

## Report to the Executive Director for Place

### Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

Choose an item.

**Portfolio Holder:** Cllr D Walsh, Planning

**Local Councillor(s):** Cllr Heatley; Cllr Sutton; Cllr Wheller

**Executive Director:** J Sellgren, Executive Director of Place

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**Report Status:** Public

#### Brief Summary:

**This report considers an application for a Definitive Map Modification Order, based on user and historic evidence, to add a footpath to the Definitive Map and Statement in the Rodwell & Wyke Ward. Following an investigation of the user evidence, and 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 T520/22/1; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed as made by the Council.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

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- (b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections, Dorset Council can itself confirm the Order without submission to the Planning Inspectorate.

### **1 Background**

#### **Applicant**

- 1.1. An application to add a footpath from Portwey Close to Rodwell Road, Weymouth, as shown A to B on drawing T520/22/1 (Appendix 1) was made by Mrs Jean Walkman and Mrs Krys Fursman on 12 January 2012.

#### **Description of the route**

- 1.2. The route claimed commences at Portwey Close, Weymouth, between property numbers 31 and 33 (Point A). The route runs in an easterly direction to meet Rodwell Road, exiting between property numbers 34 and 36, opposite the junction with Rodwell Avenue (Point B). The width at Point A is approximately 1.8 metres. The width continues at an equal distance from Point A to a point at the easternmost boundary of no 33 Portwey Close. The path increases in width at this point to approximately 4.2 metres, adjacent to the electricity sub-station, before narrowing slightly at the westernmost boundary wall of no 36 Rodwell Road, to approximately 3.35 metres, and continuing at this width to Point B where the path meets Rodwell Road, where the width is approximately 3.10 metres. The route is open and unrestricted at both ends. No gates or signs are in place.

#### **Background to the application**

- 1.3. This application was submitted in 2012 due to the deterioration of the concrete path surface, and the removal of a street light at the Rodwell Road end of the path.

#### **1.4. Use of Evidence**

The applicant submitted documentary and user evidence in support of this application. Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives. A full consultation exercise was carried out during May to July 2022, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. The Councillors for Rodwell & Wyke Ward, Cllr Wheller, Cllr Sutton and Cllr Heatley, were also consulted. In addition notices explaining the application were erected on site.

Relevant evidence provided has been discussed in this report.

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### **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/T520)**

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 under the relevant headings below.

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### **Tithe Map**

- 4.2 The Wyke Regis Tithe Map and Award of 1843 covers the wider area in which the claimed route is located. The easternmost section of the route, from Rodwell Road to the location of the sub-station, is shown on the Tithe Map, included as apportionment 197 described as House, Garden, Malthouse. The route formed part of the total acreage of land which would attract Tithe Payments. The track is not shown on the Tithe Map in the same way that other routes known to be public are shown.

### **Finance Act 1910**

- 4.3 The eastern section of the claimed route is shown on the 1910 Finance Act held at the National Archives under reference IR125/2/571, as an uncoloured, unshaded, un-numbered, fenced route. It is excluded from the valuation which strongly suggests that the route was vested in the Highway Authority and therefore carried public rights.

### **Ordnance Survey Maps**

- 4.4 The claimed route did not appear on any Ordnance Survey maps until 1864, Ordnance Survey 1" to the mile.
- 4.5 Each of the Ordnance Survey maps (at a scale of 6" to the mile, or 25" to the mile) from 1864 to 1958 show the eastern section of the claimed route 'fenced' in the same manner as other features denoted as a public road. Smaller scale maps do not show the route.
- 4.6 Ordnance Survey 1864 – 6 inch to the mile Sheet LIII NLS.  
The map shows the eastern section of the claimed route as a public carriageway – drawn in the same manner as other public carriageways in the area. This is good supporting evidence that this section of the route was in existence at the time of the OS survey, and that the surveyors at the time considered it to be of a public nature.
- 4.7 Ordnance Survey 1926 – 6 inch to the mile Sheet LIII SW NLS  
The map shows the eastern section of the claimed route as a public carriageway – drawn in the same manner as other public carriageways in the area. This is good supporting evidence that this section of the route was in existence at the time of the OS survey, and that the surveyors at the time considered it to be of a public nature.
- 4.8 Ordnance Survey 1901 – 25 inch to the mile Sheet LIII 14 NLS  
The map shows the eastern section of the claimed route as a public carriageway – drawn in the same manner as other public carriageways in the area. This is good supporting evidence that this section of the

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route was in existence at the time of the OS survey, and that the surveyors at the time considered it to be of a public nature.

### **4.9 Ordnance Survey 1937 - 25 inch to the mile Sheet LIII 14 NLS**

The map shows the eastern section of the claimed route as a public carriageway – drawn in the same manner as other public carriageways in the area. This is good supporting evidence that this section of the route was in existence at the time of the OS survey, and that the surveyors at the time considered it to be of a public nature

### **4.10 Ordnance Survey 1958 – 1:25000 Sheet SY67-C NLS**

The map shows the eastern section of the claimed route as a public carriageway – drawn in the same manner as other public carriageways in the area. This is good supporting evidence that this section of the route was in existence at the time of the OS survey, and that the surveyors at the time considered it to be of a public nature.

4.11 Dorset Council Geographic Information System (GIS) data '1:1000 Ordnance Survey mapping (2012), shows the route recorded in its entirety.

4.12 Dorset Council Geographic Information System (GIS) data 'Vectormap Local Vector' Ordnance Survey mapping (2022), shows the route recorded in its entirety.

### **Highway Board Minutes**

4.13 The claimed route was not mentioned in the Weymouth Rural District Highway Minutes which were viewed at the Dorset History Centre.

### **Estate maps**

4.14 There were no available Estate Maps which showed the claimed route.

### **Quarter Sessions**

4.15 These records were not relevant to this route

### **Railway Plans**

4.16 No path is recorded on any of the railway plans for this area.

### **Dorset Council Records**

4.17 The Weymouth Parish Survey (1950s) for this area did not claim a right of way corresponding to the application route, nor was it shown on the Draft Map (1954), Provisional Map (1964), Revised Draft Map (1974), or the most recently sealed Definitive Map (1989).

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### **Estate Numbering plan**

- 4.18 The 1962 Springfield Estate Numbering plan, in conjunction with Planning Application no. 13834, identifies part of the claimed route. The western section of the claimed route is clearly shown on this Estate Plan, indicating that the developer accepted that construction of this route was required (see 4.20), in accordance with the condition placed on the planning permission.

### **Aerial photographs**

- 4.19 All available aerial photography (held by Dorset Council) for this site was examined. The path is shown in its entirety on the aerial photographs issued between 1972 – 2020, providing good evidence of the existence of the claimed route.

#### Officer comment:

These photographs show the route in place in accordance with the requirements of the 1962 Planning Application (see below).

### **Planning Application for Springfield Estate (now Portwey Close)**

- 4.20 Planning permission was granted in 1962 for a new housing estate on land known as Springfield, Weymouth (Planning Application no. 13834, date of grant of permission: 2 February 1962. Applicant: Ball & Pope.) Of the various conditions attached to this planning permission, Condition 5 specified that '*a footpath link to Rodwell Road shall be provided on or before the completion of the estate roads*' (Reason: to secure the satisfactory layout of the Estate).
- 4.21 The plan showing the 'Springfield Estate Numbering' clearly shows the western section of the route defined (see Appendices). There was full compliance with the planning condition, whereby the footpath link was provided as part of the completed housing development and thus came into being and was accepted and used freely by the public (evidenced through the Witness Evidence statements provided as part of this application).
- 4.22 The eastern section of the claimed route (from the sub-station to Rodwell Road) is not shown on the street numbering plan for the estate for the following reasons:
- (a) because it was not in the ownership of the land owner/developer for the estate; (b) this section of the route appears to already be deemed to be public by the manner in which the route is drawn by the Ordnance

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Survey cartographers since 1885, in the same manner as other public roads in the area (see historic documentary evidence, para 4.5).

