

Report to the Executive Lead for Place

Application for a Definitive Map and Statement Modification Order to record a public footpath from A357 Newton Hill, to Footpath 36, Sturminster Newton

Choose an item.

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr C Jones

Executive Director: Jan Britton, Executive Lead for Place

Report Author: Sue Phillips
Title: Definitive Map Technical Officer
Tel: 01305 221409
Email: susan.phillips@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary:

This report considers an application for a Definitive Map Modification Order, based on user evidence, to add a footpath to the Definitive Map and Statement in the Parish of Sturminster Newton. Following an investigation of the user evidence and available documentary evidence a recommendation is made to accept the application and make an Order.

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 A to B as shown on Drawing T514/23/1; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

- (a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist
- (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 Council can itself confirm the Order without submission to the Planning Inspectorate.

1 Background**Applicant**

- 1.1. An application to add a footpath from Newton Hill on the A357, Sturminster Newton to join Footpath 36, Sturminster Newton as shown A - B on Drawing T514/23/1 (Appendix 1) was made by Jan Wardell, on behalf of the Ramblers, on 29 July 2011.

Description of the route

- 1.2. The route claimed commences at Point A, the highway of A357 Newton Hill and continues in a west, south west direction along a surfaced drive to the north of two residential properties known as The Chapel and The Annexe. The route at Point A is 5 metres across the surfaced drive. The route continues in a west, south west direction where it narrows to 3 metres across the surfaced drive and continues along to the northern boundary of a further residential property known as The Mount. The claimed route narrows to 1.5 metres from the external boundary of The Mount to a handrail post. The surface of the claimed route becomes a mix of stone and vegetation and continues in a west, south west direction to meet Footpath 36, Sturminster Newton at the start of an ascending set of stone steps at Point B. An historic wrought iron handrail exists for the final 22 metres of the claimed route, along the northern edge.

Background to the application

- 1.3 The application was prompted when a planning application made in 2010, to split one larger residential property into two residential properties, was granted permission on appeal. During the planning application process, concerns were raised that an increase in residential properties would potentially restrict access to Footpath 36, Sturminster Newton which is gained via the drive for the residential properties and along which the claimed route runs. The claimed route remains accessible and available to the public at the time of this report being written.

2 Law

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

3 Issue to be decided

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.
- 3.3 Historical documentary evidence and user evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T514)

- 4.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below. Information on the background and evidential weight which should be attached to particular historical sources is included at Appendix 3 which should be read in conjunction with this section.

Finance Act 1910

- 4.2 The Finance Act Plan for 1910 shows an uncoloured route along which the claimed route runs. This route is a continuous lane diverting from an uncoloured route at the eastern end and re-joining the uncoloured route at its western end. There is no hereditament number for this route. An uncoloured route on the Finance Act Plan without a hereditament suggests a road, lane or other route of access. A route excluded from the Valuation in this way is considered to be vested in the highway authority and likely to indicate a route with public access of some description. The uncoloured route shows that a way along the claimed route existed at the time the Finance Act Plan was created. The Plan offers a small amount of weight towards evidence in support of the claimed route. See Appendix 3i

Ordnance Survey Maps

- 4.3 The Ordnance Survey map of 1902 shows the feature of a continuous route along which the claimed route runs. The eastern end the continuous route starts at what is now known as the A357 main road at the southern end of Sturminster Newton and re-joins the main road at the western end. The OS map shows a continuous feature of a route passing what were, at the time, Methodist Church buildings and along which the claimed route runs. See Appendix 3ii.
- 4.4 The Ordnance Survey map of 1962 shows the same features as the 1902 map of a continuous route departing and re-joining the main A357 main road.
- 4.5 Officer Comment: Current OS maps shows a feature of a continuous route, demonstrating a physical route which is visible on the ground, but this does not add any weight to the existence of public rights along the claimed route.

Dorset Council Records

- 4.6 The proposed route was not claimed at the time of the Parish Survey (circa 1950's). See Appendix 3iii. The proposed route was not shown on the 1954 Draft Definitive Map, the 1964 Provisional Map, the 1967 First Definitive Map, or the 1974 Revised Draft Definitive Map. See Appendix 3iv. The route was not recorded on the Definitive Map (sealed 1989). See Appendix 3v.
- 4.7 Officer Comment: The Parish Survey Plan shows a claimed Footpath (numbered 36) commencing at Point B, the western end of the route currently being claimed, see Appendix 3iii.
- 4.8 Officer Comment: Footpath 36 is recorded on each version of the Definitive Map. The Parish Survey Plan and Description place the start of Footpath 36 on the lane, starting at the point just beyond the Methodist Buildings. All subsequent maps show the route of Footpath 36 meeting the Highway of the A357, Newton Hill, a few metres north of the surveyed termination point which is a sheer descent from the Lane. There is no available evidence for the legal basis of this. The later versions of the Definitive Maps showing Footpath 36 terminating at the A357 is likely to have been a drafting error which arose after the Parish Survey. The Parish Survey Description and the current Definitive Statement describes Footpath 36 as "*West of Wesleyan Chapel, Newton, Southwards towards road at Hole House*" which places the start of Footpath 36 on the lane at its junction with Point B, the termination point of the claimed route.
- 4.9 Officer Comment: The absence of a claim for a public right of way at the time of the Parish Survey along the current claimed route suggests access was available to people and the lane was believed to have public access. The records do not offer any evidence as to status of access. The Definitive Maps offer some weight towards the evidence that a route with public access existed along the claimed route.
- 4.10 Dorset Council Highways records do not contain any information about the lane along which the claimed route runs. Dorset Council Highways extent does not incorporate the lane along which the claimed route runs. This lane is unnamed and does not appear on the List of Streets.
- 4.11 Several examples of correspondence between the Methodist Circular and solicitors acting on behalf of the purchasers of The Manse (which became known as The Mount) assert a belief that the approach road to The Manse is owned by Dorset County Council.

