

## Report to the Executive Director for Place

### Application for a Definitive Map and Statement Modification Order to record a public footpath from Park Road along the Railway Cutting at Easton, Portland

#### For Decision

<b>Portfolio Holder:</b>	Cllr D Walsh, Planning
<b>Local Councillor(s):</b>	Cllr R Hughes Cllr P Kimber Cllr S Cocking
<b>Executive Director:</b>	J Sellgren, Executive Director of Place
<b>Report Author:</b>	Sue Phillips
<b>Title:</b>	Definitive Map Technical Officer
<b>Tel:</b>	01305 221409
<b>Email:</b>	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 Portland. 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 T526/23/1; 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- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.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 Park Road to its junction with Footpath 24 as shown A - B on Drawing T526/23/1 (Appendix 1) was made by Mr John Gill on 3 September 2013.

### **Description of the route**

- 1.2. The route begins at the southern end of Park Road heading south to the crest of a bank where the route continues south east down a slope with an aggregate surface. There is a post and rail wooden fence to the north and mature vegetation on both sides. The route continues in a south east direction along a compacted stone track where it descends to level ground with a high stone wall on the south western side. The surface of the path along the level of the railway cutting is a mix of compacted stone, grass and soil. The route continues in a south easterly direction rising out of the railway cutting to the end of the claimed route at its junction with Footpath 24. The width of the claimed route varies from 1 metre at the commencement of the claimed route, expanding up to 3 metres across the base of the railway cutting. The route narrows to 1.4 metres between large boulders before reaching open ground at the junction with Footpath 24.

### **Background to the application**

- 1.3. The claimed route runs through a disused railway cutting which is also in a Wildlife Management Zone. This zone is home to a colony of ecologically important Small Blue and Chalkhill Blue butterflies and supports other ecological species of importance. The claimed route remains accessible and available to the public at the time of the 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/T526)**

- 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.

#### **Tithe Map**

- 4.2 The 1841 Tithe Map for Portland shows multiple parcels of land across the area where the claimed route runs. A feature is shown on the ground that suggests a road is in existence at this time which leads to the area acquired for the creation of the Easton and Church Hope Railway Line. The Tithe Map does not add weight to the evidence in support of the claim for a footpath.

### **Finance Act 1910**

- 4.3 The Finance Act plan for Portland shows the area of the land over which the route being claimed runs. The physical feature of the Easton and Church Hope Railway Line is visible on the map. The railway line was operational at the time of the Finance Act 1910. The Finance Act 1910 documents do not add weight to the evidence in support of the claim for a footpath. See Appendix 3

### **Ordnance Survey Maps**

- 4.4 Ordnance Survey (OS) maps from 1901 and 1926 show the Easton and Church Hope Railway Line. The railway was operational as a goods and passenger service at these times. Current OS maps show a path, demonstrating a physical route which is visible on the ground, but this does not add any weight to the existence of public rights. The OS maps add a little weight in support of the application route but are not conclusive evidence.

### **Dorset Council Records**

- 4.5 The proposed route was not claimed at the time of the Parish Survey (circa 1950's), nor was it claimed on the 1954 Draft Definitive Map, the 1964 Provisional Map, the 1967 First Definitive Map, or the 1974 Revised Draft Definitive Map. The route was not recorded on the Definitive Map (sealed 1989). Early versions of the Definitive Map show the Easton and Church Hope Railway line which operated until 1965.
- 4.6 Officer Comment: The versions of the Definitive Map, up to and including the First Definitive Map 1967 and the Definitive Map (sealed 1989), show Footpath 25 which is recorded running parallel to the claimed route. Footpath 25 runs on higher ground to that of the claimed route through the railway cutting. See Appendix 3.

### **Aerial photographs**

- 4.7 The 1947 aerial photograph records the railway tracks as they existed, prior to the complete closure, in 1965, of the Easton and Church Hope Railway Line. See Appendix 3.
- 4.8 The 1972 aerial photograph shows the feature on the ground of the direction taken by the Eastern and Church Hope Railway Line. It is along this feature that the claim is made for a Footpath. See Appendix 3.

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- 4.9 The 2002 aerial photograph shows a well-worn route running the length of the claimed route along the disused railway cutting and parallel to the higher level ground Footpath 25. See Appendix 3.
- 4.10 Officer Comment: The 1972 aerial photograph does not show the tracks for the Easton and Church Hope Railway Line as these began to be removed in 1965 following the formal closure of the Easton and Church Hope Railway line. The tracks for the Easton and Church Hope Railway line were fully removed by 1967. The removal of the tracks left an open route through the cutting which had been made to accommodate the Easton and Church Hope Railway line. The cutting which once accommodated the railway line can be seen in the 1972 aerial photograph.
- 4.11 Officer Comment: The aerial photographs taken directly overhead do not depict the difference in ground levels for the route of the footpath being claimed. The start of the claimed route is on upper ground level the same as the surrounding residential properties on Park Road before the route makes a steep descent at Point A into the cutting that was created to accommodate the Easton and Church Hope Railway line. The claimed route continues east along lower ground, approximately 4 metres below surrounding ground level, on the base of what had been the railway track bed. The claimed route then makes a gradual ascent out of the railway cutting to return to the upper ground level at the junction with Footpath 24.
- 4.12 Officer Comment: The 2002 aerial photograph shows a well-trodden continuous route from the northern end at Park Road descending to lower ground running the length of the railway cutting and rising to meet Footpath 24 at the southern end.