- 4.23 Officer comment: Acceptance and provision of the 'footpath link' by the developer is good evidence of its longevity of existence on the ground and supports the user evidence of the claimed route

### **Summary of documentary evidence**

- 4.24 There is documentary evidence to show that the eastern section of the claimed route leading to Rodwell Road has been in existence from 1884. From 1963, the entire route is shown on maps and aerial photographs to have been in existence as claimed: from Portwey Close to Rodwell Road
- 4.25 There is no evidence that any gates or fences were present at the eastern access point to the claimed route (point B) on any of the documentary sources, suggesting that no barrier to access was in existence.
- 4.26 However, the Tithe Map and the Ordnance Survey plans clearly show a solid line (suggesting a fence/wall/other obstruction) at the western section of this track (at the location of the now sub-station).

## **5. User evidence (Appendix 4)**

Copies available in the case file (RW/T520)

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as part of the original application T520 in 2012 has been included in this analysis, as well as evidence provided as part of the public consultation on this path between 31 May and 31 June 2022.
- 5.2 12 User Witness Evidence statements were submitted to accompany the application for the claimed route in January 2012.
- 5.3 Of the 12 users, the use of the claimed route spans a timeframe from 1963 through to 2012 (when the 'bringing into question' has been established by the submission of a Schedule 14 application to add a footpath to the Definitive Map and Statement). A total period of 45 years' use.
- 5.4 A continuous use of the route from 1963 to 2012 is shown to have been made by 4 of the witnesses.
- 5.5 A continuous use of the route between 1992 to 2012 is shown to have been made by 7 of the witnesses.

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- 5.6 A Petition was completed and submitted with the application. This shows a total of 67 individuals using the route between 1963 to 2012. Some of these signatories have also completed user evidence forms.
- 5.7 The Petition shows a steadily increasing rate of use of the path from 1965 through to the claim date of 2012. However, 3 of the signatories to the petition did not complete the section relating to the number of years used. The evidence contained in the petition is good evidence to support the application and shows volume of use.
- 5.8 Use of the path is reported by the residents to have continued unhindered from the 2012 application date, through to the present day. Public use has been captured on a wildlife camera in a resident's garden which faces the claimed route.
- 5.9 The applicant has, on separate days, during 2021 and 2022, counted around 90 individuals using the claimed route in a 24 hour period.
- 5.10 The path has been used by individuals on cycles. This use has not, however, been identified in formal user evidence, and cannot therefore be considered as evidence for the status of bridleway or restricted byway.
- 5.11 Some of the witnesses have provided verbal evidence that the route has been used from the 1900s by people walking from the former Rodwell Station (which was located to the west of Portwey Close), continuing along the short section of the route leading to Rodwell Road (as shown on the Ordnance Survey maps from the 1900s).
- 5.12 Officer comment: There is no documentary evidence available to show a used route from Rodwell Station to Point A of the claimed route. This hearsay evidence cannot be taken into consideration to support the footpath claim
- 5.13 The use by vehicles on the eastern section of the route from Rodwell Road was mentioned verbally by some of the witnesses. A letter from one of the residents was provided to the Council stating that cars had parked along this section since 1985.
- 5.14 Officer comment: No witness statement evidence has been submitted to indicate that vehicular rights would be appropriate on this route. The eastern section is wide enough for vehicles to pass, but the continuation to Portwey Close would not be of sufficient width for a motor car to use.



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- 5.15 One witness stated that a resident of Portwey Close used the route daily in his motorised disability buggy, and that this resident laid a slope of concrete between the section by the electric sub-station and the concrete (laid to form the path by the developer as part of the Portwey close development) to allow him to use the buggy.
- 5.16 Officer comment: There is no suggestion that motorised vehicle rights might exist on the claimed route.
- 5.17 Witness evidence suggests that the walked width of the claimed route from Point A to the sub station is approximately 1.8m, and that the route walked from the sub-station to Rodwell Road continued at the same width. Witness evidence suggests that very often the parked cars prevented use of the full 4.2m width adjacent to the sub-station.
- 5.18 Officer comment: A proposed width of the footpath at 1.8m will not interfere with the area of land on which the cars are presently parked.

### **Summary of user evidence**

- 5.19 Evidence of use on foot between 1992 to 2012 is of sufficient number and frequency of use for a reasonable allegation to be made that public rights exist on foot.
- 5.20 There is no evidence that the users were challenged during this period either by locked gates or notices advising the path was private, or by direct challenge from the landowner.
- 5.21 The available evidence suggests that use during the relevant 20 year period of 1992 to 2012 plus the 29 years prior to 1992 was without force, without secrecy, and without permission, ie user was 'as of right'.

### **6.0 Landowner correspondence** (copies available in the case file RW/T520).

- 6.1 On 13/03/1962 the land was registered to Stanley Stone Chelsea Limited.
- 6.2 On 01/07/2011 a new landowner was registered by HM Land Registry. The company name is Cala Homes Ltd. who are still in existence as an operational company.
- 6.3 Upon receipt of the Schedule 14 application in 2012 for this claimed route, the Council wrote to Cala Homes Ltd regarding the claimed route. A request for a dedication of the route was made.
- 6.4 No response to the Council's correspondence was forthcoming.

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- 6.5 In May 2022, a letter was once again written to Cala Homes, requesting a dedication of the route, and requesting comments on the application to add a public footpath over the footpath link provided. This correspondence formed part of the formal public consultation into the application. No response was received from Cala Homes.
- 6.6 Officer comment: In the absence of any response by the landowner, it can be assumed that the company holding ownership of this land does not object to public use of the path and is accepting of a deemed dedication of the path onto the legal record of public rights of way; the Definitive Map and Statement.
- 6.7 Officer comment: There is no evidence to suggest that the landowner has been to the site owing to the lack of maintenance to the path, or the erection of any notices, gates, fencing etc. This leads to a suggestion that the landowner may consider the path to have been formally adopted by the Council and as such they (the landowner) do not consider that they need to maintain the path.
- 6.8 The landowner was in full compliance with the planning application Condition 5 which stated that “*A footpath link to Rodwell Road shall be provided on or before the completion of the estate roads*” (Reason: to secure the satisfactory layout of the Estate).
- 7.0 **Consultation responses and other correspondence** (copies available in the case file RW/T520).
- 7.1 A small number of communications were received in response to the public consultation.
- 7.2 The Ramblers representative provided comment that she had no evidence of this path on any documentary evidence available to her.
- 7.3 Local Councillors wrote in support of the application route, giving the reasons that it is a very well used route by the locals in the area and needs to be formally recorded.
- 7.4 Officer comment: The desirability of the application route is not a matter that can be taken into consideration.
- 7.5 Four residents sent in letters of support for the claimed path during the consultation period. None of these people submitted a witness evidence form with the application in 2012. Each resident confirmed their continued use of the route in the present day and noted that they see many other members of the public also using the route.

