

Agenda item:

Roads and Rights of Way Committee

8

Dorset County Council



Date of Meeting	10 July 2014
Officer	Director for Environment and the Economy
Subject of Report	Application for a definitive map and statement modification order to record a bridleway from Higher Farm to Brimley Mill, Stoke Abbott
Executive Summary	In response to an application to add a bridleway at Stoke Abbott 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 her 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 November and December 2013 and a further, limited, consultation regarding a change to the route in April 2014, 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. 11 user evidence forms from users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

	<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>Recommendations</p>	<p>(a) The application to add a bridleway in Stoke Abbott as shown A – A1 – B – C – D – E – F on Drawing 13/40/2 (Appendix 1) be refused;</p> <p>(b) An order be made to modify the definitive map and statement of rights of way to add</p> <p style="padding-left: 40px;">(i) A restricted byway as shown A – A1; and</p> <p style="padding-left: 40px;">(ii) A footpath as shown A1 – B</p> <p>on Drawing 13/40/2;</p> <p>(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
<p>Reasons for Recommendations</p>	<p>(a) In respect of the claimed route as shown A – A1 – B – C – D – E – F the available evidence does not, on balance, show that the claimed right of way subsists or is reasonably alleged to subsist;</p> <p>(b) In respect of the part of the claimed route as shown</p> <p style="padding-left: 40px;">(i) A – A1 the available evidence shows, on balance, that this part of the claimed route not shown on the definitive map and statement ought to be shown as a public vehicular way. However, 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 this part of the claimed route.</p> <p style="padding-left: 40px;">(ii) A1 – B the available evidence shows, on balance that this part of the claimed route not shown on the definitive map and statement ought to be shown as a footpath.</p> <p>(c) 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 Ref: 13/40/2 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"> ▪ 1841 Stoke Abbott Tithe map (First Class copy) ▪ 1805 Ordnance Survey Drawing ▪ 1811 First Edition Ordnance Survey map at a scale of 1 inch:1 mile ▪ 1888 First Edition Ordnance Survey Map at a scale of 6 inches:1 mile (1:10560) ▪ 1910 Finance Act map - sheet 29.5 4 - User evidence <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/T471).</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.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T471, 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, Definitive Map Team Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add a bridleway from Higher Farm to Brimley Mill at Stoke Abbott as shown A – B – C – D – E on Drawing 13/40/2 (Appendix 1) was made by Dr Gillian Perrott on 14 April 2008. The route was subsequently amended to include the section as shown E – F, currently recorded as a public footpath.
- 1.2 The route claimed commences at point A at Higher Farm at its junction with the C77 road. It follows a south west direction with a tarmac surface and has a hedge on the west side and farm buildings on the east side. At point B, at the junction with Footpath 14 Stoke Abbott, there is a gate and the track has high hedges on both sides. The track remains tarmac and slopes downwards. At point C the hedges are replaced by fences on both sides and the route turns west. At point D the claimed route approaches Brimley Mill with buildings to the east and south. The route then turns south east at point E to point F and terminates at a gate marked as a bridleway (Bridleway 12, Stoke Abbott).
- 1.3 Its widest point at point A is 11 metres wide and its narrowest point is 3.4 metres at point F.
- 1.4 The claimed route is owned by Mr S H Walther of Brimley Mill and the surrounding land is owned by Mr and Mrs Kirby of Court Orchard Farm.

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 application can be viewed in full in the case file RW/T471.

4 User evidence (Appendix 4) (copies available in the case file RW/T471)

- 4.1 A table of user evidence summarised from witness evidence forms together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 9 of this report.

5 Additional evidence in support of the application (copies available in the case file RW/T471)

Name	Comments
Vanessa Ackerman	States that she has ridden around the area since 1979. She states that the bridle path (the claimed route) that she is "no longer allowed through, provides a vital link between North Bowood to Stoke Abbott and Netherbury to Stoke Abbott"...

Name	Comments
David and Lucia Borradaile	Used the route on horseback prior to 2007. Their understanding is that it "was a working mill in the 19 th Century, which would suggest that transport would have been horse drawn, and it was definitely selling animal feeds in the early 1960s".
Mathew Bowditch	Remembers that his aunt used the route down Beech Lane & then BR12 via Brimley Mill track to go to church at Stoke Abbott on Sundays.
Elizabeth Findlay	States that from 1963 onwards she used the claimed route until she was shouted at by the owner that it was not a bridleway, about 6 years ago. Her father used it before 1963. She recalls that her former cleaning lady Iris Hallett was born in the Mill and she remembers people walking and riding that way as it was the main thoroughfare from Netherbury to Stoke Abbott.
Mary Gladstone	States that her and her friends and brother used the track through the Mill on horseback between 1972 and 1978.
Margaret Harvey	Remembers riding the claimed route. "It was a useful link between Netherbury and Stoke Abbott."
Annabel Hawkins	She recently tried to ride the claimed route but found that she "couldn't complete the circle as an electric gate blocked the track and I couldn't open it".
Hilary Sweet- Escott	States that she has lived in Stoke Abbott almost continuously since 1948. Mr Richard Wolfendon used to own the Mill and it was possible to buy and collect animal feed from Brimley Mill. In the 1970s to 1980s her daughter and friends rode their ponies along the claimed route.
Bob Wyatt	Has lived in the area most of his life and remembers the track to the mill being used by farmers to access the Mill and residents of Stoke Abbott to reach the footpaths to Brimley Farm and North Bowood. He remembers that Mr Glydewell lived in Brimley Mill in the mid 1960s, he ... did not want anyone to walk/ride to the Mill or past his house,

6 **Evidence opposing the application** (copies available in the case file RW/T471)

6.1 One submission in opposition was received before the consultation started and 14 letters were received as a result of the consultation.

Name	Comments
P Archard	As a friend of Mr Glydewell for many years, Mr Archard gives evidence that he objected to any intrusion on his property.
L Bagwell	As a Stoke Abbot resident of 57 years he knows the area in great detail and confirms that the owner of the Mill "objected venomously" to anyone crossing or passing through his property".