### **Summary of documentary evidence**

- 4.13 The documentary evidence shows the Easton and Church Hope Railway, a passenger and freight line, through the area of Easton. More recent documentary evidence shows the remaining section of the bed of the railway which is no longer in existence following the total closure of the Easton and Church Hope Railway Line in 1965 and the subsequent removal of the rail tracks by 1967. The area surrounding the claimed route known as the railway cutting has been substantially developed in recent decades. The railway cutting, along which the claimed route runs, remains a clear feature on the ground.
- 4.12 Officer Comment: Early documentary evidence provides good support of the existence of a railway line until 1967. The more recent

documentary evidence provides some support for the existence of the application route but does not add weight to the existence or otherwise of public rights.

## **5 User evidence Appendix 4 (copies available in the case file RW/T526)**

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.

- 5.1 52 user evidence forms were submitted with the Definitive Map Modification Order application made in September 2013. A full public consultation was carried out between May and June 2023. No additional user evidence forms were submitted during the public consultation.
- 5.2 Of the 52 user evidence forms submitted with the 2013 application, 13 forms could not be included for data analysis.
- 5.3 Officer Comment: 13 user evidence forms could not be used for the following reasons: one person requested their user evidence form be withdrawn as they no longer wished to be part of the Definitive Map Modification Order process. A second user evidence form was discounted as the claim for use of the route was made when the Easton and Church Hope Railway Line was an operational freight and passenger service. Two further user evidence forms were not included as they did not record how often the claimants used the path and one of these forms had not been signed or dated. Another two user evidence forms were not included in the data analysis as their use was entirely outside the relevant 20 year periods (see below). A further form could not be included as it had not been signed and dated and six additional forms could not be included as the individuals all stated that they had enjoyed a private right along the claimed route.
- 5.4 Officer Comment: It is believed the six users who claimed a private right along the route may have misunderstood the meaning of this question on the user evidence form. None of these six individuals were available when contacted to verify their understanding or intent when answering the question. As a result, all six answers to this question must be accepted as given and as such these forms are not included in the data analysis.

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- 5.5 There are two possible events which could be considered to have brought into question the right of the public to use the route, the first in 1999 and again in 2013.
- 5.6 The first event when public use of the claimed route could be considered to have been brought into question arose in 1999, when the owners of the land at the time, Hanson Aggregates, made a planning application for a screening bund. The bund was to reduce the impact of quarrying activities in the area known as Bottom Coombe Quarry. The planning application site encompassed part of the railway cutting. The planning application referred to an informal pedestrian route and a proposed permissive route. These two different categories of route joined to make one continuous route along the length of the railway cutting and follows a similar line to the claimed route.
- 5.7 The advertising of the planning notices for this application was undertaken in November 1999 and notices were placed in Portland's Tophill Library, Weymouth and Portland Borough Council Offices and at Dorset County Council's County Hall. It is not known where the Planning Notices were placed on the application site nor the specific dates the notices were put on the application site. The publicising of notices at the library, and council offices with the associated plans that possibly showed a footpath with informal or potential permissive access is felt to have been sufficient evidence to bring into question the existence of the claimed route. This results in a first relevant 20 year period running from November 1979 to November 1999.
- 5.8 The second period of the claimed route being brought into question arose in August 2013 following the tipping of quarry burden into the area known as the railway cutting which blocked access to the claimed route. A subsequent Definitive Map Modification Order application was made in September 2013. The application is based on user evidence and the blocking of the route results in a second relevant 20 year period from August 1993 to August 2013.
- 5.9 Of the 52 user evidence forms submitted with the application, 39 were valid for analysis for both relevant periods between 1979 to 1999 and the later period of 1993 to 2013. There is an overlap of these two periods of six years between 1993 and 1999.
- 5.10 User evidence spans 48 years, from 1965 to 2013. There are 14 years of user evidence preceding the start of the first relevant 20 year period which arose in 1979.