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- 7.6 Officer comment: When assessing applications to add rights of way based on user evidence, it is only possible to take into account evidence of use received for the 20 year period of use under consideration. In this case, the 20 years prior to the application date of 12 January 2012.
- 7.7 Two of the letters contained information relating to the parking of vehicles on the route.
- 7.8 Officer comment: The application makes a claim for footpath rights. There is no suggestion that vehicular rights should be claimed. No evidence of vehicular use was submitted within the 20 year period of use.
- 7.9 Officer comment: The evidence is suggesting that parked vehicles have obstructed the potential full 4.2m width, although confirm that use of the route as claimed has continued over the remaining northern section of path. This evidence will help to clarify the path width to be included in an Order if made.
- 7.10 The claimed route is well known locally as a short cut from Rodwell Road to Wyke Road on foot. The volume of users in a 24 hour period, recorded on a wildlife camera facing the route, is very high.
- 7.11 Officer comment: The continued use of the path by members of the public in large numbers is good supporting evidence of the popularity of the route but cannot be used as evidential support for the application as it is outside the 20 years 'As of Right' period which is being assessed in this application.
- 7.12 The issue of vegetation maintenance, and vehicle parking were mentioned as important issues when talking with the witnesses.
- 7.13 Officer comment: If the claimed route is added to the legal record, the countryside rangers will have authority to investigate the vegetation maintenance. See paras 5.13 – 5.18 above regarding the vehicular parking.

## **8. Analysis of the evidence**

There is evidence of public use of the claimed route since 1965, 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.

### **8.1 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 that it 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 (see para 8.5)
- 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

### **Physical nature of the route**

8.2 The route claimed is capable of being a public right of way at common law, given that it follows a well-defined, linear route, leading between a housing estate road and a public highway. The route is bounded on its northern and southern sides by individual property walls/fencing for the most part, and a fenced electricity sub-station in the middle section.

8.3 The electricity board have a legal right to cross the access from Rodwell Road and along to the sub-station. This comprises a section of the 'Springfield Estate' title, Land Registry ref. DT9388, coloured brown on the plan, and identified by its individual Title no.

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

- 8.4 An enquiry was made to the Council in 2011 by the applicants regarding a street light (which had been removed), and the disintegration of the surface of the path, with a request that the Council undertake the appropriate works. The claimed route was not recorded on any Council documentation as a public route and thus no maintenance/repair was able to be authorised by the Council.
- 8.5 Advice by the Definitive Map team to a subsequent enquiry made by the applicant regarding whether anything could be done to formally record this route, was that a Schedule 14 application could be made, accompanied with sufficient evidence of user, to apply for the route to be added to the Definitive Map and Statement.
- 8.6 An application for the claimed route, accompanied by user evidence on the formal Form E, and also a Petition, was submitted to Dorset County Council on 12 January 2012.
- 8.7 In the absence of any physical barrier or notice erected at either end of the route, which would bring into question the public use of the route, it is considered that the date of the application (12 January 2012) will be the date at which the use of the path was brought into question. This would give a relevant period of use to be 1992 – 2012.

### **Twenty years use without interruption**

- 8.8 Based on the documentary and user evidence, it would appear that there has been no substantive interruption to public use during the qualifying 20 year period 1992-2012.

### **Without force, secrecy or permission**

- 8.9 There is no evidence to suggest that the route has ever been used by force.
- 8.10 All the witness evidence states that the route has always been open for use by the public. No gates, fences, or notices preventing use have been in place since use began in 1963. This was backed up verbally when speaking with witnesses/residents in the investigation into this claimed route.
- 8.11 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

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### **Use by the public**

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.

- 8.12 The evidence put forward in support of the application indicates that members of the public have used this route since houses on the 'Springfield Estate' finalised their construction, which appears to have been those houses to the north of the Estate (now known as Portwey Close), in 1963.
- 8.13 Two witnesses have stated that the route was used regularly to access Rodwell Road from the Rodwell station, when it was in existence, prior to the development of the housing estate.
- 8.14 The applicant stated that when she first moved to her property, she experienced people still using the route between Rodwell Station and Portwey Close, which involved jumping over her back garden fence in order to reach point A of the claimed route and continue on to Rodwell Road.
- 8.15 The Springfield Estate began construction in 1963. All the houses were completed by 1965. This is the date from which the earliest users provide evidence of use.
- 8.16 The Evidence of Use charts (Appendix 3 of this report) show a steady increase in numbers of users of the route since the housing estate came into existence.
- 8.17 The applicants state that the volume of people using this path continues to the present day and has not reduced since the application was submitted to the Council in 2012.
- 8.18 The relevant period of use (1992 – 2012) has been exceeded in years, both prior to and beyond the dates, confirmed by evidence submitted with the claim, and during the consultation period of 31 May to 30 June 2022.

**Conclusions under Section 31, Highways Act 1980**

8.19 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 period of twenty years between 1992 and 2012. Evidence of use began in 1965 when the housing estate was built, through to 2012 when the application was submitted and as mentioned earlier, the use continues to the present day, providing longevity of use, unchallenged, and clear acceptance of the route by the public.

**Analysis of the evidence under common law**

- 8.20 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.
- 8.21 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.
- 8.22 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.
- 8.23 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.
- 8.24 None of the witness evidence refers to any notices, barriers, or landowner verbal comments. The conduct of the landowner, therefore, is such that they had intended to dedicate the route as a public right of way, of the type that has been applied for (in compliance with the planning permission which requires the creation of a footpath link between Portwey Close and Rodwell Road).
- 8.25 This intention to dedicate is implied by a sufficient period of public use without force, secrecy or permission, and the acquiescence of that landowner in that use.

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- 8.26 The requirements for the dedication of a highway have been met: the requirement to dedicate, and the public acceptance of that dedication of a highway.

### **Conclusions under common law**

- 8.27 There is sufficient evidence from which a deemed dedication at common law can be inferred. One key point is that the grant of planning permission for the Springfield Estate in 1962 was conditional upon the route being provided by the landowner, whereby condition 5 of the permission states “*a footpath link to Rodwell Road shall be provided on or before the completion of the estate roads*” (Reason: to secure the satisfactory layout of the Estate).

## **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 Climate Implications**

Any climate 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 must be considered whether public rights subsist or are reasonably alleged to subsist on this route. On the balance of probability it is considered that there is sufficient evidence to show that public rights subsist.
- 15.2 The documentary evidence indicates that the eastern section of the route was available from the time when the Ordnance Survey undertook their survey in 1883. This evidence continues through to the 1958 Ordnance Survey maps. More recent Ordnance Survey maps (1:10000) obtained from the Dorset Council GIS system (dated 2012 and 2022) both clearly show the claimed route.
- 15.3 Aerial photography shows the existence of the entire claimed route from 1972 through to the latest aerial photos taken in 2020.
- 15.4 The user evidence in the form of witness statements confirms continued use from 1965 through to the date of the Schedule 14 application, 12 January 2012.
- 15.5 The user evidence from the Petition completed by 67 individuals, confirms use of the claimed route from 1963 through to the date of the claim.
- 15.6 The available evidence is also sufficient for a common law presumption to be inferred. The landowner was required by a condition of the planning application to provide a footpath link between Portwey Close and the electricity sub-station (corresponding to the claimed route). The condition was complied with in full by provision of a footpath link which was surfaced. The landowner did not object to this provision of a footpath, which is tantamount to a dedication of the way. The route was accordingly accepted by the public and used on a regular basis by a wide variety of people for various reasons, such as going to the shops, to school, to the harbour, short cut to Rodwell Road.
- 15.7 The remaining link of the claimed route (from the electricity sub-station to Rodwell Road) was already surfaced and in use by the public according to the witness evidence submitted. It is this section of the route which is shown on all the Ordnance Survey maps from 1863.

