

Report to the Executive Director for Place

Proposed definitive map and statement modification order – parts of Bridleway 10 and Footpath 15, Iwerne Courtney (Shroton)

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr J Somper, Ward Member for Beacon

Executive Director: J Sellgren, Executive Director of Place

Report Author: Kerry Dorrington

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Report Status: Public

Brief Summary: This report considers the evidence relating to the recorded routes of parts of Bridleway 10 and Footpath 15, Iwerne Courtney and considers modifying the definitive map and statement to correct drafting errors on the routes of the bridleway and footpath as shown on Drawings T438/23/1 and T438/23/2. A full consultation exercise was carried out in September-October 2023 and received no objections.

Recommendations:

That:

- a) An order be made to modify the definitive map and statement of rights of way to correct part of the route of Bridleway 10, Iwerne Courtney from the recorded route as shown A-B to that shown C-B on Drawing T438/23/1 (Appendix 1); and
- b) An order be made to modify the definitive map and statement of rights of way to correct part of the route of Footpath 15, Iwerne Courtney from the recorded route as shown A-B to that shown A-D-C on Drawing T438/23/2 (Appendix 2); and

- c) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reasons for Recommendations:

- a) The available evidence shows, on balance, that the recorded routes of parts of Bridleway 10 and Footpath 15, Iwerne Courtney require modifications as described.
- b) The available evidence shows, on balance, that the correct routes of parts of Bridleway 10 and Footpath 15, Iwerne Courtney are as proposed.
- c) Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

1. Background

- 1.1 The drafting error for part of Bridleway 10, Iwerne Courtney was identified in 2006. It was subsequently identified that part of Footpath 15, Iwerne Courtney was also subject to a drafting error.

Description of the routes

- 1.2 The current recorded route of part of Bridleway 10, Iwerne Courtney is from its junction with Fairfield Road (C138) at point A, south west across a grass surfaced field to rejoin the unaffected part of Bridleway 10 at the track at point B.
- 1.3 The proposed new route of part of Bridleway 10, Iwerne Courtney is from its junction with Footpath 13 at its junction with Fairfield Road (C138) at point C, south south west across a grass surfaced field and a crushed stone/chalk surfaced track to rejoin the unaffected part of Bridleway 10 at the track at point B.
- 1.4 The current recorded route of Footpath 15, Iwerne Courtney is from the unaffected part of Footpath 15, north west of 8 Old Mill Cottages at point A, south east then generally south, passing through a number of properties and gardens along The Laurels and General Wolfe Close to point B.
- 1.5 The proposed new route of part of Footpath 15, Iwerne Courtney is from the unaffected part of Footpath 15, north west of 8 Old Mill Cottages at point A, south along a grass surfaced path to its junction with Fairfield Road (C138) at point C.

2. Law

2.1 A summary of the law is contained in Appendix 3.

3. Issue to be decided

3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the routes proposed and if so, at what status the routes should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.

3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

3.3 Historical documentary evidence has been examined to see whether depictions of the routes point to them having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist.

4. Documentary evidence

4.1 Extracts from the key documentary documents considered during this investigation are contained in Appendix 4.

5. User Evidence

5.1 As this case is not the subject of an application but is being investigated under the continuous review procedure, there is no user evidence available.

6. Consultation responses

6.1 Dorset Council carried out a wide consultation in September-October 2023 and no objections were received.

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6.2 Cllr Jane Somper the local ward member for Beacon, was consulted on the proposals but made no comment.

6.3 The following seven submissions commented on the proposals to modify parts of the routes of Bridleway 10 and Footpath 15, Iwerne Courtney:

Name	Comments
The Ramblers	I have walked both of these paths for many years, on their 'modified' routes, particularly as they form part of the Wessex Ridgeway. I have no documentary evidence, other than for bridleway 10, which is shown on the OS Maps available on-line at the National Library of Scotland, for example <i>Dorset Sheet XIV.NW Revised: 1900, Published: 1902</i> , to either support or refute the proposal. Nevertheless, we would welcome it.
SGN	SGN do not appear to have any plant in this area.
Senior Archaeologist, Dorset Council	There are at present no recorded archaeological finds or features or historic buildings on the routes affected by this proposal, though there are a number in the general vicinity. However, given the nature of this proposal, I do not feel that historic environment considerations constitute a constraint in the context of this proposal.
Local Resident	I would be delighted if the boundary position was updated to reflect the current position.
Parish Council	<p>You recently advised us that ROW information on the Shroton definitive map was incorrectly marked...which I agree whole heartedly.</p> <p>I have been a parish councillor for 22 years and these ROW referred to by you in Shroton have been discussed by former persons from your department, before (sorry can't remember dates but certainly within the last 10 years) Footpath 13 does not, and never has, started at the place marked on the definitive map.</p> <p>If you refer to any map of the village you will see that it runs from a place further north, still from Fairfield road but opposite the footpath entrance to the Cricketers pub ROW.</p> <p>I have provided evidence to DCC (in previous years) from residents of the village who stated that from their childhood (1930s) the footpath has always been opposite the pub ROW (which is logical).</p>

	<p>Previous persons from your department have dismissed this and said the definitive map can't be changed.</p> <p>However the issue of the bridlepath 10 being marked in the wrong place in affect leading from a hedge...why has this been flagged but the important one hasn't been?</p>
Local Resident	<p>I've received your circular letter of 13 September about the planned modification of Bridleway 10 and Footpath 15 in Iwerne Courtney /aka SHROTON. Both proposed changes seem sensible since the modified routes indicated appear to bring them into line with current established use, instead of through private gardens (FP15) or a thick hedge (BR10).</p> <p>What concerns me is the alleged route of FP13 which is shown as starting from the same point as BR 10, through the first of two (normally closed) gates and across the spectator area of the Cricket Pavilion before skirting the playing area and exiting through the second gate onto rough grass. In custom and practice (clearly evidenced by a well trodden track) I believe it actually starts opposite FP14 through a signed gate on Fairfield Road North of the Pavilion, and allows re-entry to Fairfield Road.</p> <p>I suggest that your map should be further modified to include the actual route of FP 13 Among other advantages this would avoid unnecessary inconvenience for walkers unfamiliar with the cricket pitch gates, not to mention the risk of inconvenience for the Club and damage caused by cattle straying onto the hallowed turf.</p>
Openreach	<p>Openreach records indicate that no apparatus exists within the area of your proposed footpath alterations.</p>

7. Analysis of consultation responses

- 7.1 None of the submissions contain evidence for consideration.
- 7.2 Footpath 13, Iwerne Courtney (Shroton) has been investigated previously by officers and it is believed that it is correctly recorded on the definitive map. Dorset Council holds no evidence to suggest that Footpath 13, Iwerne Courtney has been diverted and the officer requested that any information/evidence to the contrary be submitted for separate consideration.

8. Analysis of documentary evidence

- 8.1 The most important documents in this case are the 1950s Parish Survey, 1964 Provisional Map, 1967 First Definitive Map the 1974 Revised Draft Map (see below).

Ordnance Survey Maps

- 8.2 The Ordnance Survey Dorset Sheet XIV.NW, surveyed 1886 and published 1887 (scale 6 inches to the mile) shows Bridleway 10, Iwerne Courtney as a double pecked line running from Fairfield Road (and junction with Footpath 13), south west across the field. Footpath 15, Iwerne Courtney is partly shown as a pecked line along the eastern edge of a field.
- 8.3 The Ordnance Survey Dorset Sheet XIV.NW, Revised 1900 and published 1902 (scale 6 inches to the mile) shows Bridleway 10, Iwerne Courtney as a double pecked line, annotated 'B.R.' running from Fairfield Road (and junction with Footpath 13), south west across the field. Footpath 15, Iwerne Courtney is partly shown as a pecked line along the eastern edge of a field, as per the 1887 map.

Parish Survey

- 8.4 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.
- 8.5 The 1950s Parish Survey map shows the route of Bridleway 10, Iwerne Courtney as a bridleway, numbered as 5, going south west from its junction with Fairfield Road and Footpath 13. The accompanying description given is "Enter Fairfield gate, turn left to top of Fairfield then keep left under Ranston Shrubbery wall and fence down cart road..."
- 8.6 Footpath 15, Iwerne Courtney is not annotated on the Parish Survey map, however a grey shaded pencilled line is shown running from its junction with Main Street, generally south to its junction with Fairfield Road (C138) – with a stile marked as 's' and a further note in pencil stating that there is a broken stile.

