

Agenda item:

Roads and Rights of Way Committee

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Dorset County Council



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| Date of Meeting | 10 October 2013 |
| Officer | Director for Environment |
| Subject of Report | Application for a definitive map and statement modification order to upgrade Bridleway 12 and Footpath 13 (part), Wootton Fitzpaine to byway open to all traffic |
| Executive Summary | In response to an application to upgrade Bridleway 12 and part of Footpath 13 (part), Wootton Fitzpaine (one continuous route known as Mill Lane) 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 April 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. |

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| | <p>No user evidence forms have been submitted. Any relevant evidence provided has been discussed in this report.</p> |
| | <p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> |
| | <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> |
| | <p>Other implications:</p> <p>None</p> |
| <p>Recommendations</p> | <p>That:</p> <ul style="list-style-type: none"> (a) The application be refused; (b) An order be made to modify the definitive map and statement of rights of way to record Bridleway 12 and Footpath 13 (part), Wootton Fitzpaine as shown A – B – C – D – E – F – G – H on Drawing 13/12/1 (Appendix 1) as a restricted byway. (c) if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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 H – I 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 a highway shown on the definitive map and statement partly as a bridleway and partly as a footpath ought to be shown as a public vehicular route. 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 part of the claimed route; and |

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| | <p>(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> <p>Decisions on applications for definitive map modification orders help to ensure the definitive map and statement of rights of way is kept up to date and achieves the corporate aim:</p> <ul style="list-style-type: none"> • To safeguard and enhance Dorset's unique environment and support our local economy. |
| <p>Appendices</p> | <ol style="list-style-type: none"> 1 - Drawing 13/12/1 2 - Law 3 - Documentary evidence <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1910 Finance Act <ul style="list-style-type: none"> - Map sheet 37.1 - Field book entry for Hereditament 403 ▪ 1935 Statutory Declaration under Rights of Way Act 1932 ▪ 1842 Wootton Fitzpaine Tithe map ▪ 1844 Whitchurch Canonorum Tithe map ▪ 1792 Plan of Manor of Wild ▪ 1902 Ordnance Survey Second Edition map scale 6 inches:1 mile (enlarged) |
| <p>Background Papers</p> | <p>The file of the Director for Environment (ref. RW/T422)</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/T422, 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 Tel: (01305) 221562 Email: p.c.hobson@dorsetcc.gov.uk</p> |

1 Background

- 1.1 An application to upgrade Bridleway 12 and Footpath 13 (part), Wootton Fitzpaine as shown between points A to I on Drawing 13/12/1 (Appendix 1) was made by Mr S Teuber on behalf of the Trail Riders' Fellowship on 24 January 2006.
- 1.2 The route claimed commences from a public road shown as point A on Drawing 13/12/1. The route follows a north westerly direction on a relatively steep decline to point A1. The extent of the route is defined by a hedge on a bank to the western side and a hedge to the east, being approximately 3.5 metres in width. The surface initially comprises of a clean stone and gravel mix, after which it is overlaid by a shallow layer of soil and mud.
- 1.3 From A1 the route is, for much of its length, extensively overgrown and in places has suffered from severe surface erosion. From A1 towards A2 a ditch has been dug to the western margin of the route, thereby reducing the useable width. However, taking into account both encroachment and erosion the width of the route has been taken as that between the defining hedges or banks adjoining it and is approximately 4.5 metres. The surface of this section is a mix of stone, gravel and earth.
- 1.4 From A2 to B, its junction with Footpath 44, Wootton Fitzpaine, the surface of the route remains a mixture of stone, gravel and earth, the width being 3 metres. From A2 to A3 the ditch to the western side remains, before joining a small stream that cuts across the path at point A3. From A2 there is also a pronounced bank to the eastern side, which gradually reduces in height towards A3. Immediately before reaching point B another small stream cuts across the path.
- 1.5 From point B the route turns easterly towards point C. This section of the route is extensively overgrown and badly eroded leaving a narrow 'gully' at the base of the adjoining banks, the useable width being 1.5 metres. However, one or two mature trees are probably indicators of where the original boundary lay and the width between adjacent banks is 3 metres. The surface remains a mixture of stone, gravel and earth.
- 1.6 From C to D the route turns northeast, the surface remains the same and the width between the tops of the adjacent banks is 2.5 metres, whereas at the base of the eroded 'gully' it is 1.5 metres. The severity of the erosion increases from point C and the base of the 'gully' becomes a narrow channel approximately 1 metre in width. There are several places where recycled kerb stones have been placed within the base of the 'gully'.
- 1.7 At point D there is a culvert beneath the route and a stream to the eastern side which has broken through the bank washing across the route before exiting above the culvert. From D the route turns easterly and narrows, being heavily encroached upon by the adjacent hedges, the width being approximately 2 metres between the faces of the hedges. The surface remains a mixture of stone and gravel, overlaid by earth.

- 1.8 At point E, its junction with Footpath 11, Wootton Fitzpaine, the width briefly widens to 3 metres before narrowing to 2.5 metres between adjacent hedges and 2 metres at the base of the 'gully'. The surface is comprised of mud and earth overlying a stone and gravel base just before reaching the ford at point F the width increases to 3 metres before reducing to 2.5 metres at the entrance to the ford. A bridleway bridge is located on the eastern side of the ford.
- 1.9 From the ford, point F, to the junction with Footpath 13, Wootton Fitzpaine, at point G the route is defined by a shallow depression, there being no hedges or fences adjacent. The surface is grass and the width 3 metres. Between points G and I the surface is gravel or stone, initially undefined but then well defined by the adjacent hedges and banks, with a width of 3 metres.
- 1.10 B H Chapman and Sons and Denhay Farms Limited own some of the adjoining fields and others have stated their knowledge of it. However, no individual or company has made any claim as to their title to the land the route occupies.

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/T422.
- 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

- 4.1 No user evidence has been submitted in support of this 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/T422)

- 6.1 One objection was received following receipt of the application in 2006. A further three letters of objection were received as a result of the consultation, which commenced in April 2013.

| Name | Comments |
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| Following the application in 2006 (1) | |
| B H Chapman & Sons | Objects to the application on the grounds of the lane's designation as a SNCI and the security of livestock. |
| Following the consultation in 2013 (3) | |
| Mr P Mills (Rights of Way Liaison Officer (ROWLO) Wootton Fitzpaine | Recommends refusal and notes that route has not been fit for use as a footpath or bridleway but acknowledges that its historical use was probably by horse drawn carts. |
| Mr P Archard | Objects to use of route with motor vehicles due to wildlife and safety reasons. |
| Mr J Snook | Has known of route since 1950s. It has been a bridleway /footpath only during this period and is unsuitable for traffic. Such use would lead to erosion and he considers it unacceptable to consider recording it as a byway. |
| | 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 |

7 **Other submissions received** (copies available in the case file RW/T422)

7.1 Another six submissions were received, one following the application and five in response to the consultation.

| Name | Comments |
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| Following the application in 2006 (1) | |
| Mrs E Fortescue, Wootton Fitzpaine Parish Councillor | Suggests that route has ancient origins and has been a public highway since at least 1864, probably used by packhorses and carts. |
| Following the consultation in 2013 (5) | |
| Natural England | No comments, does not believe the application is likely to impact on the AONB. |
| Mr G Plumbe | No comments |
| BT Openreach | No objections |
| Western Power Distribution | No objections |
| Claire Pinder, Senior Archaeologist, Dorset County Council | No recorded archaeological finds, features or historic buildings in the vicinity but notes that field boundaries are probably medieval in origin and "any surviving boundary banks should be treated with care". |

8 Analysis of documentary evidence

1910 Finance Act

- 8.1 The claimed route is clearly visible on the Ordnance Survey map sheet 37.1 (scale 25 inches: 1 mile) used as the base map for the Finance Act plans. The route between points A and C is excluded, this being indicated by the colour-washed adjacent boundaries. Although the route between points C and H appears to be included within the adjacent **Hereditament 403** it should be noted that the broken brace straddling the route in the vicinity of point E indicates otherwise. The remainder of the route between points H and I is also excluded and therefore the entire route is shown to have been excluded for the purpose of valuation.
- 8.2 Reference to the accompanying **Field Book for Hereditament 403** reveals that a deduction of £25 was given in respect of public rights of way or user. A note within the book reveals that this was in respect of footpaths over the holding. A further note under the heading of **Fixed Charges, Easements, Common Rights and Restrictions** states that *“Mill Lane passes through premises Footpaths also”*. This would confirm that Mill Lane was not regarded as a footpath nor, as it is not mentioned, was it regarded as a bridleway.
- 8.3 The exclusion of a way within these documents provides strong evidence towards the conclusion that the route was regarded as a public carriageway. Whilst there were no penalties should a landowner choose to ignore the existence of public highways, there were severe penalties for wrongfully claiming tax relief. Consequently these documents provide strong evidence towards the conclusion that the claimed route (Mill Lane) was regarded as a public carriageway throughout its length as shown between points A to I.

1932 Rights of Way Act

- 8.4 In **March 1935** the **Pass Family Trust**, owners of the **Wootton Fitzpaine Estate**, which included the land over which the entire route A to I passes, made a **Statutory Declaration** under the **Rights of Way Act 1932**. Under this legislation landowners could acknowledge where and of what status any public rights of way existed on their land.
- 8.5 The plan accompanying the declaration is colour washed in red, depicting the extent of the landholding. The accompanying key indicates that footpaths were shown in blue and ‘BRIDLE ROADS’ in red. Public carriageways are not indicated in the key although it seems apparent that these were left uncoloured on the plan. The claimed route, Mill Lane, is uncoloured, which suggests that the owners acknowledged that its status was that of a public carriageway. This is reinforced by the acknowledgement of a public footpath, now recorded as Footpath 11, Wootton Fitzpaine, that is shown to connect with Mill Lane at point E on Drawing 13/12/1.
- 8.6 However, if Mill Lane was not a public highway then Footpath 11 would have been a cul-de-sac. Assuming that it was a public highway, as it was not coloured, it does not appear to have been considered to be either a footpath or bridleway and this therefore suggests that it was regarded as a public carriageway.

