

Officer Delegated Decision

Date: 04/10/2019

Application for a definitive map and statement modification order to add a footpath from Coldharbour Road to Footpath 21, Chickerell.

Decision:

That:

- a) The application be accepted and an order made to modify the definitive map and statement of rights of way by adding a footpath from Point A to Point G as shown on Drawing14/28/1;
- b) Evidence received following publication of the order be considered prior to confirmation;
- c) If the legal test for confirmation is met and the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

(Decisions included can be executive or non-executive in nature, depending on the delegation given. Please state if the delegation was granted by the Cabinet or any other Committee or is detailed within the Scheme of Delegation in the Council's Constitution.)

Key Decision:

No

Please see definition below.

Reason(s) for Decisions:

- (a) The available evidence shows, on balance, that the claimed right of way is reasonably alleged to subsist;
- (b) There is a conflict in evidence. The publication of the Order will provide a further opportunity for additional evidence to be submitted and considered against the legal test for confirmation;
- (c) If the evidence shows, on balance, that the route should be recorded as a footpath, and there are no outstanding objections, the Council can itself confirm the Order without submission to the Planning Inspectorate.

Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements.

Decision Maker (Name and Title):

Vanessa Penny – Definitive Map Team Manager

Alternative options considered and rejected:

None

Any conflict of interest declared by any member consulted:

None

Any dispensation granted in respect of any declared conflict of interest:

None

Definition of Key Decisions

Key decisions are defined in the Constitution as decisions of the Cabinet which are likely to -

- "(a) result in Dorset Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making he decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms



Lead Members: Cllr Jean Dunseith, Cllr John Worth (Members for Chickerell Ward)

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and
Infrastructure.

Executive Summary:

In response to an application to add a footpath from Coldharbour Road to Footpath 21, Chickerell, this report considers the evidence relating to the status of the route.

Equalities Impact Assessment:

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

Budget:

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

Risk Assessment:

As the subject matter of this report is the determination of a definitive map modification order application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications:

None

Recommendation:

That:

- a) The application be accepted and an order made to modify the definitive map and statement of rights of way by adding a footpath from Point A to Point G as shown on Drawing14/28/1;

- b) Evidence received following publication of the order be considered prior to confirmation;
- c) If the legal test for confirmation is met and the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reasons for Recommendations:

- (a) The available evidence shows, on balance, that the claimed right of way is reasonably alleged to subsist;
- (b) There is a conflict in evidence. The publication of the Order will provide a further opportunity for additional evidence to be submitted and considered against the legal test for confirmation;
- (c) If the evidence shows, on balance, that the route should be recorded as a footpath, and there are no outstanding objections, the Council can itself confirm the Order without submission to the Planning Inspectorate.

Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements.

Use of Evidence:

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 2016, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. The Councillor for Chickerell Ward at the time, Cllr Gardner was consulted, and the current councillors for the ward, Cllr Dunseith and Councillor Worth were also consulted. In addition, notices explaining the application were erected on site.

37 user evidence forms from users of the claimed route were submitted during the investigation. Any relevant evidence provided has been discussed in this report.

Appendices:

1. Drawing 14/28/1
2. Law
3. Documentary evidence - Extracts from key documents
 - Ordnance survey maps
 - Photos of the site
 - Aerial photos
4. Charts to show periods and level of use

Background papers:

The case file of the Executive Director of Place (ref. RW/T511).

Most of the original historic maps and documents referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.

Copies (or photographs) of the documentary evidence can be found on the case file RW/T511, which will be available to view at County Hall during office hours.

Officer Contact:

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1 Background

- 1.1 An application to add a footpath as shown A – B – C – D – E – F - G on Drawing 14/28/1 (Appendix 1) was made by B.K. Bean on 6 July 2011.
- 1.2 The route claimed commences at Coldharbour, opposite and slightly to the east of property number 18, and extends in a generally south south easterly direction to the boundary of the Electricity Sub-station where it joins Footpath 21, Chickerell. The width along the entire length varies from 4 - 7 metres.
- 1.3 The surface between points A – F is well-maintained packed stone, some potholes have been repaired with tarmac. Between points F and G the surface is partly chalky soil and partly stony.
- 1.4 Across the entrance from Coldharbour (at A) is a padlocked 4.7 metre wide metal gate, with strands of barbed wire above. There is a sign on the gate stating: "**Private Land**". From A through B to C the route is bounded on both sides by old laid hedges with one wide gap into a field on the eastern side just north west of point B.
- 1.5 At C there is a wide track branching off to the east, and a gate into a stable area. Between C and D the hedge on the western side of the application route continues, and the boundary on the eastern side is a post, rail and wire fence with stables behind. From D – E – F the fence on the eastern side continues, and on the western side there is no boundary.
- 1.6 At F there is a wide track branching off the application route to the east, and a gate into the field on the eastern side. There is a mains power pole set into the western verge. Between F and G the route is bounded on the east by a post, rail and wire fence, with trees, and on the west there is a deciduous wood, bounded by a hedgerow / fence.
- 1.7 At G the application route terminates at Footpath 21, Chickerell. Just to the north of the junction there is a wooden barrier / old gate leaning in the hedge on the western side, and a thin metal post on the eastern side of the application route.
- 1.8 The land is not registered with Land Registry but ownership is claimed by adjoining landowners.

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/T511)

3.1 A table of all the documentary evidence considered during this investigation is available in the case file, RW/T511. Extracts from the key documents are attached in Appendix 3.

4 User evidence (Appendix 4) (copies available in the case file RW/T511)

4.1 A table of user evidence summarised from witness evidence forms is available on the case file RW/T511. Charts showing their periods and level of use are attached in 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/T511)

5.1 Fourteen submissions were received in support of the application.

Date of correspondence	Comments
(06/01/2009) sent in response to an earlier claim	Witness has used the application route since approx.1950, was never challenged until Dec 2008. Points out the advantages of linking Nottingham Lane with Chickerell and Radipole by footpath. Map included.
(03/02/2009)) sent in response to an earlier claim	Witness sent a copy of letter sent to Chickerell Town Council. Has walked the application route for 20 years, but during the last two years has been challenged by a woman.
(08/02/2009)) sent in response to an earlier claim	Witness sent a copy of letter sent to Chickerell Town Council supporting the application. Has used track up to 3 or 4 times a week since 1968 up to unspecified date in 2008 when he was challenged by someone who told him it was a private track. He believes it was incorrectly omitted from the definitive map and would have advantages if recorded.
(19/05/2016)	Witness sent detail of his use of the application route A – G from 1950's to 2014 without objection. He was challenged in 2014 by a woman.
(21/05/2016)	Witness sent an Email stating that she and her family have used the application route since 1988, initially unchallenged. Challenged in 2015. The site notices erected for consultation have been removed, and the gate at Coldharbour is now locked.