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- 4.12 A memo from the Dorset County Council's Divisional Surveyor, dated June 1985 asserts that *'the surfaced access to both the Methodist Chapel and The Mountis a private vehicular access over which the public at large have pedestrian rights of way – footpath 36'*.
- 4.13 Officer Comment: There are no available records to support the assertions in paragraph 4.12 that the lane along which the claimed route runs is or was owned by Dorset Council.

Land Registry

- 4.14 The application route as shown from points A to B is currently unregistered. The lack of registration does not preclude or negate any public rights over the land. The land registry documents do not add any weight to the evidence of the route being claimed.

Aerial photographs

- 4.15 The aerial photograph of 1947 shows the area looking south towards the claimed route and the lane along which the claimed route runs. At the time of the 1947 aerial photograph, a continuous way through is shown from the east from the main road, A357, Newton Hill, running to the west past the Methodist Buildings to the South and continuing through young saplings to emerge at the western end at what was then Newton Farm before re-joining the main road on the A357. See Appendix 3 vi.
- 4.16 The latest aerial photograph of circa 2020 shows the same lane from the east leaving the main road and continuing in west, along a surfaced drive which gives access to the properties to the South. The tree growth to the west has matured to produce a dense canopy through which the lane is no longer passable where the claimed route ends at Point B at the junction with the recorded Footpath 36. See Appendix 3 vii.

Methodist Church Records

- 4.17 An undated hand written extract taken from the Deeds for the house known as The Manse, which was the home for the Methodist Chaplain, states its boundary as *"being bounded on the North by a public road or footpath.....and on the West by a public footway up steps"*. See Appendix 3viii.
- 4.18 Officer Comment: The extract describes the lane past The Mount (which was the former Methodist House and known as The Manse at that time) as a public highway or footpath. The extract also records

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that an existing public footway exists which is accessed by a set of steps. These steps are an integral part of Footpath 36 to navigate the slope up from or down to Point B of the claimed route.

- 4.19 Officer Comment: The hand written extract from the property deeds for The Manse is undated. The original deeds are not available. The extract provides a small amount of weight towards the evidence of the route being claimed.

A H Green Plan

- 4.20 The A H Green Plan of 1885 for the Manor of Sturminster Newton Castle was commissioned for the Pitt-Rivers estate. The A H Green plan shows a continuous route as shown on the 1910 Finance Act Plan and Ordnance Survey Map of 1902. The route is coloured a light sienna, the same colour as the major road that has become recorded as the main road A357, Newton Hill in Sturminster Newton.
- 4.21 Officer Comment: Records do not state the occupation of A H Green, whether a cartographer or potentially a builder charged with surveying the area. The A H Green plan supports an open route that has existed since 1885 along part of which the claimed route runs. The features of the Methodist buildings to the South and farm buildings for Newton Farm at the Western end are recorded on the A H Green plan. The plan does not have a key and the status or nature of a light sienna route is not recorded. This plan does not add weight towards the evidence of the route being claimed. See Appendix 3ix.

Photographs

- 4.22 A photograph claimed to be taken in approximately 1900, looking South from Sturminster Newton Bridge, shows the lane along which the claimed route runs, in front of what was the Methodist Chapel buildings. At this time, the lane is a continuous route passing to the North of the Methodist buildings and beyond Point B of the claimed route. See Appendix 3x(i).
- 4.23 Officer Comment: This photograph shows the lane prior to mature tree cover becoming established. The way along the lane is now impassable at Point B, beyond The Mount.
- 4.24 A further photograph, also claimed to date from approximately 1900, taken from the lane along which the claimed route runs and facing the North, shows pedestrians stood on the lane along which the claimed route runs. The pedestrians are stood close to what is now the main

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road, A357 Newton Hill, and shows the start of the claimed route at Point A. See Appendix 3x(ii).

- 4.25 Officer Comment: This photograph shows white bollards across the claimed route which suggests the route was only available to users of the route on foot at the time the photograph was taken.
- 4.26 The final 22 metres of the claimed route is edged to the north by a wrought iron handrail. The iron handrail continues beyond the end of the claimed route into the impassable section of the historic lane. See Appendix 3x(iii)
- 4.27 Officer Comment: The handrail suggests pedestrians were making use of the lane which required a rail to be installed to offer support to pedestrians using the lane and a safety barrier against the sheer drop immediately to the north of the lane down to the major road below.
- 4.28 Officer Comment: A recent photo taken from the main road below the point at which the claimed route stops at Point B and meets Footpath 36 shows the iron handrail still in situ. It also demonstrates an effective barrier to stop pedestrians being able to continue north from the end of Footpath 36 to meet the significantly lower A357 Highway as suggested by Definitive Maps since 1963. See Appendix 3x(iv)
- 4.29 At Point B, the end of the claimed route at its junction with Footpath 36, is an aged sign which states '*Danger. Footpath closed*'.
- 4.30 Officer Comment: The sign suggests the lane was in use as a footpath at the time of a landslide. The landslide caused the footpath to be closed. See Appendix 3x(v).
- 4.31 Officer Comment: Three users evidence state using the lane along part of which the claimed route runs. The lane continued past The Mount, but people use was restricted beyond Point B following a landslide. See Paragraph 5.14

Summary of documentary evidence

- 4.32 The Finance Act Plan (1910) may be suggestive of public rights over the whole of the application route although the status of any rights is unclear. The Finance Act Plan adds some weight to the application, but it is not conclusive.

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- 4.33 The Ordnance Survey Map (1902) shows a feature of a continuous route from Points A – B. This is confirmed on the aerial photographs of 1947. The aerial photograph of circa 2020 shows the route is accessible from Points A – B. These documents add some weight to the application, but it is not conclusive.
- 4.34 The historic photographs appear to show a route past the Methodist buildings giving access to an area of Sturminster Newton known as Glue Hill and to join what became recorded as Footpath 36 on the Definitive Map. One photograph appears to show pedestrians on the route. Recent photographs show a handrail and a footpath closed sign. The photographs add some weight to the application for a footpath but they are not conclusive.