Tithe Apportionments & Plans

- 8.7 Parts of the claimed route are shown on both the **Wootton Fitzpaine** and **Whitchurch Canonorum tithe maps**. This may indicate that the parish boundary ran along part of the route at the time.
- 8.8 The entire route as shown between points A and I is clearly depicted on the **1842 Wootton Fitzpaine Tithe Map**. It is not apportioned and is clearly annotated as being 'Mill Lane', which is shown to continue beyond point I, following the route of what is now recorded as a public road, the D10612.
- 8.9 The **1844 Whitchurch Canonorum Tithe Map** depicts two parts of the claimed route, a small section as shown between points A and A1 and a longer section between points A2 and B. The sections depicted are clearly not apportioned and, in addition, are colour-washed in light brown. Unusually there is an accompanying key, which defines, amongst other features, footpaths and roads. Footpaths are depicted by means of a broken single line, whilst roads are depicted by two parallel lines and are colour-washed in light brown.
- 8.10 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.
- 8.11 In this particular case the Tithe apportionment provides good evidence as to the physical existence of the route at the time. Additionally, the fact that the route is **unapportioned** on both maps, labelled as '**Mill Lane**' on the **Wootton Fitzpaine map** and **colour-washed in light brown**, denoting that it was regarded as a road on the **Whitchurch Canonorum map** may lend support towards the conclusion that the route was regarded as a public highway, possibly a public carriageway. However, in light of the evidence provided by the Finance Act documents and the Statutory Declaration it is considered reasonable in this instance to apply **additional weight** to this evidence and to conclude that it provides additional supporting evidence towards the existence of the claimed rights.

1949 National Parks and Access to the Countryside Act

Parish Survey

- 8.12 The precise date that the **Wootton Fitzpaine Parish Survey** was undertaken is not known for certain although some notes within the file suggest that it may have commenced in **March 1953**. However, the application route, Mill Lane, is clearly shown on the Ordnance Survey base map that was used for the survey.

- 8.13 Other than a small section of the route as shown between points G and H, which was part of Footpath 18 at the time, the application route was not claimed by the parish, although located to the east a footpath numbered 22 and running generally parallel to it, was claimed (now Footpath 11). Footpath 22 was shown to terminate at its junction with the claimed route shown as point E. It was not shown to continue along the claimed route.
- 8.14 The schedule for footpath 22 contains little information but defines the route as a “**Footpath**”, with what appears to be a later annotation of “**Recommendation for abloition [sic] as there is an alternative route**”. It is described as commencing from “**Westover Hill**” leading to “**Champerhayne**”.
- 8.15 The survey map has additional annotation in pencil adjacent the claimed route in the vicinity of point A that states “Bridle Road”, referring to a small circled area (A to A1). This was most likely to have been added by the County Council at a later date.
- 8.16 The termination point of footpath 22 is noteworthy as the schedule clearly describes the path as continuing to the Mill, necessitating use of the claimed route from E to H. This suggests that the Parish Council were aware of existing public rights over the claimed route and, as these were neither on foot nor horseback, as they were not the subject of any claim, it appears that they may have considered the claimed route to have the status of a public carriageway. Furthermore, Mill Lane may well be the alternative route they had in mind when the extinguishment of footpath 22 was suggested.

Draft, provisional and first definitive maps

- 8.17 The information collated during and immediately following the parish surveys was used in the production of the draft map of public rights of way, which in turn resulted in the publication of the provisional and first definitive maps.
- 8.18 Although the application route was not the subject of any claim, that part as shown between points E and H was recorded (A to E and H to I were not recorded) as part of Footpath 22 on the **draft map** for the **west area**, which was published in **June 1953**. However, no explanation for this course of action has been discovered and it appears to have been done in order to extend Footpath 22 from point E, as recorded on the parish survey, to a new termination point with Footpath 18 at point G.
- 8.19 The Ramblers’ Association objected to the omission of the part of the currently claimed route (A – E) from the draft map, stating that it was “**A little used lane, if it is not a Public Highway, from paths 22 and 23 at [GR] 350955 to A.373 at 348949**”. The National Parks Sub Committee upheld the objection and recommended that the path be added to the draft map.
- 8.20 On both the **provisional map** published in December **1963** and the **first definitive map** published in **1966** the claimed route as shown between points A and G was recorded as **Bridleway 12**, that part between points G and G1 as **Footpath, 13** and that between points G1 and I was not recorded.

Special Review – revised draft map – current definitive map

- 8.21 **Bridleway 12 and Footpath 13** were not subject to an investigation during the **Special Review of rights of way (1973)**. The claimed route as shown between points A and G was recorded as **Bridleway 12, Wootton Fitzpaine**, that part between points G and H as **Footpath 13** and that part between points H and I was unrecorded on the **revised draft map (1974)**.
- 8.22 Although the fact that the whole of the claimed route is recorded upon the **current definitive map (sealed 1989)** as a bridleway is conclusive evidence as to the existence of these rights, it is not prejudicial to the existence of any higher public rights over the route.
- 8.23 The evidence derived from the records leading to the publication of the first definitive map provides nothing of particular significance. However, the Parish Council did not claim Mill Lane as either a footpath or bridleway but had claimed another footpath that connected to it. This would have had to have been a public highway of some description and supports the conclusion that the Parish Council believed that Mill Lane may have held public vehicular rights. Weighed against that is the fact that when the route was established as a bridleway following the Special Review there is no record of any objections to its status.

List of streets

- 8.24 The **schedule of roads** on the List of Streets records that part of the claimed route as shown between points H and I is a part of an unclassified road that commences at Champernhayes Mill, SY 353960 (point H) heading north to its junction with Champernhayes Lane, SY 351:956 via Champernhayes Cross. It is recorded as comprising of 0.12 miles (0.19km) of paved road and 0.30 miles (0.48km) of unpaved road and has the reference number D10612.
- 8.25 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 H to I being that of a public carriageway.

Other documents

Estate Map

- 8.26 The map of the “**Manor of Wild** in the parish of **Whitechurch Canonorum**, the Property of the **Honorable James Everard Arundell and Ann his Lady**”, **1792**, depicts that part of the route as shown between points A and B. Although there is no accompanying schedule or explanation it can be seen that each individual parcel of land is individually numbered, whilst the roads clearly are not. The claimed route is not numbered and is depicted by means of two parallel unbroken lines, being shown in exactly the same manner as the public road from which it commences at point A. Therefore this suggests that the claimed route may also have been a public road.

Ordnance Survey Maps

- 8.27 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 Wootton Fitzpaine parish was completed in **1806** and clearly depicts the route claimed throughout its length A to I. It is shown in the same manner as other routes in the vicinity, many of which are recorded as public carriageways.
- 8.28 The **1809 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also shows the claimed route as shown between points A and I. It is depicted by two parallel solid lines, suggesting that throughout its length it was enclosed 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.
- 8.29 The **1888 First Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route throughout its length between points A and I. The lane is not marked 'F.P.' or 'B.R.' but is boldly annotated with its name 'Mill Lane'. In addition the route is clearly defined in the same manner as the earlier one inch scale map, suggesting that it was enclosed throughout its length. In several places the route is crossed, indicated by a dark line, however in this instance this most likely indicates the presence of a brook or drain rather than a gate or barrier. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.30 The **1902 Second Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in a similar manner to the First Edition map at the same scale. It is not annotated as a footpath or bridleway, it is shown with double solid lines, indicating that it is fenced or hedged on both sides and is annotated with its name 'Mill Lane'.
- 8.31 The **1904 Second Edition Ordnance Survey map** at a scale of 1:2500 (25 inches: 1 mile), which is the same edition used for the Finance Act valuation, depicts the claimed route in the same manner as the six inch scale maps of 1888 and 1902.
- 8.32 The applicant provided extracts from both the **1919** and the **1946 Ordnance Survey maps** at a scale of 1 inch:1 mile which show the claimed route throughout its length from between points A and I. Both of these maps also have keys and the route is defined as a road under 14 feet wide and in bad condition.

8.33 The **1923 Ministry of Transport Road Map of Weymouth, Yeovil and Taunton** was produced by the **Ordnance Survey** and based on the Ordnance Survey 1 inch:1 mile scale 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 they were not classified.

- (a) Reference to the map key reveals that the whole of the claimed route as shown between points A and I 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.

8.34 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 solid lines denoting the presence of 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 'Mill Lane', which may also suggest the public nature of the route.

8.35 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 and in light of all of the available evidence may be considered as providing some support to the application.

Commercial maps

8.36 The applicant makes reference to a number of **small scale maps of Dorset** held at the Dorset History Centre and has provided extracts from a variety of Bartholomew and other commercial maps in support of the application.

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

- **1765 Taylor's Map of Dorset**
- **1796 Taylor's Map of Dorset**
- **1826 Greenwood Map of Dorset (Key: Cross Road)**
- **1846 Gazetteer Dorset (Key: Bye Road)**

- **1863 Cruchleys Railway and Station Map of Dorsetshire**
- **Early 1900s Map of Dorset by George Richmond**
- **1900s Weller Despatch Atlas**
- **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 and Cross-road)**
- **1920s English roads at a glance Map 3 by George Philip and Son Ltd**
- **1940s Geographia Large Scale Road Map of Dorsetshire (Key: Other Road)**

8.38 **Bartholomew's maps** are based on Ordnance Survey data and were extremely popular and widely referred to by the public. They provided information on first, second and 'indifferent' classes of roads as well as footpaths and bridleways. The extracts from the **Bartholomew Maps** submitted in support of the application cover a period from **1911 to 1971** and depict the route quite prominently in exactly the same manner as other public roads in the area. Reference to the accompanying map keys indicates that the claimed route was designated as either an 'inferior' or 'other' road.

- **1911 2 miles to an inch (Key: Inferior Road)**
- **1920 2 miles to One inch (Key: Inferior Road)**
- **1923 2 miles to One inch (Key: Inferior Road)**
- **1927 2 miles to One inch (Key: Inferior Road)**
- **1931 2 miles to One inch (Key: Inferior Road)**
- **1936 2 miles to One inch (Key: Other Road)**
- **1944 2 miles to One inch (Key: Other Road)**
- **1951 2 miles to One inch (Key: Other Road)**
- **1960 2 miles to One inch (Key: Other Road)**
- **1971 2 miles to One inch (Key: Other Road)**

8.39 The extracts from the **Small Scale Maps of Dorset**, including the **Bartholomew Maps** 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, provides some support to the application, although no significant weight has been attached to them.

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

8.1 No user evidence was submitted in support of the application. The applicant is relying entirely on the documentary evidence submitted with the application.

9 Analysis of evidence opposing the application

- 9.1 The objections and other comments opposing the application relate to issues such as suitability and environmental impacts and are therefore not relevant to the question as to what rights may exist and consequently cannot be taken into consideration in determining whether or not the claimed rights exist.

10 Analysis of other submissions

- 10.1 The other letters contain no evidence to be considered.

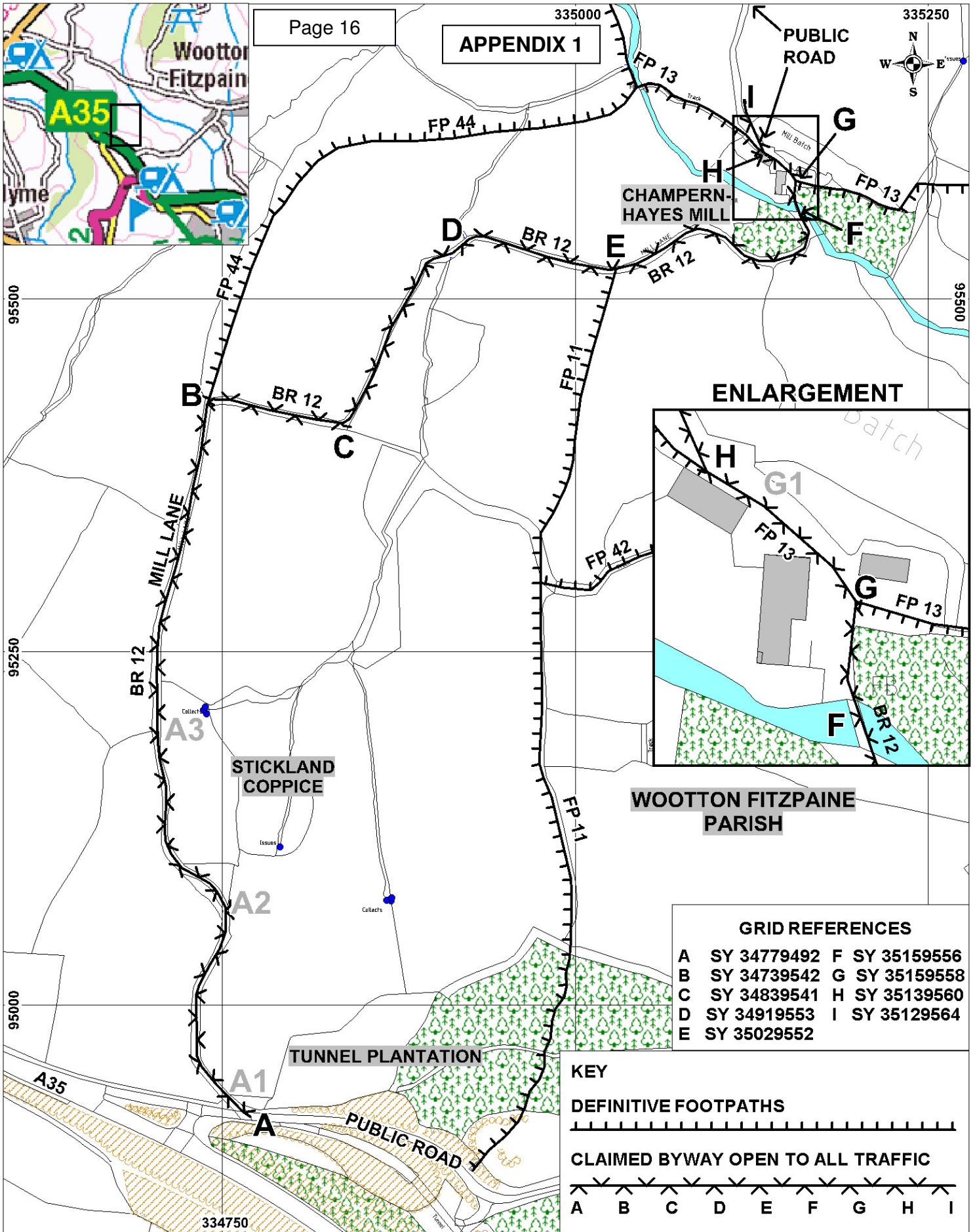
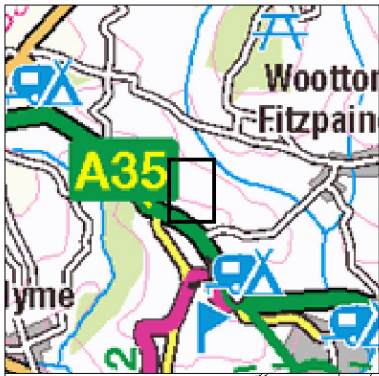
11 Conclusions