(30/05/2016)	Witness reported that he, his wife and family used the application route on a daily basis from 1973 – 2000. Infrequently there was a closed gate to prevent stock straying onto the road but this did not prevent use. He considered it to be a public footpath.
(31/05/2016)	Witness reported that he and his family used the application route, on foot, from 1970 – ' recent years '. He stopped using the route due to ' abusive attitude of horse-riders '. He considered it to be a well used footpath.
(01/06/2016)	Witness said he used the application route several times a week from 1985 – 2010 without hindrance. Since 2010 the gate has been locked and he has heard of others being verbally challenged. He names someone who used the route before 1985.
(05/06/2016)	Witness sent an Email stating that she and her family have walked the footpath since 1979 to visit family.
(07/06/2016)	Witness sent a letter accompanying User Evidence Form. Describes use by herself and her family from 1940's onwards. Attaches old maps and documents relating to East Chickerell.
(08/06/2016)	Witness sent photographs accompanying User Evidence form showing family members using the application route in late 1970's
(21/06/2016)	Witness describes various incidents of being challenged, with other users,(no dates given, all post 2001) and states that some users were allowed to continue, with permission.
(22/06/2016)	Witness describes being challenged when using the route in Summer 2010. Previously had used route 1983 – 2000 without challenge.
Cllr Jon Orrell (29/06/2016) Weymouth & Portland Borough Council	Email stating that he has used the application route for last 18 years, and in the early days was not challenged. He cites other residents who confirm the public nature of the path. Cllr Orrell says that the route is now gated and some of the new owners are abusive to walkers.

6 Evidence opposing the application (copies available in the case file RW/T511)

6.1 Twenty two people provided evidence forms opposing the application. These submissions are in the case file RW/T511 and analysed in section 11. An additional 9 other submissions were received, some of these from the same witnesses.

Name	Comments
Relative of claimed landowner (17/03/2016)	Email with attached photograph of a locked gate at northern end of application route. States that the locked gate has been in situ for over 35 years.
Claimed landowner (14/06/2016)	Email stating that walkers had attempted to use application route, torn down signs, knocked down fencing and climbed over gates, resulting in confrontations. Barbed wire had been fitted to top of gate on/before 1981, the gate had always been there but moved from the road edge to its current location after 2000 when a splayed entrance was created, it is left open during the day when the fields are being used.
Adjoining landowners (15/06/2016)	Email stating they purchased the adjoining land 12 years ago, with permission from claimed landowner to use the application route to access their land. They describe a locked gate at Coldharbour and that unauthorised users were challenged.
Employee (received 16/06/2016)	He worked for the owners of East Chickerell Court in 1958 and says that at that time there was no track to Coldharbour. States that the gates and 'Private Property' signs were erected following the building of the electricity substation. People using the application route have been challenged over the years. He cites lack of need, privacy, and security issues for his objection.
Adjoining tenant (17/06/2016)	Attends the fields at least twice a day. Has encountered only 'a handful' of people trying to use the application route and has guided them back because she believes it is private.
Adjoining tenant (08/07/2016)	Has used application route several times a day since 2002 with private right to access private land. Land attractive due to private nature of access and perception of associated security. Describes a locked gate (locked 100% overnight, 60% during day) and signs on route. Padlocks have been removed / cut off 4 times overnight. Only a few 'walkers' have been

	seen, but not challenged. Objects on safety and security issues.
Adjoining landowner (25/07/2016)	Purchased land near the application route in 2008 and a key factor was that access was private and not a public right of way. He describes a locked gate and a sign 'Private Land'. He says there is no access at the other end. Only a few people have ventured off the right of way, these have been turned back.
Claimed landowner (28/07/2016)	Believe it is not RoW, have been owners / tenants since 1965, and local resident since 1950. Have turned back everyone seen who does not have private right. Have erected signs and gates to prevent unauthorised access.
Adjoining tenant (30/07/2016)	Letter accompanying User Evidence form completed as private user. Gives evidence relating to a locked gate on the application route since the late 1960's, and to signs erected following the challenge of a walker by her mother.

7 Other submissions received (copies available in the case file RW/T511)

7.1 A further 17 submissions were received which included no evidence to be considered. This included multiple communications with Mr Bean (the applicant), the claimed landowner and his representatives, and Chickerell Town Council, some of which dated from a previous application.

Name	Comments
Brian Bean (applicant) (24/07/2015)	Information that, since the application was made, use of the route has been prevented by adjoining landowners challenging walkers. Also, a metal gate and sign has been erected at the entrance to the track.
Simon Dando, National Grid, (22/03/2016)	Email stating that application route has been used by National Grid to access pylons, with permission of Mr Coombe (landowner), gate sometimes locked. Previously a gate had dual access padlock for Mr Coombe / National Grid – unspecified location.
(06/06/2016)	Witness sent an Email requesting that the application route be recorded as a footpath. He states that the route has been used for over 10 years but that in 2015 a horse owner challenged his use and verbally abused

	him. However, no map or clear description to define location.
(08/07/2016)	Witness has rarely visited the site but opposes the application on the basis of security, lack of need and lack of pre-existing right. Provides extensive background information and personal opinion.

8 Analysis of documentary evidence

Inclosure Awards

- 8.1 There is no known inclosure in existence for the land crossed by the claimed route.

Tithe Apportionments and Plans

- 8.2 The **1839 West Chickerell Tithe Apportionment Plan** shows that part of the application route as shown between points D – G on Drawing 14/28/1. The route is defined by two parallel lines (partly solid, partly pecked) suggesting that in places it was partially enclosed by a fence or hedge, the remainder being unenclosed.
- 8.3 The route is also coloured ochre, and is generally shown in a similar manner to other routes shown on the plan, many of which are recorded as public roads today.
- 8.4 That part of the application route, as shown between points A – D falls outside the area of the plan.
- 8.5 The bracing on the plan indicates that the whole of the route as shown between points D - G on Drawing 14/28/1 is braced within an Apportionment numbered 44.
- 8.6 The **West Chickerell Tithe Apportionment** describes **Apportionment 44** as “***Barn Waste Lane etc.***” There is no entry with respect to its state of cultivation, suggesting the apportionment was uncultivated. Rent charges are not listed for individual apportionments.
- 8.7 Officer comment:
- The fact that the route is generally depicted in the same manner as other roads which are known to be public, referred to as a *Lane* and was, in all probability, uncultivated, may suggest it was considered to be a public highway. However, the fact that the application route was included within an apportioned plot, number 44, part of which was occupied by buildings might also

suggest that it was considered to be a private or 'occupation' road.

- Consequently, it is considered, on balance, that this evidence is insufficient to conclude what status, if any, the route may have carried.

8.8 **The 1841 Radipole Tithe Apportionment Plan (copy)** is uncoloured and defines that part of the application route, as shown between points A – B on Drawing 14/28/1, with parallel solid lines, suggesting that it was enclosed by hedges or fences. It was un-apportioned and therefore not subject to taxation.

8.9 That part of the application route as shown between points B – D falls within an area of land identified as Apportionment 185 which is described as being ***"Part of Ewe Leaze – Arable and Pasture"***. However, there is no mention of any way or access, and the route is not depicted on the plan.

8.10 That part of the claimed route D - G falls outside the area of this Tithe.

8.11 Officer comment:

- Whilst it was not the primary purpose of these documents to depict public highways, in many cases they do, as they often form the boundaries of separate apportionments.
- The lack of any apportionment number suggests that this part of the claimed route (A-B) may have been regarded as a public highway, possibly a public carriageway and consequently might be considered to provide a little support in respect of this part of the application route. However, little weight can be attributed to it.

8.12 **The 1837 Radipole Tithe Apportionment** provides no evidence in support of the application.