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- 15.8 Therefore, the recommendation is that an Order is made to add the claimed route to the Definitive Map and Statement as a Footpath.
- 15.9 If no objections are received to the Order, the Council may itself confirm the Order.
- 15.10 If objections are received to the Order, the Council must submit the application to the Planning Inspectorate, with the objections, for it to determine the outcome of the application.

## **16 Appendices**

- 1** Drawing 13/31
- 2** Law
- 3** Documentary evidence

Extracts from key documents:

- 1843 Tithe Map
  - 1910 Finance Act
  - 1864 Ordnance Survey 6inch to the mile Sheet LIII NLS
  - 1926 Ordnance Survey 6 inch to the mile Sheet LIII SW NLS
  - 1901 Ordnance Survey 25 inch to the mile Sheet LIII 14 NLS
  - 1937 Ordnance Survey 25 inch to the mile Sheet LIII 14 NLS
  - 1958 Ordnance Survey 1:25000 Sheet SY67-C NLS
  - 1972 Aerial Photograph – flown by Story
  - 2002 Aerial Photograph – flown by UK Photography
  - 2005 Aerial Photograph – flown by Get Mapping
  - 2011 Aerial Photograph – flown by Get Mapping
  - 2020 Aerial Photograph – flown by AP UK
  - 1962 Springfield estate Street Numbering Plan
- 4** Charts to show periods and level of use from witness evidence

## **Application to add a footpath from Portwey Close to Rodwell Road, Weymouth**

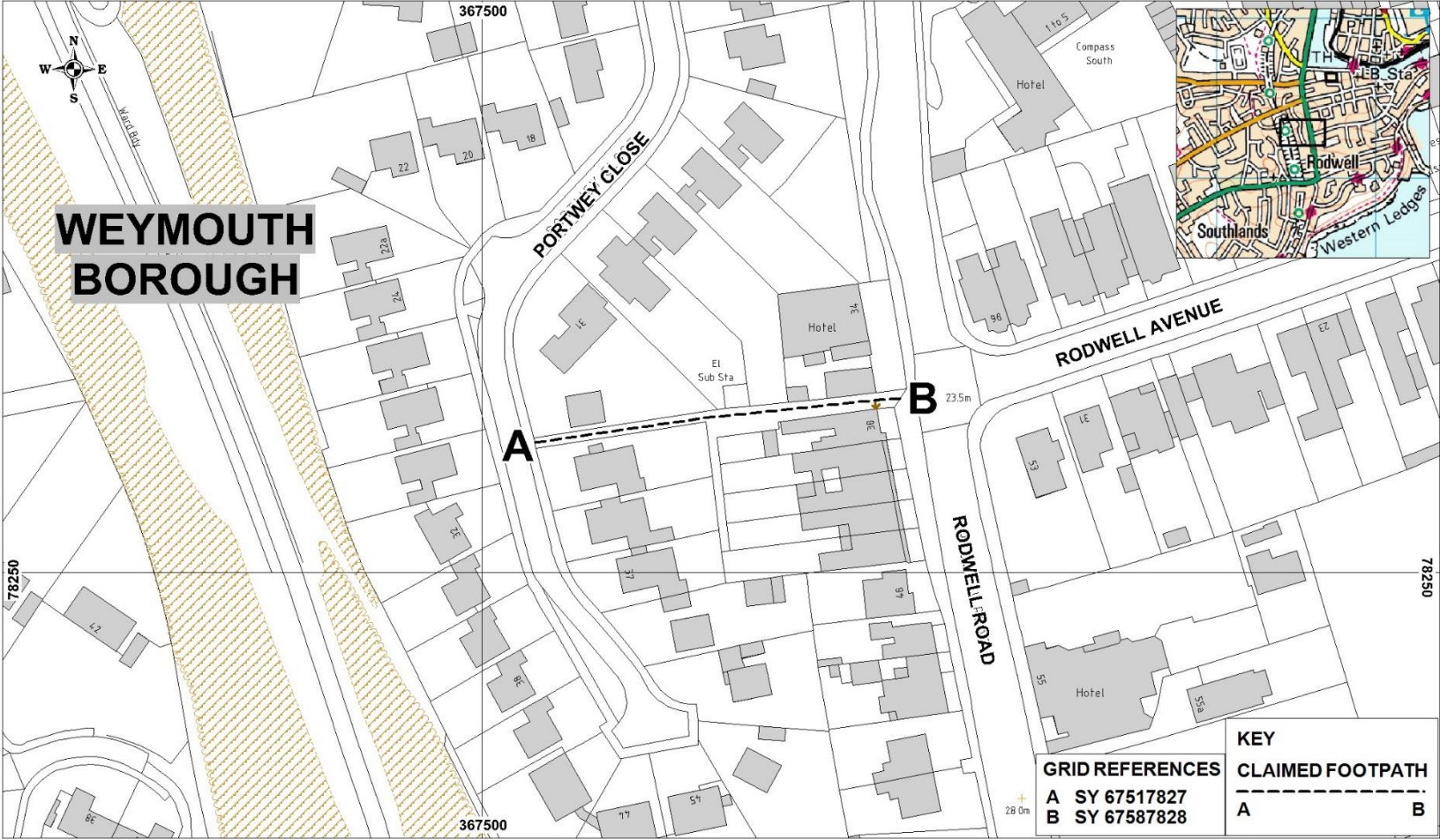
- 5** Charts to show periods and level of use from the signatories to the Petition

### **17 Background Papers**

The file of the Executive Director, Place (ref. RW/T520).

**Date: 19 August 2022**

**Application to add a footpath from Portwey Close to Rodwell Road, Weymouth**

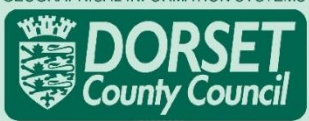


**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**APPLICATION TO ADD A FOOTPATH FROM PORTWEY CLOSE TO RODWELL ROAD, WEYMOUTH**

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

**Ref: 13/31**  
**Date: 06/08/2013**  
**Scale 1:1000**  
**Drawn By: ACWH**  
**Cent X: 367547**  
**Cent Y: 78280**

GEOGRAPHICAL INFORMATION SYSTEMS



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**Application to add a footpath from Portwey Close to Rodwell Road, Weymouth****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

## **Application to add a footpath from Portwey Close to Rodwell Road, Weymouth**

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.

## **Application to add a footpath from Portwey Close to Rodwell Road, Weymouth**

- 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).
- 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.