Name	Comments
Mrs C Corson	"I have been challenged walking on it by the previous owner.... The present owners do allow people from the village to walk/ride ..when they ask!"
Mrs D Ewings	As a long term resident and horse rider she comments that the track down to the mill was not a bridleway but "solely for access to the Mill".
B J Jones	Has lived in Stoke Abbott for 66 years. "I have always known that the lane to Brimley Mill is a private lane maintained by the owner".
Mr and Mrs Kirby	<p>"We own and farm the land to both sides of the proposed right of way and have done for the past fifteen years..... During all this time the roadway in question was used as a private drive with no right of way.....The previous Mill owner Mr Peter Glidewell, who resided there since the 1960's valued his privacy and actively challenged anyone who attempted to use the lane.....</p> <p>We have also, over the last fifteen years, actively discouraged members of the public from attempting to use the roadway as a right of way.</p> <p>My Husband has never seen anyone riding a horse down the lane and if he had he would have challenged them.....</p> <p>Our farmhand has always been instructed to challenge anyone using the roadway."</p>
S Parfimowicz	"I can confirm that Mr Glidewell objected to anyone who tried to use his driveway and if 'caught in the act', would shout numerous obscenities and walk them off his property."
A Sinclair	Mr Glydewell "did not like people strolling about his property". This "was well known in and around the village. He did not hesitate to tell anyone who strayed onto his land that it was indeed private property and not a public footpath."
L Stanton	"I am very surprised to hear that a resident is suggesting some sort of precedence for access to the driveway as [Mr Glydewell] was forever complaining about some 'idiot' accidentally or not wandering down his drive and him seeing them off."
Mrs H Strebing	"The one time that I and a friend ventured down to Brimley Mill. Mr Peter Glidewell came out of his house, accosted us on the driveway and asked us not to go any further as it was private property. She later confirmed that this would have been in Spring 1996.

Name	Comments
S H Walther	<p>Purchased Brimley Mill "in 2006 following an arrangement I had with the previous owner, Mr Peter Glydewell... I know that during the period of his ownership he had erected a gate across the access drive at a point close to the public highway in Stoke Abbott and had put up a notice saying "<i>Private Lane, no right of way</i>". This would have been in about 2002/3."</p> <p>"I confirm that" [when he] "moved into Brimley Mill in 2006, that I replaced the gate erected by Peter Glydewell..... I also erected the present sign saying "<i>Attention. This is a private road and not a footpath or bridleway</i>"."</p> <p>He encloses originals of letters received "confirming that there has never been presumed dedication of the right of way during the period claimed, principally by the clear intention of Mr Peter Glydewell in objecting to people using the access drive without his consent".</p> <p>"In summary there is no evidence of presumed dedication at Common Law and very little evidence by use of members of the public in general for the statutory period of 20 years required under Section 31 and in any event any such use was in the face of clear evidence that the owner did not intend to dedicate."</p>
G Clemoes M H Clough M De Lang	<p>Issues were raised such as: -</p> <ul style="list-style-type: none"> • Safety • Damage to the surface • Disruption to residents, wildlife and the natural environment • Noise • Pollution • Suitability • Dangerous junctions • Disruption and damage to the historical environment • Current and past use

7 Other submissions received (copies available in the case file RW/T471)

7.1 One further submission was received from the County Council's Senior Archaeologist. She states that "Brimley Mill and Higher Farmhouse are listed buildings. There are at present no other recorded archaeological finds or features or historic buildings on or in the immediate vicinity of the route affected by this proposal. The listed buildings do not constitute a constraint in this context."

7.2 An email dated 25 April 2014 from Mr S Walther states "that I consulted Mr Kirby, the co-owner of my drive to Brimley Mill with reference the issue with the footpath that goes along the same path as the proposed bridle way. We are both on [sic] agreement that we would volunteer dedication of the top of the drive where the existing footpath goes if it helps the predicament you may incur..."

8 Analysis of documentary evidence

1910 Finance Act Map and Field Books

- 8.1 The 1903 Ordnance Survey base map was used for the 1910 Finance Act valuation purposes. **Sheet 29.5** clearly shows the claimed route between points A and F.
- 8.2 The evidence from the **Finance Act map** may suggest that part of the claimed route was excluded from valuation as shown between points A and A1 where there may have been a gate or barrier as shown on the map by a solid line across the route. The exclusion of a way in this manner is indicative of a public highway, probably a public vehicular carriageway.
- 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 The claimed route crosses **Hereditament 359** (A – C) and in the accompanying valuation book there are deductions for the landowner of £50 for public rights of way. Under the heading "Add for Additional Value" and "Restrictions" "Footpath £50" is noted. However, the routes to which they refer are not specified and the Hereditament is large, in several parts and shows many routes.
- 8.5 The claimed route also crosses **Hereditaments 307** (C – F) and in the accompanying valuation book there are deductions for the landowner of £25 for public rights of way. Under the heading "Charges, Easements and Restrictions" the sum "F.P. £1. 5.0 x 20 = £25.0.0" is noted. However, from this information it is not possible to deduce how many acknowledged footpaths affected Hereditament 307 and the Hereditament is large, in several parts and shows many routes.

1841 Stoke Abbot Tithe Map

- 8.6 As there is no Inclosure award affecting this area the most important documents in this case are those relating to **1841 Stoke Abbot Tithe** map, which shows a track on the claimed route from the village to Brimley Mill. It depicts the claimed route as shown between points A to D and is shown with parallel solid and pecked lines, signifying on which sides the route was either fenced or unfenced. At point A1 there is a solid line across the route, indicating a gate or bank.
- 8.7 During the investigation a First Class copy of this tithe map was viewed (this is held in the National Archives). First Class maps had the Commissioners' seal attached showing them to be reliable as a true record for the purpose. This shows a solid line across the centre of the track to the mill. This indicates that part of the claimed route B to C is in apportionment 518 and that from C to D is in apportionment 367.
- 8.8 The Second Class copy shows the claimed route A – D is unapportioned. Second Class maps failed in some, often minor, way to meet the stringent test for First Class status but are not necessarily inferior from a mapping point of view. The Second Class map shows that between points A and A1 the route is shown as the other public roads are shown. Between points A1 and D the claimed route runs alongside Apportionments 518 and 367.

- 8.9 The Apportionment describes 518 as "Ouorhay" and its state of cultivation as "Meadow and Orchard" and 367, as "Mill Close" and its state of cultivation as "Pasture".
- 8.10 The part D – F is within Apportionment 399. Apportionment 399 is described as "Ponds and Orchard" and the state of cultivation is "Orchard".
- 8.11 The First Class copy shows the claimed route between points B to D as apportioned and, as this map is of a better status, it can be more relied on than the Second Class copy. Therefore this does not add evidence but lessens the likelihood that public rights existed at this time.
- 8.12 By themselves Tithe documents rarely 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. In this instance the tithe map indicates that the part of the claimed route A – A1 may have higher public rights than that of a bridleway.