Dorset Council Records

- 8.7 There were various maps produced by the Council leading up to the current definitive map published in 1989, all at smaller scale of 1:25000. They are attached at Appendix 3.
- 8.8 The 1959 Draft Map for the North area shows the route of Bridleway 10, Iwerne Courtney as on the Ordnance Survey 1887 and 1902 maps and as per the Parish Survey. Footpath 15, Iwerne Courtney is not recorded.
- 8.9 The 1964 Provisional Map and the 1967 First Definitive Map both show the route of Bridleway 10, Iwerne Courtney as per the Ordnance Survey 1887 and 1902 maps and the Parish Survey.
- 8.10 The 1964 Provisional Map and the 1967 First Definitive Map both show the route of Footpath 15, Iwerne Courtney from its junction with Main Street, generally south to its junction with Fairfield Road (C138) - as per the pencil line on the Parish Survey.
- 8.11 As part of the Special Review of rights of way in 1973, correspondence was received from the Dorset Ramblers Walking Group (D.R.W.G.) who submitted a claim for Bridleway 10, Iwerne Courtney from Fairfield to the Parish boundary to be upgraded to a higher status.
- 8.12 This claim received an objection from the Parish Council and the claim was overruled (dated 10 October 1973) on the grounds that public vehicular rights had not been shown to exist.
- 8.13 The 1974 Revised Draft Map shows Bridleway 10, Iwerne Courtney from its junction with Fairfield Road, further south of Footpath 13 and continuing south west across the field. This does not accurately record the route as shown on the Parish Survey and all the previous maps.
- 8.14 The 1974 Revised Draft Map shows Footpath 15, Iwerne Courtney from its junction with Main Street continuing south to Fairfield Road. This reflects the route as shown on the 1964 Provisional Map and the 1967 First Definitive Map.

Aerial photographs

- 8.15 Aerial photographs from 1947, 1997, 2002, 2005, 2009, 2014 and 2017 have been examined but they do not provide strong evidence.

- 8.16 All of the aerial photographs show some evidence of use of Bridleway 10, Iwerne Courtney, however this includes use by farm vehicles accessing the fields.

9. Summary of documentary evidence

- 9.1 The current Definitive Map of rights of way, sealed in 1989, shows the route of part of Bridleway 10, Iwerne Courtney as a thick green line corresponding with the route as shown A-B on Drawing T438/23/1 (Appendix 1).
- 9.2 Dorset Council records indicate that the route of part of Bridleway 10, Iwerne Courtney as shown C-B on Drawing T438/23/1 (Appendix 1) was the way as recorded on the 1887 Ordnance Survey map and subsequent maps, but that 1974 Revised Draft Map and the current definitive map, have been drafted or printed incorrectly.
- 9.3 The current Definitive Map of rights of way, sealed in 1989, shows the route of part of Footpath 15, Iwerne Courtney as a thick purple line corresponding with the route as shown A-B on Drawing T438/23/2 (Appendix 2).
- 9.4 Dorset Council records indicate that the route of Footpath 15, Iwerne Courtney as shown A-D-C on Drawing T438/23/2 (Appendix 2) was the path as recorded on the 1964 Provisional Map and subsequent maps but the current definitive map, has been drafted or printed incorrectly.
- 9.5 No legal orders have been discovered that have changed the parts of the routes of either Bridleway 10 or Footpath 15, Iwerne Courtney.

10. Financial Implications

Any financial implications arising from these proposed modifications are not material considerations and should not be taken into account in determining the matter.

11. Natural Environment, Climate and Ecology Implications

Any natural environment, climate and ecology implications arising from these proposed modifications are not material considerations and should not be taken into account in determining the matter.

12. Well-being and Health Implications

Any well-being and health implications arising from these proposed modifications are not material considerations and should not be taken into account in determining the matter.

13. Other Implications

None.

14. Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: LOW

Residual Risk: LOW

15. Equalities Impact Assessment

An Equalities Impact Assessment is not a material consideration in considering this application.

16. Conclusions

- 16.1 In deciding whether or not it is appropriate to make an order it must be considered whether public rights subsist or are reasonably alleged to subsist on the proposed routes. It is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 16.2 It would appear that on the balance of evidence, the route of Bridleway 10, Iwerne Courtney as shown from points A-B arose as a result of a drafting error on the 1974 Revised Draft Map which was repeated when the Definitive Map was sealed in 1989 and the proposed route from points C-B is how the route of Bridleway 10, Iwerne Courtney should be recorded.
- 16.3 It would appear that on the balance of evidence, the route of Footpath 15, Iwerne Courtney as shown from points A-B arose as a result of a drafting error when the Definitive Map was sealed in 1989 and the proposed route from points A-D-C is how the route of Footpath 15, Iwerne Courtney should be recorded.
- 16.4 Therefore, the recommendation is that that the Definitive Map and Statement should be modified to delete part of Bridleway 10, Iwerne Courtney as shown A-B and instead add it as shown C-B on Drawing T438/23/1 (Appendix 1) and to delete part of Footpath 15, Iwerne Courtney as shown A-B and instead add it as shown A-D-C on Drawing T438/23/2 (Appendix 2).

16.5 If no objections are received, then the Council can itself confirm the order provided the criterion for confirmation has been met. An order can be confirmed if, on the balance of probability, it is shown that the routes as described do exist. It is considered that the evidence is sufficient to satisfy this test.

17. Appendices

1 Drawing T438/23/1

2 Drawing T438/23/2

3 Law

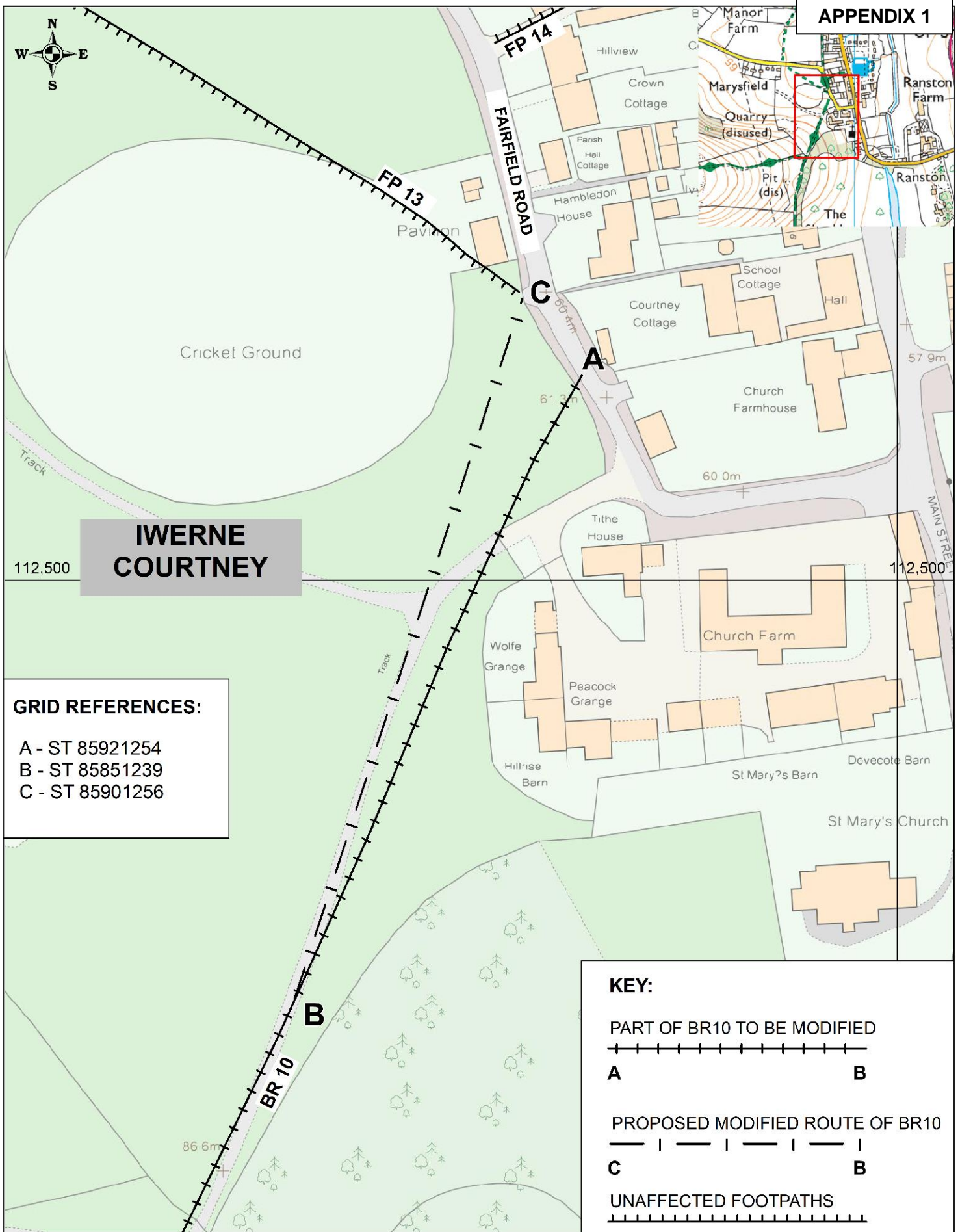
4 Documentary evidence (extracts from key documents):