5 User evidence (Appendix 4) (copies available in the case file RW/T514)

- 5.1 The application, made in 2011, is based on user evidence and follows the route being brought into question following the planning application made in 2010 with subsequent permission being granted in 2011. As such, the relevant 20 year period runs from 1991 to 2011. Charts showing periods and level of use form Appendix 4.
- 5.2 Seven user evidence forms were submitted with the application for the claimed route. A public consultation ran from August to September 2023. During this time a further 16 user evidence forms were submitted.
- 5.3 Officer Comment: A total of 23 user evidence forms were received and analysed for user evidence data.
- 5.4 The earliest recorded use occurred in 1925 and the last recorded use was in 2011. Use was continuous from the date of first use to the last recorded use in 2011 resulting in 85 years continual use of the claimed route. See Appendix 4iii.
- 5.5 All 23 users claimed use of the route on foot only.
- 5.6 Based on user evidence, the minimum number of users between 1991 and 2011 was 11, which occurred in 1991 and the maximum number of users in the same period was 17, occurring first in 2005 and again in 2011. See Appendix 4ii.

- 5.7 The frequency of use ranged from a single occasion for one user (as part of a walking party), two times a year for others up to weekly for others. During the 20 years leading up to the application in 2011, the route was used a minimum of 120 times in each of the years 2009 and 2010 rising to a maximum of 284 times in each of the years 1998, 1999 and 2000. See Appendix 4i.
- 5.8 Officer Comment: This level of use in this manner supports the proposal for a route of footpath status.
- 5.9 None of the 23 users evidence declares they were given permission to use the claimed route.
- 5.10 None of the 23 users evidence declares they were challenged in their use of the claimed route.
- 5.11 Six of the users claimed use of the route on occasions when they were part of organised walking parties.
- 5.12 Several users state the claimed route was incorporated into advertised town walks for the Sturminster Newton area.
- 5.13 Officer Comment: Several examples of published walk guides promoting the use of the paths in the Sturminster Newton area were submitted as evidence. The claimed route features in these walk guides as part of longer circular walking routes. The various published walk guides are undated.
- 5.14 Officer Comment: A directional fingerpost was installed at Point A, the start of the claimed route, by Dorset Council Rights of Way Ranger Service and Sturminster Town Council in approximately 2002. It is likely that the fingerpost has contributed to people's understanding that a Public Right of Way exists along the claimed route.
- 5.15 Several users recall a way through using the lane along which the claimed route runs and continuing along west to Newton Farm, as follows:

User Evidence Number 3 "Can also remember when the path continued past the steps and was used by people going to Newton and Gluehill (until landslip made it too narrow)"

User Evidence Number 4 "In the early 50's I used path A – B also to access path above the Mount that came out at what was Newton Farm. This was the original old road."

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User Evidence Number 5 "...the continuation of the path from beyond the buildings and over the "top" to Newton was closed permanently due to subsidence some years later."

- 5.16 Officer Comment: Users evidence supports the documented evidence that a way through, beyond Point B, existed but was subsequently closed. This evidence supports the claim that use of the claimed route on foot, from Points A – B had already been established. See Paragraph 4.26 and Appendix 3x(v)

Summary of user evidence

- 5.17 Considering the 20 years leading up to the application, evidence of use on foot between 1991 and 2011 is of sufficient quality and quantity for there to be a reasonable allegation that public rights on foot exist (see Paragraph 5.8).
- 5.18 The available evidence suggests that use during the relevant 20 year period of 1991 to 2011, plus the 65 years prior to 1991, was without force, without secrecy and without permission i.e. it was used as of right.
- 5.19 User evidence shows sufficient weight to support the claim that public rights on foot only exist.

6 Landowner correspondence

- 6.1 The claimed route runs along unregistered land.
- 6.2 No correspondence has been received from the owners of the properties affected by the claim prior to or during the public consultation.

7 Consultation responses and other correspondence (copies available in the case file RW/T514)

7.1 The following points were raised:

Name	Comments
Claire Pinder – Senior Archaeologist at Dorset Council	The proposed new route runs close to Sturminster Newton Castle, a Scheduled Monument. I do not feel that historic environment considerations constitute a constraint in the context of this proposal, particularly as it seeks to join Footpath 36 which already runs through the scheduled area.
Sasha Chapman – Historic England	We note that the proposed modification is adjacent and close to the scheduled site of Sturminster Castle (NHLE 1002719). Whilst we have no specific concerns regarding the proposal we do wish to point out that any works such as sign posts and stiles etc would require Scheduled Monument Consent.

8 Analysis of the evidence

8.1 There is evidence of public use of the claimed route since 1925 and the user evidence put forward supports the claim that the route has been dedicated as a public right of way. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.

8.2 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

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- 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

Physical nature of the route

- 8.3 The route claimed is capable of being a public right of way at common law, given that it follows a well-defined, linear route

Bringing into question the right of the public to use the path

- 8.4 It is considered that the earliest date of challenge which brought into question the right of the public to use the claimed route, as shown between points A – B on Drawing T514/23/1 is 2011, the date of the application.

Twenty years use without interruption

- 8.5 Based on user evidence, it would appear that there has been no interruption to public use during the qualifying 20 year period from 1991 to 2011.

Without force, secrecy or permission

- 8.6 There is no evidence to suggest that the route prior to 2011 has been used by force. Use of the route has been open. There is no evidence to suggest that use of the route has ever been because of landowner's permission.

Use by the public

- 8.7 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business. The evidence put forward in support of the application indicates that during the years 1991 to 2011, the number of users and frequency of use was sufficient to be considered to be of use by the public at large. There is no registered owner of the land along which the route is claimed.