## **Application to add a footpath from Portwey Close to Rodwell Road, Weymouth**

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**

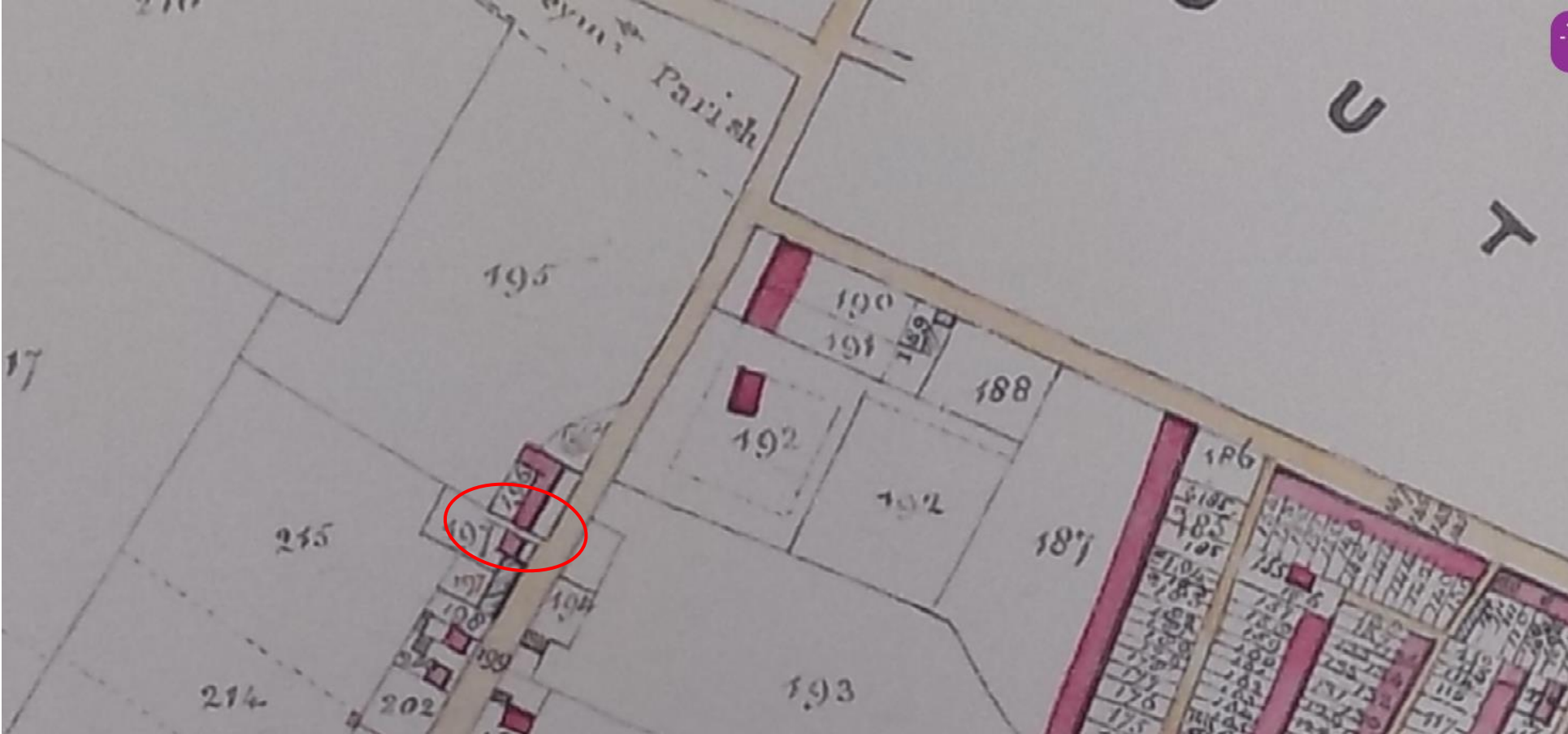
5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as "Surveying Authority" to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.



Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

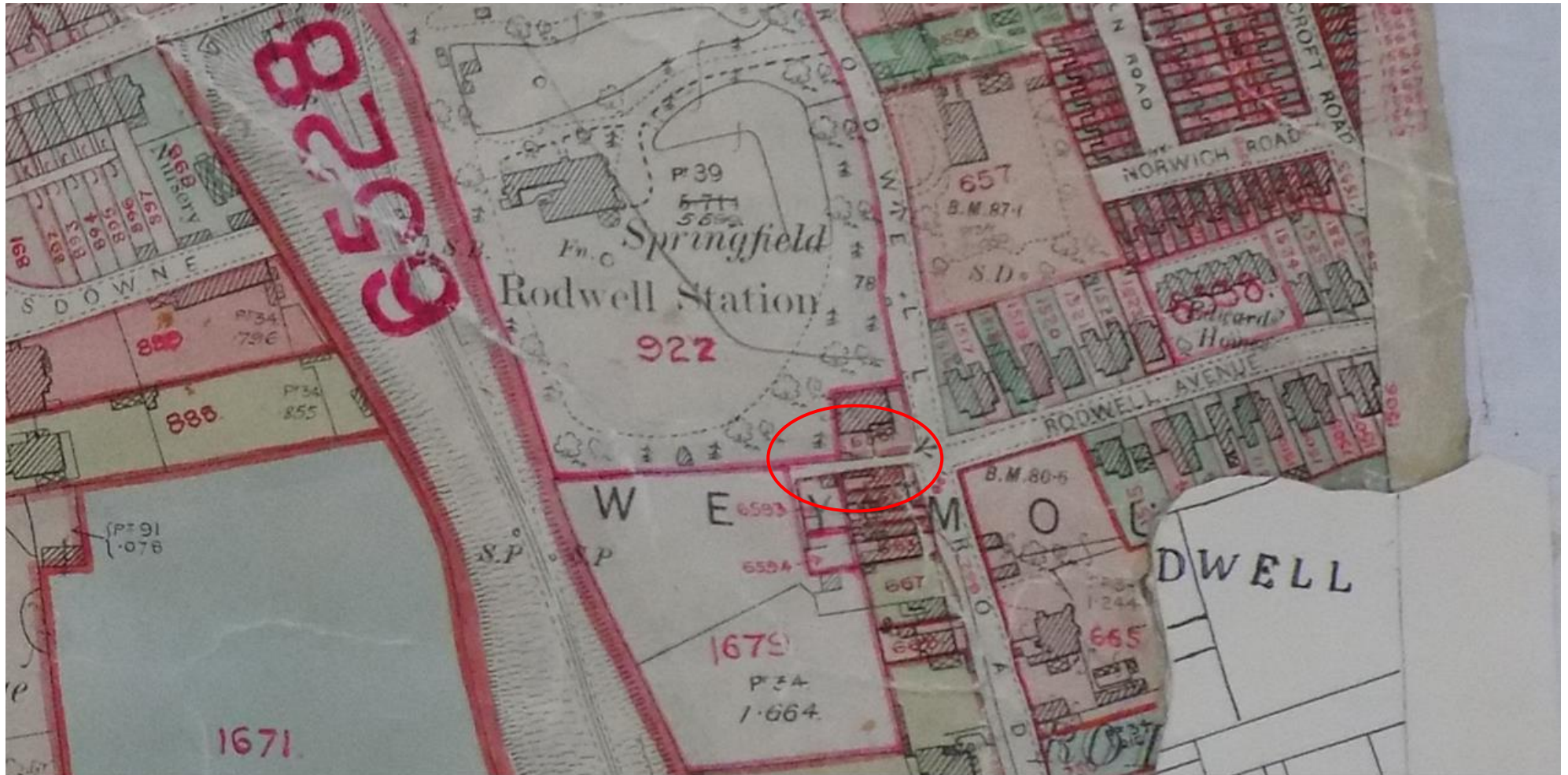
DOCUMENTARY EVIDENCE CONSIDERED

Tithe Award 1843



Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

Finance Act 1910





Application to add a footpath from Portway Close to Rodwell Road, Weymouth

Ordnance Survey 6 inch 1864 Sheet LIII NLS



Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

Ordnance Survey 6 inch 1926 Dorset Sheet LIII-SW-NLS



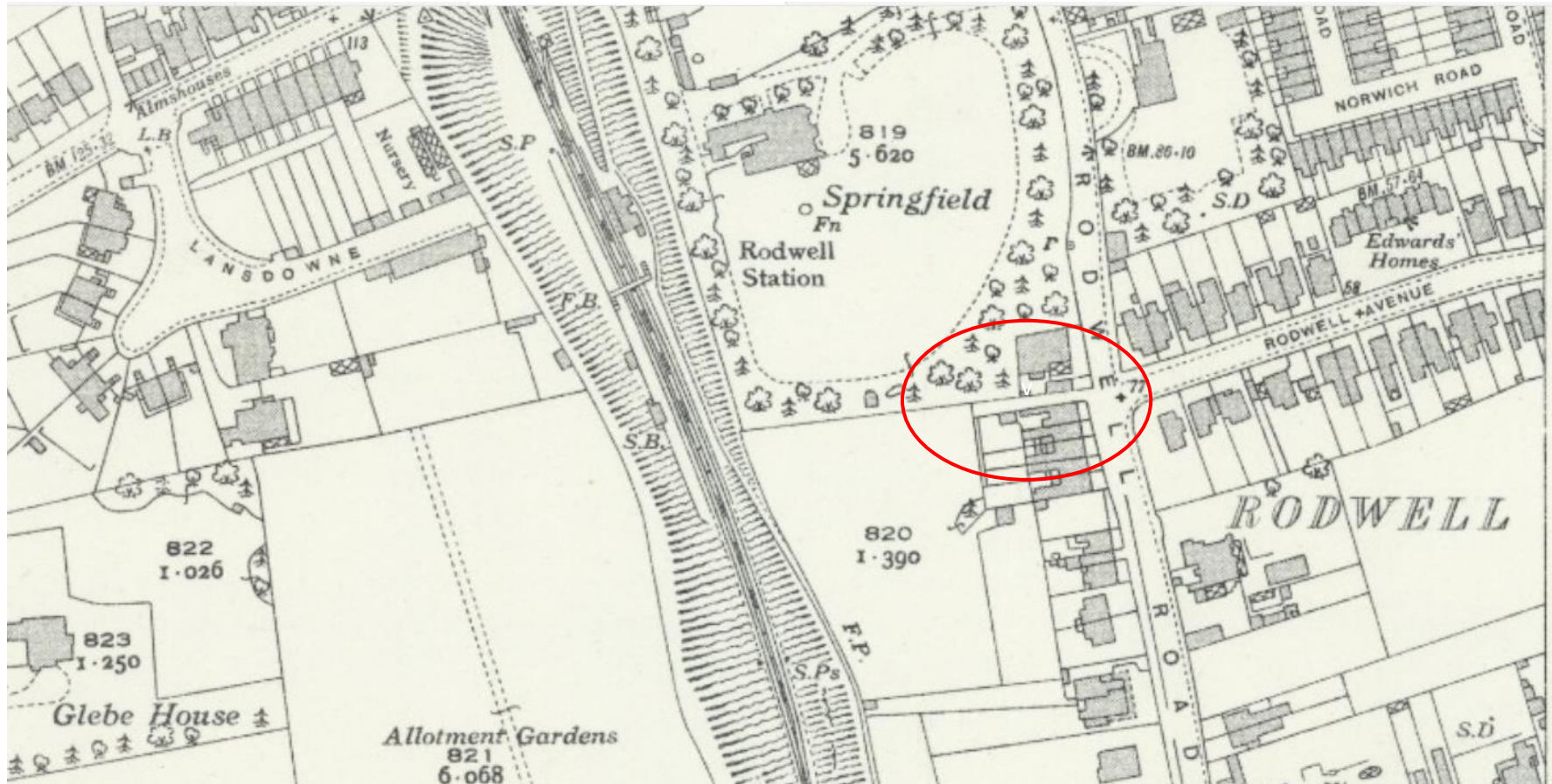
c)





Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

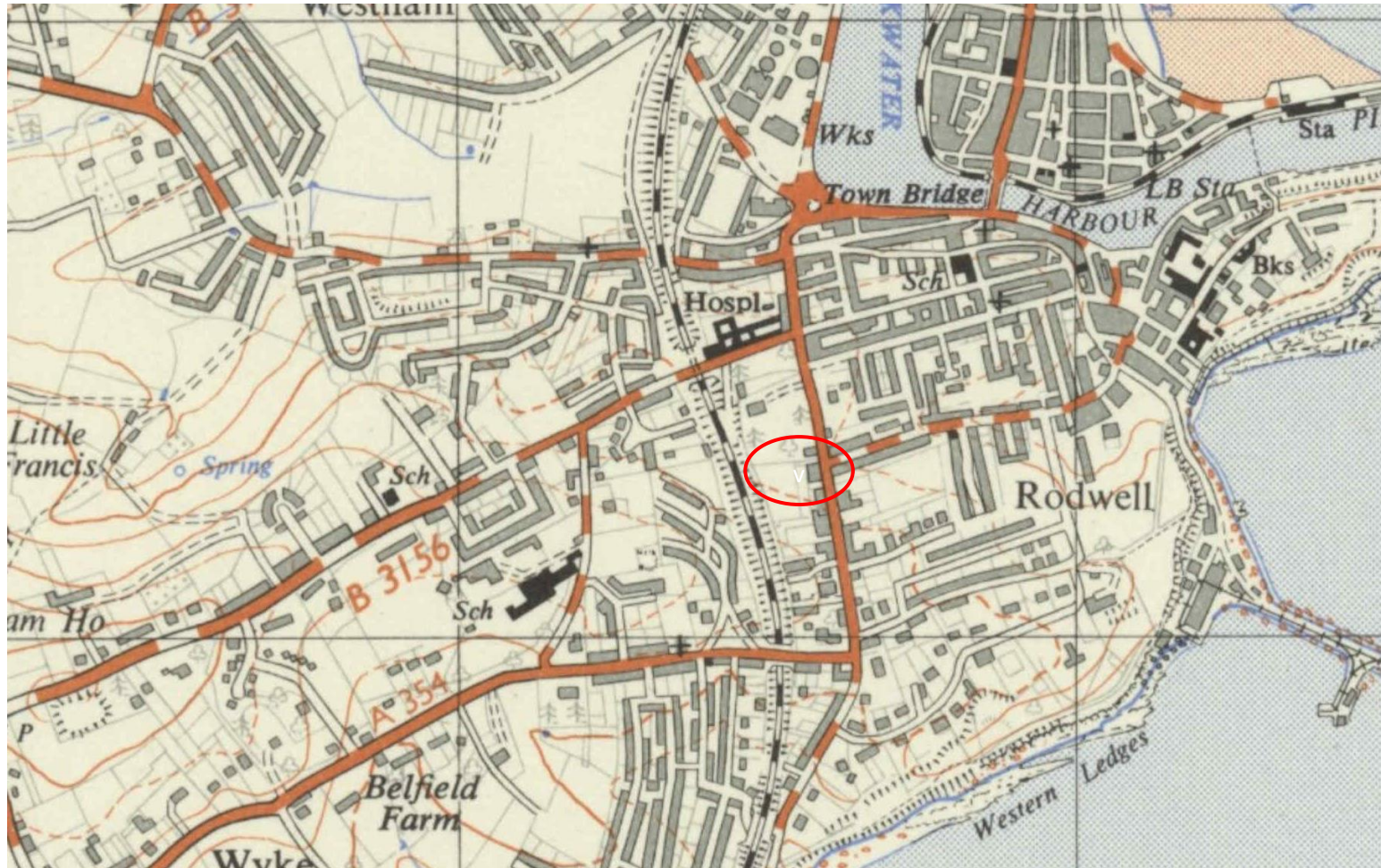
Ordnance Survey 25 inch 1937 Dorset Sheet LIII-14 NLS





Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

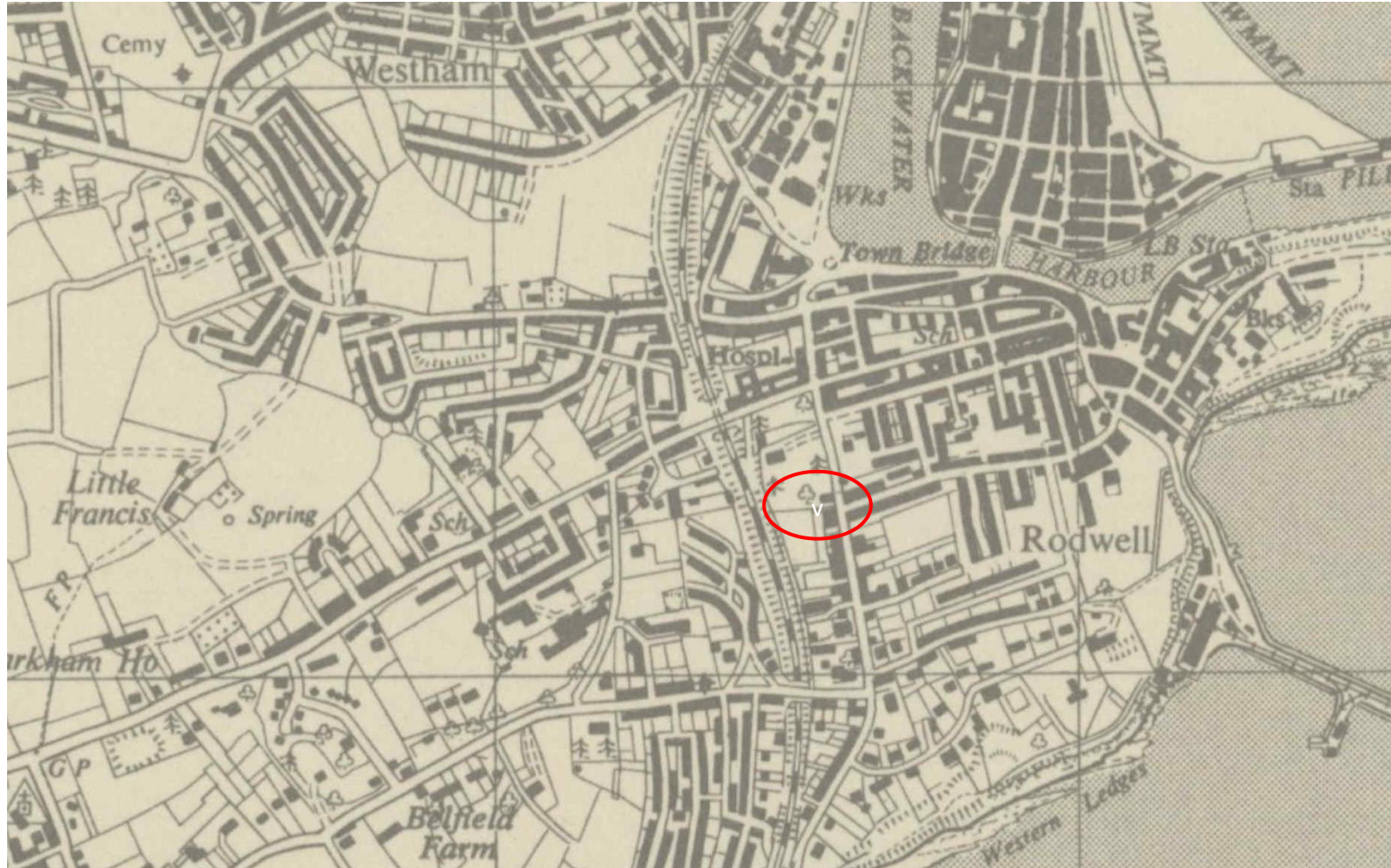
Ordnance Survey 1:25000 1958 Dorset Sheet SY67-C colour NLS





Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

Ordnance Survey 1:25000 1958 Dorset Sheet SY67-C NLS





Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

1972 Aerial Photograph



Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

1997 Aerial Photograph.





# Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

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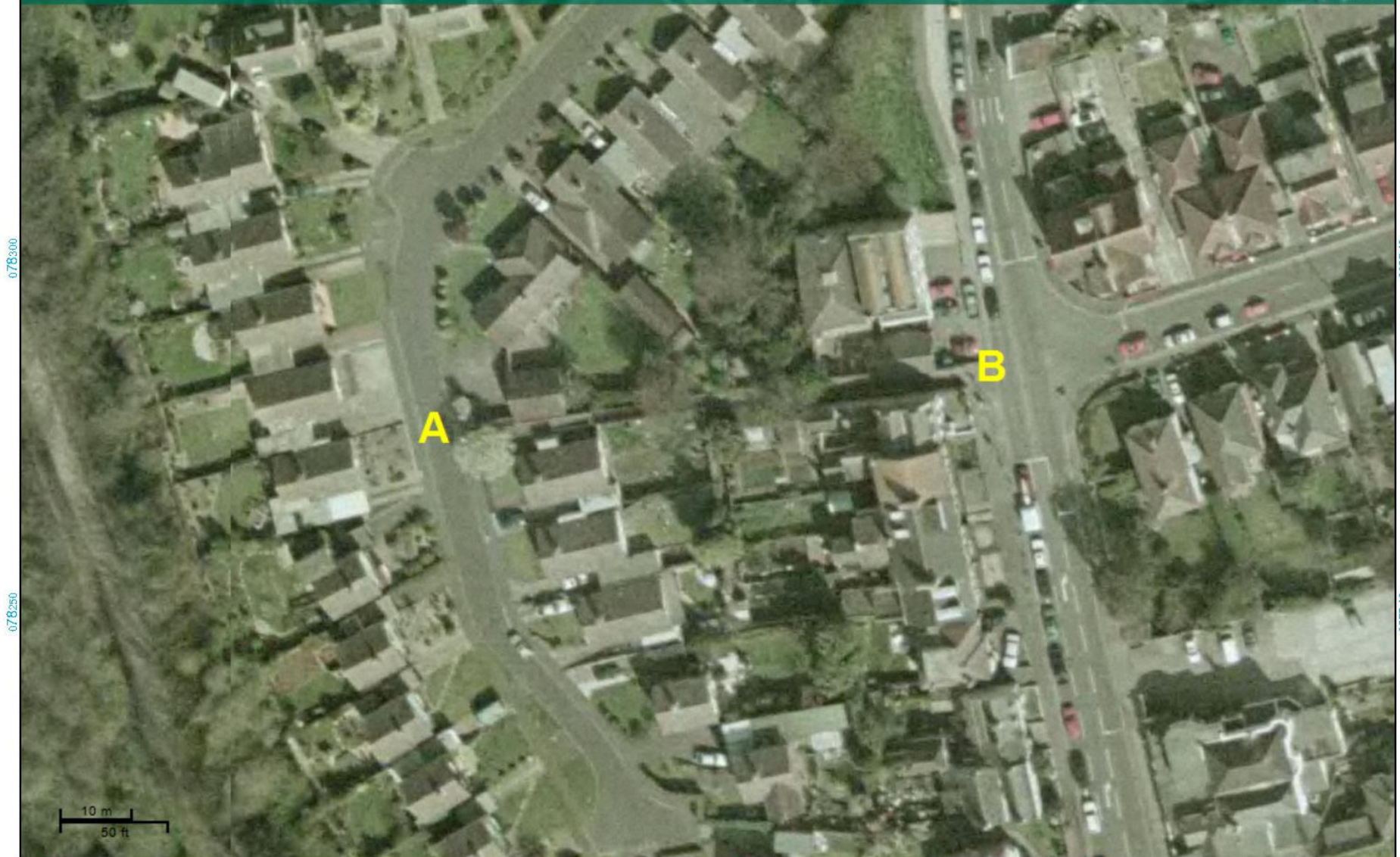
367600



