

Agenda item:

Roads and Rights of Way Committee

5

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 16, Sherborne and Bridleway 22, Castleton (Quarr Lane) to byway open to all traffic
Executive Summary	In response to an application to upgrade Bridleway 16, Sherborne and Bridleway 22, Castleton, one continuous route known as Quarr Lane, to a byway open to all traffic this report considers the evidence relating to the status of the route and a proposal to correct a mapping anomaly.
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 also been researched from sources such as the Dorset History Centre, and the National Archives. A full consultation exercise was carried out in February and March 2013, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.

	<p>Any relevant evidence provided has been discussed in this report.</p>
	<p>Budget/ Risk Assessment: Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p>
<p>Recommendations</p>	<p>That:</p> <ul style="list-style-type: none"> (a) The application to upgrade the bridleway along Quarr Lane be refused; (b) An order be made to modify the definitive map and statement of rights of way: <ul style="list-style-type: none"> (i) To remove part of Bridleway 16, Sherborne as shown C1 – C2 – D and part of Bridleway 22, Castleton as shown E1 – F2 – G on Drawing 13/04/4; (ii) To add a restricted byway in Sherborne as shown C1 – D and a restricted byway in Castleton as shown E1 – F – G on Drawing 13/04/4; and (iii) To upgrade parts of Bridleway 16, Sherborne and Bridleway 22 Castleton as shown A – B – C – C1, D – E – E1 and G – H – I on Drawing 13/04/3 to restricted byways; and (c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.
<p>Reasons for Recommendations</p>	<ul style="list-style-type: none"> (a) Subject to (b) below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist; (b) The available evidence: <ul style="list-style-type: none"> (i) Shows, on balance, that there is no public right of way over land shown in the definitive map and statement as a bridleway; (ii) Shows, on balance, that a restricted byway not shown in the map and statement subsists or is reasonably alleged to subsist; and (iii) Shows, on balance, that a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made for a restricted byway over the claimed route; and

	<p>(c) The evidence shows, on balance, that the route claimed should be recorded as a restricted byway on the line proposed. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p>
<p>Appendices</p>	<ol style="list-style-type: none"> 1 - Drawing 13/04/3 Application to upgrade claimed route to byway open to all traffic 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1910 Finance Act maps ▪ 1901 Ordnance Survey Object Names Book ▪ 1843 Sherborne Tithe Map ▪ 1849 Sherborne Inclosure Map ▪ 1935 Sherborne Castle Estate Deposit 4 - Drawing 13/04/4 Proposed modification to parts of Bridleways 16, Sherborne and 22, Castleton
<p>Background Papers</p>	<p>The file of the Director for Environment (ref. RW/T420)</p> <p>Most of the original historic maps referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew and some, which are the applicant's own copies.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T420, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to upgrade Bridleway 16, Sherborne and Bridleway 22, Castleton as shown on Drawing 13/04/3 (Appendix 1) was made by Steven Teuber on behalf of the Trail Riders' Fellowship on 24 January 2006.
- 1.2 During the investigation it was noticed that the definitive lines of the bridleways did not reflect the claimed route (as shown in the enlarged section on Drawing 13/04/3). This investigation will address this issue and recommend a solution.
- 1.3 The claimed route is double hedged for its entire length. It commences at point A on Drawing 13/04/3 from a road, also known as Quarr Lane, and heads in a north north west direction. The surface at point A is tarmac, which continues to its junction with a track leading from the east at A1. At point A1 the surface becomes a hard made up track and is well-worn with an earth surface. At point B it narrows and is enclosed by banks with hedges on the top. Between points C and G it zig zags to the west and the surface remains the same. At G the path continues north north west through woodland with mature trees. The downward gradient is steep until the claimed route turns west and terminates at point I at the Sandford Road.

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/T420.
- 3.3 In summary, the applicant states that "there is a weight of evidence to indicate it is more likely that this route carries public carriageway rights rather than any lesser rights and therefore we believe there is evidence to support our claim that this road carries vehicular rights".

4 **User Evidence**

- 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/T420)

6.1 43 submissions, including a petition containing 118 names, were received before the consultation started and 14 letters were received as a result of the consultation.

Name	Comments
Sherborne Town Council	"Supports the correction to the definitive route" as shown on Drawing 13/04/4 and "would favour the definition as a 'Restricted Byway' supporting historical evidence that it has not been used by mechanically propelled vehicles".
Miss P Bathurst	"The book of Sherborne by J H P Gibb reproduces a map of Sherborne Manor as surveyed by John Ladd for Lord Digby in 1733. This clearly shows the original main roads, lanes and tracks at the time. QUARR LANE TRACK (Bridleway 16 can be identified as a track running from the present Mermaid Hotel to Dimor Bottom on the Sandford Orcas lane. All the surrounding land (with the exception of the Quarry at the lower end) is shown as the medieval strip system of farming and, as such, this track would have provided access to the fields. The only wheeled traffic would have been horse-drawn carts – hence the cobbling of part of the track from local stone. This was long before the advent of the internal combustion engine. Motorised "traffic" had still to be invented."
Mr C Luxmoore	"I have walked this path regularly since [1974] including the 14 years when I was the County Rights of Way Officer. On a number of occasions both my wife and myself have stopped motor cyclists from using the path.... Both before and during the 2 nd World War I walked this path with my father and I can not recall ever meeting a car or truck driving along it". In relation to the documentary evidence: "The 1733 map (John Ladd) could not have shown use by mechanically propelled vehicles since no such vehicles had been built at that time. The same can be said of the maps dated 1811 and 1843. I do not know what the Digby Estate acknowledged under the 1932 Rights of Way Act, but I would suggest that they agreed that the track existed whilst not actually stating that it could be used by the public in any sort of vehicle other than one drawn by a horse. In Sherborne, ever since the middle ages, stone has been quarried for use in building the Abbey and most of the building in the town. One such quarry existed just above Dymor. This stone was moved by horse and cart to areas such as existed behind Coombe Terrace..... In no way could such use be described as use by the general public."
Jan Wardell on behalf of the Ramblers' Association	We....do not support this application, but as it has been received after the NERC 'cut- off' date, and we do not believe any of the exceptions apply, we would not object to the route being modified to Restricted Byway status.

Name	Comments
Paul Orchard Mrs S Headlam B Bandy Mary Brodie Hilary Nerrill Mrs M.L Rowley Mrs Burrige Mr & Mrs Keating Pat Bishop G Findlay Petition – Mr & Mrs Dare Mr C.M Holt Mrs Brummell 32 letters from Quarr Lane Park Residents John Tuke on behalf of Sherborne Golf Club Mr & Mrs Gunter Mrs E Tiddy Mrs S Brunel-Cohen	Issues were raised such as: - <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Noise • Pollution • Suitability • Dangerous junctions • Disruption and damage to the historical environment • Current and past use

7 **Other submissions received** (copies available in the case file RW/T420)

Name	Comments
Cllr Susan Greene Sherborne Town Council	Agrees that the correct route is “between the hedges. A restricted Byway seems an excellent solution to the problem”.
Graham Plumbe Natural England	No Comment
Claire Pinder	There are at present no recorded archaeological finds or features or historic buildings on or in the immediate vicinity.
Jim Hart, Rights of Way Liaison officer, Castleton Parish	Regarding the proposed modification to the route, he has “talked to the Chairman of the Yeohead and Castleton Parish Council and the two Castleton Councillors and we don’t have any objections to the proposed changes to the route of the right of way in Castleton as shown in your Drawing”.

