

Agenda item:

# Regulatory Committee

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## Dorset County Council



Date of Meeting	12 March 2015
Officer	Director for Environment and the Economy
Subject of Report	<b>Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas</b>
Executive Summary	In response to an application to add a footpath at Bradford Abbas, this report considers the evidence relating to the status of the route.
Impact Assessment:	<p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence: The applicant submitted documentary evidence in support of his application.</p> <p>Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.</p> <p>A full consultation exercise was carried out in June and July 2014, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. In addition notices explaining the application were erected on site.</p> <p>22 user evidence forms from 24 users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.</p>

	<p><b>Budget:</b></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><b>Risk Assessment:</b></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><b>Other Implications:</b></p> <p>None</p>
<p><b>Recommendations</b></p>	<p><b>That:</b></p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record a footpath at Bradford Abbas as shown A – B – C – D – E on Drawing 14/18/1; and</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.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><b>Reasons for Recommendations</b></p>	<p>(a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist;</p> <p>(b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. 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 ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p><b>Enabling Economic Growth</b></p> <ul style="list-style-type: none"> <li>• Ensure good management of our environmental and historic assets and heritage</li> </ul> <p><b>Health, Wellbeing and Safeguarding</b></p> <ul style="list-style-type: none"> <li>• Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset</li> </ul>

	<ul style="list-style-type: none"> <li>• Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live</li> <li>• Enable people to live in safe, healthy and accessible environments and communities</li> </ul>
<p>Appendices</p>	<ol style="list-style-type: none"> <li>1 - Drawing 14/18/1</li> <li>2 - Law</li> <li>3 - Documentary evidence <ul style="list-style-type: none"> <li>• Table of documentary evidence</li> <li>• Extracts from key documents <ul style="list-style-type: none"> <li>▪ 1887 First Edition Ordnance Survey map</li> <li>▪ 1928 Edition Ordnance Survey map</li> <li>▪ 1838 Bradford Abbas Tithe map</li> <li>▪ 1910 Finance Act map</li> <li>▪ 1951 Bradford Abbas Parish Survey map</li> </ul> </li> </ul> </li> <li>4 - User evidence <ul style="list-style-type: none"> <li>• Table of user evidence</li> <li>• Charts to show periods and level of use</li> </ul> </li> </ol>
<p>Background Papers</p>	<p>The file of the Director for Environment and the Economy (ref. RW/474).</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 and user evidence can be found on the case file RW/T474, 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  Tel: (01305) 221670  Email: r.bell@dorsetcc.gov.uk</p>

## 1 **Background**

- 1.1 An application to add a footpath from East Lane to the public road by Coombe Cottages, Bradford Abbas as shown A – A1 – B – C – D – E on Drawing 14/18/1 (Appendix 1) was made by Bradford Abbas Parish Council on 7 July 2008.
- 1.2 The route claimed commences at point A at the junction with the public road known as East Lane, travelling in an easterly direction. The surface of the claimed route is loose, hard stone. At point A1 a wooden field gate across the route displays a notice “Private No Public Right of Way”, which can be seen from users approaching from the west. The claimed route then passes between the buildings of the Saxon Maybank development on both sides. At point B the route changes course to run north easterly. At point C there is a wooden field gate and the route is hard surfaced with hedges on both sides. At point D there is a further field gate and the route widens out with Coombe Cottages to the north western side and cars parked on the south eastern side of the claimed route. It terminates at point E at its junction with the public road D20503.
- 1.3 Between points A and C the claimed route is owned by Mr Shaw of Charteroak Estates and between points C and E by Winchester College.
- 1.4 Its widest point at point E is 10 metres wide and its narrowest point at point B is 3 metres wide.
- 1.5 In October/November 2007 Charteroak Estates erected a gate with the notice across the claimed route at point A1 and it has remained locked, preventing public use.

## 2 **Law**

- 2.1 A summary of the law is contained in Appendix 2.

## 3 **Documentary evidence (Appendix 3)** (copies available in the case file RW/T474)

- 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.

## 4 **User evidence (Appendix 4)** (copies available in the case file RW/T474)

- 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/T474)

- 5.1 Two letters supporting the application were received in response to the consultation exercise.

Name	Comments
Mrs Jan Wardell, The Ramblers	States “until 2008, there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and notes “that the 1902 OS map shows a footpath leading to East Farm from the south, and then onwards north-east to where Coombe Cottages are now situated – part of the claimed route”.
Mr Derek Hayward, Chairman, Bradford Abbas Parish Council	Submitted an extract from a large scale, coloured 1916 map, similar to the 1903 Ordnance Survey map described below at 8.5. East Farm is shown as part of a red edged and pink shaded plot. The routes that are now recorded as roads to the west (including a continuation north from point A), south and east are shown uncoloured. The area including East Farm buildings, the claimed route (partly fenced and partly unfenced – as shown by double solid and double pecked lines) and the path shown with double pecked lines marked ‘F.P.’ (footpath) heading south are all in the land shaded pink.

6 **Evidence opposing the application** (copies available in the case file RW/T474)

6.1 Two letters opposing the application were received in response to the consultation exercise.

Name	Comments
Tracey Merrett, Pardoes Solicitors on behalf of <b>Charteroak Estates</b> (owner) Letter 1	“My principal concern regarding this application is that my clients have not been served with a notice of the application pursuant to Schedule 14 of the above Act.... Mr Shaw has received no notification from the applicant and therefore this is incorrect and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
Tracey Merrett Pardoes Solicitors LLP on behalf of <b>Charteroak Estates</b> (owner) Letter 2	<p>Comments on all the witness statements provided by the applicant in detail including:</p> <ul style="list-style-type: none"> <li>• “Mr and Mrs Wallis live on site in the middle of the route and are tenants of the owner....Evidence of the use of the route as an access to the Wallis’s house is clearly not evidence of use of the route as a public right of way”.</li> <li>• “Only 7 of the 19 witnesses are willing to give evidence at Inquiry and have their evidence tested...”</li> <li>• The site was previously a dairy and before that a feed mill, both of these uses would have entailed the public visiting the site and using the track to buy animal feed or buying milk...”</li> <li>• “The use of the site has clearly been used as a shortcut on bicycle and by car to the village as stated in some of the witness statements...”</li> <li>• “To conclude there is very little usage evidence that is clear and testable and I have been unable to find any historic evidence of a right of way along this route.”</li> </ul> <p>(Full Transcript in the case file RW/T474.)</p>

Name	Comments
Mr Patrick Pearce (owner of lodge at Saxon Maybank)	Raises issues such as: - <ul style="list-style-type: none"> <li>• Safety – including from users with dogs</li> <li>• Pollution</li> <li>• Damage to privacy                             <ul style="list-style-type: none"> <li>▪ Security</li> </ul> </li> <li>• Disruption to residents, wildlife and the natural environment</li> <li>• Noise</li> <li>• Suitability</li> </ul>

7 **Other submissions received** (copies available in the case file RW/T474)

7.1 Another three submissions were received in response to the consultation exercise.

Name	Comments
Mrs Carol Shoopman on behalf of the British Horse Society	"No evidence to support this application."
Claire Pinder Dorset County Council senior Archaeologist	"No recorded archaeological finds or features or historic buildings on or the vicinity of the route affected by this proposal."
Southern Gas Networks	"We have no gas mains in the area of the enquiry."