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- 5.11 Charts showing the number of users each year, and the annual frequency of use, form Appendix 4 and detailed witness evidence forms are available in the case file T526.
- 5.12 A further chart showing the mixed modes of use along the claimed route is included in Appendix 4.
- 5.13 Not all 39 users claimed use of the route over the same periods. Based on user evidence, the minimum number of users between 1979 and 1999 was 7 which occurred in 1979 and the maximum number of users in the same period was 26, occurring in 1999. During the second relevant 20 year period, a minimum number of 18 users claim use of the route in 1993 with a maximum 39 users being recorded in 2012. See Appendix 4.
- 5.14 Of the 39 users' evidence included in the analysis, all users made use of the claimed route on foot. 25 of these users, made use of the route between one and seven times per week.
- 5.15 During the relevant period 1979 to 1999, the lowest recorded number of uses along the claimed route was 644 in 1979 and the highest number of uses was 3,731 in 1999. During the second relevant period 1993 to 2013, the claimed route was used a minimum of 1,995 which occurred in 1993 and the highest number of uses in the same period was 5,558 which occurred in 2012. See Appendix 4.
- 5.16 Officer Comment: The minimum and maximum number of uses on foot of the claimed route by the minimum and maximum number of users in both relevant periods shows strong evidence to support the claim for a footpath along the claimed route.
- 5.17 Of the 39 user evidence forms analysed, two people made use of the route on horseback during the relevant period 1979 to 1999 and three people made use of the route on horseback during the relevant period 1993 to 2013. The level of use on horseback varied with two users claiming use between one and three times per week. One user claimed to make use of the route daily either on foot or horse back. It was not possible to obtain verification from the user as to their actual level of use for each method therefore their use was split evenly between foot and horseback.



- 5.18 Of the 39 user evidence forms analysed, two people made use of the route on bicycle during the relevant period 1979 to 1999. During the relevant period 1993 to 2013, a further two people made use of the route on bicycle. The level of use on bicycle varied between approximately once every three months and up to once a week. One user claimed to make use of the route almost every day on either foot or by bicycle. It was not possible to obtain verification from the user as to the actual split of use for each method therefore their use was split evenly between foot and bicycle.
- 5.19 Officer Comment: The number of users of the route on horseback and bicycle and the frequency of their use on either horse back or bicycle does not show sufficient evidence to support the status of a bridleway for the claimed route.
- 5.20 Of the 39 user evidence forms analysed, none record their use of the route as being with permission.
- 5.21 Of the 39 user evidence forms analysed, none make reference to a planning application being placed on site which brought to their attention an informal path or a proposed permissive path.
- 5.22 Of the 39 user evidence forms analysed, none record seeing notices or obstructions at any time on the claimed route which prevented or advised against the individuals use of the claimed route up until the event which brought the claimed route into question in 2013.
- 5.23 Of the 39 user evidence forms analysed, none record the user being stopped or turned back from using the claimed route.

#### **Summary of user evidence**

- 5.24 The data of 39 users of the claimed route was analysed for the number of users and frequency of use of the claimed route during the relevant periods of 1979 to 1999 and 1993 to 2013. All 39 users made use of the route on foot during the relevant periods with a minimum of 644 uses in 1979 in the first relevant period and 1,995 minimum uses in the second relevant period which occurred in 1993. A maximum number of uses of 3,731 occurred in the first relevant period in 1999 and a maximum number of uses in the second period of 5,558 occurred in 2012. Of the 39 users, three made use of the route on foot or horse and four made use of the route on foot or bicycle. See Appendix 4.
- 5.25 The users evidence gives substantial weight to support a claim for a footpath.

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5.26 There is insufficient evidence to support a status of bridleway for the claimed route.

**6 Landowner correspondence Appendix 5 (copies available in the case file RW/T526)**

- 6.1 The land over which the claimed route is carried, was under the ownership of Hanson Aggregates in 1999 when the planning application for the screening bund was made and use of the claimed route was potentially brought into question. At the time of the second period of the claimed route being brought into question, in 2013, the land had changed ownership and Portland Stone Firms Ltd were the registered owners. The land is currently owned by Betterment Homes (Weymouth) Ltd.
- 6.2 In October 2013 a statement was provided, via the landowner, from two employees of Portland Stone Firms Ltd. The statements record two acts of fencing being erected in 2005. Both statements record that an initial post and rail fence remained in place for six weeks. A second barbed wire fence was put up in its place which remained in situ for two weeks. The statements claim the purpose of the fencing was to deter use of horses along the claimed route. See Appendix 5.
- 6.3 Officer Comment: It is not clear if there was a gap of time between the post and rail fence being put up and the replacement barbed wire fencing being installed.
- 6.4 Officer Comment: The statements were typed and entered on a single sheet of paper with an electronic date of 22.10.2013. Neither statement is signed by the people making the statements.
- 6.5 Officer Comment: 35 users claim use of the route in 2005, making use of the route in excess of 5,000 times over the year. See Appendix 4. 23 of these users made use of the route between one and seven times per week in this year. No users state any fencing being in situ across the claimed route nor that their way was blocked by fencing during this period.
- 6.6 In July 2021, the land owned by Portland Stone Firms Ltd across which the claimed route runs was sold to Betterment Properties (Weymouth) Ltd.

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- 6.7 Prior to the sale of the land across which the claimed route runs, Portland Stone Firms Ltd had agreed to enter into a dedication agreement with Dorset Council record a Public Right of Way. The route to be dedicated was similar to that of the claimed route.
- 6.8 In August 2021, Betterment Properties (Weymouth) Ltd withdrew from the process of the dedication agreement for a footpath citing it as unnecessary due to an existing Public Right of Way running parallel to the claimed route.
- 6.9 Officer Comment: Betterment Properties (Weymouth) Ltd were invited to attend a pre-consultation site visit but did not respond to the invitation.
- 6.10 Officer Comment: No communications were received from Betterment Properties (Weymouth) Ltd during the Public Consultation for a footpath to be added along the railway cutting.