8 Analysis of documentary evidence

Finance Act 1910

- 8.1 The evidence from the **1910 Finance Act** documents reveals that on the Ordnance Survey map sheets 5.12 and 6.9 the claimed route is excluded from taxation from A to just north of A1 and between points F1 and G1. The central section of Quarr Lane between points A1 and F1 may also be excluded as at either end there are dashes across the lane where the hereditaments change. However, as there are no braces across the lane in this section the strength of this evidence is reduced.
- 8.2 The claimed route crosses **Hereditaments 35 and 1565**. In the accompanying valuation books there are deductions for the landowner of £75 for public rights of ways in **Hereditament 1565**. The large size of the Hereditament, including some paths, makes it impossible to deduce which paths are the ones that gave the landowner tax deductions from the Inland Revenue.
- 8.3 Whilst convention dictates that public roads would normally be excluded for valuation purposes, it is not unique or unusual for public roads to be included.
- 8.4 It should be noted that parts of the, B3145 Bristol Road and the Sandford Orcas Road (public roads) are also shown on the Finance Act plans in a similar way to the central section of Quarr Lane i.e. not braced. This suggests that public rights along Quarr Lane were the same as the nearby public carriage roads that were shown in the same manner.
- 8.5 This is strongly supported by the **1901 Ordnance Survey Object Names Book**. These 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 1901 book covering the Sherborne area records "Quarr Lane" as "A public roadway from Sandford Road 50 chains E... of Coombe Farm to the Bristol Road".

Tithe

- 8.6 The **1842 Sherborne Tithe Map** shows the whole of the claimed route. The route is clearly unapportioned and is indistinguishable from the other public carriageways that can be clearly identified upon it. The tithe apportionment and plan provide good supporting evidence to the claimed public vehicular rights.
- 8.7 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.
- 8.8 On their own these Tithe documents provide some support to the application as evidence to the physical existence of the route at the time.

Inclosure Award

- 8.9 The **1849 Sherborne Inclosure Map** shows the claimed route from point A to point B. The wording “From Sandford” is annotated leading north westwards from point B, indicating that the route continued to Sandford. The claimed route is not numbered and is not mentioned within the Inclosure Award. As the Inclosure Award was produced after the Tithe map this suggests that the claimed route was already a public highway.

Other documents

- 8.10 **Sherborne Castle Estate Deposit** under the **Rights of Way Act 1932**. This allowed landowners to make a deposit of a map and statement, followed by a statutory declaration, acknowledging the existence of public rights of way and declaring that they had no intention of dedicating any further public rights of way over their land, thereby preventing the accrual of any ‘new’ public rights of way.
- (a) The Estate’s agents, Rawlence and Squarey submitted plans, which they signed and dated 9 August 1935, showing the land within the Estate’s ownership. Quarr Lane is shown on the base map but is not coloured, as part of the Estate’s land. Other routes in the area, which are now public roads, are similarly uncoloured.
 - (b) Footpaths and bridleways admitted as public rights of way by the Estate are coloured blue and red respectively.
 - (c) This evidence supports the Finance Map evidence that the whole length of Quarr Lane had public carriageway rights.
- 8.11 The **1733 Manor of Sherborne by John Ladd** is a map of the Sherborne Estate and shows the medieval agriculture strip system. It shows the claimed route mainly as a faint line going across the strips. At either end of the claimed route it shows a wider, double lined lane connecting with the “Bristol Road” at the southern end and the “Sandford Way” at the northern end. This shows that a route existed along the line of the claimed route at that time.
- 8.12 The **1869 Sherborne Highway District maps** were part of the recording of publicly maintainable roads within the Sherborne District. The maps show all “highways” in yellow, “halter paths” in green and “Turnpike Roads” in red. The length and a description of the highway is provided. The claimed route is not coloured or numbered. Many other routes on these maps are not coloured or numbered, including many roads within Sherborne town. However, it can be deduced that the uncoloured routes were not seen as publicly maintainable at this time. They may have been roads maintainable by the landowner but which carried public rights.

Ordnance Survey maps

- 8.13 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 Sherborne parish was completed in **1805** and clearly depicts the route claimed throughout its length. 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.
- 8.14 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also depicts the claimed route. 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.
- 8.15 The **1889 First Edition Ordnance Survey map** (sheet 5SE only) at a scale of 6 inches:1 mile (1:10560) was surveyed in 1885. The claimed route is shown with double solid lines, indicating that it is fenced or hedged on both sides, and crossing a Rifle Range at the northern end. There are no annotations of 'F.P.' or 'B.R.' alongside but the route is named alongside.
- 8.16 The **1903 Second Edition Ordnance Survey Maps** at a scale of 1:2500 (25 inches:1 mile) is the map used for the Finance Act valuation and depicts the claimed route in detail. It is shown with double solid lines, indicating that it is fenced or hedged on both sides. There are no annotations of 'F.P.' or 'B.R.' alongside but the route is named alongside. The **1928 Edition** at the same scale shows the route similarly.
- 8.17 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route. It is shown with double solid lines, indicating that it is fenced or hedged on both sides. There are no annotations of 'F.P.' or 'B.R.' alongside but the route is named.
- 8.18 The **1906 coloured Ordnance Survey Map** at a scale of 1 inch :1 mile shows the claimed route as a fenced 'unmetalled road'.
- 8.19 The **1930 Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route similar to the 1903 edition at the same scale.
- 8.20 The evidence provided by the **Ordnance Survey Maps** suggests the existence of a route quite capable of accommodating vehicular traffic. The claimed route is consistently shown in the same manner as other public carriageways in the vicinity, being clearly defined on both sides by hedges or fences. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation such as 'B.R.' or 'F.P.', which suggests that if it were considered to be a public highway it would be of a higher status than a footpath or bridleway. It is also clearly annotated with its name Quarr Lane, which may also suggest the public nature of the route.

- 8.21 Although the Ordnance Survey maps provide evidence in support of the application they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map.

Commercial maps

- 8.22 The applicant makes reference to a number of small scale maps of Dorset held at the Dorset History Centre and has provided extracts from commercial maps in support of the application.
- 8.23 The following maps show the claimed route in the same manner as other roads known to be public carriageways in the vicinity:
- **1826 C & J Greenwood Map of Dorset (Key: Cross road)**
 - **1930s W & A K Johnston Map of England (scale 3 inches:1 mile)**
- 8.24 The late **1800s Map of Dorset by George Richmond** was included in the applicant's evidence in support of the application. Mr Teuber says that it "clearly shows the claimed route joining the Sandford Road from the northern side of the town of Sherborne". However, the claimed route cannot be seen.
- 8.25 The extracts from the **Small Scale Maps of Dorset** submitted in evidence by the applicant are mainly of a commercial nature and in all probability derive their data from other surveys such as the Ordnance Survey. Very few, if any, are wholly independent surveys and several have no accompanying key. However, they do all show the route clearly and prominently and consequently it is considered that this evidence, whilst providing nothing conclusive, supports the claim, although no significant weight has been attached to them.

Aerial photographs

- 8.26 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.