- The Ordnance Survey Dorset Sheet XIV.NW, surveyed 1886 and published 1887 (scale 6 inches to the mile)
- The Ordnance Survey Dorset Sheet XIV.NW, Revised 1900 and published 1902 (scale 6 inches to the mile)
- 1950s Parish Survey Map
- 1959 Draft Map for the North Area
- 1964 Provisional Map
- 1967 First Definitive Map
- 1973 Special Review
- 1974 Revised Draft Map
- 1989 Current Definitive Map

18. Background Papers


The file of the Executive Director, Place (ref. RW/T438).

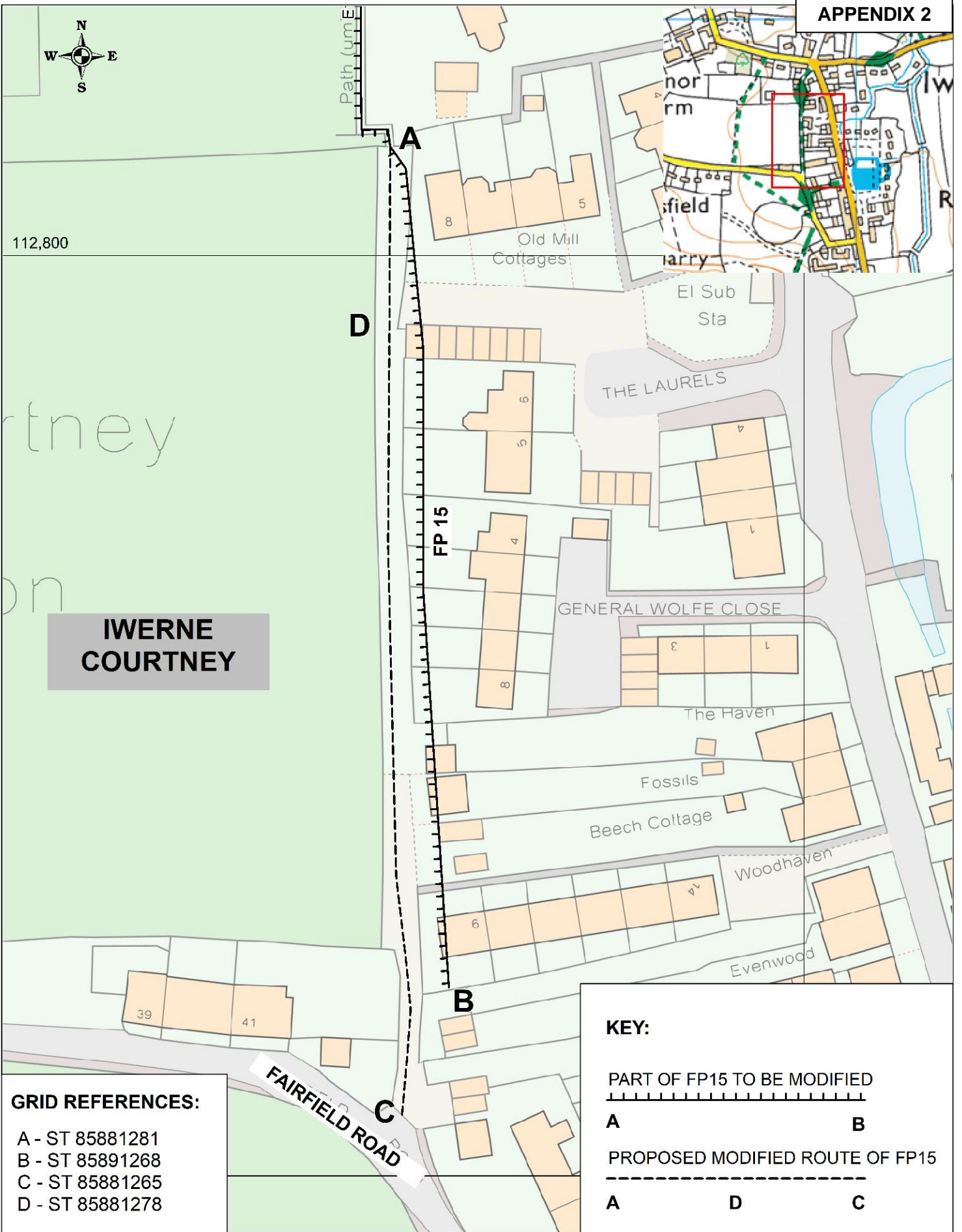
Date: November 2023



WILDLIFE & COUNTRYSIDE ACT 1981
PROPOSAL TO MODIFY PART OF BRIDLEWAY 10, IWERNE COURTNEY
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T438/23/1
Date: 03/11/2023
Drawn by: KJD
Scale: 1:1200
Cent X: 385,898
Cent Y: 112,490


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 & 2014, © Getmapping Plc and Bluesky International
 Limited (2017 onwards)



112,800

IWERNE COURTNEY

GRID REFERENCES:

- A - ST 85881281
- B - ST 85891268
- C - ST 85881265
- D - ST 85881278

KEY:

PART OF FP15 TO BE MODIFIED

A **B**

PROPOSED MODIFIED ROUTE OF FP15

A **D** **C**

WILDLIFE & COUNTRYSIDE ACT 1981

PROPOSAL TO MODIFY PART OF FOOTPATH 15, IWERNE COURTNEY

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T438/23/2
 Date: 03/11/2023
 Drawn by: KJD
 Scale: 1:800
 Cent X: 385,897
 Cent Y: 112,741



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LAW

General

Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the 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 right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the 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 right of way not shown on the definitive map and statement subsists.
- 1.3 The Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify 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).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.

1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.

1.9 Where an objection has been made to an order, the 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 Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought in to question.

(a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

(b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

(c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.

2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is

visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

- 2.4 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 20 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.
- 2.5 Section 32 of the Highways Act 1980 says that the Council 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 criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

Case specific law

- 4 National Parks and Access to the Countryside Act 1949

- 4.1 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.

Proposed definitive map and statement modification order – parts of Bridleway 10 and Footpath 15, Iwerne Courtney (Shroton)

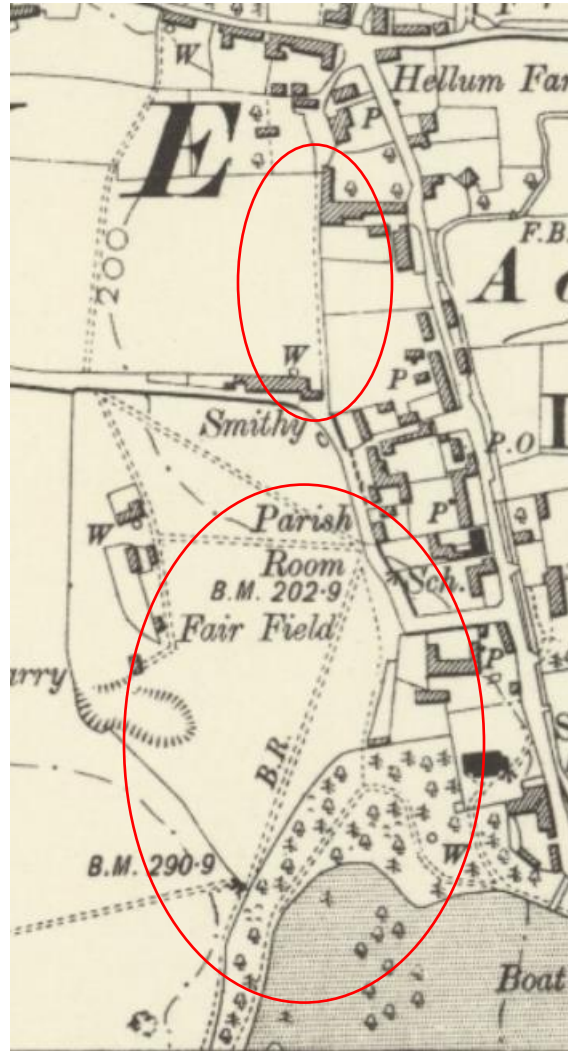
Extracts from key documents

(See the file of the Executive Director, Place (ref. RW/T438) for copies of other documents mentioned)

The Ordnance Survey Dorset Sheet XIV.NW, surveyed 1886 and published 1887 (scale 6 inches to the mile)



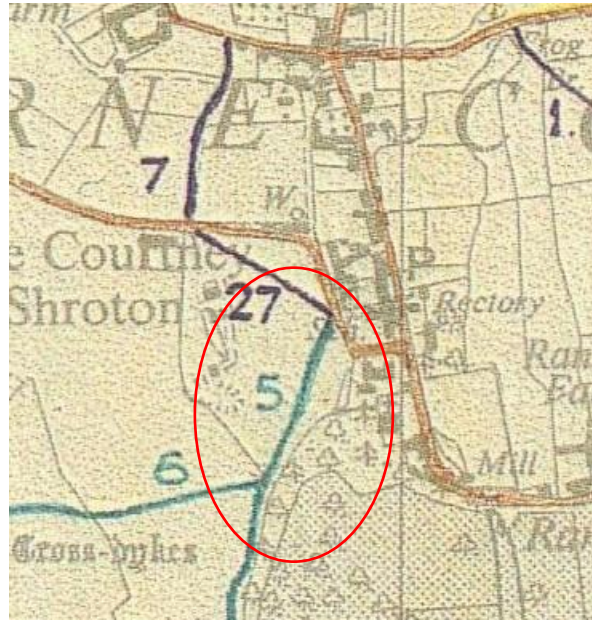
The Ordnance Survey Dorset Sheet XIV.NW, Revised 1900 and published 1902 (scale 6 inches to the mile)



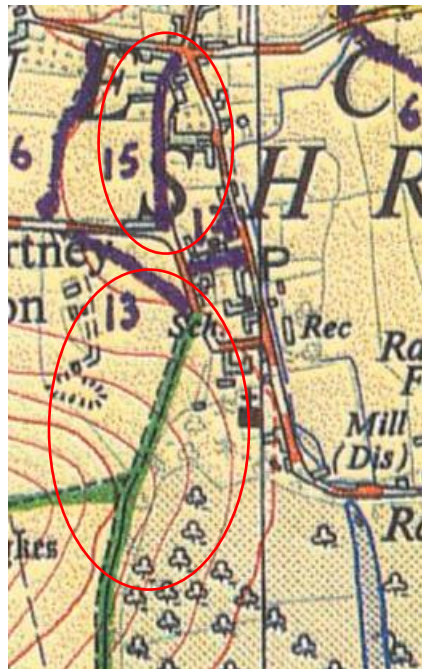
1950s Parish Survey Map (enlarged)**Description**

NOS } Enter Fairfield gate turn left to top of Fairfield, then
 keep left under Rauston Shrubbery wall & fence
 down cart road through "boombe" follow ~~down~~
 southwards across "Mount Pleasant" to gate on
 corner of main road (Blandford Shaftesbury) by
 Steepleton garden cottages. BR

1959 Draft Map for the North Area (enlarged)



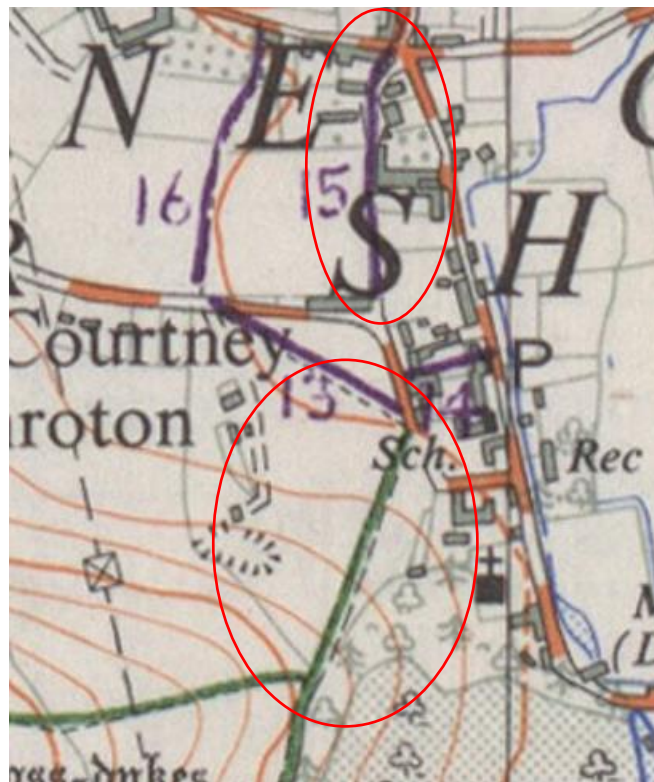
1964 Provisional Map (enlarged)



1967 First Definitive Map (enlarged)

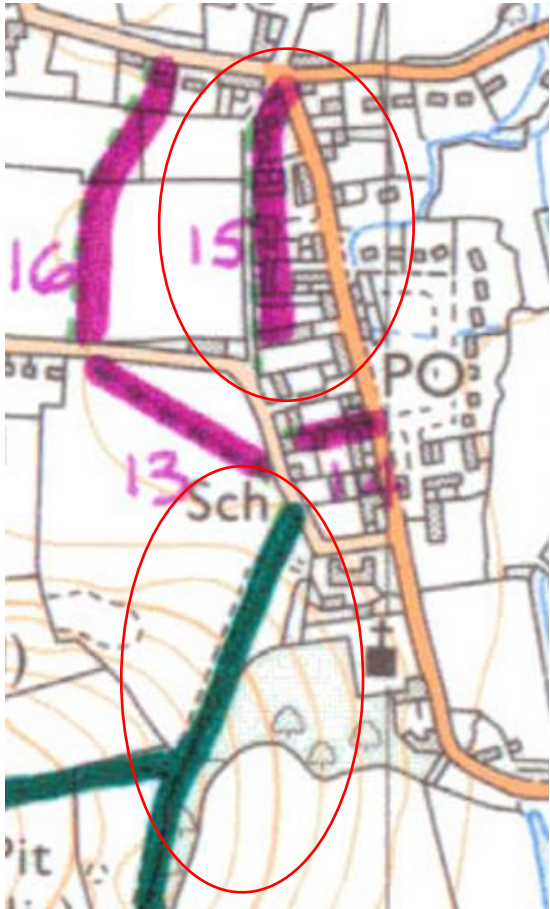


1974 Revised Draft Map (enlarged)



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1989 Current Definitive Map (enlarged)



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Proposed definitive map and statement modification order – parts of Bridleway 10 and Footpath 15, Iwerne Courtney (Shroton)

Recommendations accepted:

Signed:

.....V Penny.....

Date:.....8 November 2023..

Vanessa Penny

Definitive Map Team Manager

Spatial Planning