Conclusions under Section 31, Highways Act 1980

- 8.8 It is considered that the requirements of Section 31 have been satisfied in this case and that the public have been using the route 'as of right' for a full twenty years between 1991 to 2011.

Analysis of the evidence under common law

- 8.9 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.

Conclusions under common law

- 8.10 There is sufficient evidence from which a deemed dedication at common law can be inferred.
- 8.11 Officer Comment: Where there is no known landowner of the route an inferred dedication at common law may not be possible if the land is held in certain types of settlement. As no landowner has come forward, there is no evidence to suggest this is the case here. As such a dedication at common law can be inferred.

9. Financial Implications

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

10 Natural Environment, Climate and Ecology Implications

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

11 Well-being and Health Implications

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

12 Other Implications

None

13 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

14 Equalities Impact Assessment

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

15 Conclusions

- 15.1 In deciding whether or not it is appropriate to make an order, it should be considered whether public rights subsist or are reasonably alleged to subsist on this route and/or the balance of evidence shows that the route ought to be recorded with a different status. On balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.

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- 15.2 The documentary evidence, in particular that of the Finance Act Plan (1910), Ordnance Survey Map (1902), Parish Survey Plan (circa 1954), First Definitive Map Review (1974) and Definitive Map (1989) provide support for the claimed right of way from points A – B on Drawing T514/23/1 however it is considered insufficient to demonstrate on its own, that the claimed rights subsist or are reasonably alleged to subsist.
- 15.3 The user evidence is strong and there is no interruption to use during the relevant 20 year period.
- 15.4 The available evidence is also sufficient for a common law presumption to be inferred.
- 15.5 Therefore, it is recommended that the application to add a footpath from A – B as shown on drawing T514/23/1 be accepted and an order made.
- 15.6 If no objections are received, then the Council can itself confirm the order provided the criterion for confirmation has been met. An Order can be confirmed, if on the balance of probability, it is shown that the route described does exist. It is considered that the evidence is sufficient to satisfy this test.

16 Appendices

- 1 Drawing T514/23/1
- 2 Law
- 3 Documentary evidence
 - Extracts from key documents:
 - Finance Act Plan (1910)
 - Ordnance Survey Map (1902)
 - Parish Survey Plan, Revised First Draft (1974) and Definitive Map (1989)
 - Aerial Photographs (1947) and (2020)
 - Methodist House Deeds Extract (undated)
 - A H Green Plan (1885)

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- Photographs (1900 - 2023)

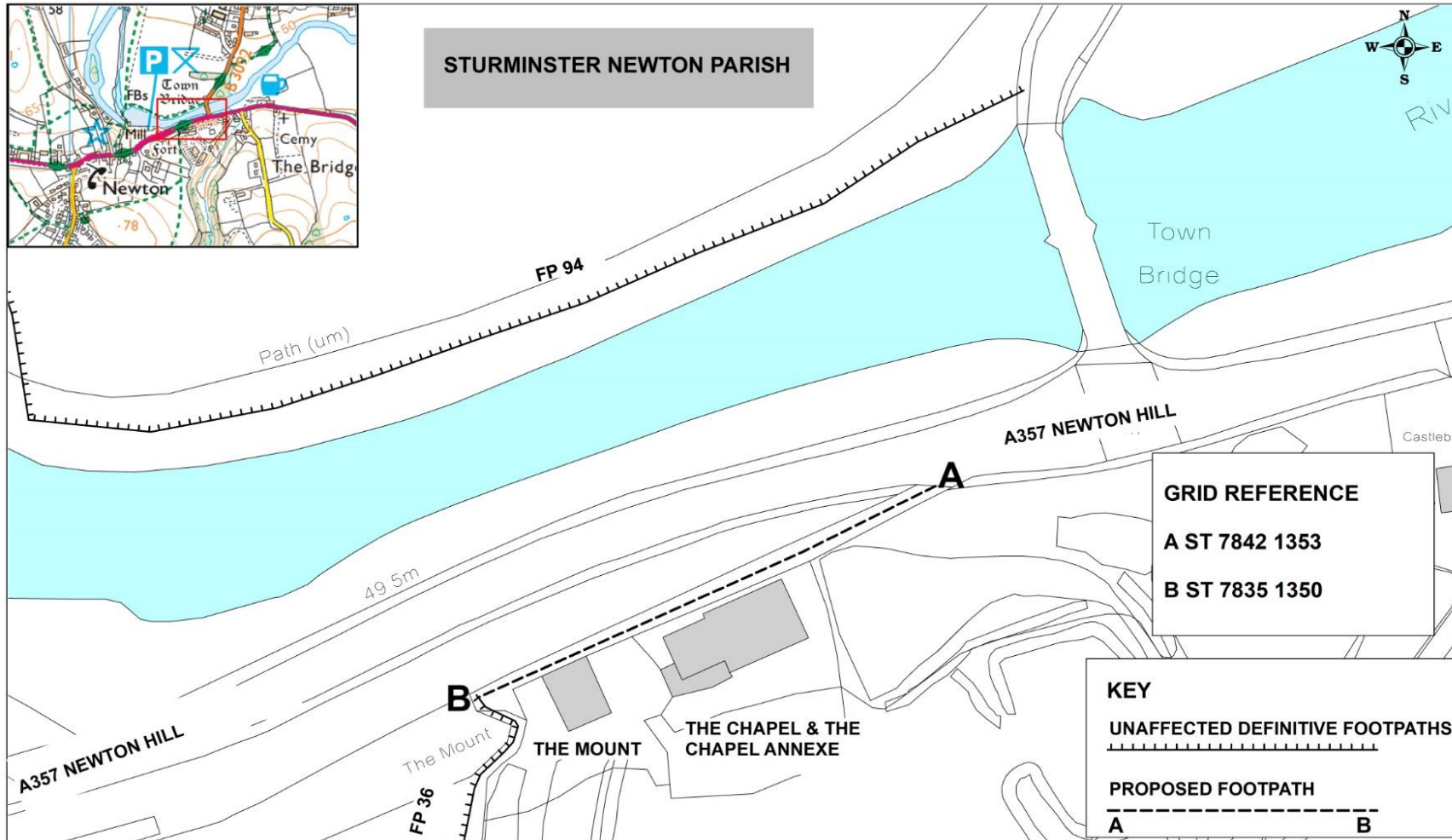
- 4 User evidence charts to show frequency of use, quantity of users and years of use

17 Background Papers



The file of the Executive Director, Place (ref. RW/T514).