Other documents

Ordnance Survey maps and Object Names Book

- 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 Stoke Abbott parish was completed in **1805** and depicts part of the route claimed A – D and names 'Brimley Mill'.
- 8.14 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile does not depict the claimed route. However, Brimley Mill is shown.
- 8.15 The **1888 First Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route as a track leading down to 'Brimley Mill (Corn)'. This suggests a working mill at that time. There is a solid line across the track at point A1. The eastern side of the claimed route between points A and C is shown by a solid line, indicating the presence of a fence or hedge. A double pecked line annotated alongside 'F.P.' (footpath), now recorded as Footpath 14, is shown joining the claimed route at point B.
- 8.16 The **1903 Second Edition Ordnance Survey Map**, sheet 29.5, at a scale of 1:2500 (25 inches: 1 mile) is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1888 edition. The map shows three gates or banks across the track, at point A1, half way between points B and C and at point E. The map also has as the annotation 'Corn' beneath the wording 'Brimley Mill' and so indicates a working mill. Footpath 14 is also shown clearly.
- 8.17 The **1904 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in the same manner as the **1903 1:2500 Ordnance Survey map** but with less detail. It also shows Footpath 14.

- 8.18 None of the Ordnance Survey maps show the annotation 'F.P.' or 'B.R.' (including the 1888 First Edition, which has no disclaimer - see note in Table of Evidence, Appendix 3). This may indicate that the route was considered to have a higher public status than footpath or bridleway. However, the route is not named alongside, as other vehicular routes were annotated on Ordnance Survey maps.
- 8.19 The evidence provided by the **Ordnance Survey Maps** suggests that Brimley Mill was a working mill up to 1903. Therefore much of the use of the track would have been to access the Mill only and therefore would have been by invitation and not by public right.
- 8.20 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. They also indicate that Footpath 14 joins the claimed route at point A1. As this path would not have been a cul de sac it must have joined up with another public route at point A1.
- 8.21 The **1901 Ordnance Survey Object Names Book** describes Brimley Mill (corn) as "A corn mill situated 10 chains south west of Stoke Abbott village owner ... (Mr John Bowditch)". This provides no evidence to either support or against the claim.

1797 Lease and Release of Beamy Mill now know as Brimley Mill

- 8.22 Both documents relate to the leasing of the Mill and both have the statement relating to routes applying to the land holding. The claimed route is not mentioned.

Commercial maps

- 8.23 The sale documents dated 1906 for Wall, Brimbley Coombe & Brimbley Farms by Auction by Messrs Henry Duke & Son, Bridport contain a plan of the farms in the parishes of Stoke Abbott & Burstock, which shows the claimed route in the same manner as the 1903 Ordnance Survey Second Edition at 1:2500. The claimed route is not within the sale area, therefore there is no description of it in the sale documents.
- 8.24 None of the small scale maps at the Dorset History Centre depict a route on or in the general location of the application route (see table at Appendix 3).

Parish Survey and County Council rights of way maps and records

Parish survey

- 8.25 The majority of the claimed route was not claimed by the Parish Council during their **Survey of public rights of way** carried out in 1951. However, the footpath numbered 37, which is currently shown on the definitive map as leaving the claimed route at point B and which is now Footpath 14, was claimed.
- (a) The Schedule of paths describes footpath 37 from Brimley Cottages to Higher Farm and mentions that it went "to mill lane and Higher Farm".

- 8.26 A continuation of the southern end of the claimed route, a bridleway numbered 2, now Bridleway 12, was also claimed.
- (a) The Schedule for bridleway 2 describes a path from Brimley Mill to Beech Lane but is not specific as to the start point, which could have been point E.
- 8.27 The Parish Council claimed a footpath leading from Higher Farm at the northern end of the claimed route and a bridleway connecting with its southern end. This suggests that they believed part of the claimed route A – A1, to have public rights. There is no further evidence from the survey regarding the remainder of the route.

Special Review to current definitive map

- 8.28 The application route was not subject to any investigation or claim during the **Special Review 1973** and no part of the application route is recorded on the **current definitive map 1989**. However, the fact that the route is not recorded on the current definitive map is not prejudicial to the existence of any unrecorded public rights that may exist over the route.

County Council files

- 8.29 Within the County Council's parish file for Stoke Abbott, a right of way report form from 15 October 1984 states that "the Mill owner will not allow walkers to use the private FB [footbridge] to Higher Farm".
- 8.30 On 24 March 1987, a letter from John Sweet-Escott, Parish Rights of Way Liaison Officer states "We query the lane from 452004 Higher Farm down to the Mill, down Mill Lane 450002 is private..... This has been used for 50 years by locals as a right of way, A new private notice has just gone up".
- (a) A letter in response dated 8 April 1987 from C Luxmore, Dorset County Council to Mr Sweet-Escott says "I confirm that there is no public right of way from the County Road down Mill Lane to the Mill and therefore the council has no power to take action regarding the private road notice".
- 8.31 On 10 October 2007 Doctor Gillian Perrott (applicant) states in a letter, submitted prior to her application, that "There is a bridleway & footpath that leaves from this road to the Mill. At the Stoke Abbott end there is a sign, which states it is not a footpath or a bridleway but a Private Road. The Bridleway sign disappeared about 18 months ago and the private sign went up just over a year ago. These have been times of confrontation when riders have ridden down there from ? new owner of the Mill stating it is private & no right of way. Also on occasion the gate with bridleway sign on it by the Mill has had vehicles parked across it."
- 8.32 These documents show that the status of the claimed route has been questioned before and records instances of challenge to public use. However, the status has not been previously investigated as the response from the County Council in 1987 merely states that there was no record of it being a public right of way.