## **7 Consultation responses and other correspondence (copies available in the case file RW/T526)**

- 7.1 The following points were received in response to the Public Consultation:

Name	Comments
Claire Pinder (Senior Archaeologist, Dorset Council)	<p>There are a number of recorded archaeological finds and features on and in the immediate vicinity of the routes affected by this proposal, including the railway itself (Historic Environment Record reference MWX69).</p> <p>In view of the nature of this proposal, I do not feel that historic environment considerations constitute a constraint (in the context of this proposal).</p>
Kate Gocher, Footpath Secretary, Ramblers, South Dorset Group	<p>I have no documentary evidence to either support or refute the proposal to modify the definitive map and statement of rights of way by adding a footpath along the Railway Cutting, Portland.</p>

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- 7.2 Portland Town Council requested an extension to the Public Consultation to allow them time to consider the proposal at their scheduled meeting.
- 7.3 The request by Portland Town Council for an extension was granted. No further communications were received from Portland Town Council during the consultation period or the extension period.
- 7.4 No contact was received from members of the public as a result of the Public Consultation.

## **8 Analysis of the evidence**

8.1 There is evidence of public use of the claimed route since 1965. 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
- 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**

8.1 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**

- 8.2 The first event bringing into question public rights occurred in 1999 when a planning application to erect a screening bund was registered and subsequently advertised in the local area.
- 8.3 The planning application referred to a proposed permissive path and an informal public path which join to create a continuous route along a similar line to that being claimed. Officers believe that the Planning Application is capable of bringing into question the right of the public to use the route, although this will depend on when and where the statutory sites notices were erected i.e. whether or not they were in the vicinity of the claimed route and whether the public reasonably would have been expected to see them. Available records do not clarify where or when site notices were erected.
- 8.4 A second event bringing into question public rights occurred following the tipping of quarry burden and large boulders near the junction with Footpath 24 at the end of the route being claimed (point B) which blocked access to the route.
- 8.5 The events described in paragraph 8.3 and paragraph 8.4 satisfy the requirements of acts that brought the public's use of the route into question, giving two potential relevant 20 year periods of 1979 to 1999 and 1993 to 2013.

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

- 8.6 Based on user evidence, it would appear that there has been no interruption to public use during the two qualifying 20 year periods from 1979 to 1999 and from 1993 to 2013.
- 8.7 If the Planning Application for the screening bund is found insufficient to qualify as an event which brings into question the rights of the public to use the route, then it will also be insufficient to demonstrate a lack of intention to dedicate on behalf of the landowner within the later 20 year period.

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

- 8.8 There is no evidence to suggest that the route prior to 2013 has been used by force. Use of the route has been open.

### **Use by the public**

- 8.9 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 1979 to 2013, the number of users and frequency of use was sufficient to be considered use by the public at large that has come to the attention of the landowner. It is understood the landowner at the time knew of use of the route by the public by references made on planning documents and wildlife management reports.

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

- 8.10 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 two full periods of twenty years between 1979 to 1999 and from 1993 and 2013. There is inconclusive evidence of sufficient action on behalf of the landowner which would indicate a lack of intention to dedicate.

### **Analysis of the evidence under common law**

- 8.11 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**

- 8.12 There is sufficient evidence from which a deemed dedication at common law can be inferred. Although there is mention made by employees of the previous landowner that they were instructed to erect fencing across the route being claimed, there is no evidence that any barriers or blockages were experienced by any users of the claimed route prior to the route being brought into question. There is a conflict of evidence between employees of the landowner purporting to erect fencing during the claimed periods of use and users of the route purporting that no barriers were experienced during their periods of use of the claimed route. This conflict means no more weight can be given to one side than the other.

### **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.
- 15.2 The documentary evidence offers a little support for the application.
- 15.3 The user evidence is strong and there is no interruption to either period of twenty years leading up to the dates when public use of the route was brought into question.
- 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 to B as shown on Drawing T526/23/1 be accepted.
- 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
- 2 Law
- 3 Documentary evidence - extracts from key documents in order of importance
  - Finance Act 1910
  - Portland Parish Survey Map (circa 1950)
  - First Definitive Map (1967)