Date: March 2024

APPENDIX 1




GRID REFERENCE
A ST 7842 1353
B ST 7835 1350

KEY
UNAFFECTED DEFINITIVE FOOTPATHS

PROPOSED FOOTPATH


WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO RECORD A FOOTPATH FROM THE A357 NEWTON HILL TO FOOTPATH 36, STURMINSTER NEWTON
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T514/23/1
Date: 17/08/2023
Scale: 1:800 (at A4)
Drawn by: SP
Cent X: 378,399
Cent Y: 113,545



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LAW

General

Wildlife and Countryside Act 1981

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

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

right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.

- 1.9 Where an objection has been made to an order, the Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the Council can itself confirm the order, provided that the criterion for confirmation is met.
- 2 Highways Act 1980
- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought in to question.
- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that they 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

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with the Council a map and statement indicating what ways over the land (if any) they admit 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.

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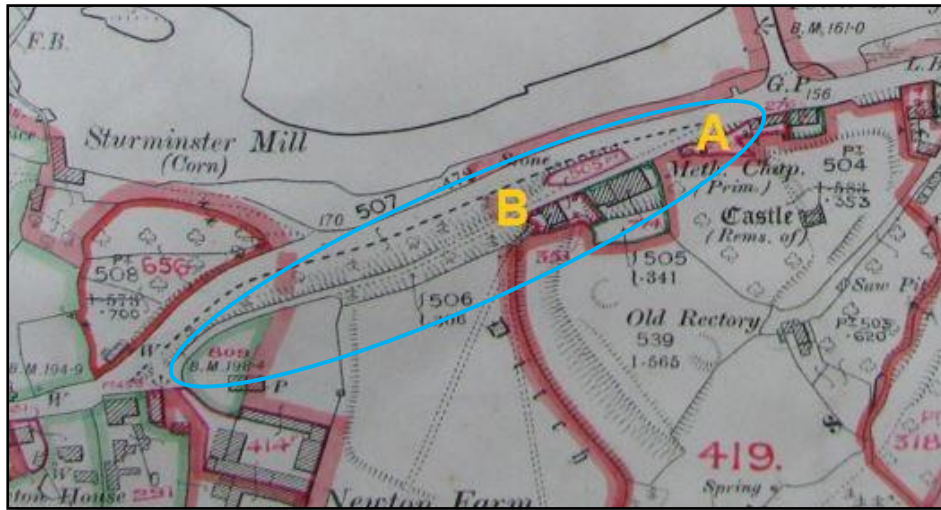
Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

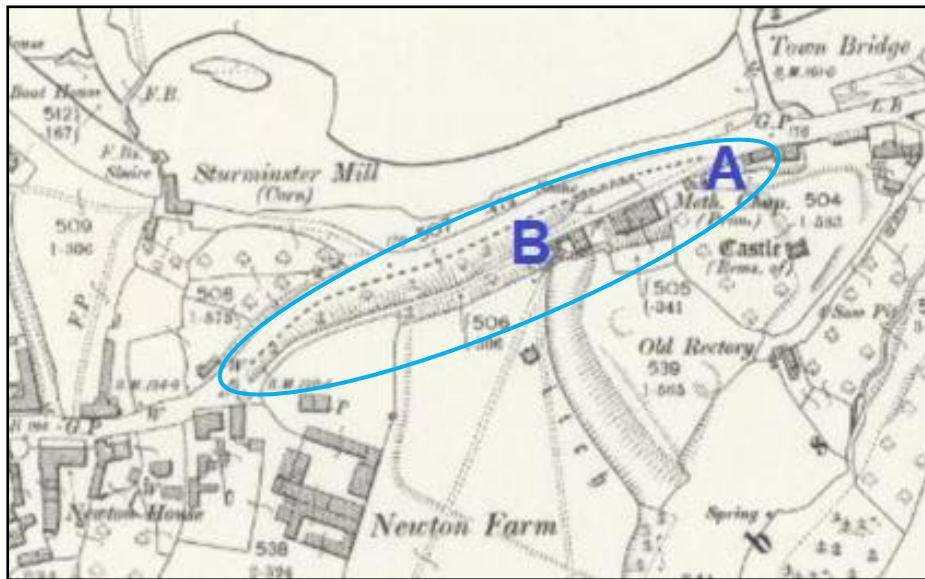
5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