9 Analysis of user evidence supporting the application

- 9.1 With the exception of Mrs Findlay, all of the witnesses state that they used the route, either individually or with other users, shown from point A to point F on Drawing 13/40/2 and that this use was mainly for pleasure and school and work.
- 9.2 The earliest date of use is 1934 and 2007 is the last date of use.
- 9.3 The most used years were 2001 and 2002, with five users and from 1972 to 1975, with four users. It is not clear whether Mrs Findlay and Mrs Sweet-Escott used the whole of the claimed route including the part E – F.
- 9.4 Mrs Sweet Escott is the only user who states that she has used the claimed route in a vehicle.
- 9.5 Mrs Sweet-Escott was challenged in the 1970s and Mrs Crawford states that she was challenged in the 1980s. Mrs Findlay was challenged in 2004. Mrs Mills was also turned back during her usage but does not give a date.
- 9.6 Mrs Findlay reports unlocked gates in 2003 and a sign at point A in 2004 stating "Private Road No Horses or Dogs". Mrs Harvey, Mrs Hughes, Mrs Mills and Mrs Sweet-Escott remember gates at various points along the claimed route.
- 9.7 Dr Perrott (applicant) and Mrs Harvey remember blue waymarkers at point A with a wooden sign post. Dr Perrott states that a photograph of the blue waymaker, submitted with the application shows a Dorset County Council blue bridleway waymarker at point F. This is the start of Bridleway 12, Stoke Abbot and connects with footpaths at its northern end.
- 9.8 Mrs Mudford lived at the Brimley Mill, so therefore had private rights to access the claimed route and so her use was not as a 'public' right and must be discounted.
- 9.9 The frequency of use ranged from 200 times a year to once a year.
- 9.10 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) There were challenges in the 1970s, 1980s, 1990s and 2000s. Prior to the mid 1970s there are three users, only one of which used it for more than 20 years to raise a presumption of dedication. Therefore the user evidence is considered to be insufficient.
- (b) The application was made in 2008 and is a further date of bringing that use into question,
- (c) The use before the 1960s could be seen as being by permission as the Mill was a working corn mill and later a place to store and collect animal feed. Visits to the Mill were to access a business and therefore by invitation rather than by public right.

10 Analysis of evidence opposing the application

- 10.1 The friends of the former owner of Brimley Mill all record that Mr Glydewell did not like others using his "private drive". This is in contrast to some of the user evidence submitted, which stated that there was free and unchallenged access to the claimed route. However, some of the users stated that they were challenged by the owners, which supports the objectors' evidence.
- 10.2 The signs that were identified by the objectors were said to be in place throughout the 1980s and 2000s. However, only the later sign, currently in place, has been documented and the wording clarified and also the sign was at point B facing north. As the wording on the earlier signs is unknown this cannot be used as a date of challenge.
- 10.3 Within the submission the objectors state "There is no evidence that there was continued use of the route claimed". However, there is witness evidence that the claimed route was used by the public, although some of the users were challenged throughout the period.
- 10.4 The opposing evidence conflicts with the user evidence in relation to the signs, challenges and use.

11 Analysis of other submissions

- 11.1 The other letters contain no relevant evidence to be considered.

12 Conclusions

- 12.1 As the claimed route between points A and E is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 12.2 As the claimed route between points E and F is currently recorded as a footpath it is necessary for members to decide whether, on the balance of probability, the highway shown in the map and statement as a footpath ought to be shown as a highway of a different description.
- 12.3 The strongest documentary evidence supporting the claim is from the **Finance Act** documents. The map shows that part of the claimed route A to A1 was excluded from taxation and therefore is a strong indication that this part should have public vehicular rights. There is a line across the route at point A1, which may be the point where the vehicular rights stop.
- 12.4 The First class **1841 Stoke Abbott Tithe Map**, shows the section A – A1 unapportioned but the rest of the claimed route uncoloured and partly within two apportionments. By themselves Tithe documents rarely 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.
- 12.5 When the Parish Survey took place the Parish Council did not claim the route itself, this indicates that they may have believed it to be a road, as the routes labelled as footpaths 14 and 13 and bridleway 12 all connected with the mill track.

- 12.6 The **Ordnance Survey maps** provide evidence in support, 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 this part of the claimed route was visible.
- 12.7 There are some anomalies along the claimed route in that Footpath 14 does not currently link with a public route at its eastern end and also Bridleway 12 is a dead-end bridleway but a detailed search of old maps, documents relating to Brimley Mill, including Leases and conveyances, sale documents of the mill itself and surrounding farm and estates sale documents have uncovered little or no evidence of public rights.
- 12.8 The documentary evidence alone is considered insufficient to demonstrate, on balance, that the claimed public rights subsist along the whole of the claimed route. However, it is considered sufficient to add the northern part of the route A – A1 with public vehicular rights and the documentation relating to the Parish Survey indicates that the eastern end of Footpath 14 should be extended to A1.
- 12.9 If members are satisfied that the documentary evidence does not show, on balance, that the claimed rights or any other rights exist they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.
- 12.10 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, could be taken to be between 1986 and 2006 with the erection of the current sign in 2006, as stated by the applicant. A further period could be the 20 years prior to the mid-1970s when Mrs Sweet-Escott was challenged, although there is no firm date of this challenge.
- 12.11 There is some evidence of use by horse riders. However, it is considered as being insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to either date that public rights were brought into question, necessary for presumed dedication under Section 31 of the Highways Act 1980, nor would it satisfy the common law requirements to infer a dedication of either public bridleway rights over the claimed route or of public vehicular rights over the part of the claimed route A – A1.
- 12.12 If Section 31(1) of the Highways Act 1980 is considered not to apply, the evidence of use, together with the historical documentary evidence, is considered, on balance, sufficient to raise an inference of dedication of a public vehicular right between points A and A1 under the common law and to add the part of footpath between points A1 and B.
- 12.13 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply to the part of the route A – A1, the public mechanically propelled vehicular rights have been extinguished.
- 12.14 Therefore it is recommended that the application be refused but that an order be made to record the part of the claimed route A – A1 as a Restricted Byway and the part of the claimed route A1 – B as a footpath.

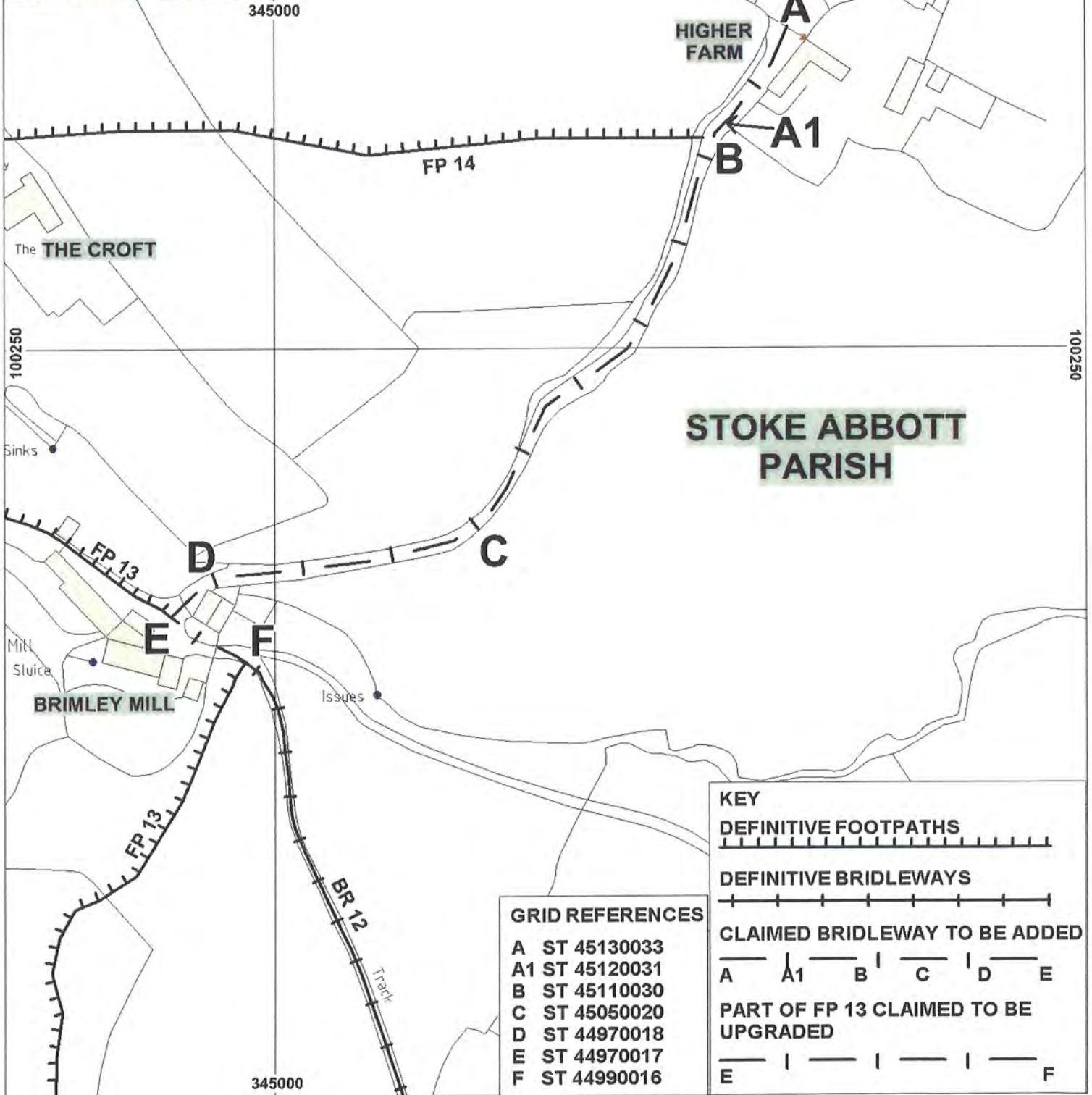
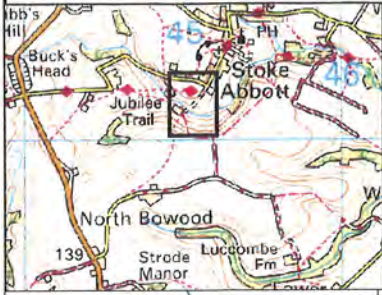
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12.15 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Mike Harries

Director for Environment and the Economy

June 2014



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A BRIDLEWAY FROM HIGHER FARM TO BRIMLEY MILL AND UPGRADE PART OF FOOTPATH 13, STOKE ABBOTT TO BRIDLEWAY

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 13/40/2

Date: 04/06/2014

Scale 1:1500

Drawn By: ACWH

Cent X: 345073

Cent Y: 100233

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 right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist or 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 right of way not shown on the definitive map and statement subsists or 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 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).
- 1.5 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.
- 1.6 An order can be confirmed if, on the balance of probability, it is shown that the route claimed does exist or 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 criterion for confirmation is met.

2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner 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 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. DEFRA guidance states that 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
1773	Map of Dorset by J Bayly	Not shown
1787	J Cary Map of Dorset	Not shown
1796	Isaac Taylor's Map of Dorset	Shows the site of 'Brindley Mill'. Claimed route not shown.
1797	Lease of Breamley Mill	Claimed route not mentioned.
1797	Release of Breamily Mill	Claimed route not mentioned.
1801	C Smith New Map of Dorset	Not shown
1805	Map of Dorset by J Stockdale	Not shown
1805	Ordnance Survey Drawings	Shows part of the claimed route with double solid lines and part with double pecked lines and names Brimley Mill.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Only shows Brimley Mill but not claimed route. Access to Mill is via another route to the west, now Footpath 13.
1815	J Arrowsmith's Map of Dorset	Names Brindley Mill but claimed route not discernable.
1826	Greenwood Map of Dorset	Not Shown
1841	Stoke Abbott Tithe Map (National Archive)	Shows the claimed route unapportioned A – A1 and shown as other roads. From point A1 to point D claimed route shown within two apportionments, 518 and 367.
1841	Stoke Abbott Tithe Map (Dorset History Centre)	Shows a track on the claimed route from the village to Brimley Mill and unapportioned. A – A1 shown as other roads. A1 – D claimed route shown alongside apportionments 518 and 367, one side fenced and one side unfenced.
1846	Gazetteer Dorset	Not Shown
1847	Conveyance of Brimley Mill	No details of the claimed route.
1848	Pigot & Son Map of Dorset	Not Shown
1863	Crutchley's Railway Map of Dorset	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.	
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows the claimed route as a track leading down to Brimley Mill (Corn). This suggests a working mill at that time. Footpath shown meeting claimed route at point B.
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.	

Date	Document	Comment
1895	Description of Stoke Abbot by Frederick Swaffield	"A lot of the people used to leazing or picking up the ears of wheat that were left behind and they took it to the mill to be ground into flour".
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.	
1896	Ordnance Survey map scale one inch to one mile	Shows the claimed route as a track down to a 'Mill' partly with parallel solid and pecked lines and part with double pecked lines.
1901	Ordnance Survey Object Names Book	Describes the mill as a Corn mill and gives the location.
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	The claimed route is shown similarly to the 1888 edition. The map shows three gates or banks across the route. Footpath shown meeting claimed route at point B.
1904	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows the claimed route in the same manner as the 1903 25 inch Ordnance Survey map.
1906	Sale documents for Wall, Brimbley Coombe & Brimbley Farms	Shows the claimed route in the same manner as the 1903 25 inch Ordnance Survey map.
1908	Sale document for North Bowood	This property is directly south of the claimed route. Does not show claimed route or Mill.
1900s	Bacon's New Revised Map of Dorsetshire	Not Shown
1900s	Bacon's Geographical Map of Dorsetshire	Not Shown
1900s	G Philip & Son Geological Map of Dorset	Not Shown
1900s	G Philip & Son Botanical Map of Dorset	Not Shown
1900s	Weller Despatch Atlas	Not Know
1910	Finance Act documents	Shows part of the claimed route excluded from taxation A to A1. The claimed route is shown in the same manner as the 1903 large scale map.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1923	Ordnance Survey Ministry of Transport road map scale ½ inch:1 mile	Shows only the Mill, with no track leading to it.
1920s	Bacon's Motoring and Cycling Road map	Not shown
1924	Harding's Map of Dorchester District	Not shown

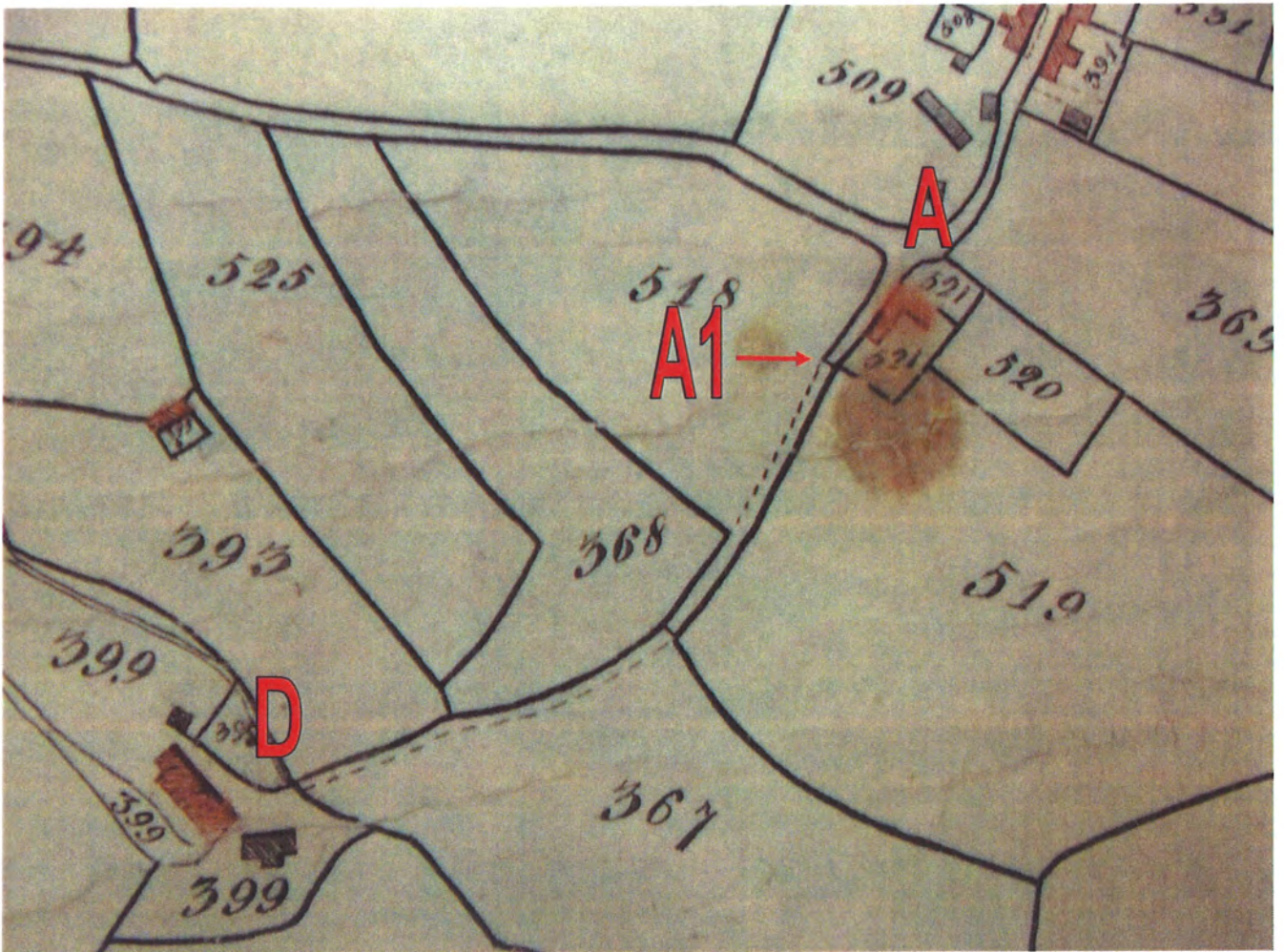
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Date	Document	Comment
1936	W & A K Johnston Motoring & Touring map of England scale 3 miles:1 inch	Not shown
1940s	Geographia Large Scale Road Map of Dorsetshire	Shown as under "Other Roads".
1941 - 1943	National Farm Survey	Not mentioned within the documents
1945	Ordnance Survey 1 inch to 1 mile New popular edition sheet 178	Shows as "Minor Roads in Towns. Drives and Unmetalled Roads".
1949	<p>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.</p>	
1951	Stoke Abbott Parish Survey	Claimed route not claimed, although footpath (now Footpath 14) claimed meeting it at point B and bridleway claimed leading from southern end.
1953	Draft map	Not Shown
1958	<p>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.)</p>	
1964	Provisional map	Not Shown
1966	First definitive map	Not Shown
1974	Revised draft map	Not Shown
1989	Current definitive map	Not Shown