Parish Survey and County Council rights of way maps and records

- 8.27 The Sherborne Parish Survey of rights of way 1951 shows the claimed route between points A and D coloured green as bridleway 16. However, within the schedule accompanying the map it can be seen that the route was originally claimed as "CRF" (cart road used as a footpath) 16, as this has been crossed out and "BR" substituted.
- (a) It is described: "Starts at Bristol Road (B. 3145) near Mermaid Hotel between hedges to U.D. Boundary. The first 300 yards (approx) is a metalled carriageway. This path continues in Rural District to Sandford Road and is known as Quarr Lane". The words "(public highway)" are annotated next to "first 300 yards".
 - (b) The part of Quarr Lane south of point A has been coloured brown over the green bridleway colouring. The roads in Sherborne are also coloured brown.

- 8.28 The Castleton Parish Survey of rights of way was carried out in 1951. The map shows the claimed route between points D and I coloured green as Bridleway 22 and also with the parish boundary shown as a black dashed line along the route. The map is annotated “This section of Quarr Lane is in the parish of Castleton”.
- (a) The original parish schedule did not record this part of Quarr Lane and an additional entry has been made, which says “22, BRIDLEPATH. FROM SANDFORD ROAD, NORTH OF DYMOR, SE TO SHERBORNE U. D. boundary. This lane is known as Quarr Lane. Added by DCC for continuity with Sherborne UD”.
- 8.29 The **1959 draft map** for the north area, **1964 provisional map**, **1966 first definitive map** and **1974 revised draft map** all show the claimed route described and numbered as on the current definitive map, i.e. as Bridleway 16, Sherborne and Bridleway 22, Castleton.
- 8.30 All these maps show the definitive line following and within the boundaries of Quarr Lane along its entire length and as shown A – B – C – C1 – D – E – E1 – F – G – H – I on the plan 13/04/3.
- 8.31 **Objections to the revised draft map** were received in **1975** by the British Motor Cyclists Federation. Bridleways 16, Sherborne and 22, Castleton were on a list of “ways which we consider should be reclassified as byways open to all traffic”. Quarr Lane was listed as “well defined, metalled shows signs of having been ditched at some time. No signs to deter local m/c riders who have used it regularly for years and never been challenged by farmers or public”.
- 8.32 At a **1979 Public Enquiry** the inspector, after hearing all the evidence at that time, came to the conclusion that “The evidence of public vehicular use is insufficient to justify reclassification. BR16 was claimed as a RUPP in the 1951 parish survey but I do not consider that undue hardship would be caused if it was retained as a BR”. The claim was therefore not upheld by the Inspector. The **Secretary of State’s decision on 17 January 1983** was to dismiss the objection.
- (a) It should be noted that the Inquiry was conducted under different terms of reference than apply today. At the Inquiry issues such as suitability and hardship were considered as being relevant considerations.
- 8.33 It can be seen that the historical documentary evidence above shows that public rights have existed along the route of Quarr Lane between its hedges/fences throughout its length for many years. However, the **current definitive map** (sealed **1989**) shows it to be offline in places (Drawing 13/04/3).
- (a) The definitive statement for Bridleway 16, Sherborne reinforces the position of the route, recording it as “Bristol Road (B3145) near Mermaid Hotel, *between hedges* to urban district boundary. This path continues in rural district to Sandford Road and is known as Quarr Lane”.

- (b) The drafting anomaly may be addressed by way of a definitive map modification order.

8.34 Showing Quarr Lane as a bridleway is conclusive evidence as to the existence of these rights but is not prejudicial to the existence of any higher public rights over the route.

9 Analysis of evidence opposing the application

9.1 Miss P Bathurst discusses “the map of Sherborne Manor as surveyed by John Ladd for Lord Digby in 1733. This clearly shows the original main roads, lanes and tracks at the time” and “The only wheeled traffic would have been horse-drawn carts – hence the cobbling of part of the track from local stone. This was long before the advent of the internal combustion engine. Motorised “traffic” had still to be invented”.

- Other documents and maps of a later age do show the claimed route as a public carriageway.

9.2 Mr C Luxmoore discusses the use of the route and the documentary evidence.

- (a) He states that he has walked this claimed route for many years and has “stopped motor cyclists from using the path..... Both before and during the 2nd world war I walked this path with my father and I can not recall ever meeting a car or truck driving along it.”

- This may be the case, however, the application is based on historical documentary evidence and no user evidence has been submitted.

- (b) “The 1733 map (John Ladd) could not have shown use by mechanically propelled vehicles since no such vehicles had been built at that time. The same can be said of the maps dated 1811 and 1843.”

- Again, other documents and maps of a later age show the claimed route as a public carriageway.

- (c) “I do not know what the Digby Estate acknowledged under the 1932 Rights of Way Act, but I would suggest that they agreed that the track existed whilst not actually stating that it could be used by the public in any sort of vehicle other than one drawn by a horse.”

- As stated in the report at paragraph 8.10 above, Quarr Lane is not coloured as part of the Estate’s land nor is it coloured blue for footpath or red for bridleway. This suggests that the lane was seen as the same as all the other public carriageways on the map in 1935.

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

10 Analysis of other submissions

- 10.1 Cllr Susan Greene (Sherborne Town Council) agrees that “the correct route” is “between the hedges”. The Town Council also “Supports the correction to the definitive route”.
- During the investigation it was discovered that only the 1989 definitive map has shown the route incorrectly (see paragraph 8.33) and Cllr Greene agrees that this is the case.

11 Conclusions

- 11.1 During the investigation a drafting error was discovered on the current definitive map as shown in the enlarged section on Drawing 13/04/3 (Appendix 1). In respect of the proposed modification it is necessary for members to decide whether, on balance, a public right of way does not subsist over the land as shown.
- 11.2 As all the other evidence investigated shows the claimed route within the confines of Quarr Lane, the definitive line of Bridleway 16, Sherborne should be deleted between points C1 – C2 – D and that of Bridleway 22, Castleton deleted between points E1 – F2 – G as shown on Drawing 13/04/4 (Appendix 4).
- 11.3 The cumulative weight of the documentary evidence analysed in paragraph 8 provides evidence towards the existence of public vehicular rights. It is considered that the most important piece of documentary evidence is that provided by the **1910 Finance Act** maps, supported by the **1901 Ordnance Survey Object names book**, **1843 Sherborne Tithe Map**, **1849 Sherborne Inclosure Map** and **1935 Sherborne Castle Deposit** under the **1932 Rights of Way Act**.
- 11.4 The **Ordnance Survey maps** and the **Commercial maps** provide evidence in support of the application but they do not, on their own, provide any conclusive evidence as to the status of the route. They do, however, show the physical characteristics on the ground at the date of the map and show that the claimed route was a route of some significance.
- 11.5 In the absence of user evidence the documentary evidence alone is sufficient to demonstrate, on balance, that that a public right for vehicles exists in respect of the claimed route between points A – B – C – C1 – D – E – E1 – F – G – H – I on Drawing 13/04/3 and an order should be made to upgrade the existing bridleway and to add the sections that currently are not shown on the definitive map and statement to record the higher public rights.
- 11.6 However, 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.
- 11.7 Therefore it is recommended that an order be made to modify the definitive map and statement:

Page 14 Application for a definitive map and statement modification order to upgrade Bridleway 16, Sherborne and Bridleway 22, Castleton (Quarr Lane) to byway open to all traffic