APPENDIX 3

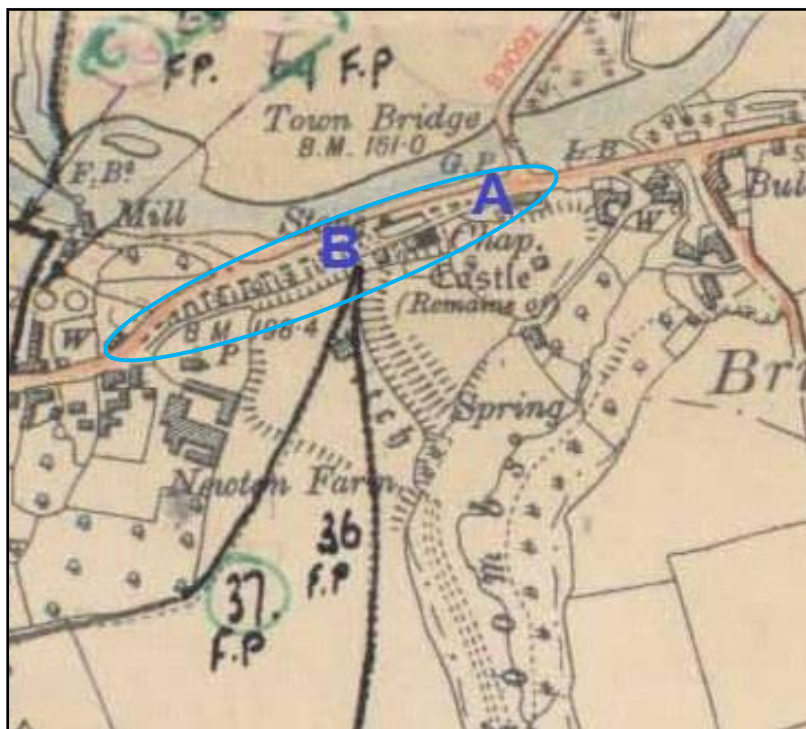
3i - Finance Act Plan (1910)



3ii - Ordnance Survey Map (1902)



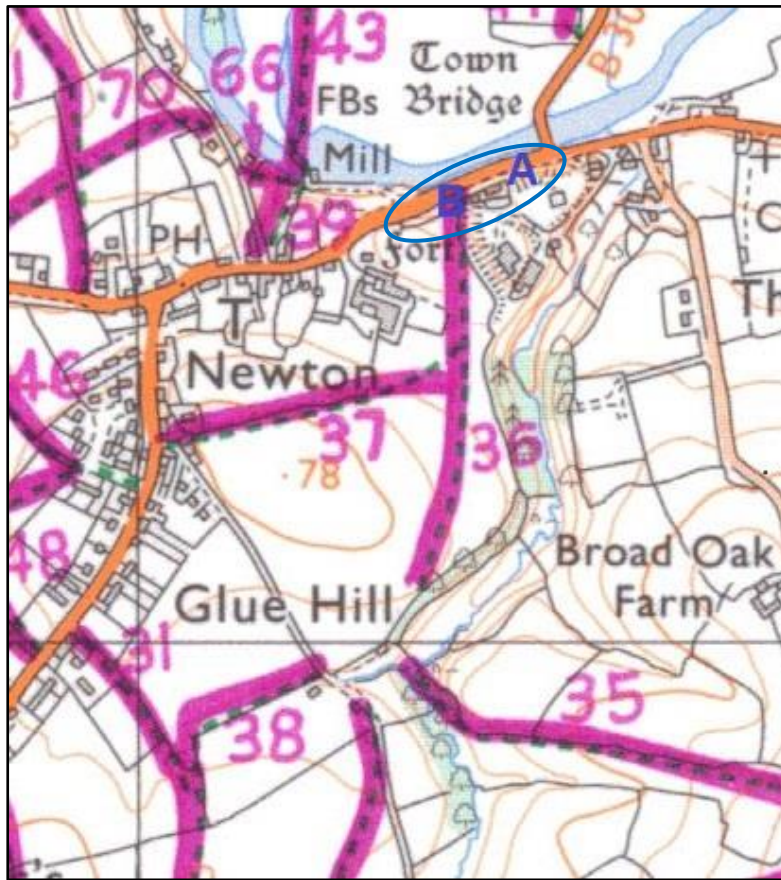
3iii - Parish Survey Plan (circa 1950)



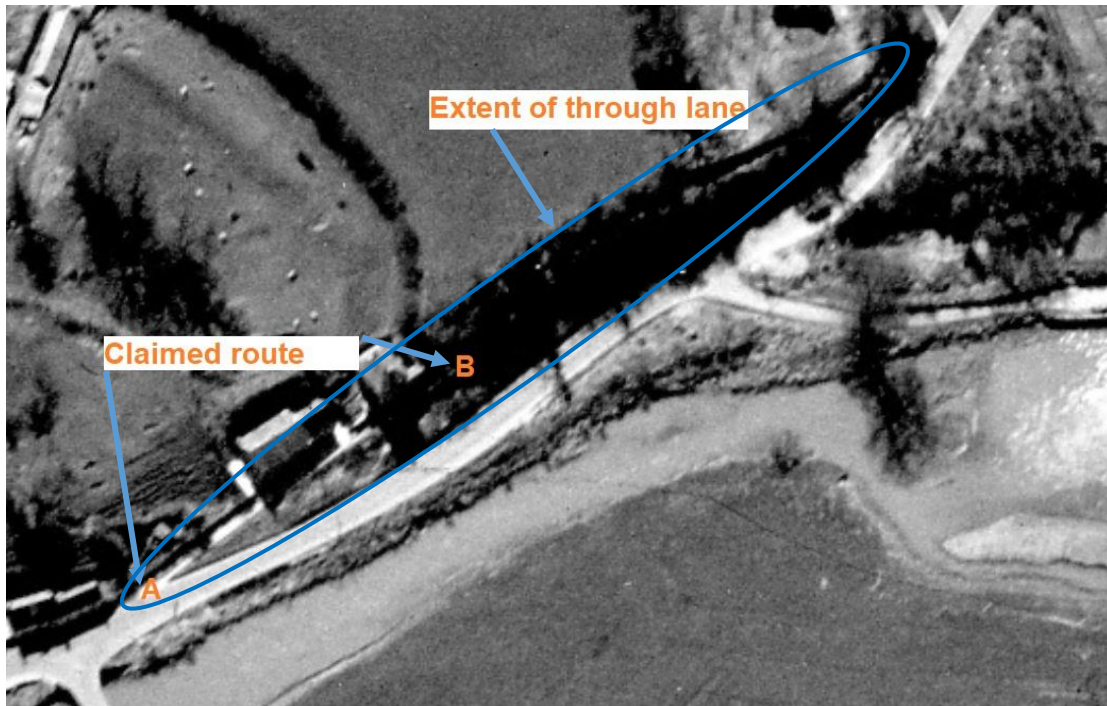
3iv - Revised First Draft (1974)

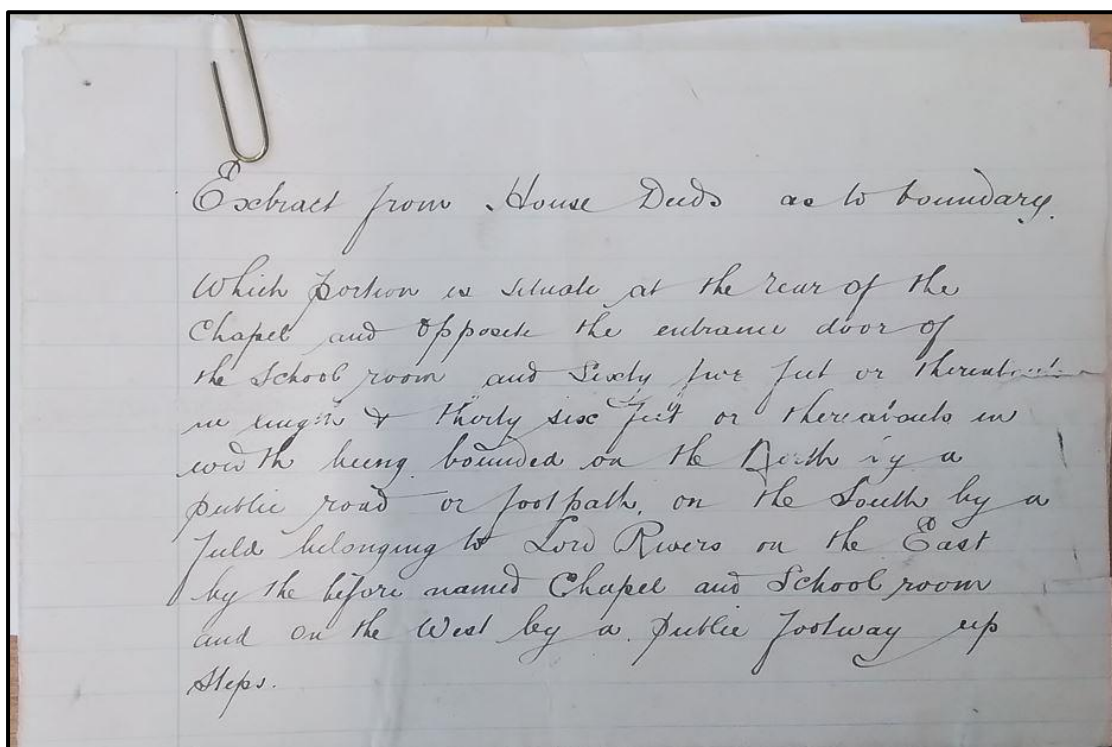


3v - Current Definitive Map (1989)



3vi - Aerial Photograph 1947



3vii - Aerial Photograph 2020**3viii - Methodist Church Records (Undated)**

3ix - A H Green Plan (1885)



3x - Photos

3x(i) View towards Methodist Chapel from Town Bridge (circa 1900)



3x(ii) View outside Methodist Chapel towards Town Bridge (circa 1900)



3x(iii) Iron handrail along final 22 metres of claimed route (2023)



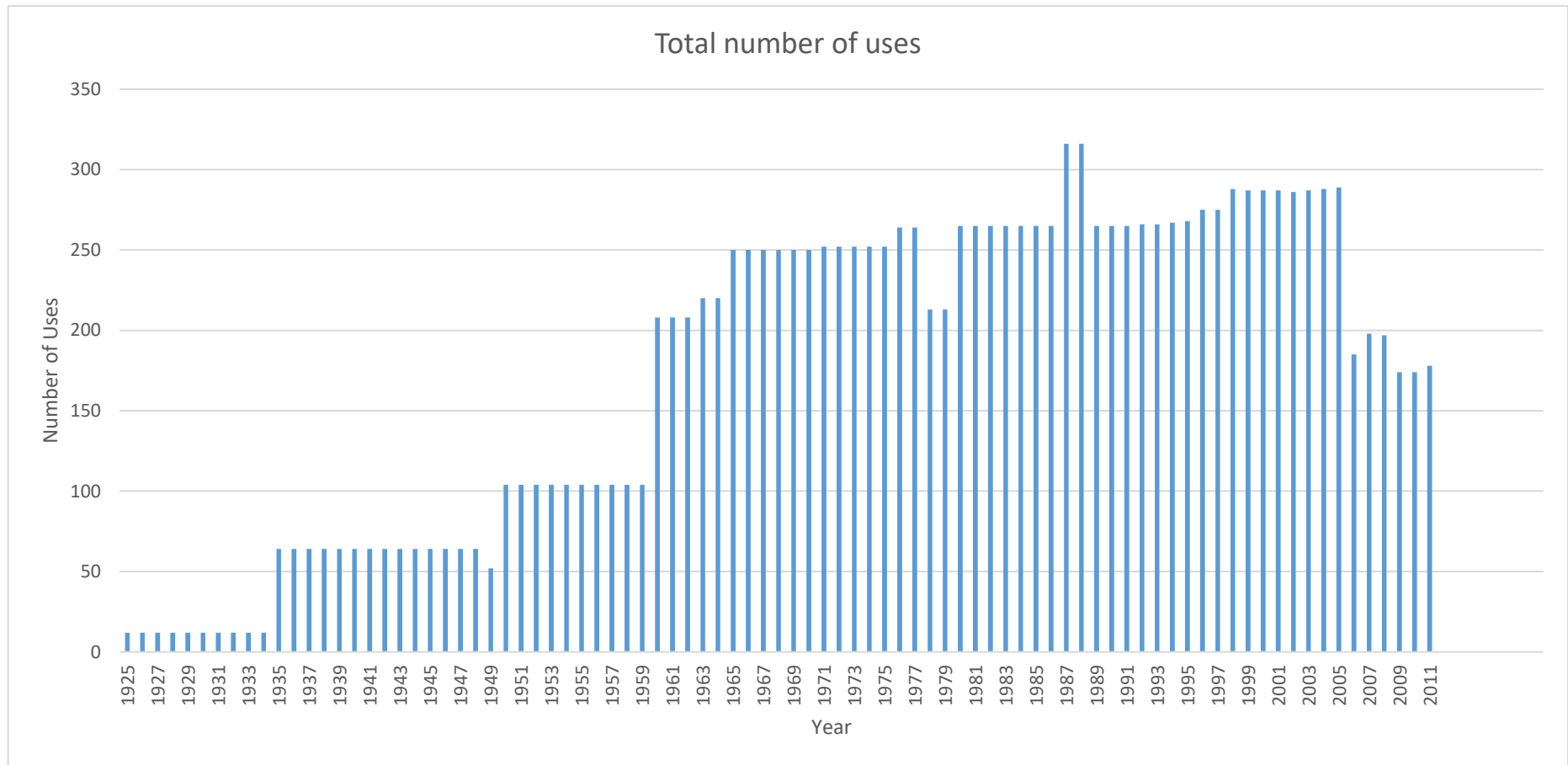
3x(iv) Handrail on the northern edge of claimed route at Point B of claimed route and junction with Footpath 36. Picture taken from A357 Newton Hill, demonstrating drop from lane of claimed route to the A357 Highway (2023)