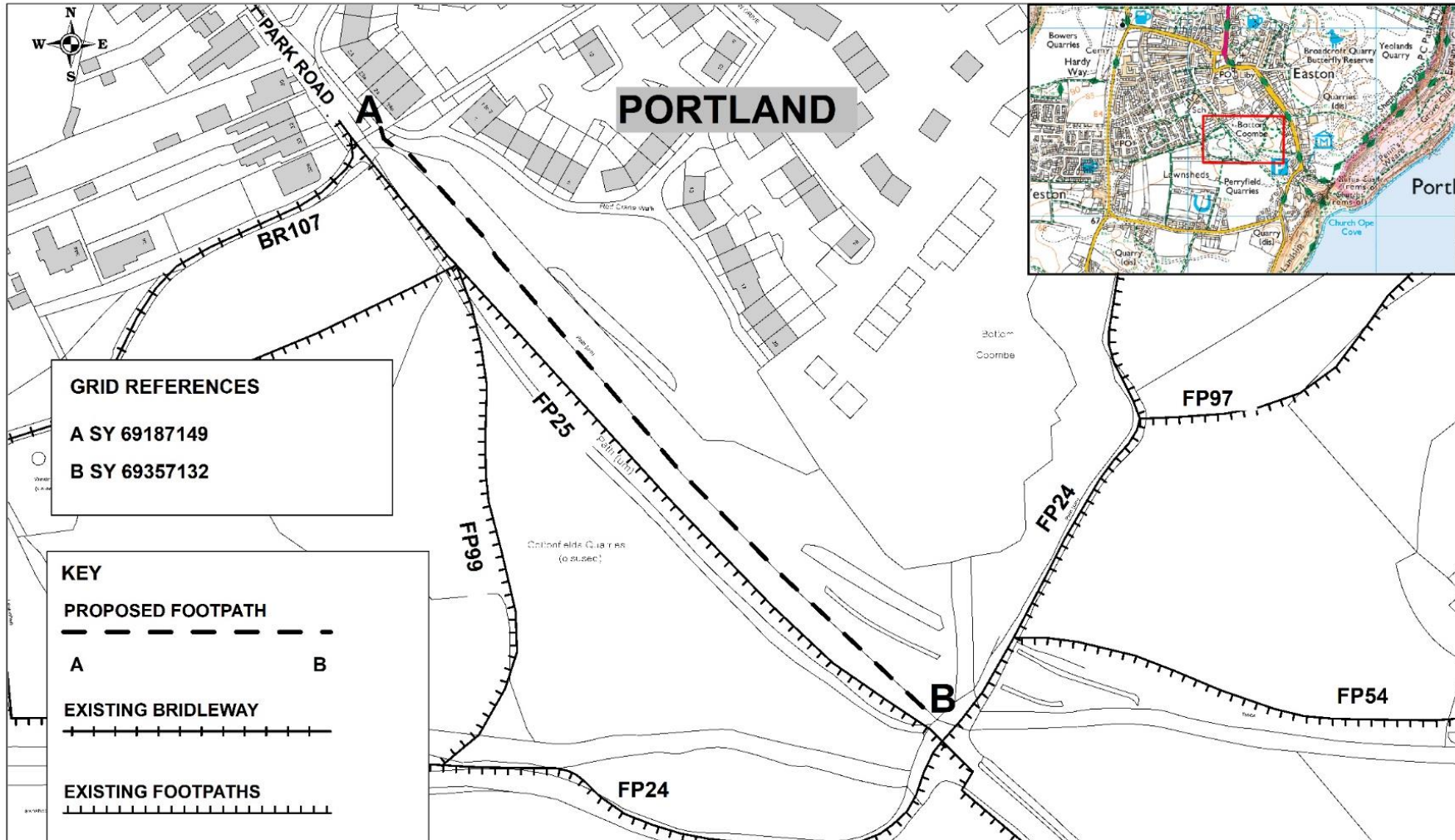
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- Definitive Map (Sealed 1989)
  - Aerial Photographs 1947, 1972 and 2002
- 4 User evidence charts to show periods, level and mix of use
  - 5 Landowner evidence

## **17 Background Papers**

The file of the Executive Director, Place (ref. RW/T526).

**Date: December 2023**



<p><b>Wildlife and Countryside Act 1981</b></p> <p>APPLICATION TO ADD A FOOTPATH ALONG THE RAILWAY CUTTING ON PORTLAND</p> <p>THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS</p>	<p>Ref: T526/23/1 Date: 17/05/2023 Scale: 1:1,500 Drawn by: SP Cent X: 369,293 Cent Y: 71,408</p>	<p> Dorset Council</p> <p><small>© Crown copyright and database rights 2023 OS 0100050983, Aerial Photography © UKPerspectives 2002 &amp; © Getmapping 2005, 2009 &amp; 2014. © Getmapping Plc and Bluesky International Limited (2017 onwards)</small></p>
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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 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.

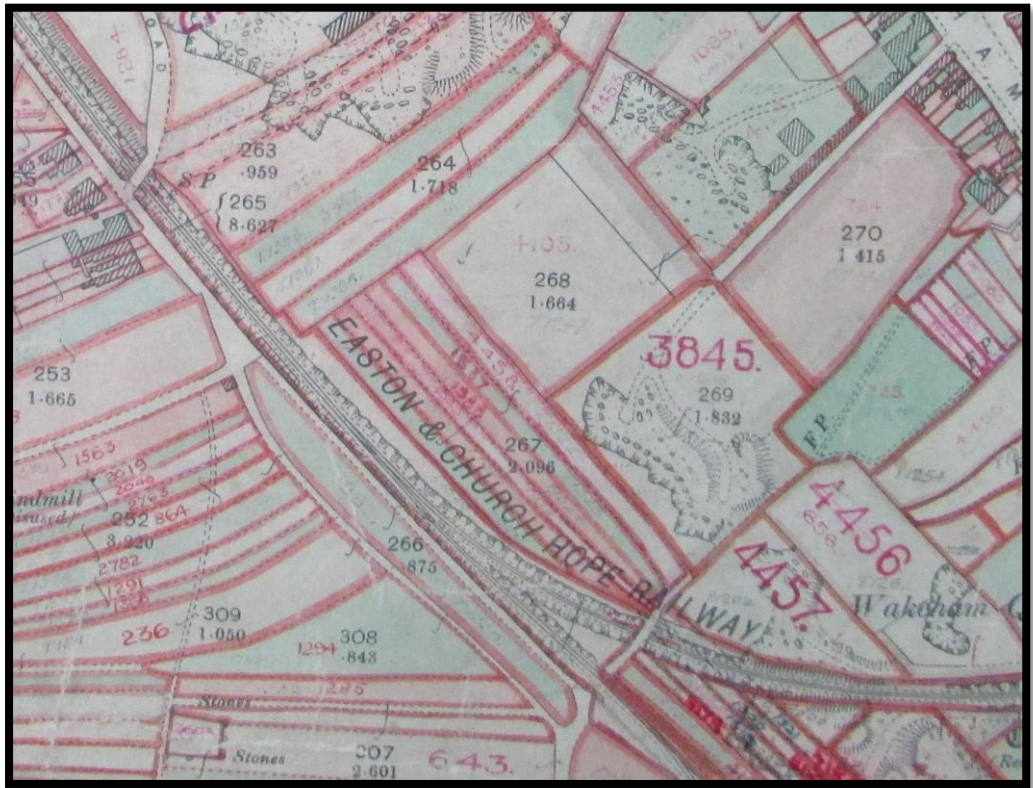
### 3 Human Rights Act 1998

- 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).