8 **Analysis of documentary evidence**

8.1 As there is no Inclosure award affecting this area the most important documents in this case are Ordnance Survey maps.

**Ordnance Survey maps**

8.2 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 Bradford Abbas parish was completed in 1805 and clearly depicts the public road travelling due north to point A. However, the road continues due north and neither the claimed route nor East Farm is shown.

8.3 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch:1 mile also does not show the claimed route.

- 8.4 The **1887 First Edition Ordnance Survey map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route with a gate or barrier at point A1. A fenced track on the line of the claimed route leads eastwards to the buildings of East Farm and at the eastern side of East Farm there is a solid line across the route at point B. It continues with double pecked lines (an unfenced track), on the same route as that claimed, to point E. The route is not marked 'F.P.' or 'B.R.' alongside. There is a footpath annotated 'FP' from the farm heading due south to join the road. There is no disclaimer present on this map (see note in Table of Evidence, Appendix 3).
- 8.5 The **1903 Second Edition Ordnance Survey map** 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 1887 First Edition, although the larger scale map shows more detail.
- 8.6 The **1903 Second Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route similarly to the larger scale 1903 Edition.
- 8.7 The **1928 Edition Ordnance Survey Map** at a scale of 25 inches:1 mile (1:2500) shows the claimed route but with no gate at point A1. The unfenced track starts at the western edge of the buildings (slightly west of point B). At point C a solid line is shown across the route, indicating a gate or barrier. Between points C and E the track is shown with a solid line on the north western side, indicating that this boundary was fenced or hedged, and a pecked line on the south western side, indicating that this boundary was unfenced. The footpath due south of East Farm is no longer shown.
- 8.8 The **1930 Edition Ordnance Survey Map** at a scale of 6 inches:1 mile (1:10560) shows the claimed route in the same manner as the 1928 Edition Ordnance survey map.
- 8.9 The evidence provided by the **Ordnance Survey maps** adds support to the route claimed and suggests that a gate at point C has been in existence since 1928. 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.

### **Other documents**

#### **Tithe map and apportionment**

- 8.10 The **1838 Bradford Abbas Tithe map** shows East Lane continuing north from point A but does not show the track or a farm along the claimed route.
- 8.11 The Tithe 'apportionments' are the numbered parcels that record the state of cultivation and area. The claimed route is not shown and therefore is unapportioned.
- 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 case the tithe does not support the claimed route.

### **Finance Act documents**

- 8.13 The 1910 Finance Act map uses the 1903 Ordnance survey base map and shows the claimed route not excluded from taxation but within part of Hereditament 41.
- 8.14 Within the same hereditament a footpath is clearly shown leading due south of the claimed route, clearly annotated 'F.P.' (see paragraph 8.4 above).
- 8.15 However, within the field books detailing the land valuation, Hereditament 41 has no deductions in respect of "Public Rights of Way or User".
- 8.16 Although these records indicate that the owners of this parcel did not acknowledge the existence of any public right of way over it, as members will be aware, this does not necessarily indicate that no public rights existed within them. Whilst it was a criminal offence with severe penalties to falsely claim tax deduction in lieu of the existence of a public highway there were no penalties for not acknowledging the existence of a public highway over the land.

### **Commercial maps**

- 8.17 **Johnston's early 1900s small scale map** shows the current road to East Farm (East Lane) and a track to the farm itself between points A and B. It does not show any connection to the public road at point E.
- 8.18 Various other small scale maps do not depict a route, either completely or partially, on or in the general location of the application route (see table at Appendix 3).

### **Sales particulars**

- 8.19 The **1954 Bradford Abbas Estate** sale did not include East Farm or the claimed route. However, it was included on the plan showing the area for sale at the time. It clearly shows East Lane and the whole of the claimed route, between points A and C through the buildings at East Farm and as an unfenced track between points C and E. Outside of the area of the estate being sold this map shows both public and private routes as unshaded.
- 8.20 The **1966 East Farm Bradford Abbas** sales document and plan shows East Lane and the D20503 road as uncoloured but the claimed route through the farm and north east to point E appears to be coloured pink, which is the colour used in this plan to indicate the area for sale. Between points C and E the route appears to be shown with a solid line (hedged or fenced) on the north western side and with a pecked line (unfenced) on the south eastern side. This plan indicates that if a route is not coloured it is not part of the sale and could be seen as a public route. Therefore, if coloured in it is part of the plot for sale.
- 8.21 The sales documents indicate the claimed route was in existence but do not add to the evidence to support the claim.



### **Parish Survey and County Council rights of way maps and records**

- 8.22 The **1951 Bradford Abbas Parish Survey** map of rights of way shows that no public right of way between points A and E was claimed at the time. Between points C and E there is a hand written annotation marking this part of the claimed route as "Private".
- 8.23 The claimed route is not shown on the **draft, provisional** or the **first definitive maps** as a public right of way.
- 8.24 The application route was not subject to any investigation or claim during the **1973 Special Review** and therefore is not shown as a public right of way on the **1974 revised draft map** nor is it recorded on the **current definitive map sealed in 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.
- 8.25 The Parish Council did not claim the route during the original Parish Survey, or at the Review. However, their current claim indicates that they have evidence that the route has acquired public rights and should be recorded as a footpath.

### **9 Analysis of user evidence supporting the application**

- 9.1 22 forms of evidence were received from 24 users of the claimed route.
- 9.2 Mr and Mrs Balch were given permission to walk and drive their car by the farm manager in 1986. Mrs Fry and Mr & Mrs Wallis are tenants/workers on the farm. Therefore evidence from these users must be given less weight than the other users.
- 9.3 All 24 of the witnesses state that they used the route (17 if use by tenants and those given permission is discounted), either individually or with other users, shown between points A to point E on Drawing 14/18/1 and that this use was on foot.
- 9.4 Mr Bennett and Mr & Mrs Houston used the route on a bicycle. Mr Bennett and Mr Houston also both used a car.
- 9.5 The earliest date of use is 1956 and 2007 is the last date of use.
- 9.6 The heaviest amount of use is between 1997 and 2002 when 23 users state that they used the claimed route (17 if the use by tenants and those given permission is discounted). 21 of the statements claim to have seen others using the route on foot, horseback, bicycle or by car.
- 9.7 18 users state that there were never any gates or stiles until notices "Private No Public Right of Way" and gates were erected at point A1 by the current owner from 31 October 2007. Eight stated that they were never challenged while on the claimed route.

- 9.8 Mr Allwright, Mr Bennett, Mr Coffin, Mr Houston and Mr & Mrs Yeoman all state that they believed that the owners or occupier was aware of public using the claimed route, as they spoke to workers and previous owners while using the route.
- 9.9 The frequency of use ranges from Mrs Down, who used it “every day” to Mr Coffin, who used the route between 3 and 4 times a year.
- 9.10 Nine users state the width of the claimed route, all commenting on the wideness of the track.
- 9.11 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) In comparison with an urban environment, to have 24 users giving evidence of their use in this rural location is considered to be significant.
  - (b) The locked gate and private notice (31 October 2007) is evidence of bringing the use of the route into question. The user evidence before that date is sufficient reasonably to allege that a footpath exists.
  - (c) The application was made on 7 July 2008 and is a further date of bringing that use into question.

## 10 **Analysis of evidence in support of the application**

- 10.1 The Ramblers’ evidence includes the Ordnance Survey Second Edition map as discussed at paragraph 8.6 above. They do not provide any other evidence to back up the statement that “there was a ‘through route’ along the claimed path, both for pedestrians and vehicles” and therefore this evidence does not add significantly to support the application.
- 10.2 The Parish Council’s 1916 map shows the route claimed but does not add significantly to the evidence in support.

## 11 **Analysis of evidence opposing the application**

- 11.1 In the first letter from Pardoes Solicitors LLP, on behalf of Charteroak Estates, Tracey Merrett notes that her client did not receive “notification from the applicant and therefore this is and consequently the application is invalid and the County Council have no jurisdiction to determine it”.
- The application indicates that both Charteroak Estates and Winchester College were informed when the application was made in July 2008.
  - Within the case file there is a note dated 5 August 2009 that Mr Michael Shaw of Charteroak Estates had telephoned the Definitive Map Team Manager about the footpath claim. The call from Mr Shaw indicates that the Charteroak Estates have been aware of the application at least since 2009.

- A further file note dated 2 June 2010 records a telephone call representative from Battens Solicitors “representing the landowners, Charteroak”. He was advised that the applicant, Bradford Abbas Parish Council, had sent the Notice of Application (Form B) to them in July 2008 as the County Council had a Certificate of Service of the Notice (Form C) on file, which included Charteroak Estates and Winchester College as having been notified. Copies of the application and user evidence forms were subsequently sent to Battens.
- 11.2 She also states that she had contacted the other owner of the claimed route, Winchester College. The current Estates Bursar, Mr Chute, told her that “Neither I nor anyone else at Winchester College has ever received any communication from Bradford Abbas about this track”.
- Within the same file there is a copy of a Fax dated 17 October 2008 sent from Ms Penny of the Definitive Map Team to Emma Ede of Winchester Collage. The subject is the application at Bradford Abbas and a plan was attached, showing the claimed route with a thick dotted line. This also shows that Winchester College was aware of the application soon after the application was made.
- 11.3 In the second letter from Pardoes Solicitors LLP, Tracey Merrett states that some of the user evidence forms are not reliable because Mr & Mrs Wallis and Rachel Fry had connections with previous and current land owners.
- This is correct and therefore, as previously stated, their statements have been given less weight.
- 11.4 Ms Merrett states that “Three of the witnesses have since died, Mr Lisle, Peter Pepper and Betty Fellows and therefore their evidence cannot be cross examined and tested at an inquiry”.
- Their evidence forms do add to the user evidence to be taken into account even though it cannot be tested should there be a local public inquiry.
- 11.5 Ms Merrett adds that “only 7 of the 19 living witnesses are willing to give evidence at inquiry and have their evidence tested, which should affect the weight to be given to their evidence.”
- This is not the case: these forms have equal weight at this stage of the investigation. Should there be a local public inquiry then this issue may be relevant.
- 11.6 Ms Merrett also states that members of the public were using the track to visit the site to buy animal feed and milk and therefore this use should be discounted.
- Of those who completed user evidence forms only Mrs Fry indicates that her use was to visit the dairy (and her brother) and was therefore by invitation and not as of right. (Mr and Mrs Wallis are also still working for the land owners of A – C.)

11.7 She states that the site has been used as a shortcut on bicycle and by car.

- All the witnesses that used the claimed route on bicycle and by car also state that they have used it on foot.

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

## 12 **Analysis of other submissions**

12.1 The other letters contain no evidence to be considered.

## 13 **Conclusions**

13.1 As the claimed route 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.

13.2 Although there is documentary evidence showing the claimed route, notably the various Ordnance Survey maps from 1887 onwards, these maps are not strong evidence and only the earliest map carries no disclaimer as to the representation of a route being evidence of a right of way.

13.3 The documentary evidence is therefore insufficient to demonstrate, on balance, that the claimed public rights subsist or can be reasonably alleged to subsist along the claimed route.

13.4 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists 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.

13.5 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date notices and gates were erected by the current owner on 31 October 2007. However, the notice may not have come to the attention of users from the eastern end of the route.

13.6 The user evidence indicates mainly public use on foot along the claimed route. There is some other use by bicycles and cars but this is not considered sufficient to have established higher rights. The user evidence is considered to be sufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to date of bringing into question, which is 31 October 2007.

13.7 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 or more years use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public footpath rights exist along the whole of the claimed route and an order should be made.

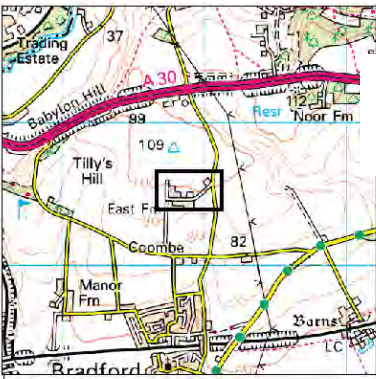
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- 13.8 Therefore it is recommended that an order be made to record the claimed route between points A and E on Drawing 14/18/1 as a footpath.
- 13.9 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

**Mike Harries**

Director for Environment and the Economy

February 2015

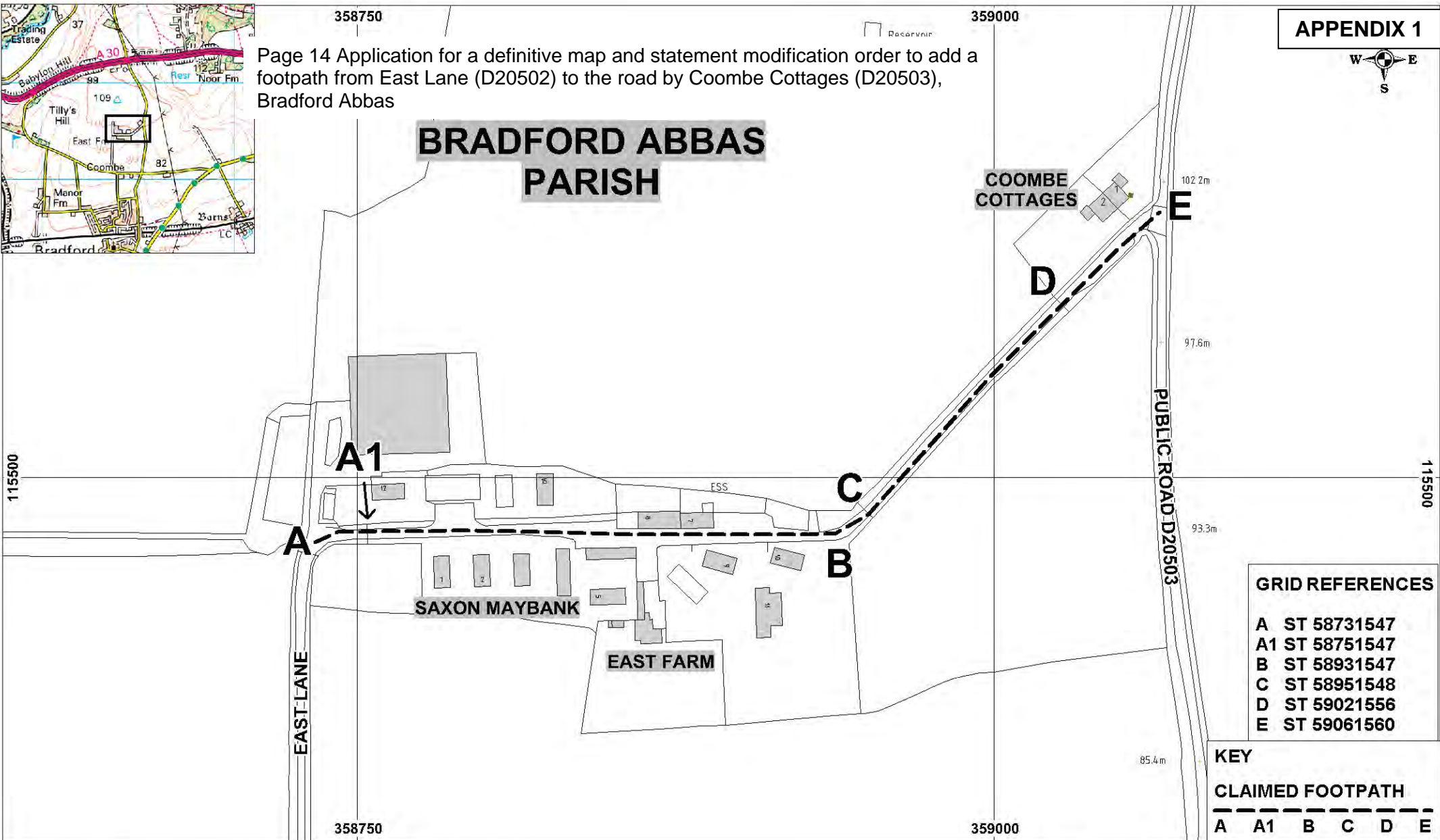


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**APPENDIX 1**



**BRADFORD ABBAS PARISH**



**GRID REFERENCES**

A	ST 58731547
A1	ST 58751547
B	ST 58931547
C	ST 58951548
D	ST 59021556
E	ST 59061560

**KEY**

**CLAIMED FOOTPATH**

A	A1	B	C	D	E
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**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**APPLICATION TO ADD A FOOTPATH FROM EAST LANE TO THE PUBLIC ROAD EAST OF COOMBE COTTAGES, BRADFORD ABBAS**

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

**Ref: 14/18/1**  
 Date: 13/024/2015  
 Scale 1:2000  
 Drawn By: ACWH  
 Cent X: 358893  
 Cent Y: 115521

GEOGRAPHICAL INFORMATION SYSTEMS

**Dorset County Council**

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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.
- 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.
- 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 An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.
- #### 2 Highways Act 1980
- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
  - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 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.

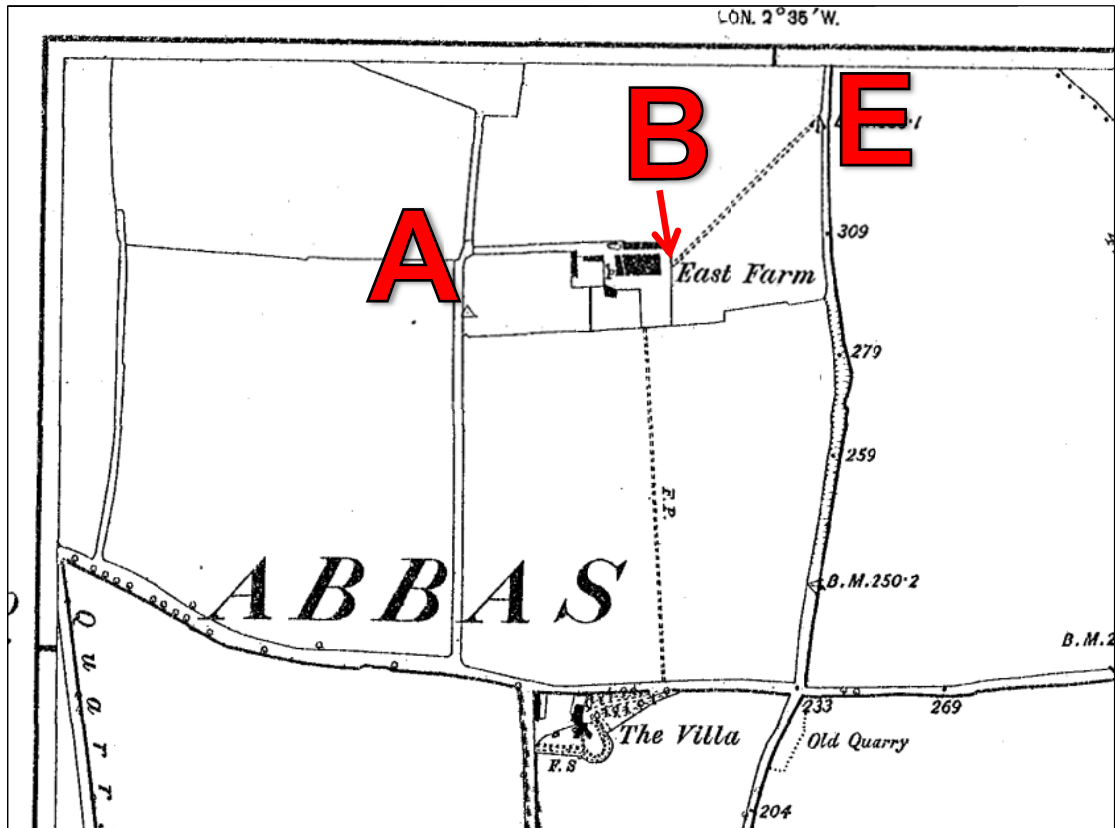
**Table of documentary evidence**

<b>Date</b>	<b>Document</b>	<b>Comment</b>
1773	Map of Dorset by J Bayly	Not shown
1796	Isaac Taylor's Map of Dorset	Not shown
1805	Ordnance Survey Drawings	Shows East Lane only, not claimed route.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows East Lane only, not claimed route.
1815	J Arrowsmith's Map of Dorset	Not shown
1826	Greenwood Map of Dorset	Not shown
1839	Bradford Abbas Tithe Map	Shows East Lane only, not claimed route.
1846	Gazetteer Dorset	Not shown
1863	Crutchley's Railway Map of Dorset	Not shown
1887	Ordnance Survey First Edition map scale 6 inches:1 mile	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
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.	
1903	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – B and unfenced B – E.
1900s	W & A K Johnston Map of England scale 3 miles:1 inch	Not Shown
1900s	Bacon's New Revised Map of Dorsetshire	Not shown
1900s	Bacon's Geographical Map of Dorsetshire	Not shown
1900s	Weller Despatch Atlas	Not shown

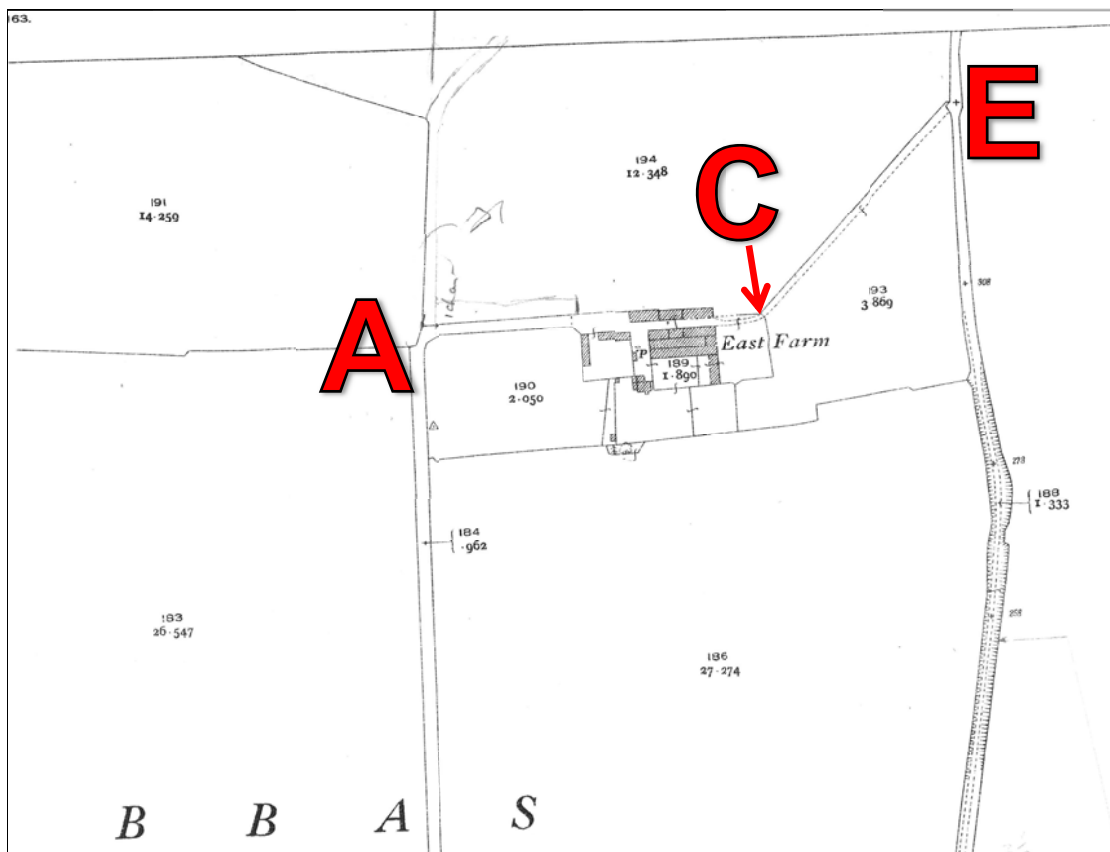
<b>Date</b>	<b>Document</b>	<b>Comment</b>
1910	Finance Act plans	The claimed route is not excluded from taxation. It runs through Hereditament 41 but there are no deductions for public rights of way in this hereditament.
1928	Ordnance Survey Edition map scale 25 inches:1 mile (1:2500)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
1930	Ordnance Survey Edition map scale 6 inches:1 mile (1:10560)	Shows the whole of the claimed route, fenced and between farm buildings A – C and fenced on north eastern side C – E.
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	Bradford Abbas Parish Survey	Route not claimed. Between points B and E annotated "Private" alongside.
1959	Draft map for the west area	Not Shown
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.)	
1954	Bradford Abbas Estate sales particulars	Shows the claimed route but not part of sale.
1964	Provisional map	Not Shown
1966	Sales Particulars for East Farm	Claimed route in part of land for sale. Claimed route shown fenced and between farm buildings A – C and fenced on north eastern side C – E.
1966/7	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's file RW/T474 for copies of other documents mentioned)

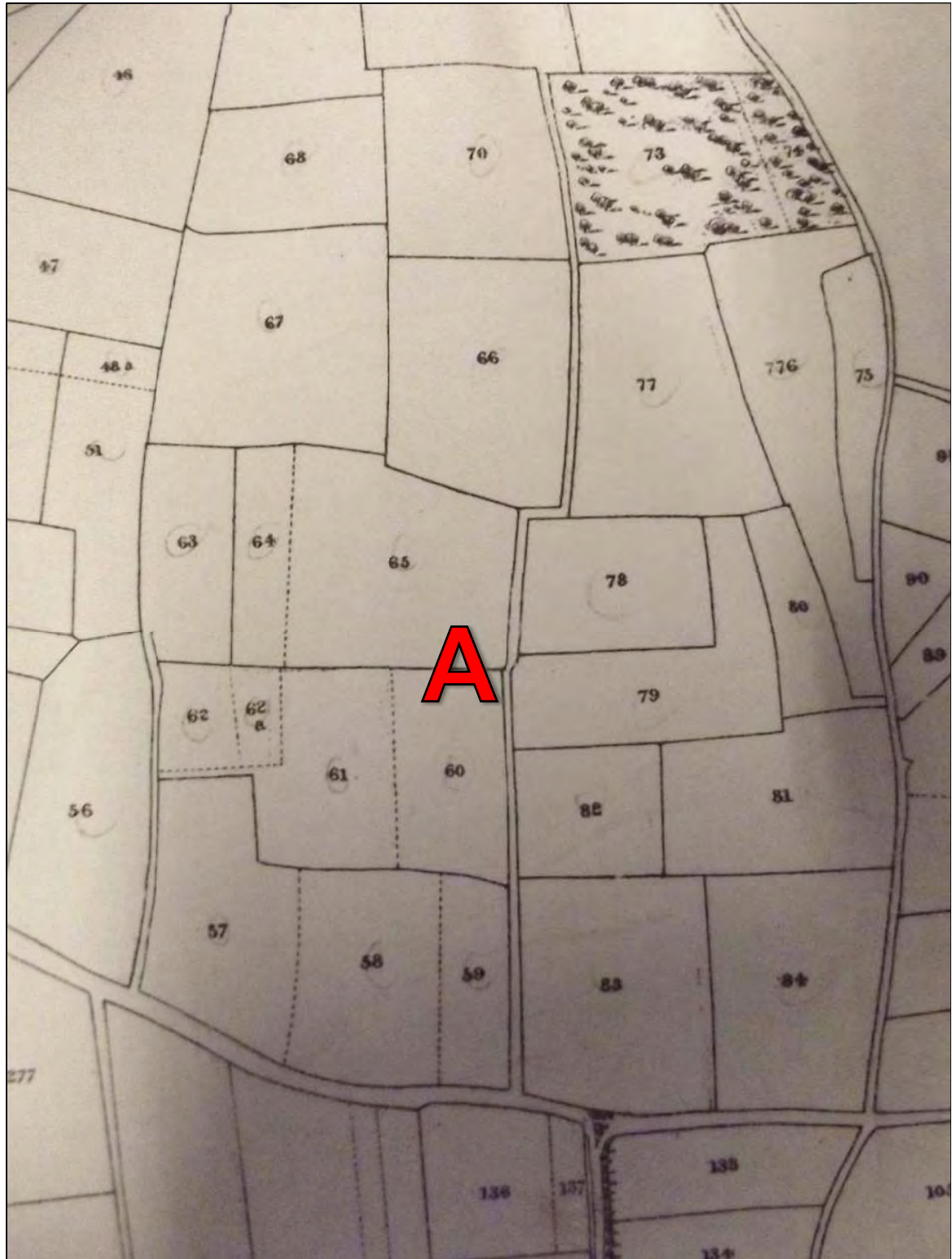
**1887 First Edition Ordnance Survey map**



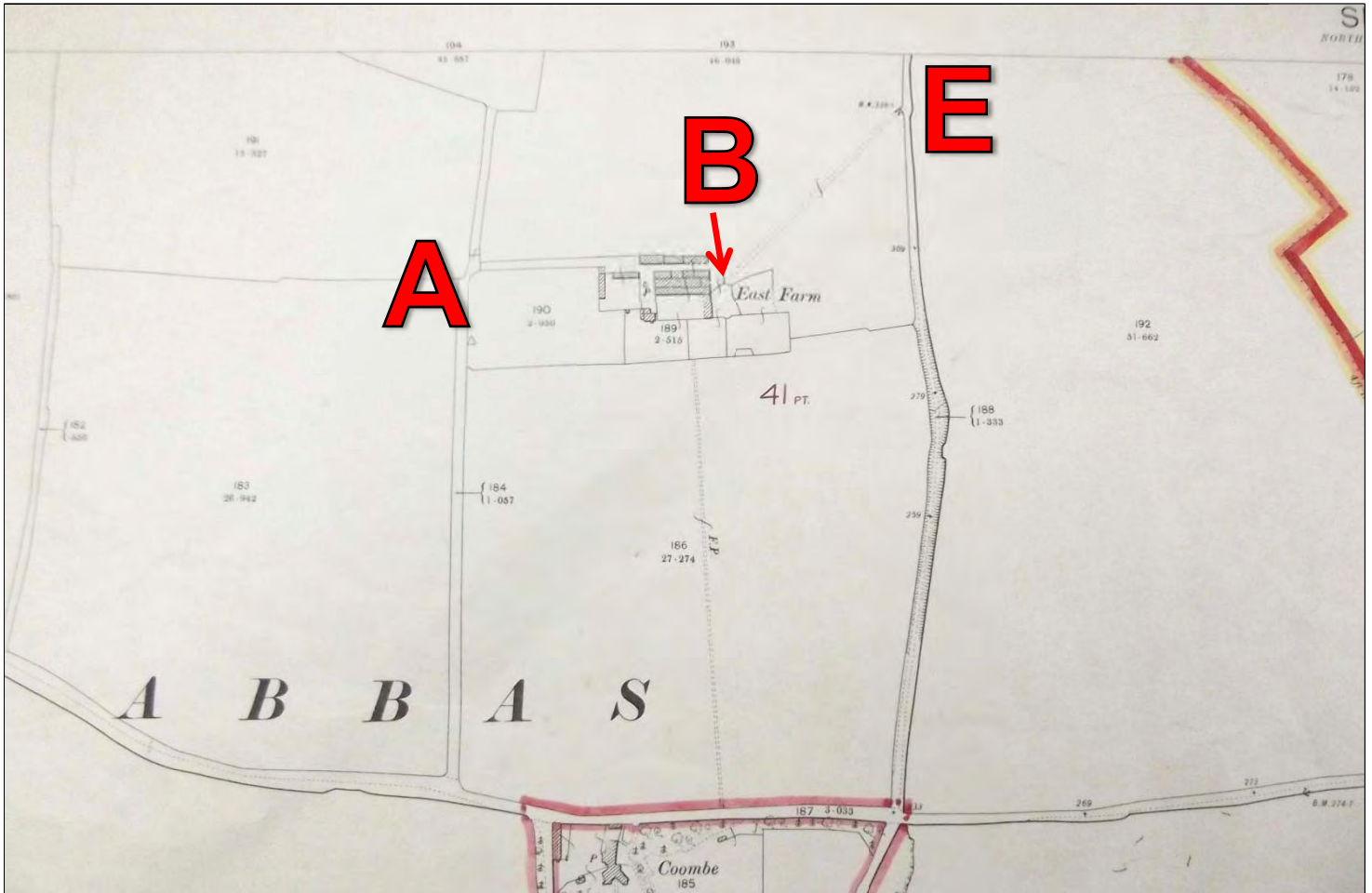
**1928 Edition Ordnance Survey map**



1838 Bradford Abbas Tithe map

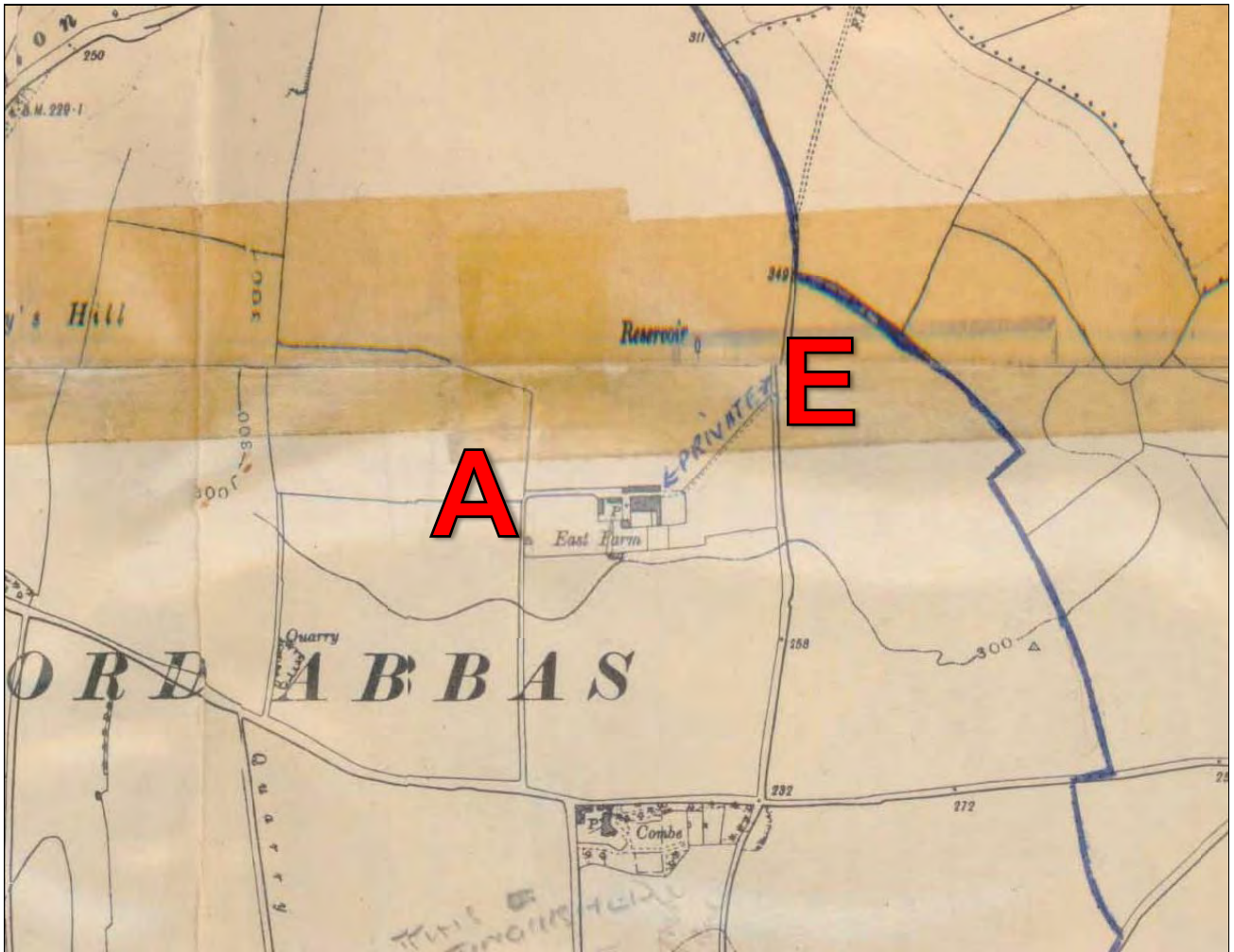


**1910 Finance Act map**



Page 23 Application for a definitive map and statement modification order to add a footpath from East Lane (D20502) to the road by Coombe Cottages (D20503), Bradford Abbas

**1951 Bradford Abbas Parish Survey map**



**User Evidence**  
**Table summarising user evidence from forms**

**USER EVIDENCE (FROM FORMS COMPLETED IN 2007 & 2008)**

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R E Allwright	1963-2007	About 50 times a year. Less in recent years.	Foot	Also used a few times in private car. Used by others on foot and in farm vehicles. No stiles, gates, notices or other obstructions. Believes the owner or occupier was aware the public was using the way as has met the occupiers and employees on the way. Never challenged.
Mr and Mrs C J Balch	1989-2008 (form actually stated to 1908)	Once a week	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. <b>Obtained permission</b> to use the route by Brian Chant in 1986 who was an ex-employee (farm manager). Did not walk route voluntarily during 90's due to outbreak of foot and mouth. Believes owner/occupier was aware of public using route due to being seen using the route.
Mrs B G Barber	1997-2008	40-50 times a year	Foot	Not used by others. No stiles, gates (until now), notices or other obstructions. Never challenged.
Mr K J Barber	1997-2008	40-50 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr R J Bennett	1983-2008	6 times a year	Foot, car and bicycle	Used by others on foot, car and bicycle. Believed owner/occupier was aware of public using the way as met farmer on many occasions there. Route is full road width.
Mrs A Bowring	1982-2007	24-30 times a year	Foot	Used by others on foot and by farm vehicles. No stiles, notices or other obstructions. Gates present. Prevented from using route by gates and notice 31/10/2007.
Ms E J Chapman	1978-2008	Average 6 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Early Dec 2007 – gates and notices. Notice in 2007 – Private.

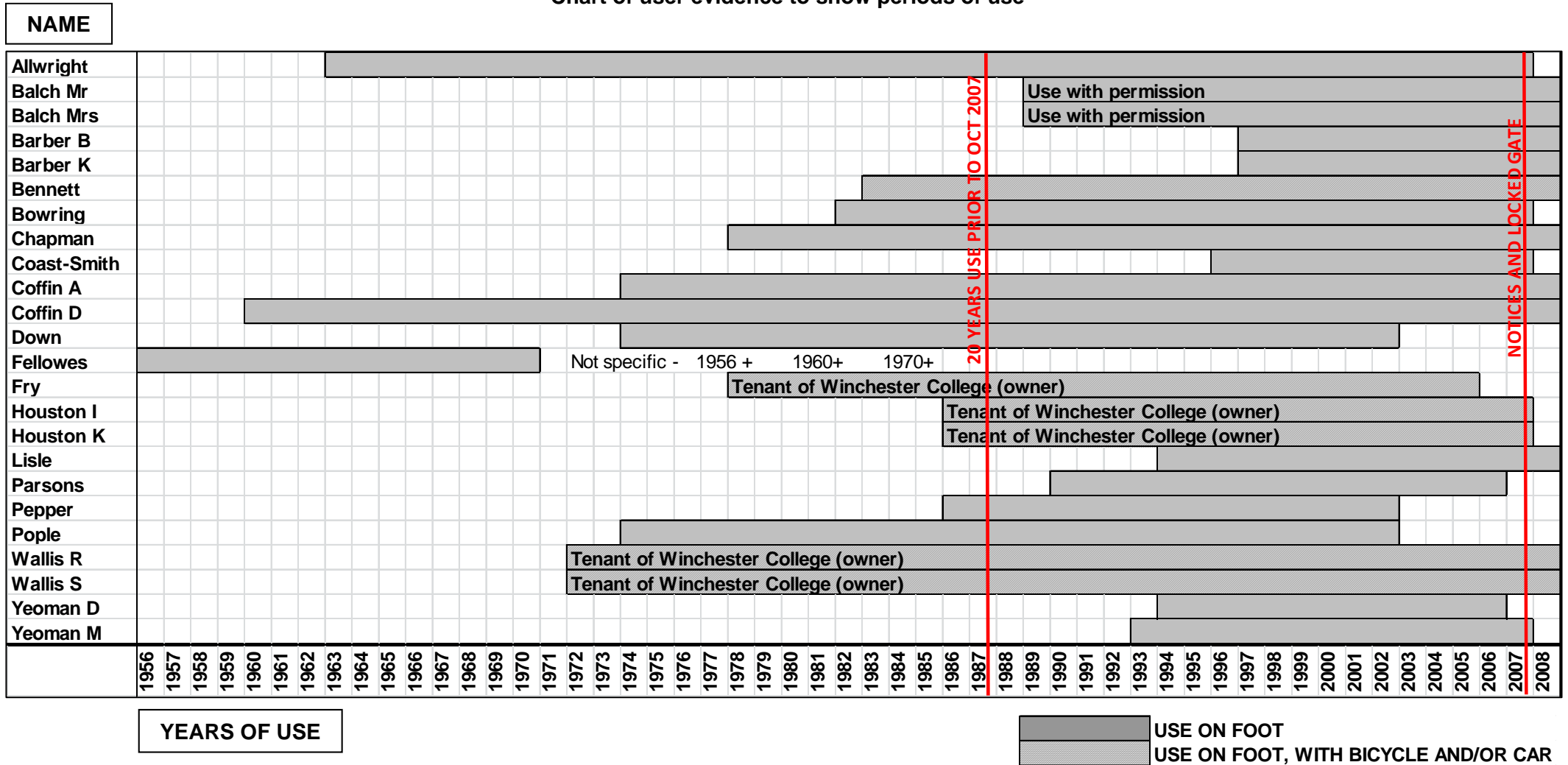


NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr R Coast-Smith	1996-2007	Up to 200 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Gates erected across path November 2007. 12 feet width across path and verges.
Mr A M Coffin	1974-2008	3-4 times a year	Foot	Used by others on foot. Gates present (locked and erected 2007) No stiles, notices or other obstructions. Believes owner or occupier was aware the public was using the way as used to see the farmer when it was farmed. Width of a single carriage road.
Mrs D S Coffin	1960-2008	4-10 times a year	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Route used to belong to Winchester College – no restriction. A rough track, possibly two cars wide in most places.
Mrs B Down	1974-2002	Every day	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Other owners have restricted the track. Route is a "2 car width".
Miss B M Fellowes	1956+ 1960+ 1970+	8-10 times a year	Foot	Unlocked gates. No stiles, notices or other obstructions. Far too narrow for extra traffic.
Mrs R Fry*	1978-2005	Regularly	Foot, car and bicycle	Used by others on foot, bicycle, cars and tractors. No stiles, gates, notices or other obstructions. <b>Has been tenant of Winchester college from 1978.</b> Wide enough to drive through.
Mr I S C Houston*	1986-2007	30 times a year	Foot, bicycle and car	Used by others on foot, bicycle and by car. No stiles, gates, notices or other obstructions. 2008 – Several gates and notices prevent access. Believes owner/ occupier was aware the public were using the way as he engaged occupier and farmers in conversation. Wide enough for farm vehicles. Single track.
Mrs K P J A Houston*	1986-2007	Between 12 and 20	Foot and Bicycle	Used by others on foot, horseback and by car. No stiles, gates, notices or other obstructions. Never challenged. Width approx. single track road.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr C J Lisle	1994-2008	Frequently	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Has been greeted cheerily. Never challenged.
Mrs C Parsons	1990-2006	Inter-mittently from 1990, most recently in 2006	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Never challenged.
Mr P A A Pepper	1986-2002	6-10 times a year	Foot	Delivering literature. Used by others on foot. No stiles, gates, notices or other obstructions. Gates only put in place by new owner. Width of the tracks is about 14 feet.
Mrs Pople	1974-2002	Most days	Foot	Used by others on foot and by vehicle. No stiles, gates, notices or other obstructions. Never challenged. Lorry width.
Mrs & Mrs R & S Wallis*	1972-2008	365 times a year	Foot, car and bicycle	Used by others on foot, cycle, car and horseback. No stiles, gates, notices (until now) or other obstructions. <b>Working for owner/ occupier of land 1972- present.</b> Never obtained permission to use the route until Charteroak purchased the access road. Friend visiting them was prevented from using it in Nov 2007. Charteroak Estates erected padlocked gates. Notices Autumn 2007 – by Charteroak Estates.
Mr D N Yeoman	1994-2006	35 times a year	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Believes owner or occupier was aware of public using the way as spoke to occupiers. Track wide enough for vehicle.
Mrs M Yeoman	1993-2007	90 times for last 4 years approx and approx 24 times for previous 10 years	Foot	Used by others on foot. No stiles, gates, notices or other obstructions. Spoke to persons using buildings and land. Never challenged.

\*Tenants of Winchester College or Charteroak Estates

Chart of user evidence to show periods of use



20 YEARS USE PRIOR TO OCT 2007

NOTICES AND LOCKED GATE

YEARS OF USE

USE ON FOOT  
USE ON FOOT, WITH BICYCLE AND/OR CAR

Chart to show level of use