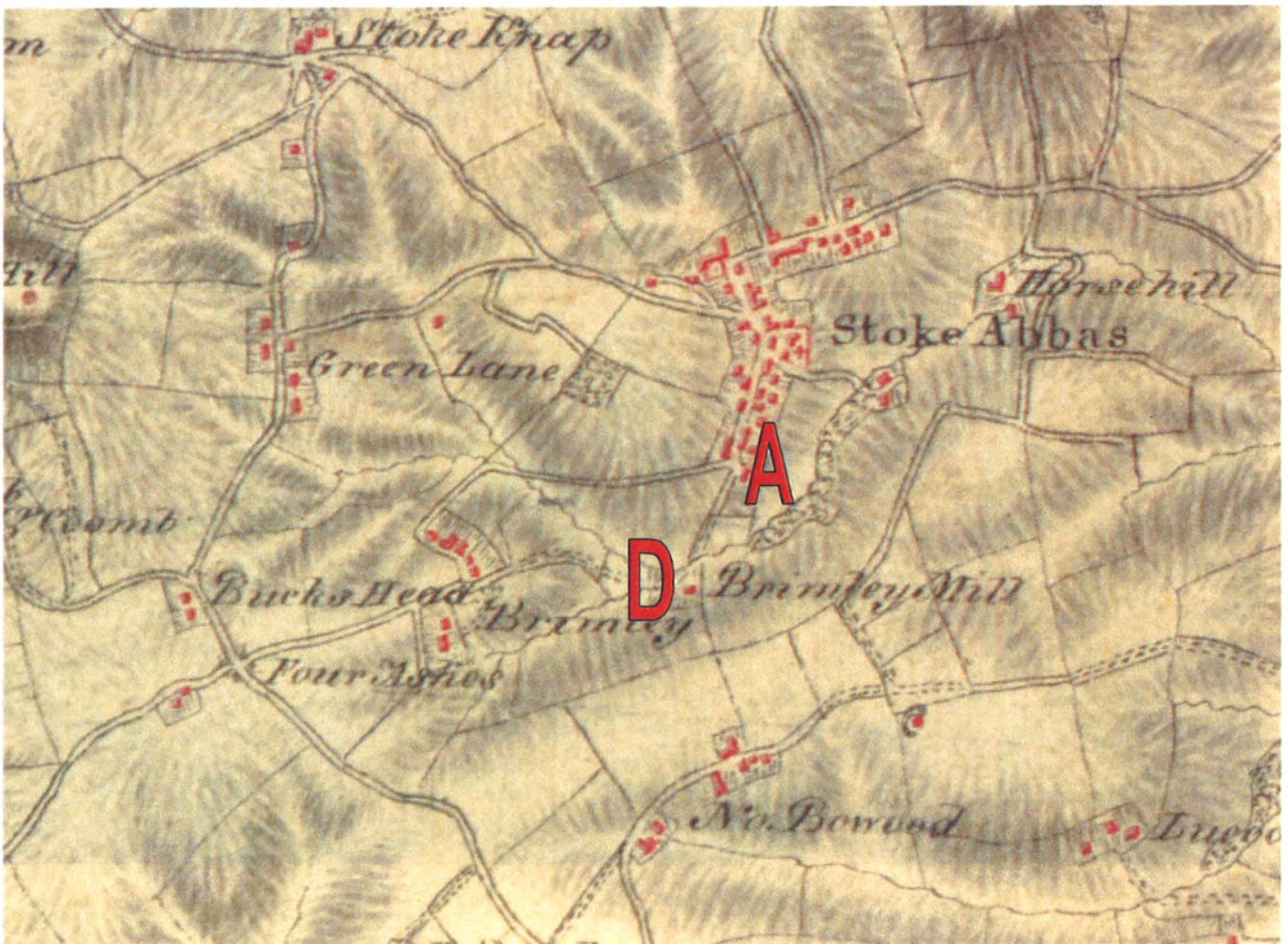
Extracts from key documents

(See the Director for Environment and Economy's file RW/T471 for copies of other documents mentioned)

1841 Stoke Abbott Tithe (First Class copy)



1805 Ordnance Survey Drawing



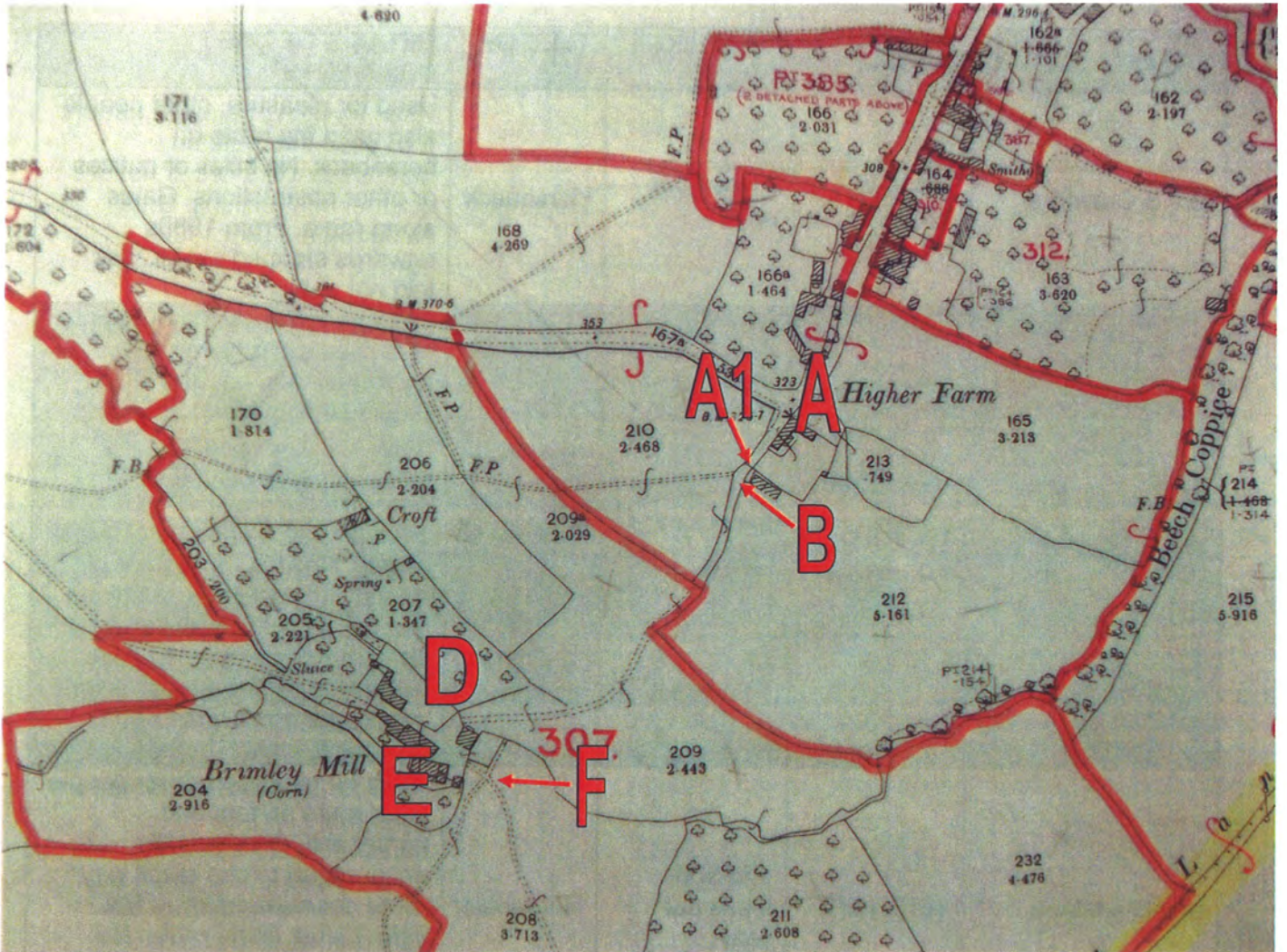
1811 First Edition Ordnance Survey map



1888 First Edition Ordnance Survey Map



- 1910 Finance Act map - sheet 29.5



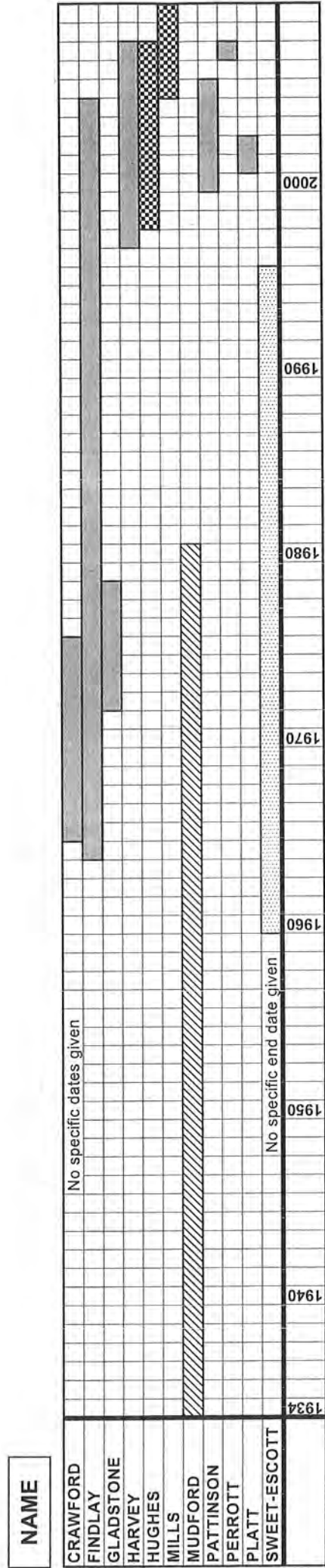
User Evidence

Table summarising user evidence from forms submitted in 2007 and 2013

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs S Crawford	1960s to 1970s	2 times per year	Horseback	Used for pleasure, other people also used the route on horseback. No stiles or notices or other obstructions. Gates along route. From 1980s onwards stopped at Mill, was told not public.
Mrs E Findlay	1964-2003/4	3 times per year	Horseback	Used for pleasure, other people also used the route on horseback and on foot. Previously ran along a different route avoiding farmyard. No stiles and gates along route were unlocked until 2003. 'Private road no horses or dogs' notices since 2004. Owner of Brimley Mill said "it was private and we were not to enter farmyard or come down drive leading to it". Owner was aware people were using the route. Cart track width.
Mrs Gladstone	1972-1978	150-200 times per year	Horseback	Used for pleasure. Other people used route on foot and horseback. Occasionally encouraged to use small way route downstream from Mill yard. Gates along route. No stiles or notices or any other obstructions along route. Not challenged whilst using route.
Mrs M Harvey	1997-2007	1 time per year	Horseback	Used for pleasure. Other people used this route on foot and horseback. No stiles, gates along route. Blue arrow denoting bridlepath on route. No other obstructions.
Mrs J Hughes	From 1998 onwards (form completed in 2007)	2 or 3 times per year	Horseback and on foot	Used for pleasure. Other people used this route on horseback. No stiles along route. Gates along route. DCC Blue arrows on route. Told by a couple that it was not public, in 2006.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs S Mills	Since 2005 (form completed in 2013)	50 plus	On horseback and on foot	Used for pleasure. Other people also used the route on horseback, on foot and in vehicles. No stiles on route but electric gates and a notice now erected saying no public foot/bridlepath approx 2007/8. Was stopped using the route by workmen. Route wide enough for lorries.
P Mudford	1934 -1980	Daily	Foot and bicycle	Used to get to school and work. Others used route on foot, horseback and with a vehicle. No stiles, gates along route unlocked. Notices on route. Wide enough to take a lorry. Not challenged whilst using route.
Mrs V Pattinson	2000-2005	6 times per year	Horseback	Used for pleasure. Other people have used this route on horseback. No stiles along route. Gates along route not locked. Not challenged whilst using route.
Dr G Perrott	2007	2 times	Horseback	Used for pleasure. Other people used this route on horseback. No stiles along route. Unlocked gates with blue arrow. Notices along route. No other obstructions along route. Not challenged whilst using route although saw a notice saying 'Private'. Gravel track from Stoke Abbott Road to Brimley Mill wide enough for carts/cars/small lorries..
A Platt	2001/2002	1 time per year	Horseback	Used for pleasure. Other people used this route on horseback. No stiles or notices along route. Gates along route.
Mrs H Sweet-Escott	1960 – 1990s	Several	On foot and vehicle	Used for pleasure and work. Others also used the route on foot, horseback and with vehicles. No stiles on route, gates sometimes locked and notices recently. Was told that the route wasn't public in the 1970s. Width approx 10'-12'.

Chart of user evidence to show periods of use



YEARS OF USE

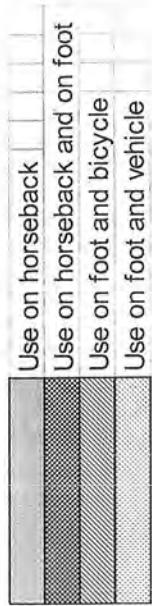


Chart to show level of use