DOCUMENTARY EVIDENCE

Finance Act 1910



Parish Survey Map circa 1950's



23 Application to add a footpath from Park Road along the Railway Cutting in Easton in the Parish of Portland

**1967 First Definitive Map**



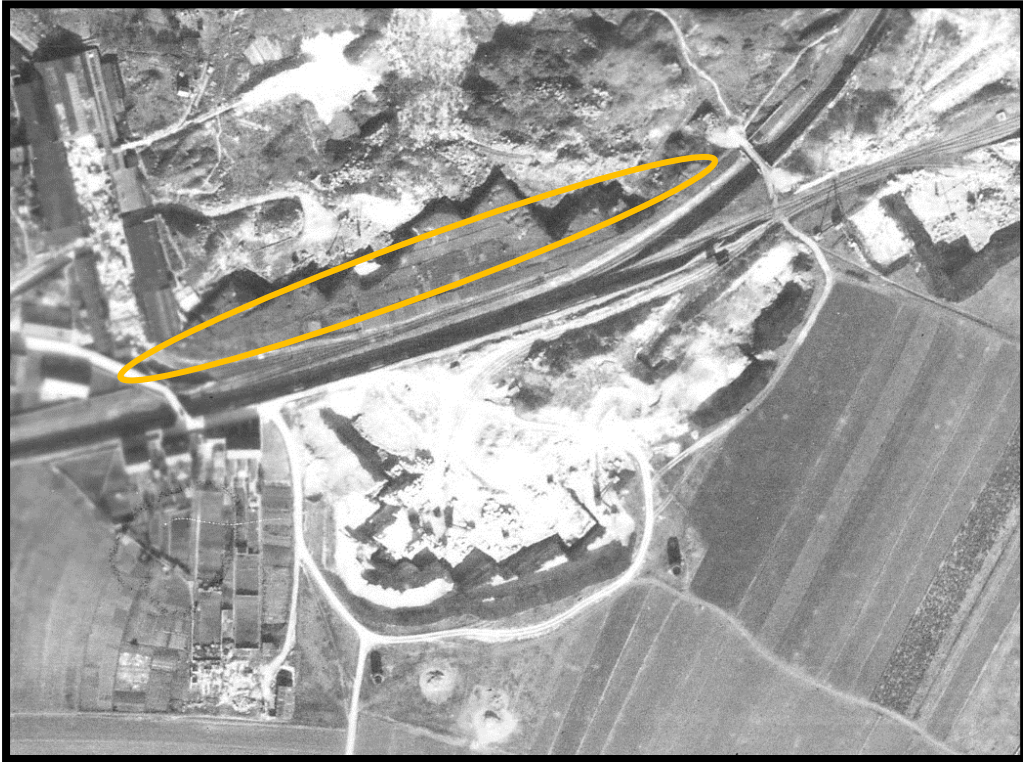
**Definitive Map (sealed 1989)**





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**Aerial Photograph 1947**



**Aerial Photograph 1972**



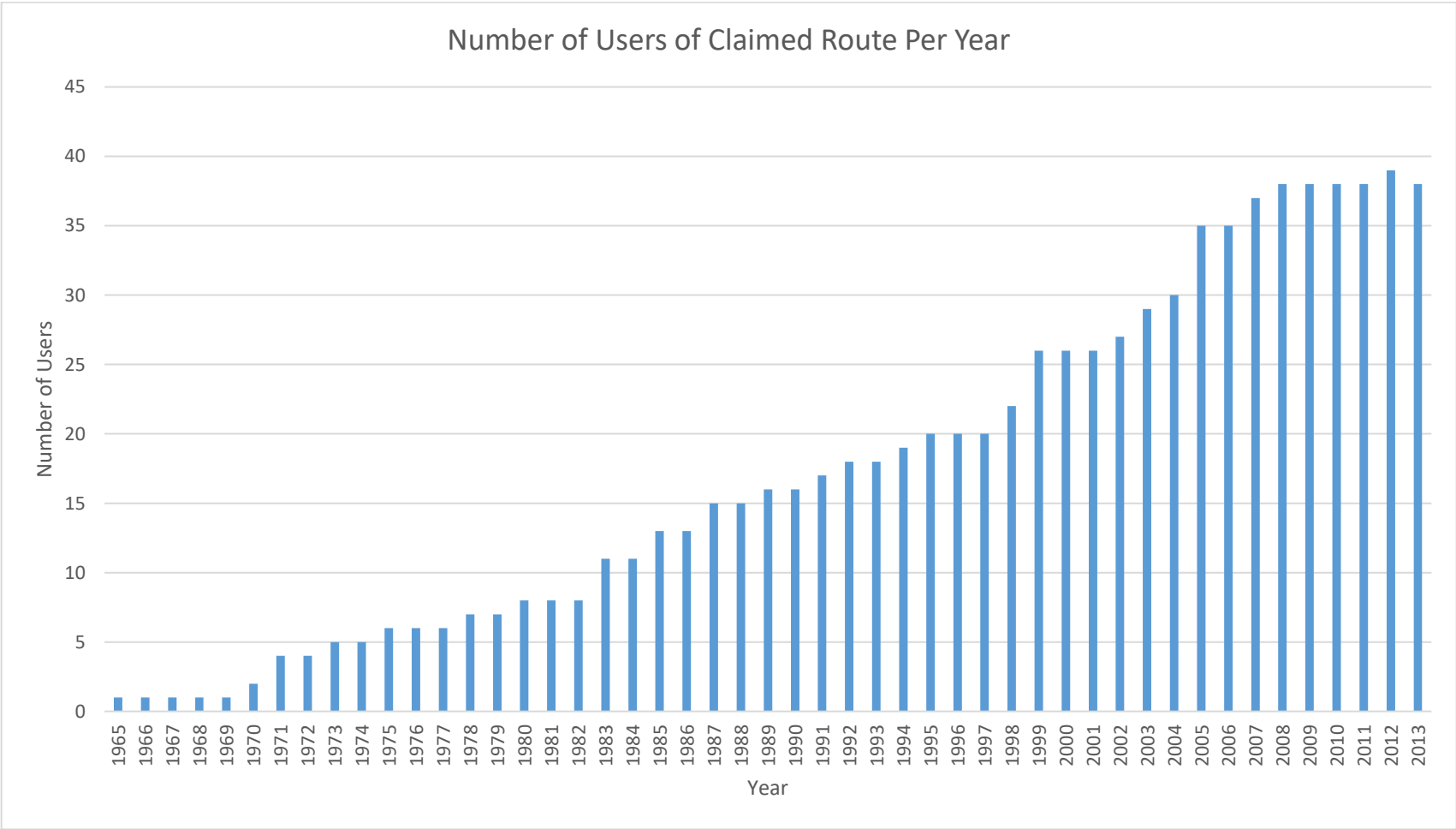


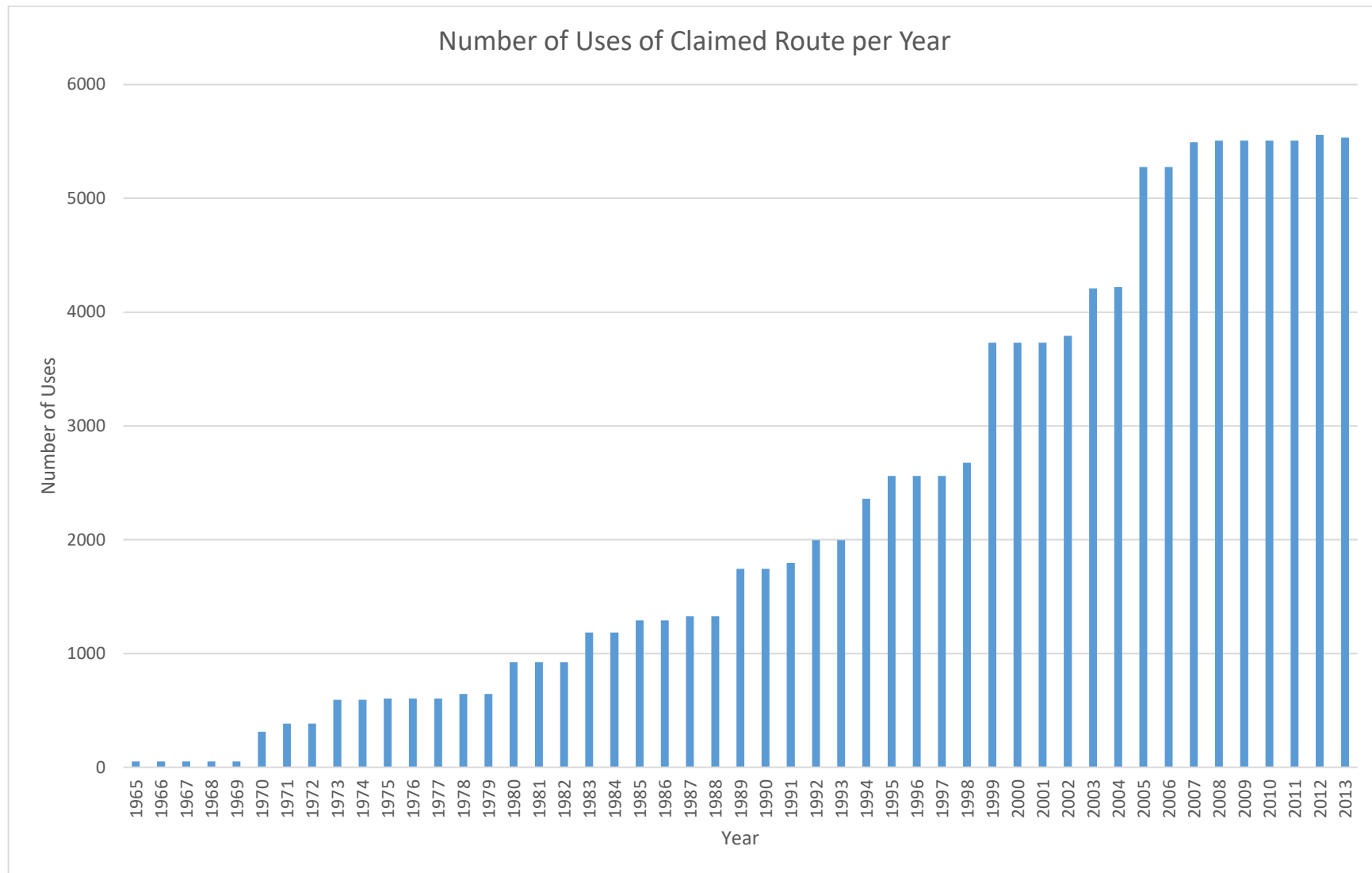
25 Application to add a footpath from Park Road along the Railway Cutting in Easton in the Parish of Portland

**Aerial Photograph 2002**



USER EVIDENCE ANALYSIS







## LANDOWNER EVIDENCE

Basis of statements for [REDACTED] 1<sup>st</sup> Draft 22.10.13 re Dedication of Footpath  
end of Park Road, Easton, Portland

[REDACTED]

Address: [REDACTED]

Date of birth: [REDACTED]

I have worked for Portland Stone Firms Ltd (The Company) and previously for Hanson/ARC/Kingston Minerals since 1983. I am employed as a fitter by the Company. I was asked by the Director of the Company, [REDACTED] in the summer of 2005 to erect a fence across the top of the permissive footpath as I believe the Company had complaints that horses were going down the permissive path and churning up the surface. I erected a post and rail fence in the approx. position shown coloured red on the attached plan. The fence lasted about 6 weeks before it was pulled down I then erected a barbed wire fence across the footpath which lasted about 2 weeks. The problem of the horses went away after that and I was not asked by the Company to do any more fences. Also, when I was on site recently I met with [REDACTED] who was with a neighbour [REDACTED] confirmed he remembered me putting up the fence in 2005, as he remembered it being done because it was done early on a Sunday morning, [REDACTED] seemed to be agitated by this confirmation.

**[REDACTED] Director Portland Stone Firms Ltd**

Portland Stone Firms Ltd bought the business from Hanson in September 2004 and soon after I had received complaints that horses were using the permissive path that was approved as part of planning permission 4/99/543 for the Landscaped Screening Bund, Bottomcombe masonry Works, Portland. I decided to block off the path on a temporary basis in order to deter the horse riders and instructed [REDACTED] to erect a post and rail fence in the position as shown edged red on the attached plan. The fence was in position for about 6 weeks and then was replaced by a barbed wire fence which lasted about 2 weeks before it was removed by persons unknown. I felt that we had done enough to deter the horse riders and took no further action.

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**Recommendations accepted:**

**Signed:**

A solid black rectangular box used to redact the signature of Vanessa Penny.

Date:.....13 December 2023...

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning