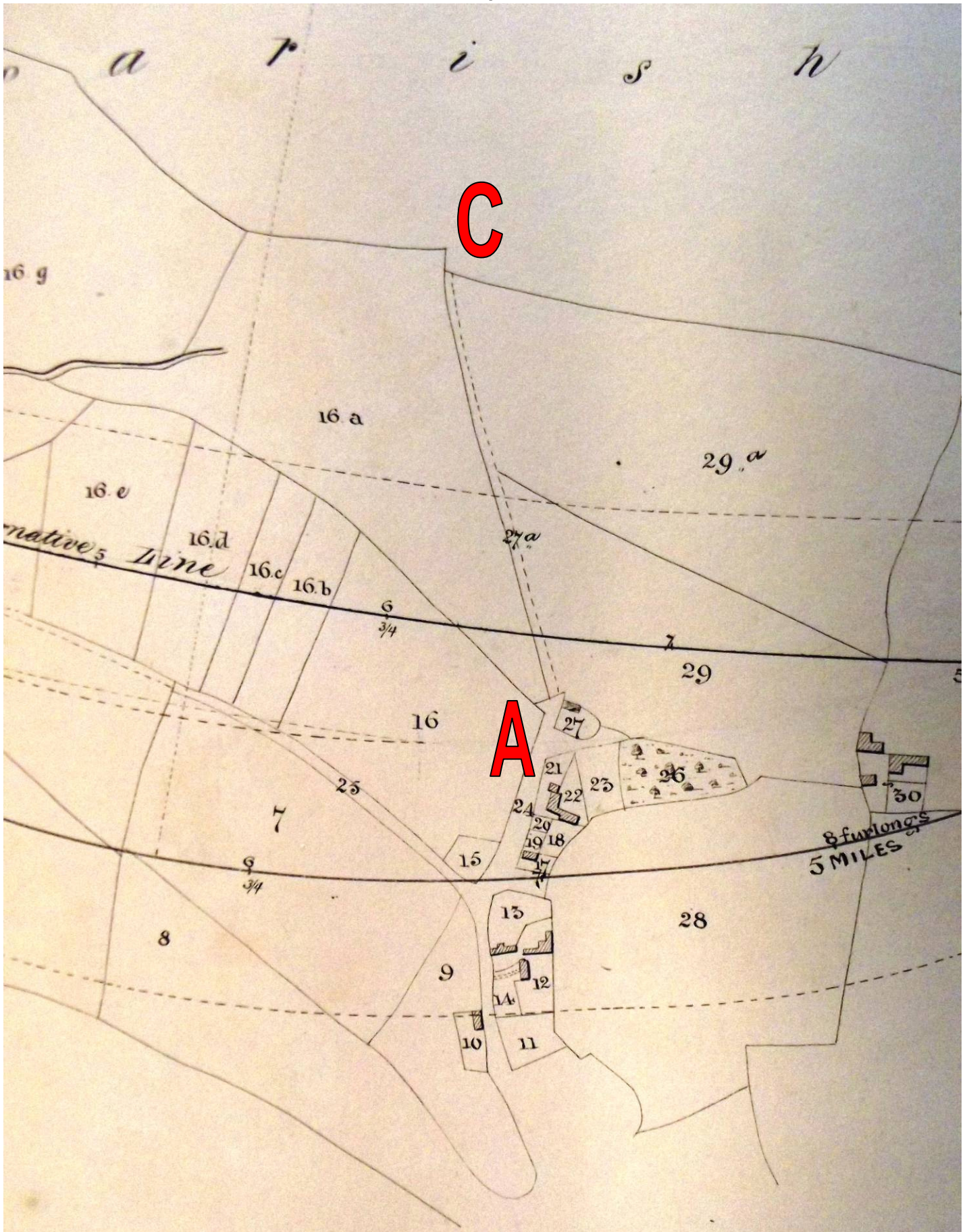
road leading from Langton Cross to Hodden

Osmington } from the Main Road near the Schools through the Village to the little Brook crossing the road at Sergeants Field, + known as White Horse Hill Road

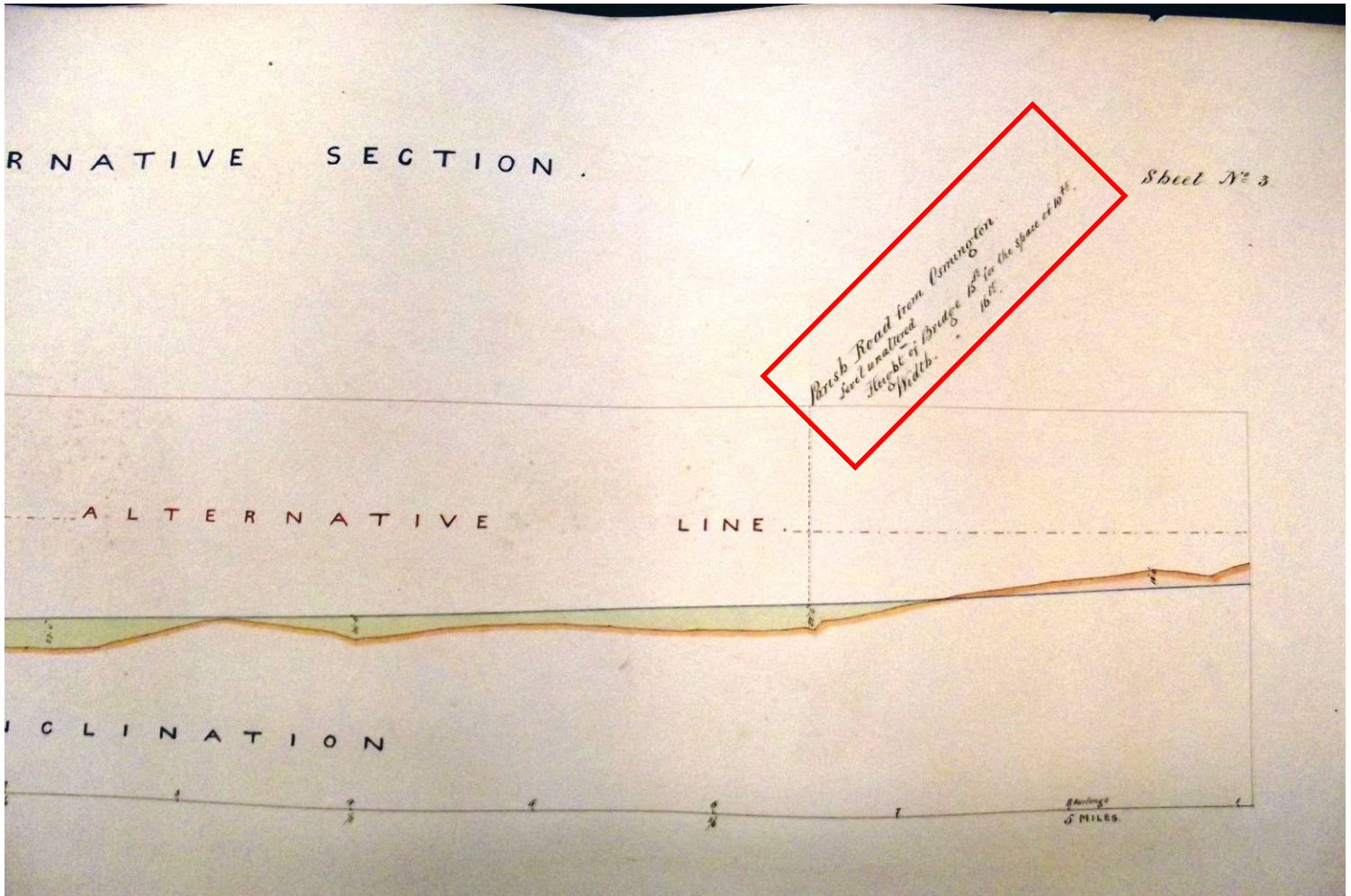
Inmuntle, () the Main Road near Sergeants Farm House

1845/46 Southampton and Dorchester Railway Plans

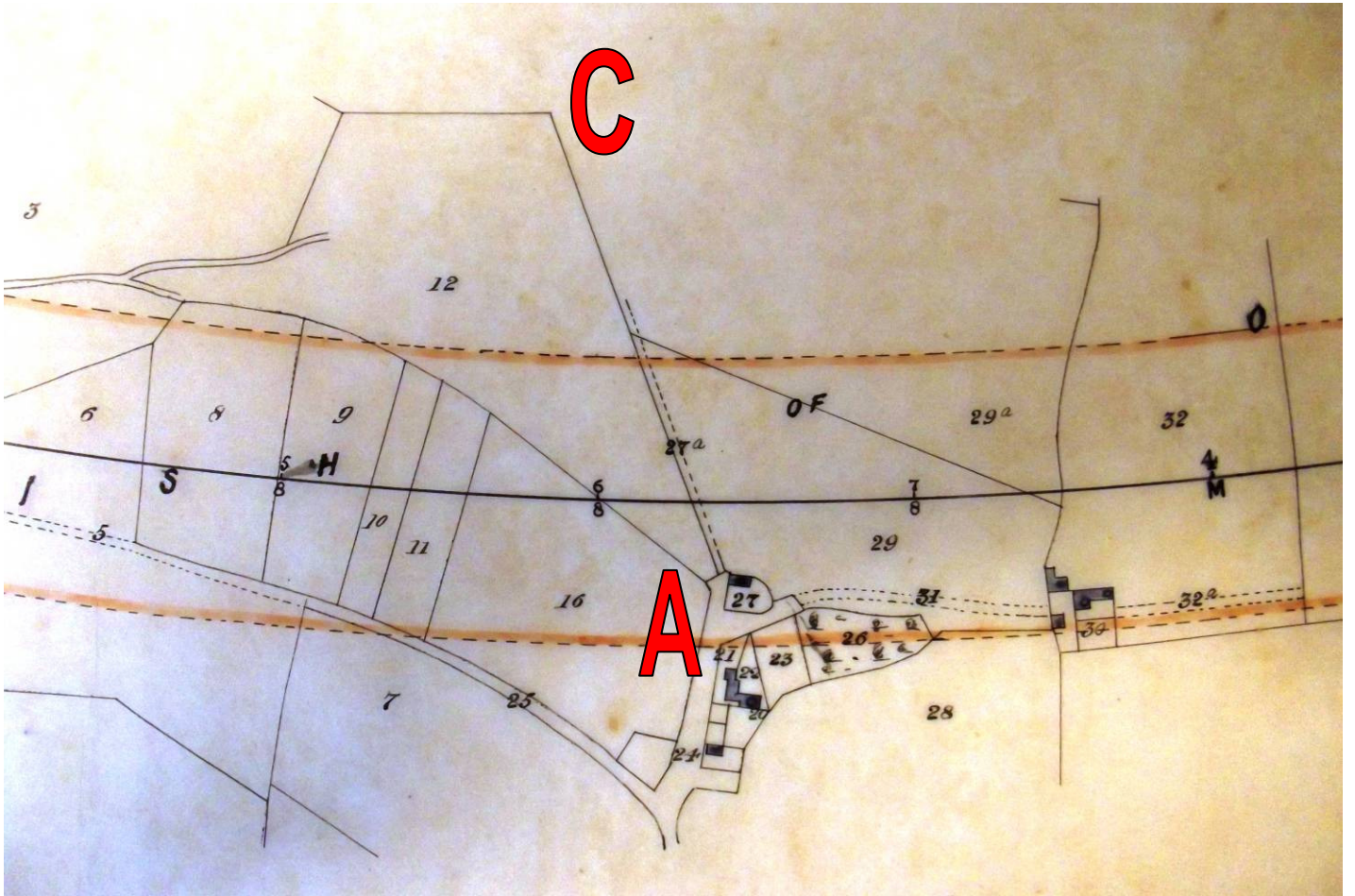
1845 plan



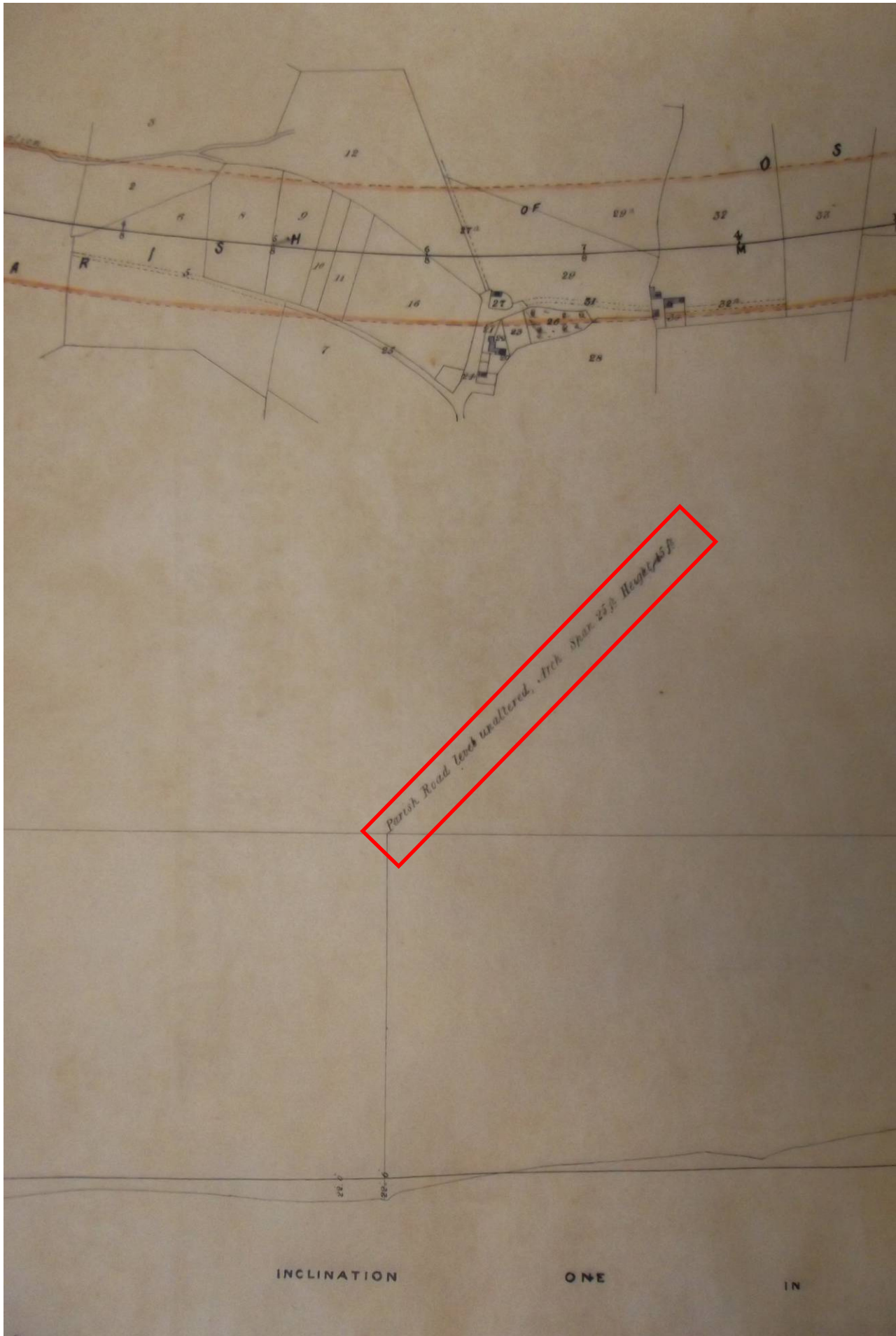
Additional plan "Alternative section"



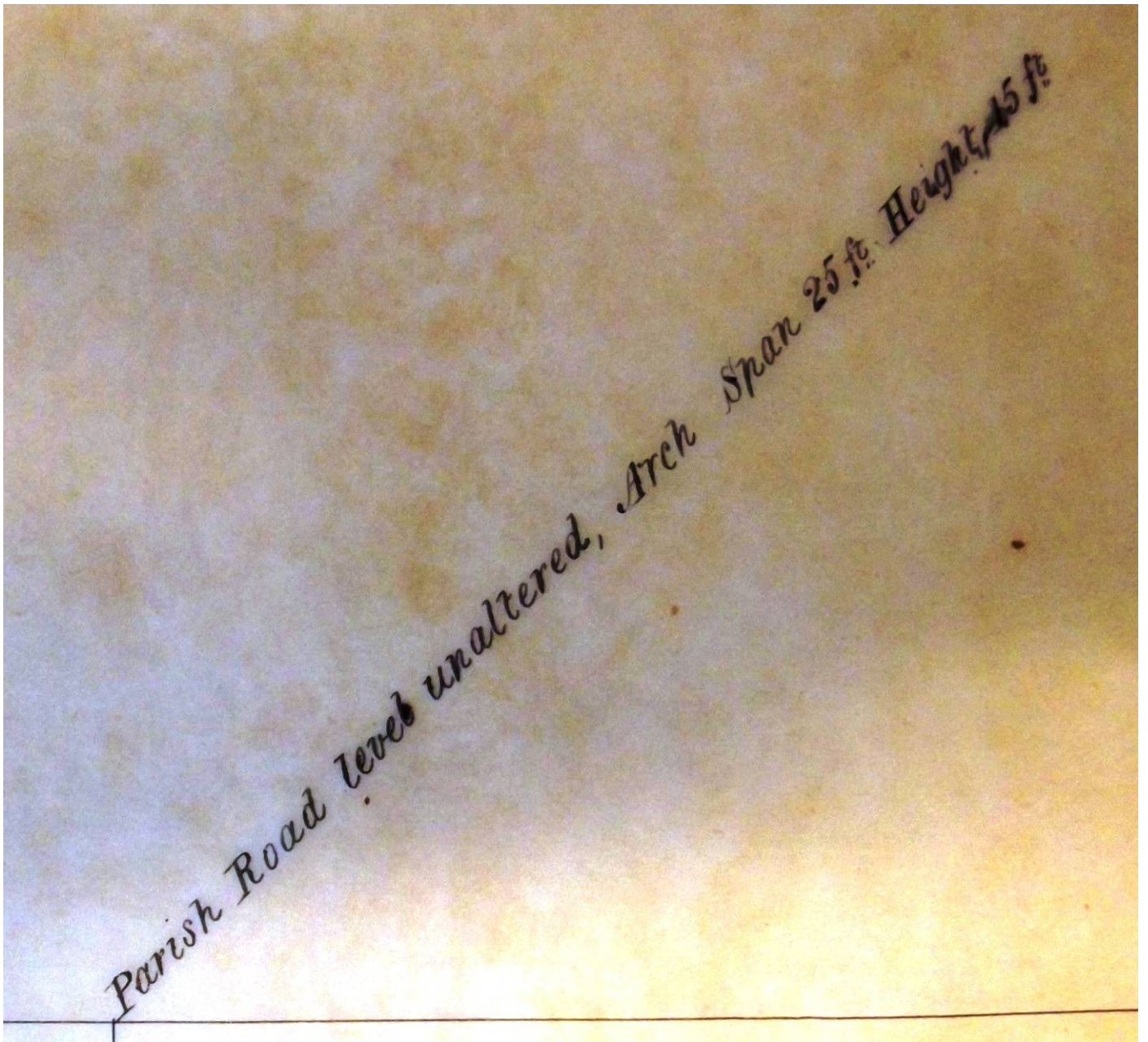
1846 revised plan



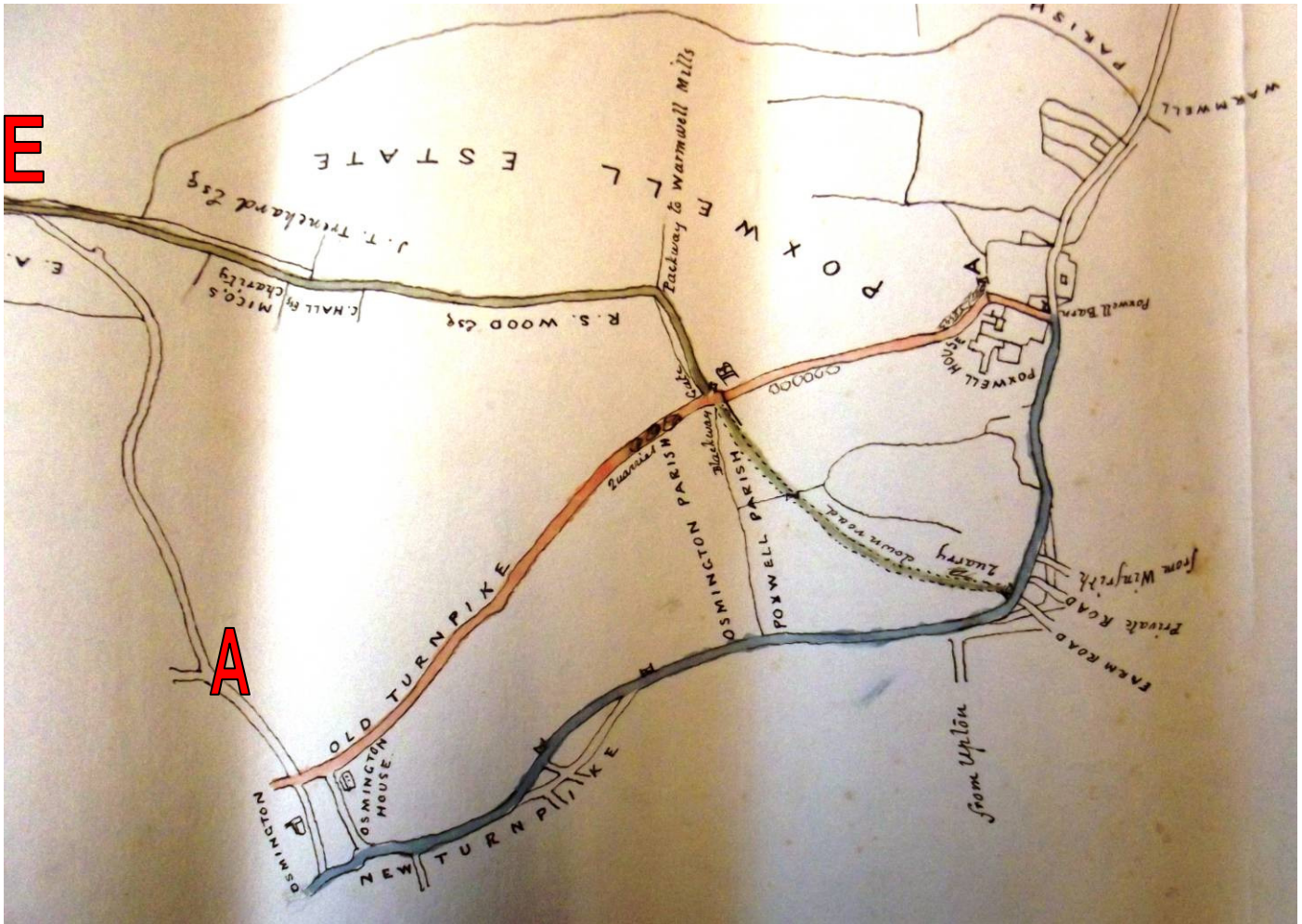
1846 revised plan including cross section



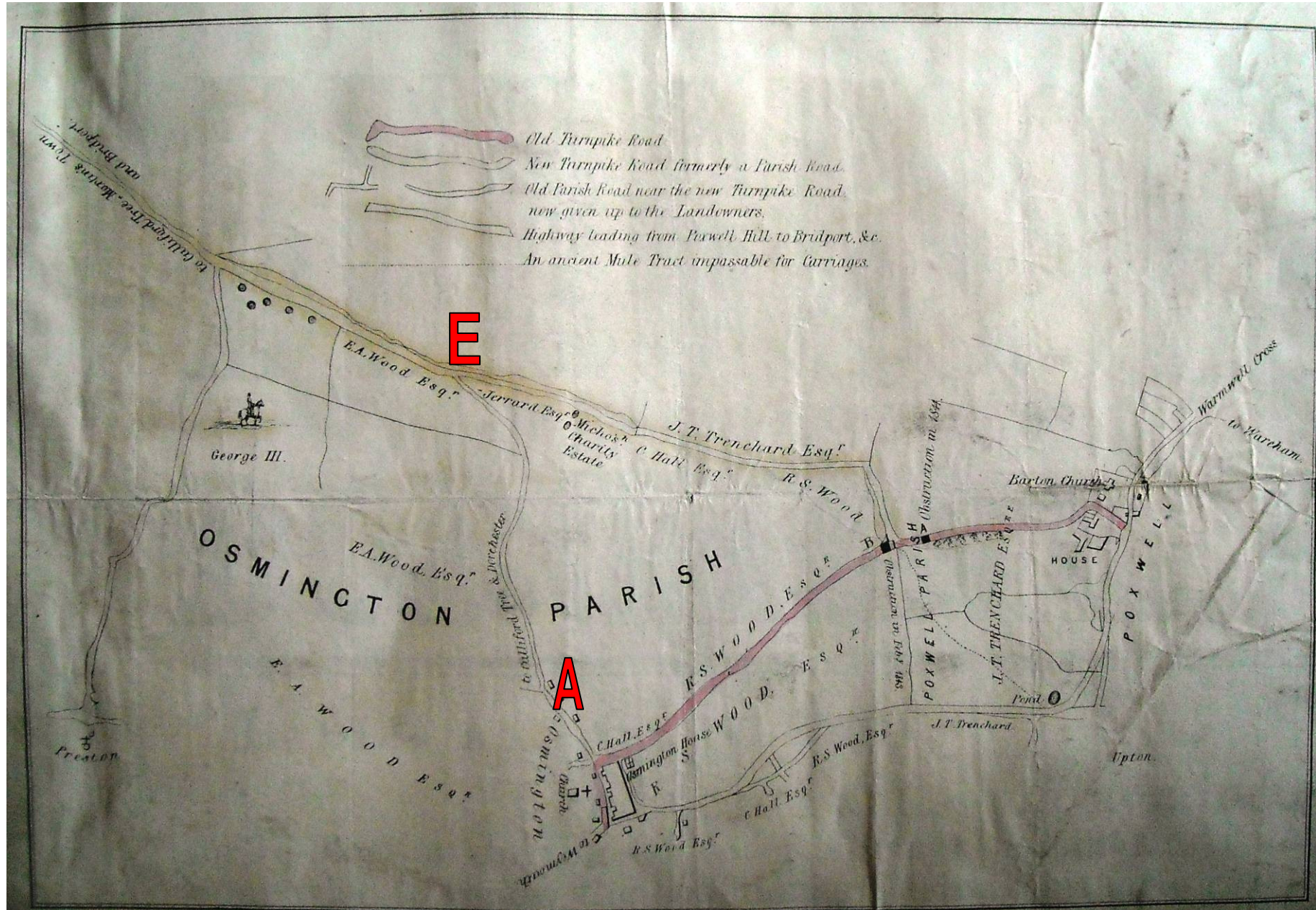
Enlargement of wording for cross section



1845/47 Poxwell Turnpike Dispute
1845 plan



Undated map



**Letter from the Trustees of the Mico Charity Estate Trustees to the Trustees of the Weymouth and Dorchester Turnpike Roads
22 September 1845**

TO THE TRUSTEES OF THE WEYMOUTH AND DORCHESTER TURNPIKE ROADS.

GENTLEMEN,

We, the undersigned, being the Trustees of an Estate in the Parish of Osmington, bequeathed by Sir Samuel Mico, for the maintenance and benefit of ten decayed seamen of the Port of Weymouth, have been informed that you are about to hold a Special Meeting at Dorchester, on the 4th of October next, to take into consideration an application made by the Rev. G. Pickard, for an order to stop the ancient Highway which leads from the said Estate to the Turnpike Road by the Church, at Poxwell; and being deeply convinced, not only of the great injustice, but also of the serious injury that would be done to the said Estate, by the granting of such an order, we hereby respectfully lay before you our most earnest protest against it.

Mr. E. A. Wood has so fully stated, in his printed Letter, the grounds on which such an application ought to be refused, that we will not occupy your attention further than to state one or two circumstances, which have occurred subsequent to the publication of that Letter, and which, have rendered it necessary for us to notice.

In the Newspaper report of a Meeting of Magistrates, held at Dorchester, on the 23rd of August last, when certain persons were brought up on a charge connected with an obstruction of the aforesaid road, it appears that the Rev. G. Pickard gave evidence to the effect that the said road was his brother's property, inasmuch as no road had existed there before a Turnpike Road was made. To refute this assertion we appeal to the Affidavit filed in the Queen's Bench, in the Appendix to Mr. Wood's letter, for confirmation.

Up to the year 1844, when Mr. Trenchard first obstructed the road against us, and was indicted by us for so doing, the Charity Estate had at no period within the memory of man, nor, as we believe at any recorded period whatever, been without the use and convenience of that road: and now that the construction of a Railway renders it of greater consequence than ever, we should be wanting in our duty as Trustees, were we not to resist by every means in our power the pertinacious attempts made by Mr. Trenchard to deprive these poor men whose interests are committed to our charge, of a right which they have always enjoyed, which is now on the point of becoming so much more valuable and important to them, and of which there is no ground but the whim of an individual for depriving them.

Whatever may be asserted or proved with regard to any authority which Mr. Billett may have received from other parties interested to assent to the stoppage of the road, he never received such authority from us or our predecessors, nor, as we believe, is it attempted to shew that he did so—it is therefore altogether inconceivable that you can for a moment entertain the question of ordering the stoppage of the road against the Charity Estate, be the right of other parties over it what they may.

We are the more earnest in appealing to you in the present stage of the business, because we are anxious not to be driven to expend in litigation those funds which we hold in Trust for the purposes of benevolence. It is true, that notwithstanding your refusal of the order, we may be driven to that extremity; but we are satisfied that you have sufficient grounds for such refusal, and thereby may remove from yourselves the just odium which must attend the infliction of injury and loss on the poor Seamen who are dependent for their subsistence upon the funds arising from the Mico Estates.

We have the honor to be, with the greatest respect,

GENTLEMEN,

Your obedient Servants,

JOHN CREE
J. A. DEVENISH
J. FLOWER
GEO. C. WELSFORD
WM. LANGRISH

JOSEPH AYLING
W. J. HILL
HENRY RAGGETT
F. PITMAN

Letter from Rev George Pickard to the Trustees of the Mico Charity
30 September 1845

TO THE TRUSTEES OF THE MICO CHARITY.

GENTLEMEN,

Having seen a Letter, published by the Mico Charity Trustees, addressed to the Trustees of the Weymouth and Dorchester Turnpike Roads, I think it right to call your attention to facts which you appear entirely to have overlooked.

Turnpike Trustees are empowered by the General Turnpike Act, to alter, divert, and widen Turnpike Roads for the benefit of the Public at large, and they are in no way bound or required to give any public Notice of their intention to enter into agreements for the purpose of effecting alterations; they have full power both to enter into such agreements and to fulfil them.

Your Letter shews that you have been misinformed respecting the period when the Road in question was closed against the Public: by reference to my last statement you will see that the old Turnpike Road from Osmington to Poxwell had been clearly closed against all Carts and Carriages for nearly fifteen years, and that when the new Turnpike was opened in 1830 that part of the old one running through the Poxwell Estate was taken possession of by the Owner of that Estate according to the agreement made with the Turnpike Trustees.

I also beg to inform you that there are several other Roads by which access can be had to all the different parts of the Mico Charity Estate—namely—a few hundred yards beyond Poxwell on the Weymouth Road, there is a Road over the Hill, which is and always has been leading to the higher part of the Mico Charity Estate, which Road is now regularly used by Mr. Andrews of Upton with his Horses and Waggons, as Tenant of the Osmington Estate. Besides this, if any Waggon has to pass to the Charity Estate from Ower Moigne (Mr. Cree's Estate) it should pass by Warmwell Cross—and from that point, the direct and easiest way to the higher Fence of the Mico Estate, is by the Dorchester Road to Warmwell Wood, turning there to the left over Warmwell Down, by the Mayne Enclosures, and so direct, without any steep Hill whatever, to the Mico Charity Estate.

There is also another Road leading from the Parish of Broad Mayne by the Mayne Enclosures to the Mico Estate. Then, there is also a Road out of the Parish of Osmington leading past the other part of the Mico Estate and on to the upper part of the same near the White Horse.

Thus from every possible point, there is a free and easy access to the Mico Estate without the piece of Road in question, which, I beg to say, never did exist as a public Road until it was made a Turnpike.

You are also under an erroneous impression in supposing that any authority could be required either from yourselves or your Predecessors, in order to effect the great benefit which the Public have derived (and your Charity as part of the Public) by means of that very Agreement which the Trustees made with the Owner of the Poxwell Estate, and without which Agreement the Public never could have had the benefit they now enjoy. They took my Brother's Land under a distinct Agreement to give in return the piece of old Turnpike running through his Estate: his Land was given up on the faith of it: he asks the fulfilment on their part of that Agreement, acknowledged by their Acts and confirmed in law by the Court of Queen's Bench. The Power of the Trustees to do him justice is clearly shewn by decided Cases,—(see De Beauvoir against Welch, &c. &c.) and my Brother has a right to expect the fulfilment of that Agreement as being due to him in honor and in Justice and in Law. This is all Mr. Trenchard has sought and still seeks and no infringement whatever of public rights.

It is not for me to interfere with the outlay of your Charity Funds, but as you hold them for purposes of benevolence it might be as well if you were cautious how you allow yourselves to be put forward in a proceeding carried on against Mr. Trenchard for private purposes.

Instead of Mr. Trenchard seeking in any way to deprive the poor Seamen of any advantage, or in the most remote degree to injure their interests, acts which would be very contrary to the habits of his life, he and I are most desirous of preventing the expenditure of the poor Seamen's Funds in a case in which they have not the slightest or most remote interest one way or the other.

I remain,

GENTLEMEN,

Your obedient Servant,

GEORGE PICKARD.

BLOXWORTH, September 30th, 1845.

**Letter from Job Gill to the Trustees of the Mico Charity Estate
3 October 1845**

TO THE TRUSTEES OF THE MICO CHARITY ESTATE.

I, **JOB GILL**, of Radipole, Yeoman, the Rentor of the Mico Charity Estate, in the Parish of Osmington, in the County of Dorset, having seen a printed letter, dated September the 30th, 1845, addressed to the Trustees of the said Charity Estate, from the Rev. G. Pickard, respecting the Roads leading to the said Estate, do voluntarily and solemnly declare that the Road which is stated to be a few hundred yards beyond Poxwell (which I think is nearly a quarter of a mile) on the Weymouth Road, is impassable for loaded waggons, from the said Turnpike Road to the Charity Estate; and, consequently, can be of no use to that Property. Respecting the Road mentioned by Mr. Pickard, over Warmwell down by the Broadmayne enclosures, I was not aware that such a Road was in existence; another Road is mentioned from the Parish of Broadmayne, but the distance is so great that it is useless as contrasted with the utility of the Road obstructed, by Poxwell Church. The only Road practicable at present, in consequence of the obstruction of the Old Turnpike Road, and by which the Upper Part of the Charity Estate can be approached, is, the Road leading from the Village of Osmington to the White horse, and it requires at least ten Horses to take up a Load to that part of the Estate, which number of Horses I do not keep.

JOB GILL.

Osmington,

October 3rd, 1845.

*How has Mr Gill gone to
the Charity Estate for the last fifteen
years, whilst the Road has
been stopped.*