Finance Act 1910

8.13 The Finance Act plans show the application route with parallel solid lines at the northern end and parallel pecked lines towards the southern end. The route has no annotation suggesting public rights of way. The whole application route lies within Chickerell Hereditament no. 170.

8.14 Chickerell Hereditament 170 is a large land parcel incorporating the whole of East Chickerell and surrounding land. It has several marked footpaths some of which are recorded as public rights of way today. The appropriate Finance Act Field Book details Hereditament 170 as benefitting from £250 deduction for ***"Right of Way"***, however, there is no indication to which ways this refers. Although this is a sizeable deduction, without evidence that some of this sum applies to the application route, it provides no evidence in support of the application.

Other documents

Ordnance Survey maps

Drawings

- 8.15 The **1806 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 Chickerell Parish clearly depicts the application route throughout its length A - G. It is defined by two parallel pecked lines suggesting that it was not enclosed by hedges or fences, at this time.

One Inch Series

- 8.16 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch: 1 mile also depicts the application route as a double pecked line (unfenced) leading from a public road (now County road C58 and called locally "*Coldharbour*"), to East Chickerell. This double pecked notation is also used to define other routes shown on the map which today are recorded as minor public roads. The route is shown to be open at both ends and throughout its length, with no indication of the presence of any gates or other barriers.

- 8.17 Officer comment:

- The purpose of these maps was for military use and it is generally considered that routes depicted were capable of carrying vehicular traffic i.e. were either public or private carriageways.

- 8.18 The **1898 Revised New Series Ordnance Survey Map** 1inch : 1mile shows the application route partly with parallel solid lines and partly with parallel pecked lines, indicating that it was partly hedged / fenced. This map carries the disclaimer (see note in Table of Evidence, Appendix 3) indicating that depiction of a route is no evidence of right of way.

Six Inch Series (1: 10560)

- 8.19 The **1868 First Edition Ordnance Survey Map** at a scale 1:10560 shows the application route with parallel lines, partly solid and partly pecked, indicating that it was partly hedged / fenced. The route is not marked 'F.P.' or 'B.R.' suggesting that it may have been a carriageway. However, despite there being no disclaimer present on this map (see note in Table of Evidence, Appendix 3), it is impossible to tell whether the status was public or private.

8.20 The **1902 Second Edition Ordnance Survey Map** at a scale of 1:10560 shows the claimed route with parallel solid lines A – C, parallel solid and pecked lines C - D and parallel pecked lines D – G indicating that it was partly fenced or hedged. There are no indications of F.P. or B.R. alongside the route suggesting it was a carriageway. The route is shown with barriers or gates at A and C. The adjoining “*Coldharbour*” is indicated as a public road by shading. The application route is not shaded suggesting it was a minor public road or private road.

25 Inch Series (1: 2500)

8.21 The **1863 First Edition Ordnance Survey Map** at a scale of 1:2500 shows the application route from point A – C with solid parallel lines, partly with parallel pecked lines indicating it was partly fenced or hedged. The route is uncoloured whilst “*Coldharbour*” is coloured sienna, indicating it was a public road. Marks across the route could indicate gates / barriers at points A and C. The map for the remainder of the route is unavailable.

8.22 Officer comment:

- The lack of colouring could be suggestive of the route being a private way.

8.23 The **1902 Second Edition Ordnance Survey Map** at a scale of 1:2500 is the map used for the Finance Act valuation and depicts the claimed route similarly to the 1868 First Edition 6 inches : 1 mile, although the larger scale map shows more detail.

8.24 Officer comment:

- The evidence provided by the **Ordnance Survey Maps** support the existence of a route on the ground for the whole of the application route A – G. None of the Ordnance Survey maps introduced as evidence depict the route with any annotation such as ‘B.R.’ or ‘F.P.’, which suggests that if it were considered to be a public highway it would be of a higher status than a footpath or bridleway. Thus the notation used suggests the existence of a route possibly capable of accommodating vehicular traffic. These maps do not, on their own, provide evidence as to the status of the route, public or private, however, some notation used may indicate private status.

Ordnance Survey Boundary Remark Books

8.25 The **1863 Ordnance Survey Boundary Remark Book for Chickerell** describes the application route at point D on Drawing 14/28/1 as “Occupation road to East Chickerell Farm”.

8.26 Officer comment:

- This suggests that, at this time, the route was considered to carry private vehicular rights. However, this does not exclude the possibility of other public rights.

8.27 **The 1863 Boundary Remark Book for Radipole** does not include details of the boundary between Radipole Parish and Chickerell Parish.

Commercial maps

8.28 Various small scale maps dated after the Ordnance Survey First Edition 1 inch : 1 mile (1866), depict a route on or in the general location of the application route, either completely or partially (see table at Appendix 3). Where it is shown, it is sometimes depicted in the same manner as other roads in the vicinity, which are known to be public carriageways, but most often it is depicted as being of lesser status than roads now known to be public carriageways.

8.29 Officer comment:

- The extracts from the available small scale maps within DCC and at Dorset History Centre are mainly of a commercial nature, and in all probability derive their data from other surveys such as the Ordnance Survey. Very few, if any, are wholly independent surveys and several have no accompanying key. However, many show the route clearly leading to the hamlet of East Chickerell, and with equal prominence to other routes leading from / to East Chickerell. It might be reasonable to assume that at least one of these routes carried public carriageway status.

8.30 **Bartholomew's maps** are based on Ordnance Survey data and were extremely popular and widely referred to by the public. They provided information on first, second and 'indifferent' classes of roads as well as footpaths and bridleways. The available **Bartholomew Maps** cover the dates 1902 and 1942 and show the route quite prominently in exactly the same manner as other public roads in the area. Reference to the accompanying map keys indicates that the route was designated as a "*Secondary Road (Good)*" in 1902, and as a "*Serviceable Road*" in 1942.

8.31 Officer comment:

- The information contained in the Bartholomew's Maps and some other commercial maps is suggestive of public carriageway status, but this carries no legal weight, and no significant weight can be attached to them.

Indenture and Sale of Land

8.32 The **1886 Indenture of East Chickerell Farm** sets out the rents and covenants pertaining to the land. It is accompanied by a plan which shows the entire application route A – G, partly with parallel solid lines and partly with parallel pecked lines. The route is not described in the indenture.

8.33 Officer comment:

- The fact that the application route is marked on the plan, but not described may suggest that it was not considered a public highway.

8.34 The **1956 Sale Documents for East Chickerell Court Farm** show the entire application route A – G on the plan and this was included in the sale. Part of the route in the north is described variously as '**Roadway with declared private rights of way**' and '**Trackway with declared private rights of way**'. The remainder of the route is not described.

8.35 Officer comment:

- These documents would suggest the application route is a private occupation road, however, the fact that they do not mention public rights of way does not exclude these rights.

National Parks and Access to the Countryside Act 1949

Parish Survey

8.36 The **1951 Chickerell Parish Survey of rights of way** does not list the route as a right of way but describes it as "*a lane (from Coldharbour) to East Chickerell*".

Draft Map, Provisional Map and First Definitive Map

8.37 The **1954 Draft map for the Chickerell area, 1964 Provisional map** and **1966 First Definitive map** do not show the claimed route as a public right of way.

Revised Draft Map

8.38 In **1973 a Special Review** Committee considered the status of the application route to decide how the route should be shown on the revised draft map. They received one claim for it to be recorded as a 'new footpath'. However, no user evidence or documentary evidence was provided with the claim.

8.39 The **1974 revised draft map** therefore does not record the application route as a right of way.

Current Definitive Map

- 8.40 The **Current Definitive Map (sealed 1989)** does not record the application route as a right of way.

Highways Act 1980, Statutory Declaration

- 8.41 The **Highways Act 1980 Section 31(6) Deposited Statements, Plans and Declarations**. Two deposits have been made which cover the area of the whole application route from point A to F. The first was on 8 February 2007, and the second was on 5 February 2009. Neither referred to the application route as a public right of way.

- 8.42 The 2007 deposit of statement and plan did not clearly delineate the land in question as the land extended beyond the limit of the map. However, the entire application route was within the illustrated land parcel. The statement is dated 8 February 2007. The accompanying declaration is dated 15 February 2007, however it refers to a statement and map deposited on 16 February 2007. These were not received by the Rights of Way team until 28 May 2008.

- 8.43 Officer comments:

- Although the statement dated 2007 was declared invalid because the map did not fully illustrate the land parcel, it could be taken to indicate that the landowner had no intention to dedicate the route in question.
- It may not be necessary for a statutory declaration to be submitted with the statement and map. A statutory declaration at this time needed to be submitted within 10 years of the deposit of the statement to keep the statement “alive”. Officers view is that the statement took effect on 28 May 2008 despite the discrepancy in the date of the declaration.

- 8.44 The 2009 deposit and plan correctly delineated the land on the plan, and also granted private rights over the land, and along part of the application route denoted by points A – F on the Drawing 14/28/1. On 5 February 2009 the landowner declared that he did not intend to dedicate any further public rights of way across the land in which the application route lies. This deposit protected the land from the acquisition of new rights of way until 4 February 2019.

Wildlife and Countryside Act 1981

- 8.45 An application to add the route to the Definitive Map as a footpath was made by Chickerell Town Council on 25 February 2009 but was rejected because insufficient evidence was provided (only 2 users).

Dorset Council List of Streets (1974)

- 8.46 The application route is not recorded on the list of highways maintainable at public expense.

Aerial Photographs (Appendix 3)

- 8.47 The aerial photographs from 1947, 1972, 1986, 1997, 2002, 2005, 2009, and 2014 all show the application route as a track throughout its length from point A to point G.
- 8.48 In all photographs the route is bounded by hedges on both sides between point A and point C, and by a hedge on the west from point C to point D, and by a wood on the west between points F and G.
- 8.49 In 1947 the photograph shows the route leading to the buildings of East Chickerell Court Farm which was in approximately the same location as the electricity sub-station in later photographs.
- 8.50 The tracks which now branch off to the east from points C and F were absent from all photographs before 2002. In addition, the splayed entrance to the route, at point A, first appeared in the 2002 photograph.
- 8.51 The photograph of 1972 shows dark shadows across the lane at points A, C and G, possibly indicating gates or barriers. The other photographs do not indicate any gates or barriers present across the route except at a point south of point G. However, the definition of the photographs may not be sufficient to enable any barriers to be seen.
- 8.52 Officer comment:
- The photographs confirm the existence of the application route throughout the period from 1947 to present day.

Google Street View Images (Appendix 3)

- 8.53 The Google Street View image from **2011** shows the entrance to the track at point A, with an open metal gate, and a vehicle in the entrance. There is a red sign on the eastern side of the track but the wording cannot be read. There is a gap beside the gate, on the western side of the gate post.
- 8.54 The Google Street View image from **2009** shows the entrance to the track at point A, with an open metal gate. There is a red sign on the eastern side of the track but the wording cannot be read. There is no sign of wear on the ground around the outside of the western gate post, but there does appear to be a gap between the post and the hedge.
- 8.55 Officer comment:
- These images confirm the existence of a gate at point A in 2009 and 2011 but that this may not have obstructed pedestrian access.
 - The presence of a sign on the application route is also confirmed in 2009 and 2011 but its wording cannot be read.

9 Analysis of user evidence supporting the application

9.1 Analysis of the evidence under Section 31, Highways Act 1980

For Section 31 of the highways Act to give rise to a presumption of dedication, the following criteria must be satisfied:

- The physical nature of the path must be such as is capable of being a right of way at common law.
- The use must be brought into question i.e. disputed or challenged in some way.
- Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question.
- Use must be 'as of right' i.e. without force, without secrecy and without permission.
- Use must be by the public at large.
- There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed.

9.2 A summary of the evidence is set out below, but reference should be made to the actual forms contained within the file of the Executive Director of Place Ref RW/T511 for all the information.

9.3 A total of 37 user evidence forms were submitted by 37 witnesses. However, 3 of these claimed use was 'with permission' and these have been considered separately. An additional 2 were employed by, or related to the land owner and these have been considered along with users with private rights in paragraph 11.14 – 11.26. This leaves 32 witnesses who claimed use as of right.

9.4 It is noted that 11 witnesses had not signed the accompanying map, 14 had not dated it, and 12 had provided a map which appeared to have been mass produced. Three witness sent a signed map in separately, one witnesses did not supply a map but clearly described the route used, and one drew the route on a very outdated map.

9.5 All of the witnesses state that they used the route, either individually or with other users, shown between points A - G on Drawing 14/28/1 and that this use was on foot. All the witnesses used the route for pleasure and 3 witnesses additionally used it for work (these were not working for, or in connection with, the landowner). All except one had seen others using the route.

9.6 The earliest date of use was 1950, and 2016 was the last recorded date of use; 66 years of continuous use. The longest period of use was 47 years and 5 witnesses used it for more than 40 years. The mean period of use was 26 years. (see graphs in Appendix 4).

- 9.7 Frequency of use ranged from once a year to 300 times a year. The evidence indicates the route was used more than twice daily.
- 9.8 15 witnesses remember there being a gate on the route, and those that specified said it was at point A on Drawing 14/28/1. Some witnesses described that the gate was a more recent addition and dates when it appeared ranged from after 2000, to 2008, and 'a few years ago (in 2016)'.
- 9.9 Four witnesses said the gate was locked at least some of the time and dates when it was first locked ranged from 2011 – 2015.
- 9.10 Two witnesses remember a stile but did not specify its location (there is a stile between the application route and FP21, Chickerell Parish and it could be this to which they referred).
- 9.11 None of the witnesses encountered any other obstructions.
- 9.12 8 witnesses saw a sign on the route at least some of the time, several said this was more recently, with dates ranging from 'not prior to 2000', 'since 2010', and 'since 2014'.
- 9.13 The wording of the sign was described variously as "**Private**", "**Private land**" and "**Private road**".
- 9.14 Officer comment:
- Such wording could still be compatible with a public right of way because public rights of way frequently cross private land and coincide with private roads. Such signs do not communicate unequivocally that the public have no right of way.
- 9.15 8 witnesses recall being stopped whilst using the route and dates for these challenges range from 2006 – 2016. The person making the challenge was not identified in any of these cases but were often described as horse-riders or people in vehicles.
- 9.16 In addition, one witness recalls being told by the landowner who claims to own the land over which the route runs in approximately 1985 that the route was not public and 2 other witnesses were told by un-named individuals in approximately 2007 and 2010.
- 9.17 13 witnesses thought the claimed owner actually owned the land over which the route ran, two thought it was the farmer, and one said S.E.B., the other witnesses did not know / did not specify.
- 9.18 21 witnesses thought the owner was aware of use and reasons stated were based on the path being well used over a long period, that they had not been stopped, and that they had met the owner/occupier and not been stopped. Two witnesses thought the owner was not aware of use.

Supporting Evidence from Users with permission

- 9.19 3 users claimed use with permission, even though they thought the public had a right to use the route. Their data has not been included in the user tables.
- 9.20 All had seen others using the route and felt it had been used by the public, but this use had been challenged recently.
- 9.21 One user said he was first challenged in 2008, the others did not give dates.
- 9.22 2 of these users had encountered a gate and said that recently it had been locked and a sign erected "Private track keep out". The third user did not recall gates or notices.

10 Analysis of other evidence in support of the application

- 10.1 Eight letters, three Emails and one set of photographs were submitted, three of these in relation to an earlier application for the same route. Some witnesses wanted their personal details kept confidential.
- 10.2 One witness claimed in 2009 to have used the route '*periodically*' since approximately 1940s and had not been challenged until December 2008 when a woman in a vehicle stopped and told him that it was a private track. He points out that the application route would link the Coldharbour - Nottingham footpath and the Chickerell – Radipole footpath and would be an attractive route for walkers. The same witness wrote again in 2016 claiming use of the route from approximately 1950 until Dec 2014 when he was challenged.
- 10.3 Officer comment:
- The desirability and attraction of the route cannot be taken into consideration.
- 10.4 Another witness claimed to have used the path 'often' for 20 years prior to 2009 but began to be challenged from 2007 onwards. The challenges came from a woman who shouted at him on every occasion he used the path. He would like to continue to use the route.
- 10.5 Officer comment:
- The wishes of users cannot be taken into consideration.
- 10.6 Another witness claimed to have used the route 'regularly (often 3 or 4 times a week)' from 1968 but was told in 2008 that the track was private. He feels that the omission to designate the route as a public right of way results in a great loss to Coldharbour residents and walkers.

- 10.7 One user added further information to her User evidence form of 2011. She detailed a further challenge in Summer 2015 when she and her family felt threatened by a woman in a vehicle. She said that since the consultation notices had been erected, they had been removed and the gate has been locked, so the track is no longer accessible.
- 10.8 One user confirmed information in his User evidence form of 2011. He stated that 'very infrequently' between 1973 and 2000 the gate at point A on Drawing 14/28/1 was closed to prevent stock getting onto the road. On these occasions he climbed the gate and used the path as usual. He believed it was a public footpath and 'seemed historically a local custom and practice to all living in Coldharbour'.
- 10.9 Another user added further information to his User evidence form of 2011. He said he has not used the route in recent years because of the abusive attitude of the new horse-riders. He considered it to be a well used footpath.
- 10.10 Another user added further information to his User evidence form of 2016. He said the previous owner of his house had used the route in the past. He describes the route as a logical connection, and mentions its desirability and improved safety over using the road.
- 10.11 Officer comment:
- Safety implications cannot be taken into consideration.
- 10.12 A further witness claimed in June 2016, use of the footpath 'opposite 18 Coldharbour' with her family since 1988. She states that the gate at the entrance (assumed to be at point A on Drawing14/28/1) had been recently padlocked.
- 10.13 Another user sent a letter with her User evidence form in which she detailed use of the route by herself and her family since the 1940's. She attached old maps and documents relating to East Chickerell.
- 10.14 Officer comments:
- The documents provided support the existence of the route
 - None of these documents provided evidence that the route carried public rights
- 10.15 One user sent photographs of her family using the application route during the 1970's. The photographs were not dated and exact locations could not be ascribed.
- 10.16 Officer comment:
- These photographs add little to the evidence already provided by her in her evidence form.

10.17 Councillor Orrell sent evidence by Email that he had regularly used the route since 1998. He had spoken to other residents of Coldharbour who used the route, one of whom had lived there for 80 years and she had confirmed 'the open access and traditionally recognised nature of this path'. He describes the gate being placed at point A on Drawing 14/28/1 'a few years ago' and that the new owners of the land to the east then began to challenge users of the route. He believes it is an historic footpath which the previous landowner allowed to be used for many decades.

11 Analysis of evidence opposing the application

Evidence of Landowner

- 11.1 The land over which the application route passes is not registered with Land Registry but the owners of some adjoining land claim ownership. They state that they own the land over which the application route passes and have done so since 1980 / 1982 (different parts). Prior to owning the land they were tenants from 1965, and believed since 1950 that the route was not a public right of way.
- 11.2 They had not seen or been aware of members of the public using the way and had challenged any users who were detected. Many people have a legal right to use the track. They had told people using the way that it was not public, and staff, family and legal users were told to do the same.
- 11.3 They state that there were, at all times (except when vandalised / stolen), signs at point A on Drawing 14/28/1, saying "**Private Land**" or "**This is not a public ROW**". From 1970 onwards there was also a sign at point G.
- 11.4 Officer comments:
- 'Private Land' may not indicate that the route was not a public right of way
 - The 'Private Land' sign was reported by users, and was present during site visits, however, none of the users reported seeing a sign using the phrase 'public right of way'.
 - There was no sign reported by users at point G and none in evidence during site visits in 2016.
- 11.5 They state that there were locked gates at point A on drawing 14/28/1, to enclose livestock, to keep out trespassers and for security. At times there was also a gate at point G when needed to contain cattle.
- 11.6 Officer comments:
- The locked gate at point A is also confirmed by users and by site visits in 2016, however, users claim that this has only recently been locked.

- Google Streetview images from 2009 and 2011 show the gate at point A open, although these relate to one instant on each date.
- The gate at point G has not been reported by users, but posts were in evidence during site visits in 2016.

11.7 They had added extra wire to block access created by trespassers around the gate posts.

11.8 Officer comments:

- During a site visit in 2016 there was no evidence that access had been gained around the gate posts in recent time.
- Google Streetview images from March 2009, August 2009 and April 2011 show a gap beside the gatepost at point A which could have allowed pedestrian access.

11.9 In an additional letter attached to the landowner evidence form claimed owners point out that the route was subject to a claim in the 1970's but insufficient user evidence was available, yet now, many of the users claim use before 1972.

11.10 Officer comment:

- A claim for this route made as part of the Special Review of the Definitive Map in 1973 was rejected due to lack of user evidence (only 2 users provided evidence). This does not preclude additional evidence which may not have been produced at the time.

11.11 They state that during major construction works between 1987 and 2000 the gate may have been left open on the route, but that signs were in place reading "**Private not a Public Path**".

11.12 Officer comment:

- This partly concurs with reports of users who largely found the gate open, however, no users reported a sign using the phrase "**Private not a Public Path**".

11.13 They point out that documentary evidence has produced no definitive evidence that the track has ever been a right of way. They also express the opinion that National Grid, although not directly affected by this application, will have serious concerns regarding security of their property.

11.14 Officer comments:

- Documentary evidence is discussed in paragraph 8.
- National Grid have sent a communication clarifying access to pylons and substation (see paragraph 12), but have not expressed concerns.

- Matters of security cannot be taken into consideration.

11.15 The claimed landowner stated in an email that walkers had attempted to use the application route, had torn down a sign stating “**Private Road This is not a public Footpath**”, knocked down fencing and climbed over gates, resulting in confrontation. He said that many local residents had been challenged over the years, and those who had asked for permission had been refused. He said that signs, closed locked gates and barbed wire along the top would have made it obvious that the farm track was not a footpath. He added that the barbed wire was fitted to the top of the gate on or before 1981. He says that the gate was moved from its original location at the highway edge, to its current location in 1999/2000 when a splayed entrance was created. He adds that there has always been a gate at the end of the track, and that it is left open during the day when the fields are being used.

11.16 Officer comment:

- The assertion that the locked gate would have made clear to potential users that the route was not public depends whether the gate was locked at a time when the public were likely to use the route.
- The statement that the gate was sometimes left open during the day might suggest that the locking of the gate was an indication of a lack of intention to dedicate, but possibly not an effective interruption to use.

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

Evidence of relatives of persons claiming to be the landowners

11.18 The daughter sent some undated photographs of the locked gate at point A on Drawing 14/28/1. She stated that the gate had been ‘in situ for over 35 years’, that it was open when being used, but locked at other times. She recalled a notice at point A and said that signs had been vandalised and removed. She had been advised to show people who tried to use the application route back to a path.

11.19 A family member by marriage described that he had lived in the area all his life and had never known the route as a public path. He had used the route approximately 12 times a year from 1996 – 2016 with the permission of the claimed landowner and he had been asked to stop or turn back any other users. He himself had been challenged. He remembered gates (with wire extension above) at points A, C and G on Drawing 14/28/1 and said they were ‘locked regularly especially at night’. He said there were signs reading ‘Private – no public footpath’ but did not describe the location.

11.20 Another daughter and employee recalls using the track as a child with her parents, and later when working on the farm. She says there has been a gate on the track at least since the late 1960's and she remembers helping her parents shut the gate at about this time. She learned how to open and shut the gate whilst riding a pony, and says the gate was locked to protect livestock. She remembers her mother purchasing and erecting signs to say that it was a private track and not a public right of way and she thinks this was pre 1975. She says other users were rarely encountered and always apologised for straying from the footpath.

Evidence of other users with private rights or with permission

11.21 23 people completed evidence forms as adjoining landowners and / or people with private rights.

11.22 Three of the witnesses were relatives of the claimed landowners and their evidence has been considered above, leaving 20 witnesses to consider.

11.23 One person's evidence is considered separately and carries less weight because she did not mark the route used on the plan, or describe when she used it. When asked she said she rarely went there and it was her daughter who accessed the land.

11.24 Of the 19 witnesses 14 were landowners or tenants who used the route to access their land. All but three of these claimed to have a private right to use the application route, one claimed an easement. Their use of the route started in 2000, or more recently.

11.25 Of the remaining five witnesses 4 were employed by the landowner and one was a tenant of sporting rights on Mr Coombe's land. Their use was from 1960, 1976, 1983 and 1986.

11.26 16 of the 19 witnesses thought the way had always run over the same route, one said there was "no track there in 1958".

11.27 Officer comments:

- The Ordnance Survey drawing of 1806 depicted the route and it has been shown on all subsequent Ordnance Survey maps as discussed in paragraphs 8.14 – 8.19.
- The route was visible on aerial photographs from 1947, as discussed in paragraphs 8.36 – 8.40.

11.28 All except one of the 19 witnesses described a gate(s) on the application route, 17 described it at a point consistent with point A on Drawing 14/28/1, in addition one witness thought there was also a gate at point G.

11.29 All 18 witnesses who recalled a gate said it was locked, but only 6 detailed when it was locked. These stated “**Evenings to stop unlawful entry on private land**”, “**some of the time**”, “**every night to prevent access to the private land**”, “**varying days and times always at night time**” “**throughout the night 100% during the day 60%**”, and “**at night and during the day when travellers or suspicious people around**”.

11.30 Officer comment:

- Locking a gate overnight may not bring to the attention of users that they were not permitted to use the route.

11.31 All except one of the 19 witnesses recalled a notice on the application route and all 12 that specified a location said it was at point A on Drawing 14/28/1. 3 witnesses said it read “**Private**”, 9 said it read “**Private land**”, one said “**Private land not a footpath**”, one said “**Private land not a public footpath**”, one said “**Private not a public path**” and one said “**No entrance private right of way**”.

11.32 Officer comment:

- ‘Private’ and ‘Private land’ concur with user reports, but users did not report signs using the terms ‘footpath / public footpath / public path / right of way’.

11.33 None of the 19 witnesses thought the route was public and 17 of them had been told so, 14 said this was by the landowner / person claiming to be the landowner.

11.34 12 of the witnesses claimed to have stopped others from using the route.

11.35 An adjoining landowner who rarely visited, said there was a gate on the main road with barbed wire on top, and that it was locked overnight. There was a notice by the gate saying ‘**Keep out / Private land**’. She did not believe the route was public.

11.36 One person claimed that the application by Mr Bean was not completed correctly because not all owners of adjoining plots had been contacted prior to the application.

11.37 Officer comment:

- The applicant had met the requirement to contact the landowner affected, and other landowners / tenants were contacted as part of the consultation process. Notices were also erected on site so there is no evidence that anyone has been disadvantaged or been unable to represent their view.

Analysis of other submissions opposing the application

- 11.38 Three witnesses sent an email in addition to their evidence forms as adjoining landowners. They state that they have owned land at East Court Farm since 2004, have fenced it for security reasons, and the main gate is locked at all times. They have encountered about 10 individuals over the years who have strayed from the public route, those who were spoken to returned to the public footpath.
- 11.39 Another witness sent a letter with his evidence form as an adjoining landowner. He restates his claim that the application route did not exist in 1958 when he worked for the owner of East Chickerell Court. He says the gate on Coldharbour was needed after the electricity substation was constructed. He says there were always signs saying Private Property and users were challenged. He objects to the application based on security issues, privacy and lack of need.
- 11.40 Officer comment:
- Security, privacy and need cannot be considered.
- 11.41 A user, with permission to access nearby land, sent a letter with her evidence form. She has been using the application route since 2002 and saw 3 or 4 people walking the route in the first year – 18months. She did not challenge them. She says that the main gate at the road is closed and locked around 60% of the time during the day, and 100% at night. There have been signs next to the gate saying it was private land and not a right of way. Both the signs and the padlocks have been removed and replaced (reported to the police). The land appealed to her due to its private location and she does not want people near her horse / belongings.
- 11.42 An adjoining landowner at Coldharbour has owned the land since 2001 and attends at least twice a day. She has only seen a handful of people on the track, at the substation end, and has guided them back to the footpath. She has never seen anyone using the route on a regular basis.
- 11.43 An owner of nearby land sent a letter with his evidence form. He says he purchased the land in 2008 because it was private and not a public right of way. He describes a locked gate at the entrance of the track, and a 'Private Land' sign, and he says there is no access onto the footpath at the other end.
- 11.44 Officer comment:
- During a site visit in May 2016 there was open access from the application route to Footpath 21 at point G on Drawing 14/28/1
 - Most opposing evidence refers to a gate and signage at the Coldharbour end of the application route, if this gate were open users approaching from the south may not be able to see any signs.

12 Analysis of other submissions

12.1 Cllr Orrell sent an Email to Cllr Gardiner in relation to an earlier application citing safety, security, desirability and financial reasons.

12.2 Officer comment:

- Such reasons cannot be taken into consideration

12.3 An Email was received from National Grid stating that the application route had been used to access pylons in 2012 and 2014, with permission of the person claiming to be the landowner.

12.4 Officer comment:

- Such access with permission does not have a bearing on any public rights.

12.5 An Email was received from a user requesting that the application route be recorded as a footpath and describing being challenged. No map or clear description of the route was provided so the information could not be considered.

12.6 The other letters contain no evidence to be considered.

13 Consideration of Presumed Dedication under the Highways Act 1980, Section 31

13.1 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. During this 20 year period there must be no indication that the landowner did not intend to dedicate the route.

Date public use was brought into question

13.2 Possible dates for consideration:

- An employee was told by the claimed owner / tenant that the lane was private and to prevent anyone straying onto private land in **1963**.
- The tenants then claimed owners state that they began telling users that it was not a public right of way, and erected signs "Private land / Not a public Right of Way" from **1965**.
- A daughter of the claimed landowners recalls there being a locked gate at point A, and signs near point A in the early **1970's**.
- Another daughter of the claimed landowners reported that there had been a locked gate at A since at least **1981**.

- The claimed landowners reported that they added barbed wire to the top of the gate at point A in **1981**, and left the gate open during the day.
- A user stated that he was told by person claiming to be landowner that the route was not public in approximately **1985**.
- **From 2001** several adjoining landowners reported challenging users.
- **From 2002** several adjoining landowners / tenants reported that there was a gate which some said was locked at least some of the time.
- **From 2002** several adjoining landowners / tenants reported signs saying "Private" "Private property" "Private property keep out" and "Private land".
- A user reported being stopped / turned back in **2006**.
- Several users reported being challenged from **2007** onwards.

13.3 Discussion

- The first reported challenge of a user was approximately 1985 when a user was told by the person claiming to be landowner that the route was not public
- In the 20 years prior to this date there is evidence from the landowner / relative / employees of a locked gate but there is conflicting evidence concerning at what time of day the gate was locked. Users did not recall a gate being locked during this time period.
- In addition there is evidence from the landowner / relative / employees of signs, but there is conflicting evidence concerning the wording of these and wording may not have been sufficient to negate a public right of way. Users did not recall signs which would negate a public right of way.
- Another user reported a challenge to use in 2006 when she was stopped / turned back.
- In the 20 years prior to this date there is evidence from the landowner / adjoining landowners of a locked gate but there is again disagreement concerning at what time of day the gate was locked. Users did not recall a gate being locked during these years, and there is photographic evidence that pedestrian access may still have been possible around the side of the gate.
- Again, there is evidence from the landowner / adjoining landowners of signs, but there is conflicting evidence concerning the wording of these and wording may not have been sufficient to negate a public right of way. Users did not recall signs which would negate a public right of way.

13.4 On balance it is considered that there are two possible dates when public use of the route was brought into question, 1985 and 2006.

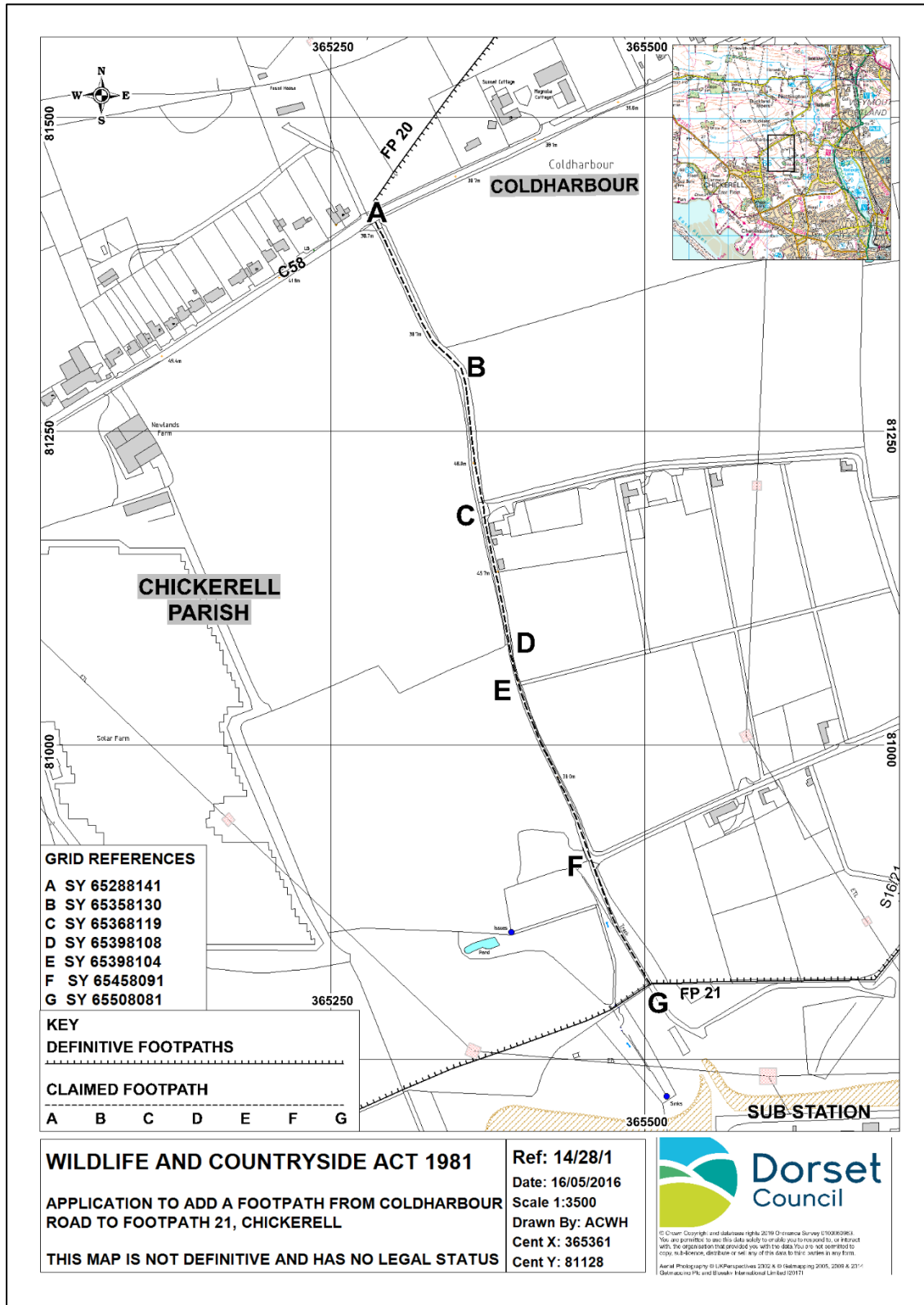
- 13.5 Filing of a Deposit of Statement and Map under the Highways Act 1980, Section 31(6) is sufficient evidence to show that the landowner had no intention to dedicate. This occurred on 28 May 2008 and remained in place until 4 February 2019.
- 13.6 The evidence of a lack of intention to dedicate does not affect the use before the date when use of the route was first brought into question.
- 13.7 Presumed dedication may be claimed under the Highways Act 1980.
- 13.8 This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied by a sufficient period of public use without force, secrecy or permission and the acquiescence of those landowners in that use. This is needed to meet the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as turning people back, putting up a physical barrier or erecting notices stating that the route is not a public right of way of the type being claimed.

14 Conclusions

- 14.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on this route.
- 14.2 The documentary evidence demonstrates that the route has been in existence as a carriageway since 1839 or earlier. However, the documentary evidence provides no support for the existence of public rights along the application route.
- 14.3 As the documentary evidence does not show, on balance, that public rights exists it is necessary to 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.
- 14.4 There is insufficient evidence to infer dedication under common law. Although there is some evidence that the landowner was aware of use, there is conflicting evidence whether this view was widely communicated to the public.

- 14.5 The evidence of use on foot covers the period 1950 to 2016. However, the two identified periods 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, are taken to be:
- 20 years or more prior to 1985, the approximate date when the first reported challenge occurred.
 - 20 years or more prior to 2006 when the second reported challenge occurred.
- 14.6 Considering the period from 1965 – 1985; in 1965 there were two users on foot, rising to 17 users in 1985. The two witnesses who used the route during the first 3 years of this period claimed use ‘once per year’ and ‘10 times per year’.
- 14.7 It is considered, taken by itself, that this use is insufficient to demonstrate use by the general public throughout the period 1965 to 1985.
- 14.8 Considering the period from 1986 – 2006; in 1986 there were 17 users on foot rising to a maximum of 28 users in 1993 then declining to 19 users in 2006.
- 14.9 It is considered that this user evidence is sufficient, under Section 31 of the Highways Act 1980, to raise a reasonable allegation that the footpath subsists based on use by the general public throughout the period 1996 to 2006.
- 14.10 Therefore, it is recommended that an order be made to record the claimed route as a footpath. As there is conflicting evidence the evidence will be reviewed at confirmation stage.
- 14.11 If there are no objections to a modification order, the Council can itself confirm the order if the criterion for confirmation has been met.

October 2019



LAW

General

Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
 - (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.
- 1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.
- 1.9 Where an objection has been made to an order, the Council is unable

itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

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

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

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

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

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

2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.

2.5 Section 32 of the Highways Act 1980 says that the Council must take

into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.

3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

Case specific law

4 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.

Extracts from key documents

(See the Executive Director for Place's file RW/T511
for copies of other documents mentioned)

Ordnance Survey Maps 25inches : 1 mile, 1863 and 1902 (composite image)

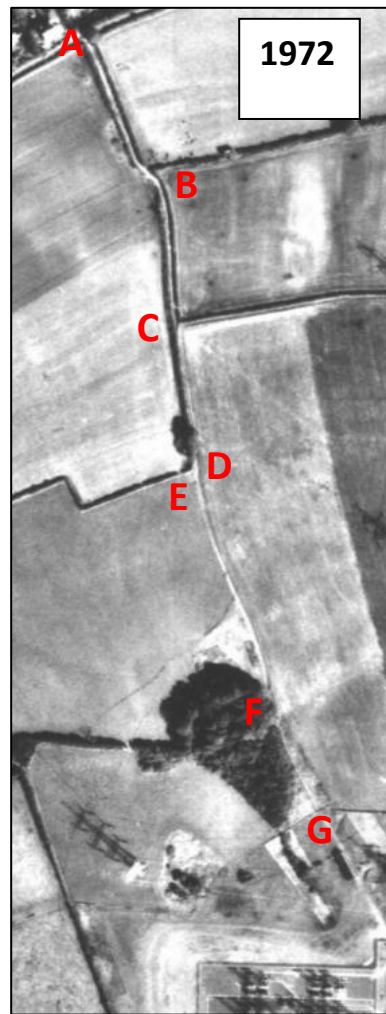


Google Streetview Images – Gate at Point A



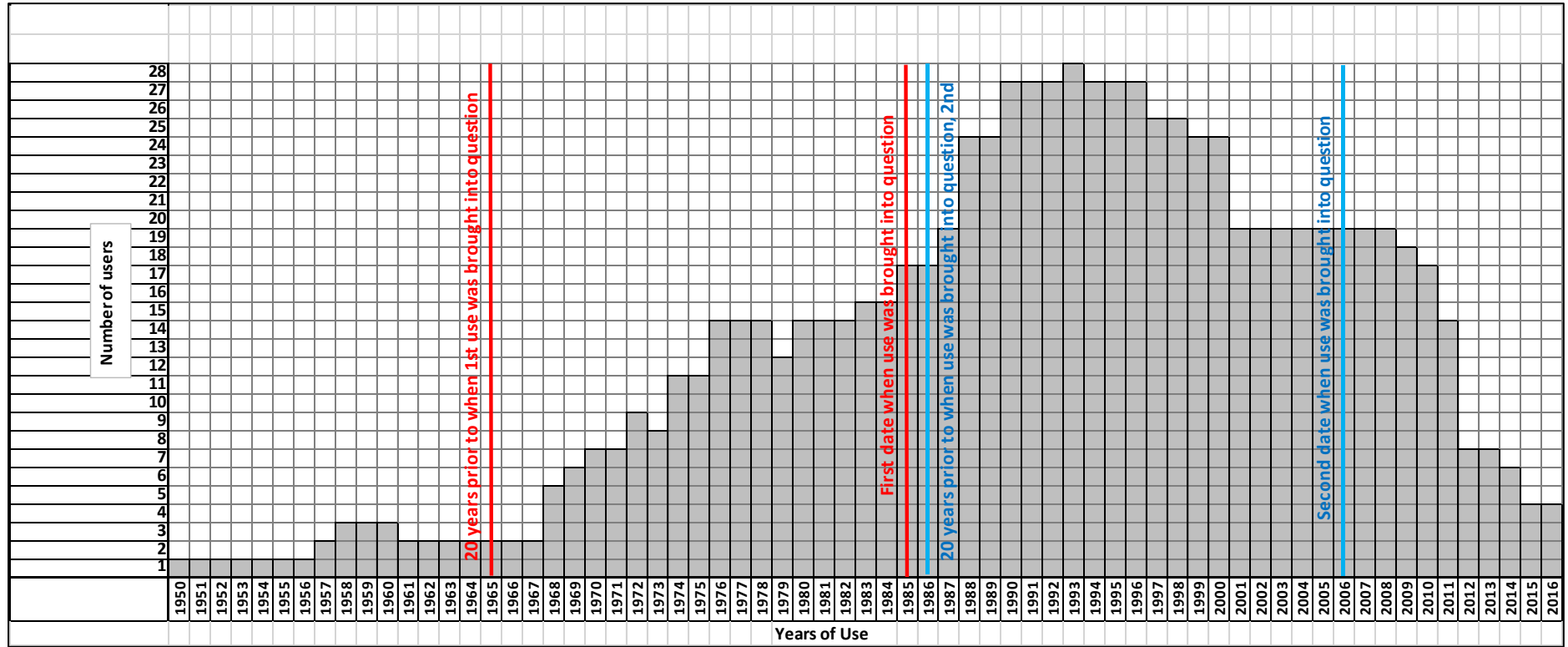
Site Visit Photograph – Gate at Point A





Aerial Photographs

Chart to show level of use



Recommendations accepted:

Signed:

Date: 04 October 2019

Signed

Vanessa Penny

Definitive Map Team Manager

Planning and Community Services