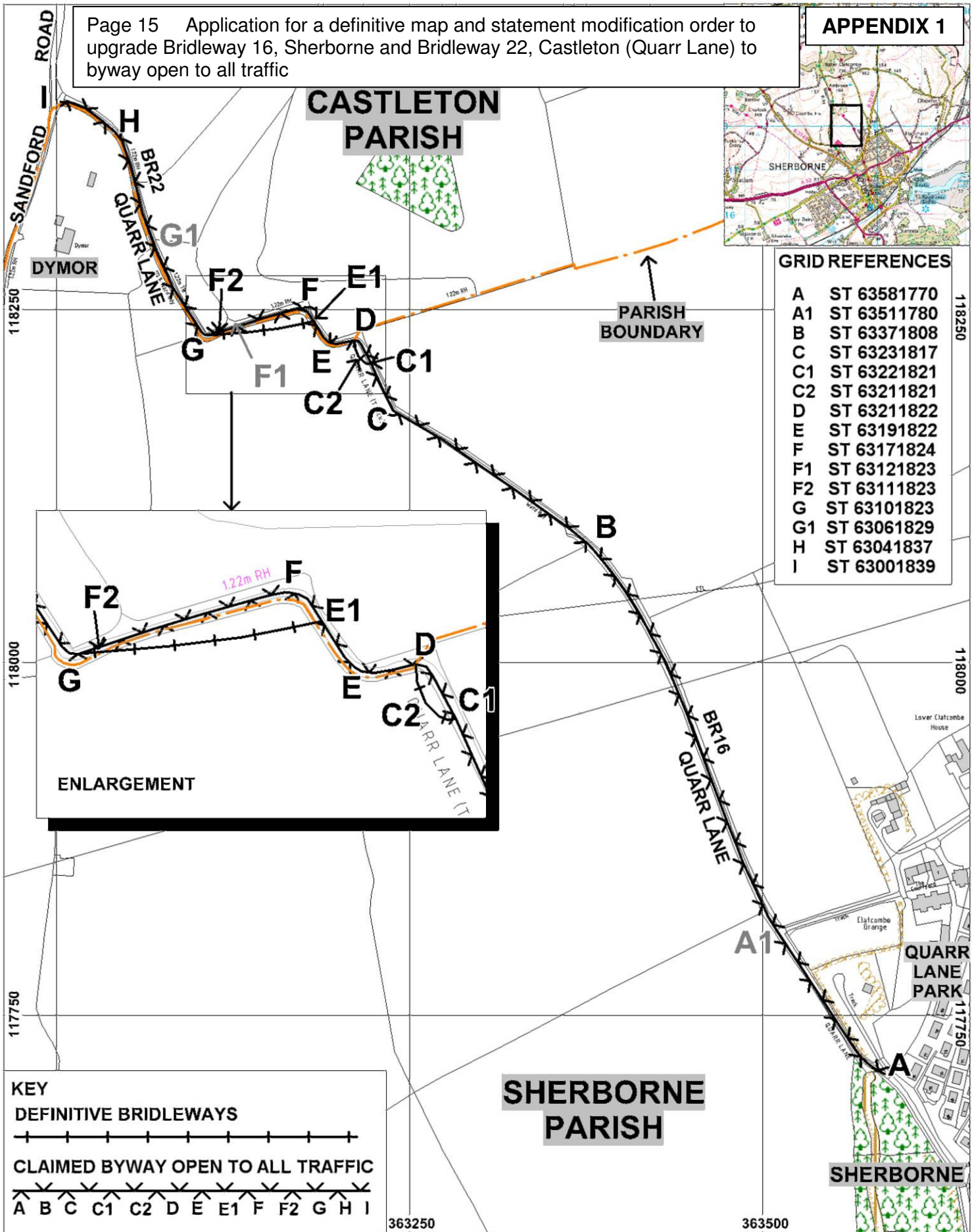
- (a) To remove part of Bridleway 16, Sherborne as shown C1 – C2 – D and part of Bridleway 22, Castleton as shown E1 – F2 – G on Drawing 13/04/4;
- (b) To add a restricted byway in Sherborne as shown C1 – D and a restricted byway in Castleton as shown E1 – F – G on Drawing 13/04/4; and
- (c) To upgrade part of Bridleways 16, Sherborne as shown A – B – C – C1 and part of Bridleway 22, Castleton as shown D – E – E1 and G – H – I on Drawing 13/04/3 as a restricted byway.

11.8 It is therefore proposed that the whole of the claimed route should be recorded with restricted byway status.

11.9 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.

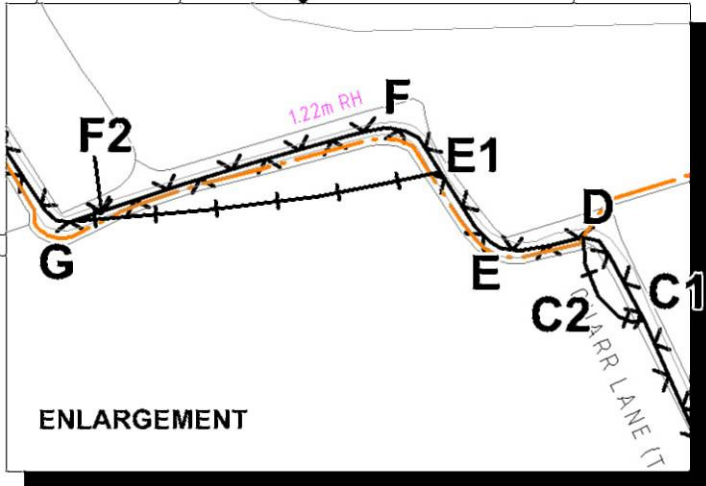
Miles Butler
Director for Environment

June 2013



GRID REFERENCES

- | | |
|----|-------------|
| A | ST 63581770 |
| A1 | ST 63511780 |
| B | ST 63371808 |
| C | ST 63231817 |
| C1 | ST 63221821 |
| C2 | ST 63211821 |
| D | ST 63211822 |
| E | ST 63191822 |
| F | ST 63171824 |
| F1 | ST 63121823 |
| F2 | ST 63111823 |
| G | ST 63101823 |
| G1 | ST 63061829 |
| H | ST 63041837 |
| I | ST 63001839 |



KEY

DEFINITIVE BRIDLEWAYS
CLAIMED BYWAY OPEN TO ALL TRAFFIC
A B C C1 C2 D E E1 F F2 G H I

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 16, SHERBORNE AND BRIDLEWAY 22, CASTLETON, QUARR LANE TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/04/3

Date: 11/06/2013

Scale 1:3500

Drawn By: ACH

Cent X: 363305

Cent Y: 118030

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 by the authority of evidence which shows: -
 - (i) That there is no public right of way over land shown in the map and statement as a highway of any description;
 - (ii) That a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 5A, a byway open to all traffic.
 - (iii) That a highway shown in the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description, or that indicates that any particulars contained in the map and statement require modification.
- 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 delete a right of way from the definitive map and statement if there is evidence that fulfils certain stringent requirements (see Circular 2/09): -
 - (i) The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made;
 - (ii) The evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
 - (iii) The evidence must be cogent.

All conditions must be met and assessed in the order listed. Before deciding to make an order, the County Council must take into consideration all other relevant evidence available concerning the status of the right of way and must be satisfied that the evidence shows, on the balance of probability that the map or statement should be modified.

1.5 The County Council must make a modification order to add a right of way to the definitive map and statement if the balance of evidence shows either:

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

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

1.6 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. It can be confirmed if, on the balance of probability, it is shown that the route should be recorded with the proposed status.

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

2 Highways Act 1980

2.1 Section 31(6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 10 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.

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

3 Human Rights Act 1998

3.1 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.

(a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:

(i) Everyone has the right to respect for his private and family life, his home and his correspondence.

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

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

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

Case specific law

4 Inclosure Consolidation Act 1801

4.1 Section 8 of the Inclosure Consolidation Act required Commissioners to set out and appoint the public carriage roads and highways and to divert, turn or stop up any roads or tracks upon or over the lands to be allotted prior to the land being enclosed.

4.2 Section 9 of the Act required carriage roads to be well and sufficiently fenced on both sides and made it unlawful for any gate to be erected across them.

4.3 Section 10 of the Act, amongst other things, empowered commissioners to appoint private roads, bridleways and footpaths in, over, upon and through the allotments to be made.

4.4 Section 11 of the Act determined that after the public and private roads and ways had been made and set out any remaining roads, paths and ways over, through and upon such lands and grounds, which had not been set out as required, would be extinguished and deemed to be taken as part of the lands and grounds to be enclosed.

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4.5 The Inclosure Consolidation Act 1801 could be accepted in whole or excluded in whole or part by local acts relevant to the area to be enclosed.

5 Finance Act 1910

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

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

6 National Parks and Access to the Countryside Act 1949

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

7 Natural Environment and Rural Communities Act 2006

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

Table of documentary evidence

Date	Document	Comment
1733	Map of the Manor of Sherborne by John Ladd	Shows the claimed route
1805	Ordnance Survey Drawings	Shows the claimed route clearly as fenced or hedged route
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows the claimed route similar to Drawings above
1826	C & J Greenwood Map of Dorset	Shows the claimed route
1842	Tithe map for Sherborne	Shows the whole of the claimed route
1849	Sherborne Inclosure Map and Award	Map shows part of claimed route between points A and B. Annotated "To Sandford" north west from point B.
1869	Sherborne Highway District maps	Shows the claimed route as uncoloured
Late 1800s	Map of Dorset by George Richmond	The claimed route is not shown
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.	
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.	
1889	First Edition Ordnance Survey map scale 6 inches:1 mile (surveyed 1885) (sheet 5SE only)	Shows claimed route (on this sheet) between points E to I fenced or hedged on both sides and crossing a Rifle Range at the northern end
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.	
1901	Ordnance Survey Object Names Book	"A public roadway from Sandford Road 50 Chains E.....of Coombe farm to the Bristol Road"
1903	Second Edition Ordnance Survey map scale 25 inches: 1mile Sheets 5.12 & 6.9	Shows the claimed route in detail and "Quarr Lane" named alongside

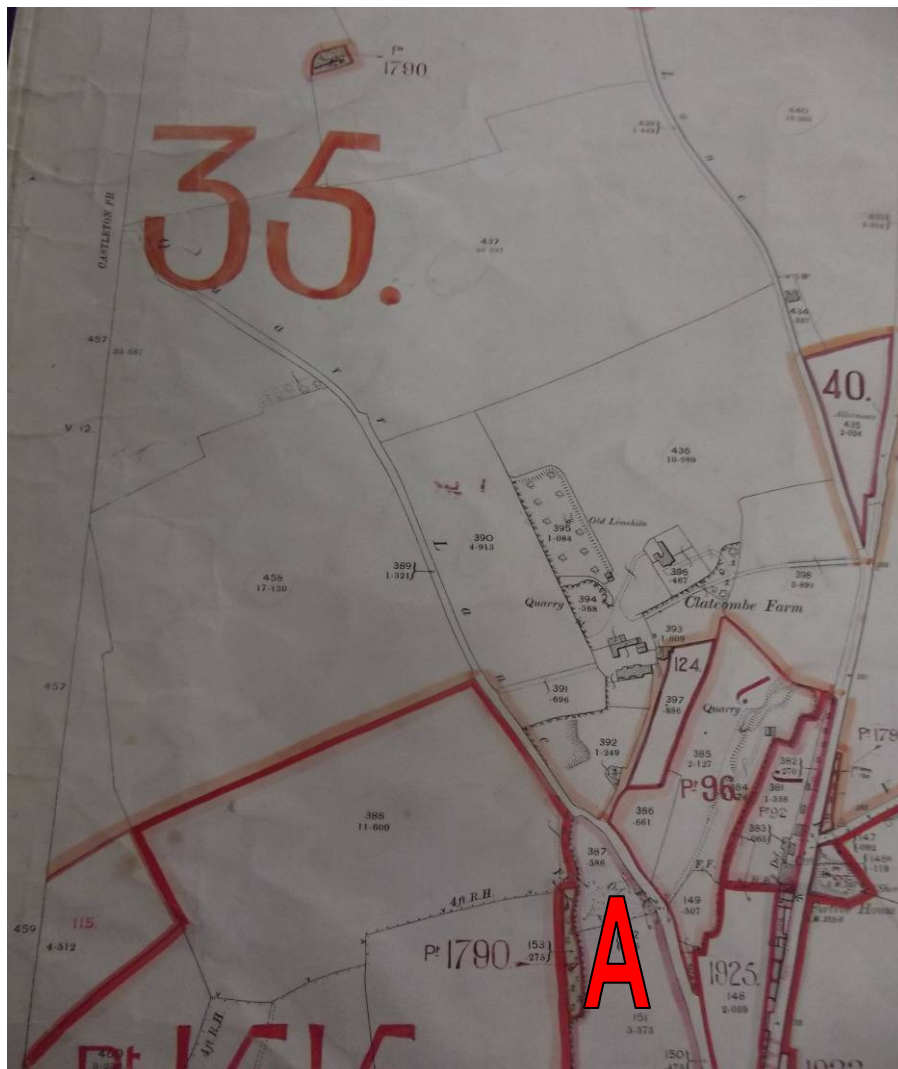
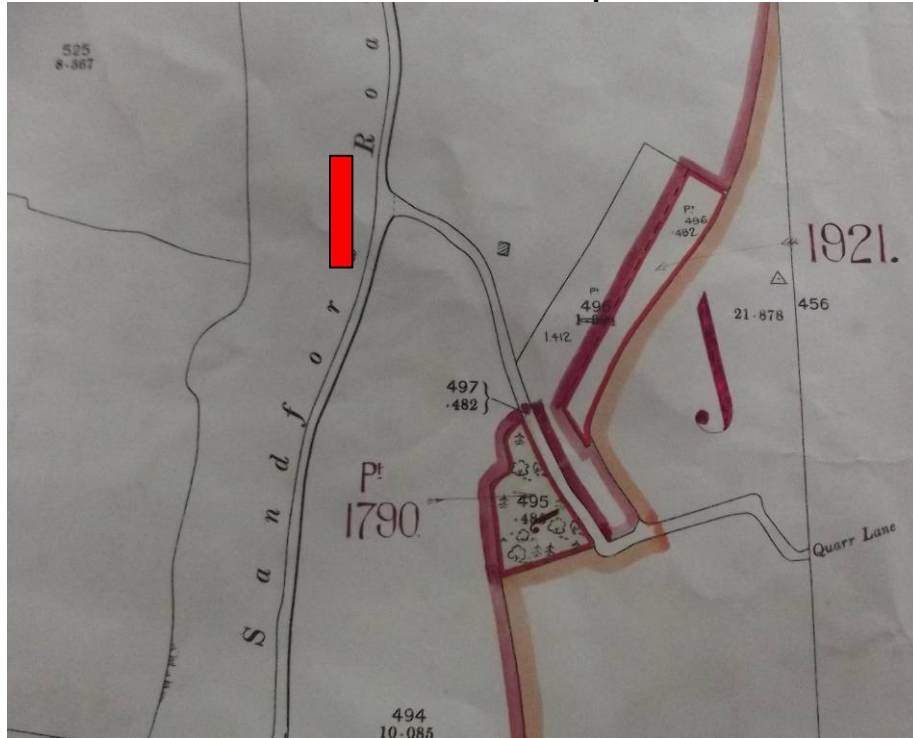
Date	Document	Comment
1903	Second Edition Ordnance Survey map scale 6 inches: 1 mile Sheets 5SE and 6SW	Shows claimed route similar to larger scale map above
1906	Coloured Ordnance Survey map scale 1 inch:1 mile	Claimed route shown as a fenced "metalled road"
1910	Finance Act plans	Shows the claimed route excluded between points A and A1 and between points F1 and G1. Between points A1 and F1 may be excluded also but lane not braced.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1928	Second Edition Ordnance Survey map scale 25 inches: 1 mile Sheets 5.12 & 6.9	Shows the claimed route in detail and "Quarr Lane" named alongside
1930s	W & A K Johnston Map of Dorset scale 3 inches: 1 mile	Shows the claimed route in a similar manner
1930	Ordnance Survey map scale 6 inches:1 mile Sheet 5SE & 6 SW	Shows the claimed route and "Quarr Lane" named alongside
1935	Sherborne Castle Estate Deposit made under Rights of Way Act 1932	Claimed route uncoloured. Not shown as a footpath or bridleway, so therefore suggests a route with higher public status.
1947	Aerial photograph	Shows claimed route within defined boundaries
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.	
1951	Sherborne Parish Survey	The map shows a bridleway numbered 16 between points A and D. The schedule shows the letters "CRF" crossed out and replaced with "B".R
1951	Castleton Parish Survey	The map shows a bridleway numbered 22 between points D and I. The schedule records "added by DCC for continuity with Sherborne UD".
1959	Draft map for the north area	Shown as bridleway 16 in Sherborne and bridleway 22 in Castleton

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Date	Document	Comment
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1964	Provisional map	Shown as bridleway 16 in Sherborne and bridleway 22 in Castleton
1967	First definitive map	Shown as Bridleway 16, Sherborne and Bridleway 22, Castleton
1972	Aerial photograph	Shows claimed route within defined boundaries
1974	Revised draft map	Shown as bridleway 16 Sherborne and bridleway 22 Castleton
1975	Objection to the revised draft map from the British Motor Cyclists Federation	Objection stated "that BR16 should be a byway"
1979	Public Inquiry	Inspector stated "BR16 was claimed as a RUPP in the 1951 parish survey but I do not consider that undue hardship would be caused if it was retained as a BR". The claim was not upheld.
1983	Secretary of State's decision re objections to revised draft map	Evidence insufficient to justify reclassification. Objection dismissed.
1989	Current definitive Map	Shown as Bridleway 16, Sherborne and Bridleway 22, Castleton – offline in places
1997	Aerial photograph	Shows claimed route within defined boundaries
2002	Aerial photograph	Shows claimed route within defined boundaries
2005	Aerial photograph	Shows claimed route within defined boundaries
2009	Aerial photograph	Shows claimed route within defined boundaries

Extracts from key documents
(See the Director for Environment's file RW/T420 for copies of other documents mentioned)

1910 Finance Act maps

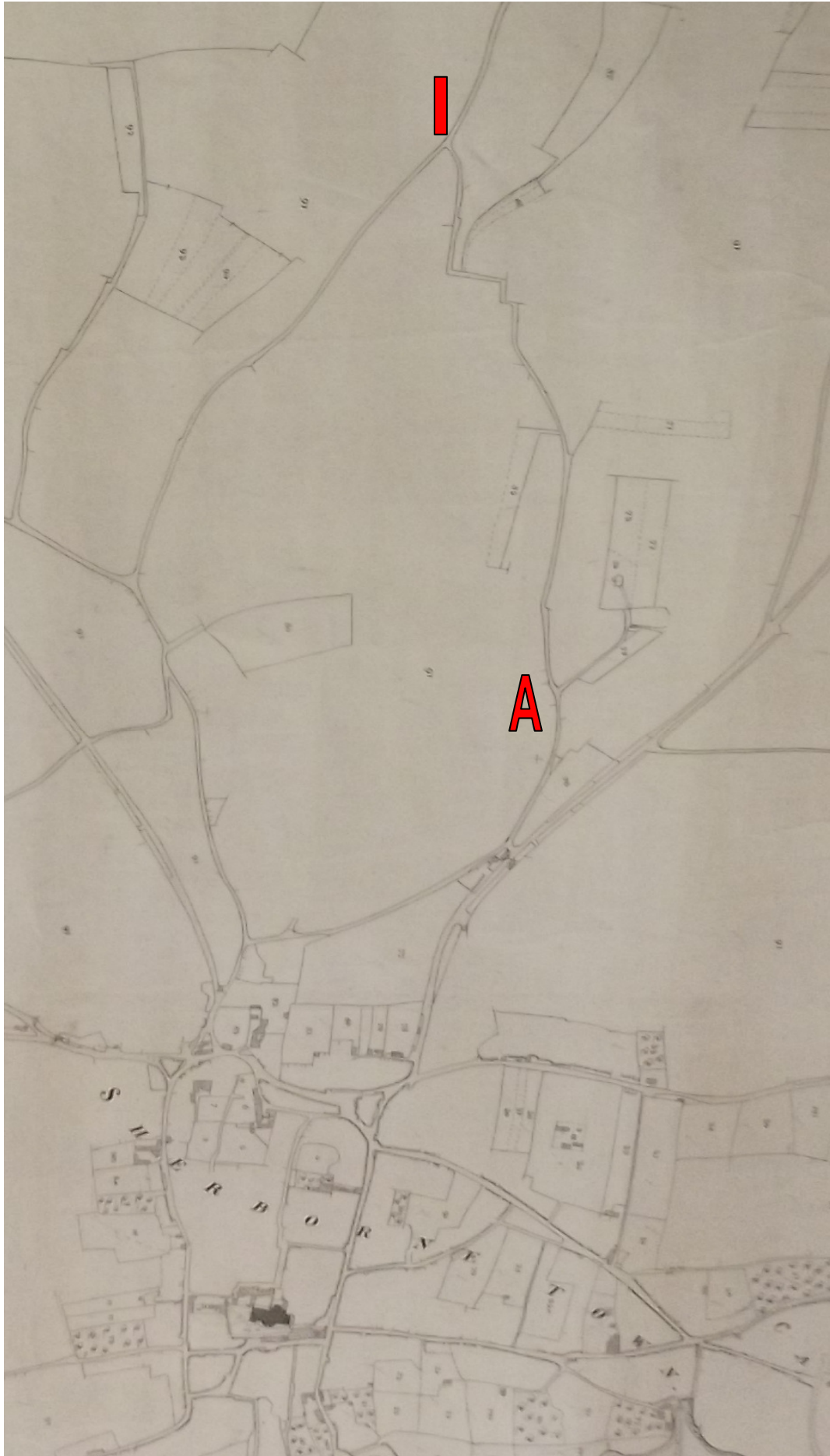


1901 Ordnance Survey Object Names Book

Names 22 as altered & cancelled in vol by Charles Russell, May 1901
 Names 22 as altered & cancelled in vol by Charles Russell, May 1901
 Names 22 as altered & cancelled in vol by Charles Russell, May 1901

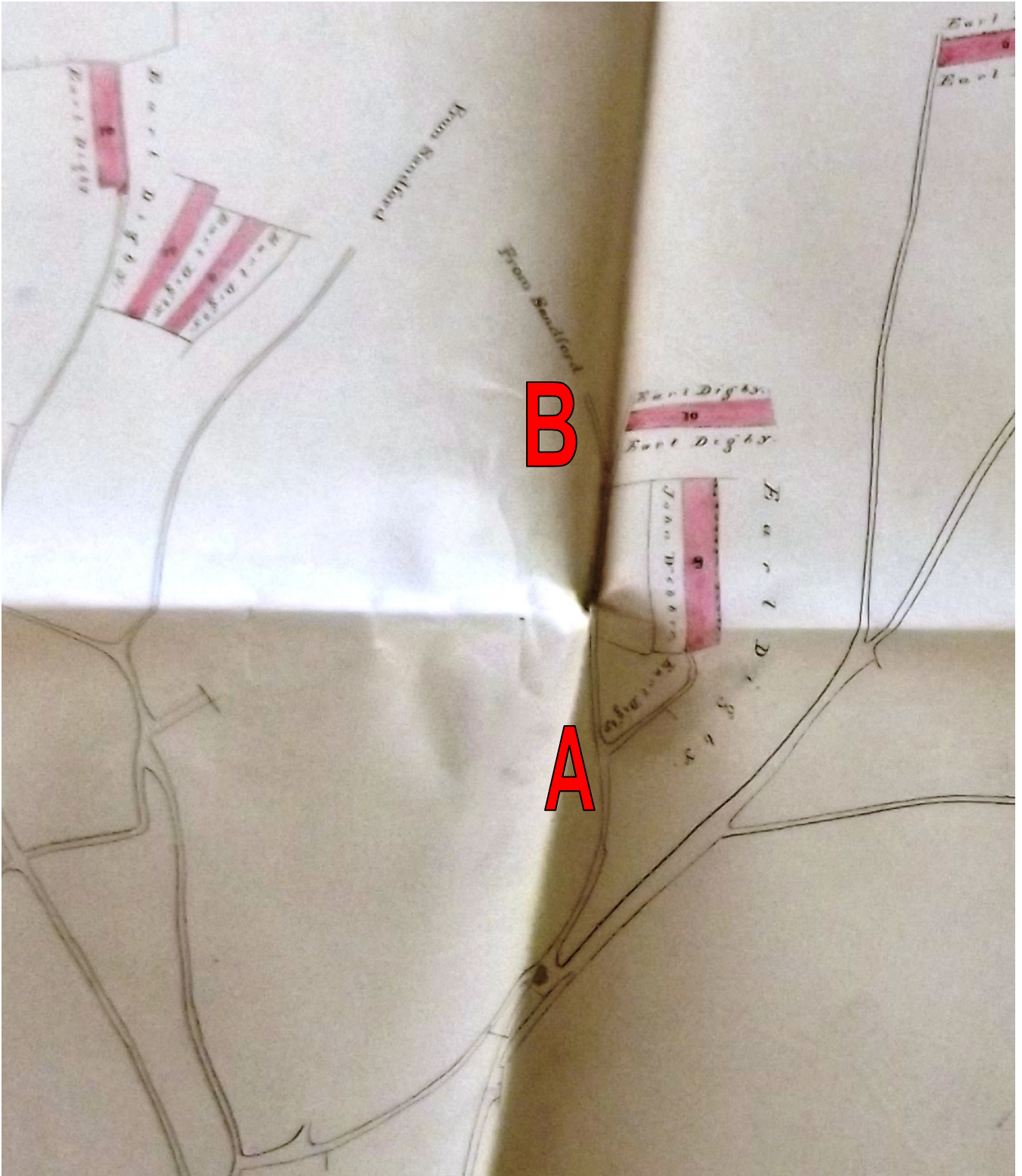
List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
	Belle Range (the 1st)	Authority for Obsolete Near Newlands & Aqueduct Cotswold Office, Sherborne See OS 2500 of 5 12	5	12	3	Now disused.
X Quarr Lane + Quarr Lane +		As above See form 230 alt. ^d See OS 2500 of 5 12	5	12	3	A public roadway from road ^{Synford Road} Sochford of Coombe farm to the junction ^{junction} road ^{road} junction ^{junction}
X Ticker's Cross +	Ticker's Cross	H B Conway Day best junction Lillington, Sherborne See form 230 alt. ^d See OS 2500 of 5 12	5	12	16	Cross roads situate about 1/4 mile of Nether Compton.
X Outcroft Lane +	Outcroft Lane	As above See form 230 alt. ^d See OS 2500 of 5 12	5	12	14	A public roadway from Ticker's Cross road 30 chains NE.
X Quincynore Lane +	Quincynore Lane	As above See form 230 alt. ^d See OS 2500 of 5 12	5	12	24	A public roadway from Ticker's Cross Wantage Lane.

1843 Sherborne Tithe Map



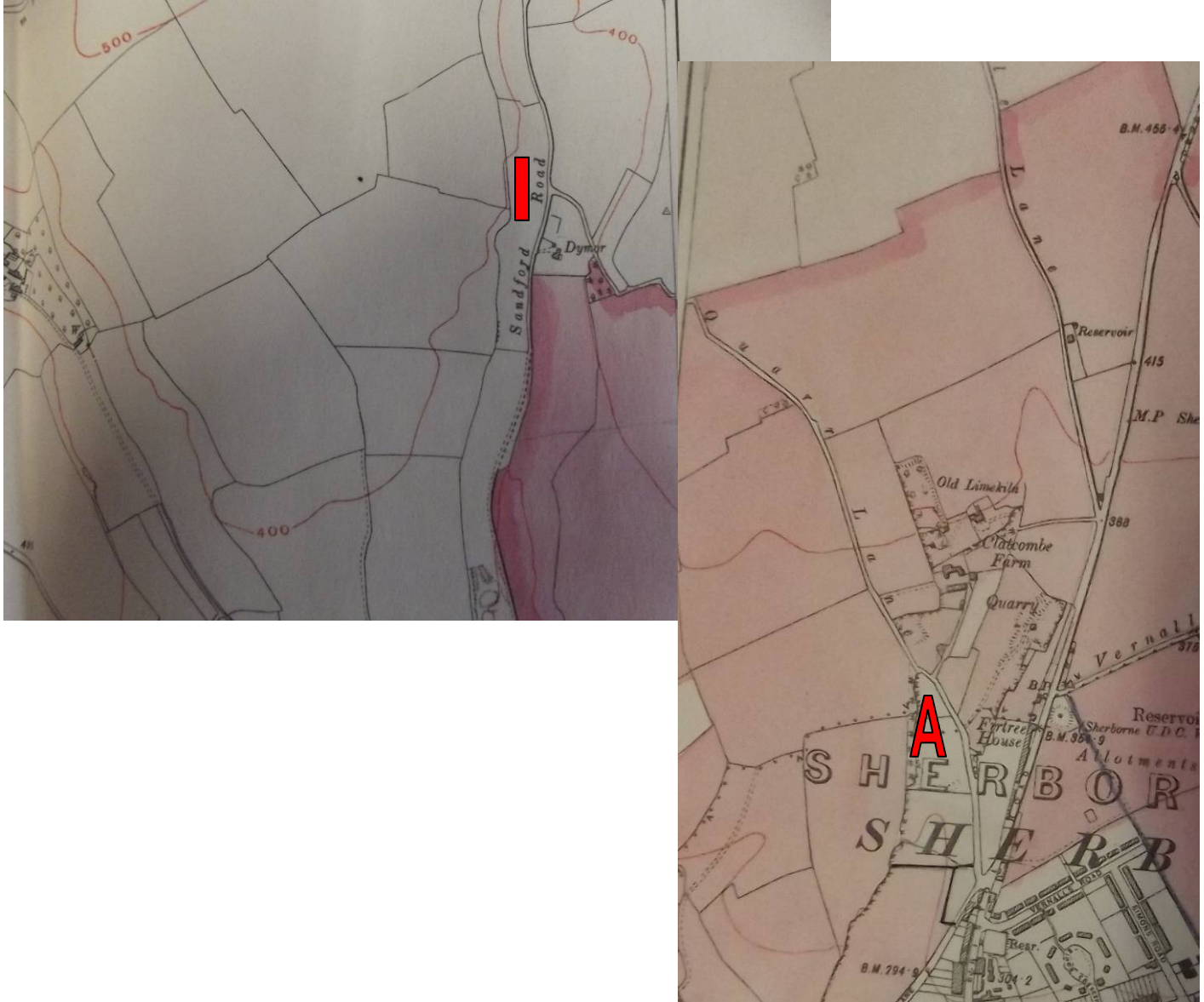
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1849 Sherborne Inclosure Map



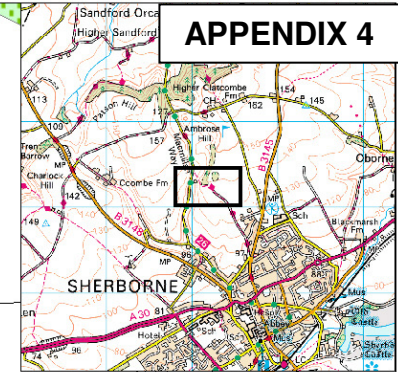
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1935 Sherborne Castle Estate Deposit



363250

APPENDIX 4

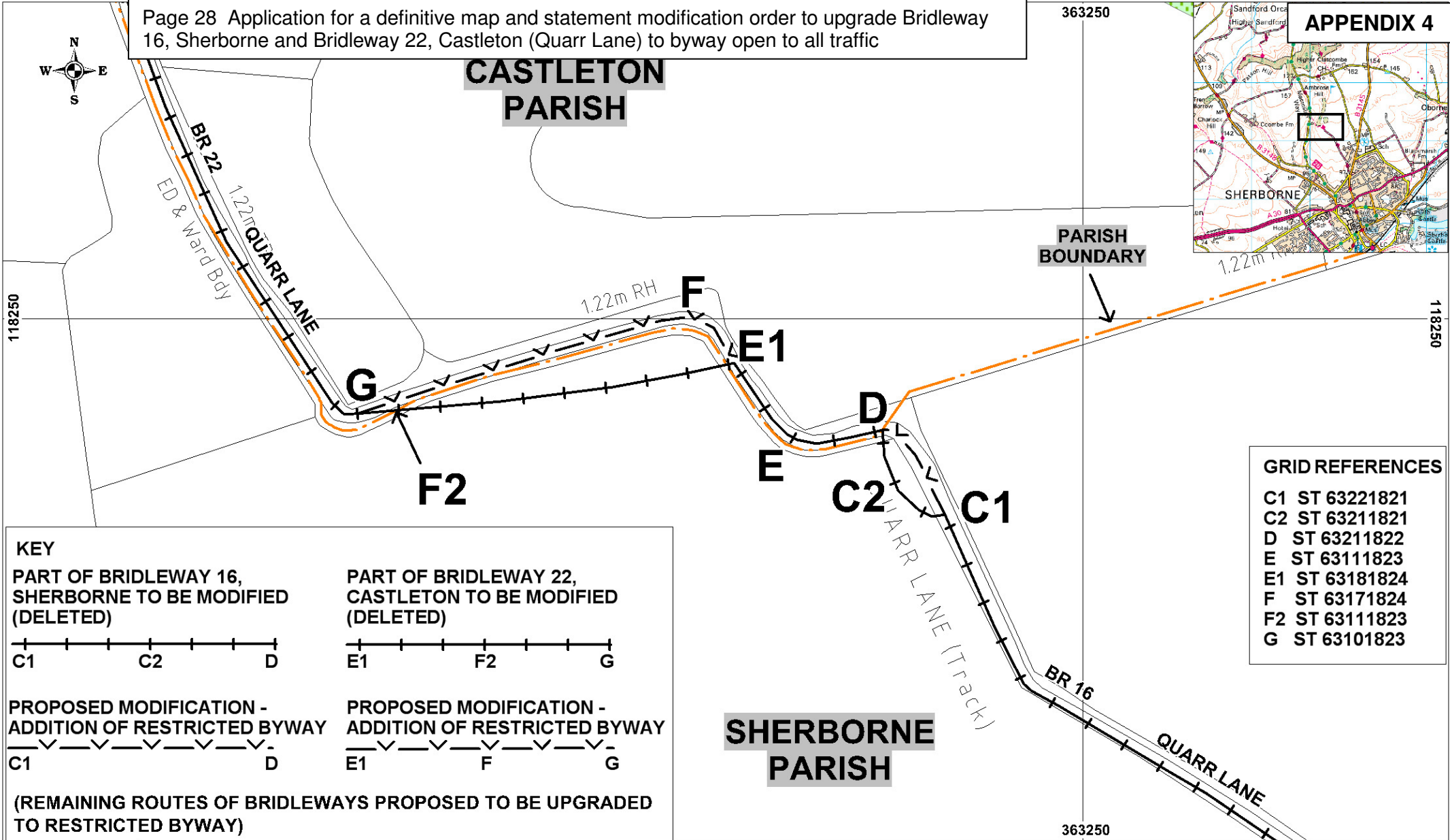


CASTLETON PARISH

PARISH BOUNDARY

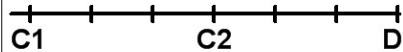
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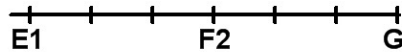


KEY

PART OF BRIDLEWAY 16, SHERBORNE TO BE MODIFIED (DELETED)



PART OF BRIDLEWAY 22, CASTLETON TO BE MODIFIED (DELETED)



PROPOSED MODIFICATION - ADDITION OF RESTRICTED BYWAY



PROPOSED MODIFICATION - ADDITION OF RESTRICTED BYWAY



(REMAINING ROUTES OF BRIDLEWAYS PROPOSED TO BE UPGRADED TO RESTRICTED BYWAY)

GRID REFERENCES

- C1 ST 63221821
- C2 ST 63211821
- D ST 63211822
- E ST 63111823
- E1 ST 63181824
- F ST 63171824
- F2 ST 63111823
- G ST 63101823

363250

WILDLIFE AND COUNTRYSIDE ACT 1981

PROPOSED MODIFICATION TO BRIDLEWAY 22 (PART), CASTLETON AND BRIDLEWAY 16 (PART), SHERBORNE - QUARR LANE

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/04/4

Date: 11/06/2013

Scale 1:1000

Drawn By: JLC

Cent X: 363180

Cent Y: 118230

GEOGRAPHICAL INFORMATION SYSTEMS



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