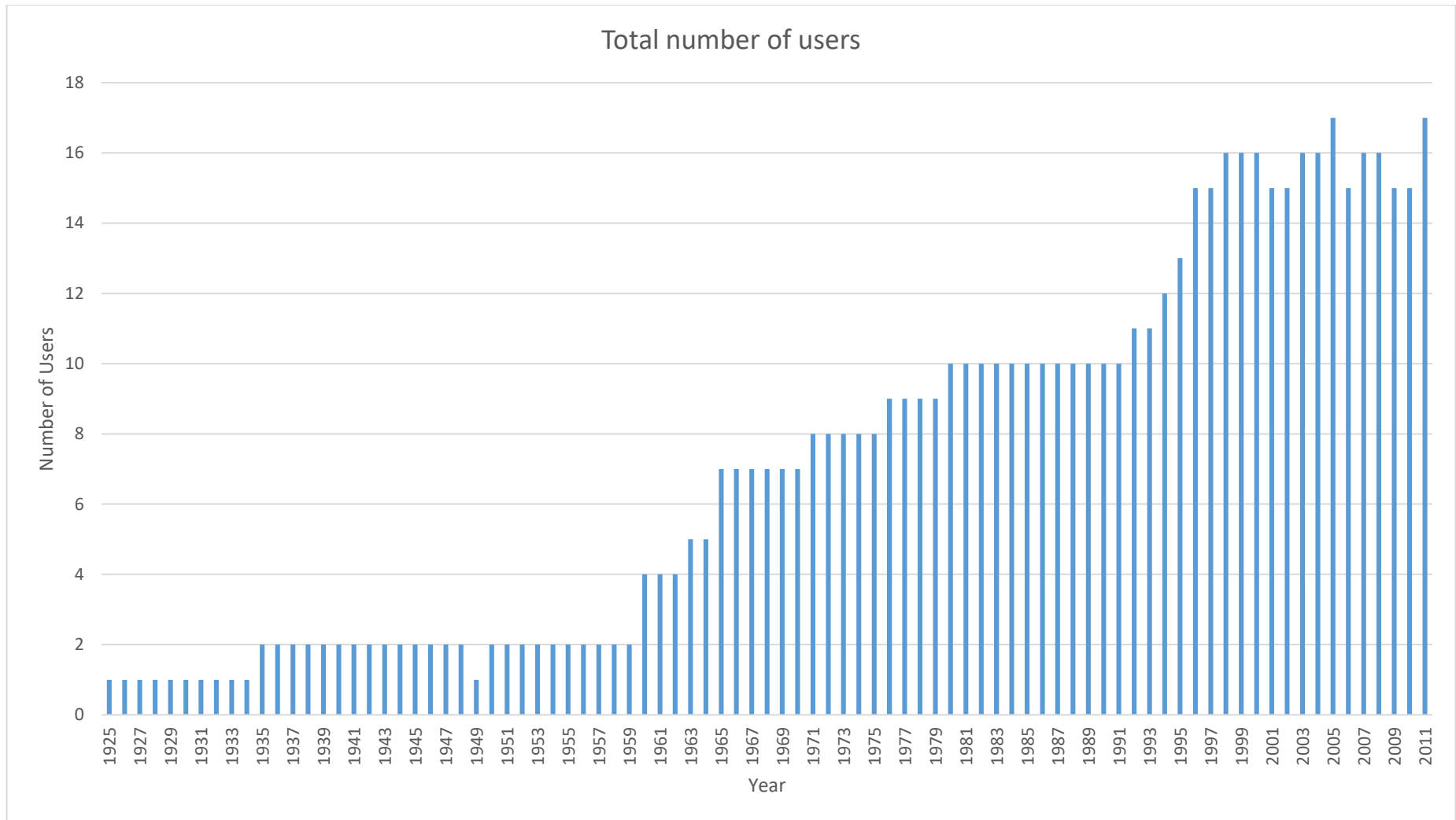
3x(v) Closed Footpath Sign at Point B and junction with Footpath 36 (2023)



4i - Chart to show level of use



4ii - Chart to show number of users



Recommendations accepted:

Signed:

...



Date:.....4 March 2024...

Vanessa Penny

Definitive Map Team Manager

Spatial Planning