- 11.1 As the route between points A and H is currently recorded as a bridleway and footpath it is necessary for members to decide whether, on the balance of probability, the highways shown in the map and statement as a bridleway and footpath ought to be shown as highways of a different description.
- 11.2 It is considered that the most significant pieces of evidence are those derived from the **Finance Act Records 1910** and the **Pass Family Trust Statutory Declaration** made under the **Rights of Way Act 1932** in **March 1935**, both of which provide very strong evidence to the conclusion that the route was a public carriageway.
- 11.3 The above conclusion is supported with the evidence provided from the **Wootton Fitzpaine Tithe Map 1842**, which depicts the route as being un-apportioned throughout its length and on which it is also clearly labelled as being "Mill Lane". In addition, the **Whitchurch Canonorum Tithe Map 1844** depicts two small sections of the route, both of which were not apportioned and the accompanying key defining them as roads.
- 11.4 In light of the above, further evidence such as that provided by the **Whitchurch Canonorum Parish Survey 1953**, the **Map of the Manor of Wild 1792** and both the **Ordnance Survey** and **commercial maps** are considered to provide further supporting evidence to the application.
- 11.5 As there does not appear to be a recorded owner of the land and in spite of a full consultation no individual or body has made any claim upon it, this may be seen as supporting the claim of the applicant that the route is a public carriageway.
- 11.6 With respect to that part of the claimed route as shown between points H and I on Drawing 13/12/1, 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. Therefore it is recommended that the application be refused.
- 11.7 With respect to the remainder of the route as shown between points A to H on Drawing 13/12/1 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.
- 11.8 As no user evidence was submitted with the application the question as to whether any presumption of dedication under Section 31 of the Highways Act 1980 or at Common Law does not arise.

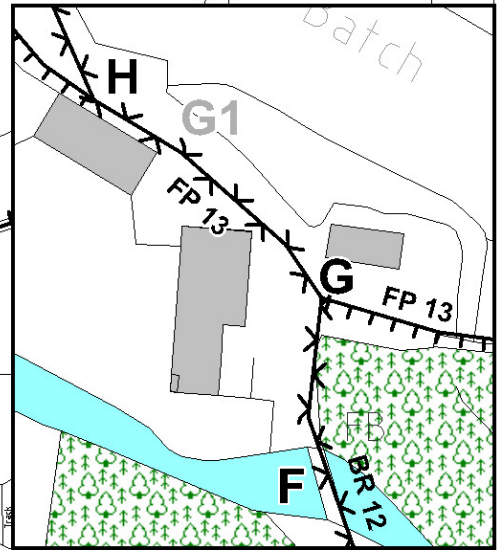
- 11.9 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the claimed route, the public mechanically propelled vehicular rights have been extinguished.
- 11.10 Therefore it is recommended that an order be made to record part of the claimed route as shown A – B – C – D – E – F – G – H on Drawing 13/12/1 (Appendix 1) as a restricted byway.
- 11.11 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Miles Butler
Director for Environment

September 2013



ENLARGEMENT



WOOTTON FITZPAINE PARISH

GRID REFERENCES

| | | | |
|---|-------------|---|-------------|
| A | SY 34779492 | F | SY 35159556 |
| B | SY 34739542 | G | SY 35159558 |
| C | SY 34839541 | H | SY 35139560 |
| D | SY 34919553 | I | SY 35129564 |
| E | SY 35029552 | | |

KEY

DEFINITIVE FOOTPATHS

CLAIMED BYWAY OPEN TO ALL TRAFFIC

A B C D E F G H I

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO UPGRADE BRIDLEWAY 12 AND FOOTPATH 13 (PART) 'MILL LANE', WOOTTON FITZPAINE TO BYWAY OPEN TO ALL TRAFFIC

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/12/1

Date: 11/09/2013

Scale 1:3500

Drawn By: JLC

Cent X: 334937

Cent Y: 95273

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(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 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

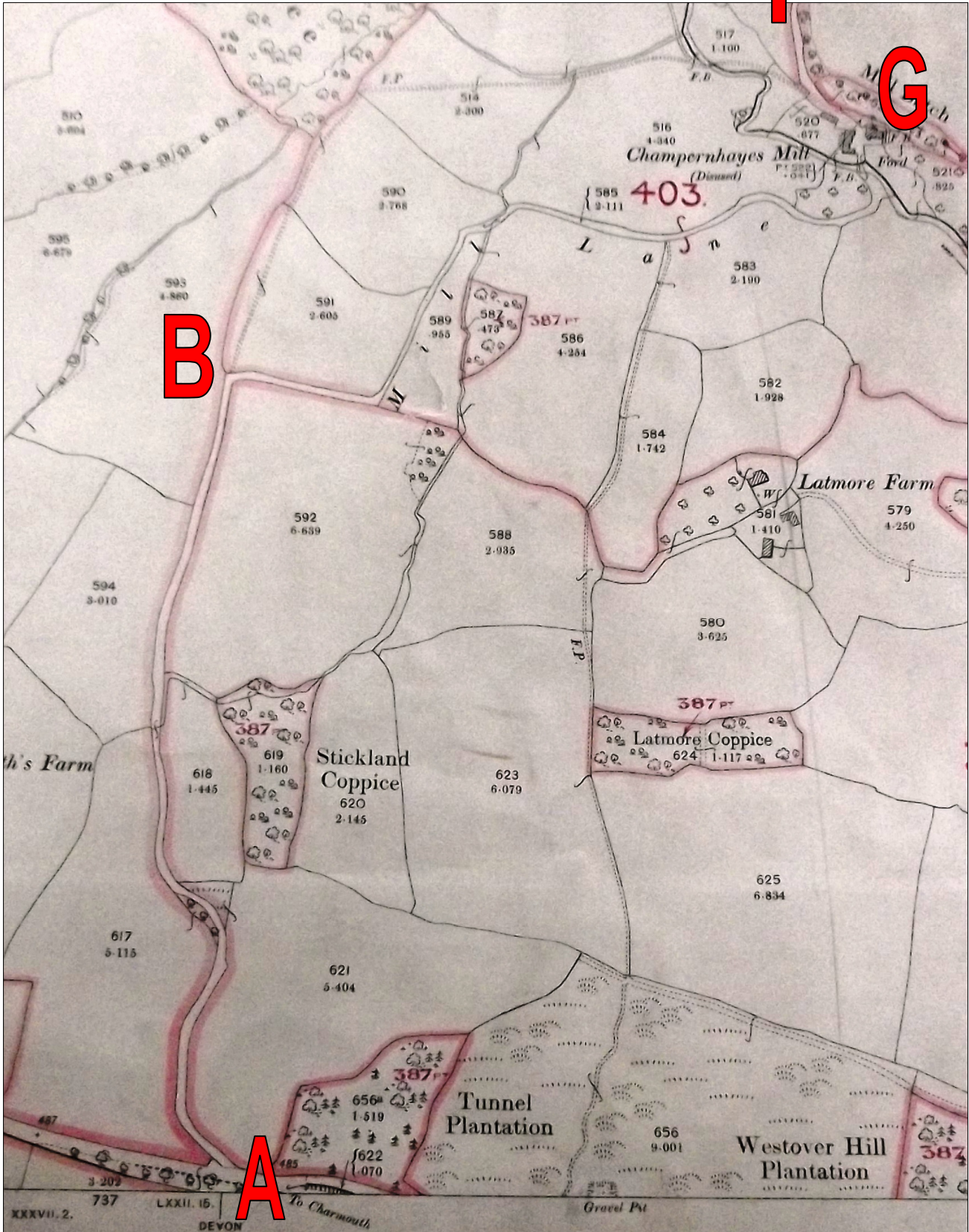
| Date | Document | Comment |
|-------------|---|---|
| 1765 | Isaac Taylor's Map of Dorset | Shows claimed route A – I. Key defines as road. |
| 1792 | Plan of Manor of Wild | Shows part of claimed route between point A and B. |
| 1796 | Isaac Taylor's Map of Dorset | Shows claimed route A – I. |
| 1806 | Ordnance Survey Drawing | Shows claimed route A – I. |
| 1809 | Ordnance Survey First Edition map scale 1 inch:1 mile | Shows claimed route A – I. |
| 1826 | Greenwoods' Map of Dorset | Shows claimed route A – I. Key defines as 'Cross Road'. |
| 1842 | Wootton Fitzpaine Tithe map and apportionment | Shows claimed route A – I, which is un-apportioned and annotated as being 'Mill Lane'. |
| 1844 | Whitchurch Canonorum Tithe map and apportionment | Shows two parts of claimed route A - A1 and A2 – B. Both sections are unapportioned, colour-washed and defined as 'roads' in key. |
| 1846 | Gazetteer Map Dorset | Shows claimed route A – I. Key defines as 'Byeroad'. |
| 1863 | Cruchley's Railway and Station Map of Dorsetshire | Shows claimed route A – I. |
| 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 – I. Not annotated as either 'F.P.' or 'B.R.'. Enclosed by fences, hedges and annotated as being 'Mill Lane'. |
| 1889 | NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889. | |
| 1896 | NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading. | |
| 1900s | Richmond's Map of Dorset | Shows claimed route A – I. |
| 1900s | Weller Despatch Atlas | Shows claimed route A – I. |
| 1900s | G Philip & Son Botanical Map of Dorset | Shows claimed route A – I. |
| 1900s | G Philip & Son Geological Map of Dorset | Shows claimed route A – I. |

| Date | Document | Comment |
|-------------|--|---|
| 1900s | Bacon's New Revised Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1900s | Bacon's Geographical Map | Shows claimed route A – I as a 'Main or Cross-road'. |
| 1902 | Ordnance Survey 2 nd edition map scale 25 inches:1 mile | Shows claimed route A – I. Not annotated as either 'F.P.' or 'B.R.'. Enclosed by fences, hedges and annotated as being 'Mill Lane'. |
| 1902 | Ordnance Survey 2 nd edition map scale 6 inches:1 mile | Shows claimed route A – I. Not annotated as either 'F.P.' or 'B.R.'. Enclosed by fences, hedges and annotated as being 'Mill Lane'. |
| 1910 | Finance Act map sheet 37.1 and field book H403 | Entire route A – I excluded from valuation suggesting a status of a public carriageway. |
| 1911 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Inferior Road'. |
| 1912 | NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912. | |
| 1919 | Ordnance Survey map scale 1 inch:1mile | Shows claimed route A – I. Key defines as 'road under 14 feet wide' condition 'bad'. |
| 1920 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Inferior Road'. |
| 1920s | English Roads at a Glance Map 3 – G Philip & Son Ltd | Shows claimed route A – I. |
| 1923 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Inferior Road' |
| 1923 | Ministry of Transport Road Map of Weymouth | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1927 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Inferior Road'. |
| 1931 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Inferior Road'. |
| 1935 | Pass Family Trust – Statutory Declaration 1932 Rights of Way Act | Shows claimed route A to I route uncoloured as are all public roads on the plan with a footpath connecting to it at E. |
| 1936 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1940s | Geographia Large Scale Road Maps of Dorsetshire | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1944 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1946 | Ordnance Survey map scale 1 inch:1mile | Shows claimed route A – I. Key defines as 'road under 14 feet metalling' condition 'bad'. |

| 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 or horseback but also with vehicles should be recorded as a CRB. | |
| 1951 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| c1953 | Wootton Fitzpaine Parish Survey | Route not claimed as either footpath or bridleway by parish. (Small section G – H part of footpath 18.) |
| 1953 | Draft Map | Part of claimed route E – H recorded as a public footpath. |
| 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.) | |
| 1960 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| Dec 1963 | Provisional Map | Part of claimed route A – G recorded as Bridleway 12, G1 – H as Footpath 13. H – I unrecorded. |
| 1966 | First Definitive Map | Part of claimed route as shown A – G recorded as Bridleway 12, part from G – G1 as Footpath, G1 – I un-recorded. |
| 1971 | Bartholomew Map | Shows claimed route A – I. Key defines as 'Other Road'. |
| 1974 | Revised draft map | Shows claimed route A – G as Bridleway 12, G – H as Footpath 13 and H – I unrecorded. |
| 1989 | Current definitive Map | Claimed route A – G recorded as Bridleway 12 and G – H as Footpath 13. |
| Current | List of Streets | Records part of claimed route between points H and I as part of an unclassified road. |

Extracts from key documents
(See the Director for Environment's file RW/T422
for copies of other documents mentioned)

**1910 Finance Act
Map sheet 37.1**



Field book entry for Hereditament 403

..... 403 Reference No. Map. No. 37.10P

Situation *Wootton Fitzpaine Champfenhay Mill*

Description *14ms. Land & premises*

Extent *37 acs. 2 Roods 12 perches.*

Gross Value { Land £ } *£27.0.0* Rateable Value { Land £ }
 Buildings } *£23.15.0* Buildings }

Gross Annual Value, Schedule A, £

Occupier *Mills S.T.*

Owner *Jan Alpa Douglas Wootton Fitzpaine Champfenhay*

Interest of Owner *Freehold.*

Superior interests

Subordinate interests

Occupier's tenancy, Term *Yearly.* from

How determinable

Actual (or Estimated) Rent, £ *30.0.0*

Any other Consideration paid

Outgoings—Land Tax, £ *4/6* paid by *owner*
 Tithe, £ *3.14.9* paid by *"*

Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance (a) occupier (b) owner

Who is liable for repairs *owner*

Fixed Charges, Easements, Common Rights and Restrictions
Mill Lane passes through premises Footpath also

Former Sales. Dates *Part of Wootton Fitzpaine Estate*

Interest

Consideration

Subsequent Expenditure *not known*

Owner's Estimate. Gross Value

Full Site Value