## 2002 Aerial Photo

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Centre Easting: 367544.28  
Centre Northing: 78281.17  
Zoom: 194.625m (19)  
Date: 06/06/2022

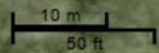


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# Application to add a footpath from Portwey Close to Rodwell Road, Weymouth





# Application to add a footpath from Portwey Close to Rodwell Road, Weymouth



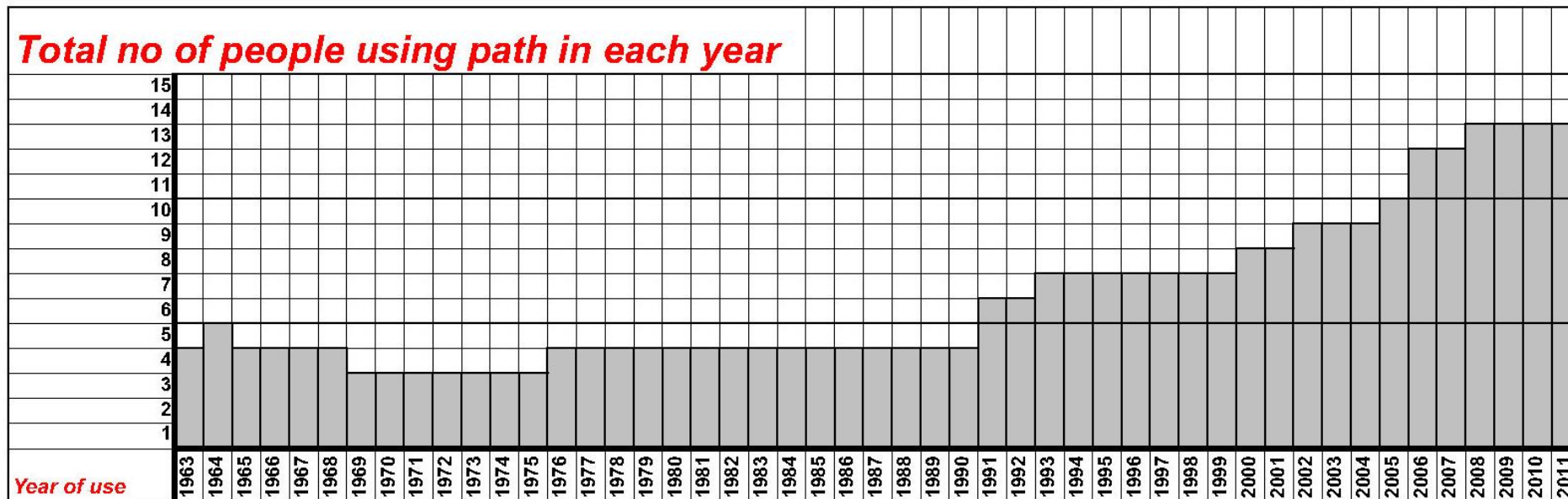


# Application to add a footpath from Portwey Close to Rodwell Road, Weymouth





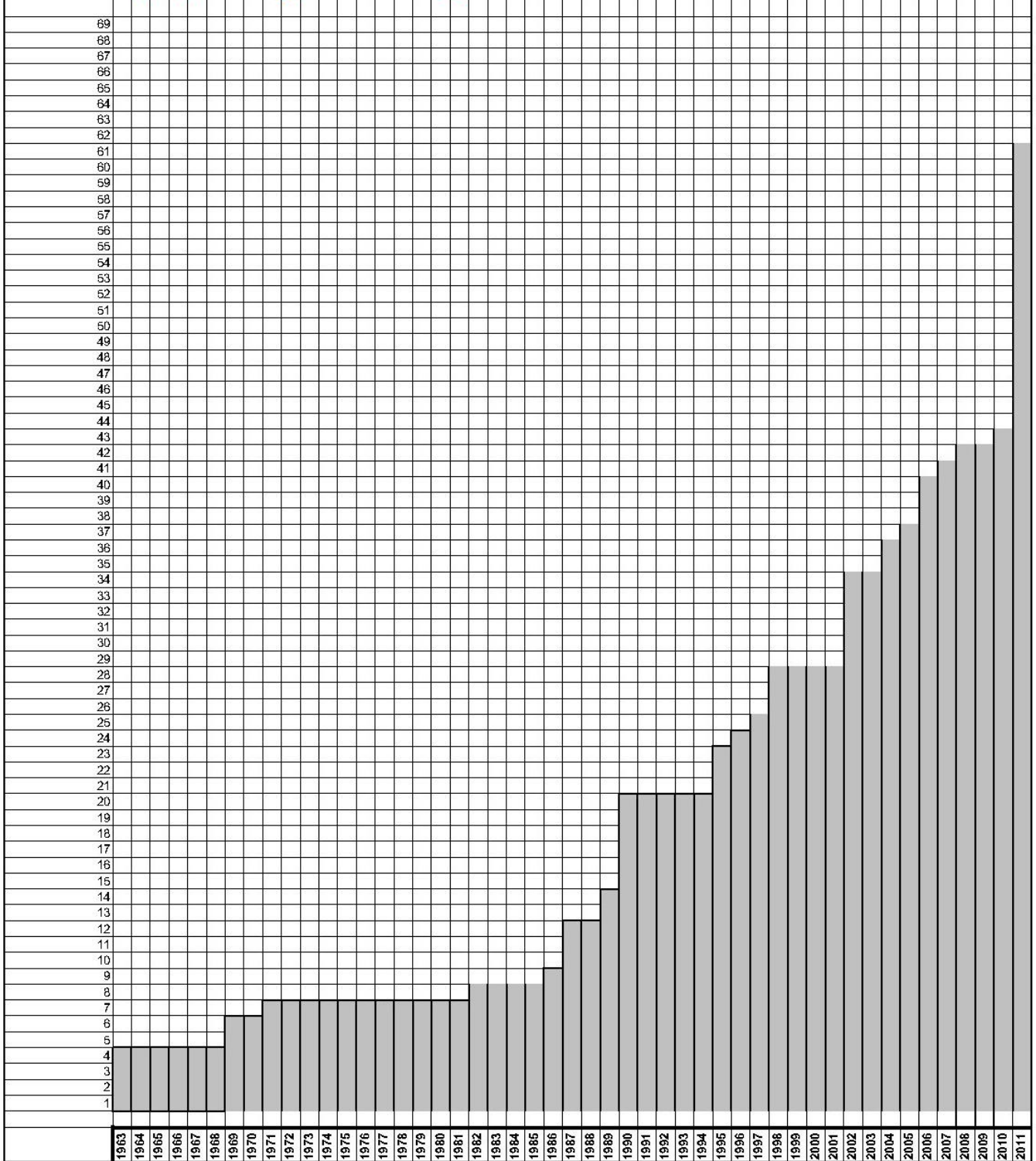
Application to add a footpath from Portwey Close to Rodwell Road, Weymouth







**Total no of people using path in each year**



**Petition – Period of use of individuals using the path in each year from 1963**

**Recommendations accepted:**

**Signed:**

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

Date:.....24 August 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning