

Agenda item:

Regulatory Committee

5

Dorset County Council



Date of Meeting	16 March 2017
<u>Local Member(s):</u> Cllr Ros Kayes - Member for Bridport	
<u>Lead Officer(s)</u> Anne Brown, Definitive Map Technical Officer (DMMO)	
Subject of Report	Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.
Applicant	Allington Parish Council (Amy Stephenson, Parish Clerk)
Executive Summary	In response to an application to add a footpath/bridleway this report considers the evidence relating to the status of the claimed route. In addition, during the investigation evidence was discovered relating to the public status of the whole of Donkey Lane and the report recommends adding Donkey Lane to the definitive map and statement.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: Documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives.

	<p>A full consultation exercise was carried out in June/July 2016, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillor for Bridport was also consulted. In addition notices explaining the application were erected on site.</p> <p>16 user evidence forms from users of the claimed route were submitted during the investigation or with the application. Any relevant evidence provided has been discussed in this report.</p> <p>Budget:</p> <p>Any financial implications arising from this application are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment:</p> <p>As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications:</p> <p>None</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) An order be made to modify the definitive map and statement of rights of way to record Donkey Lane, Bridport as a restricted byway from Dottery Road (B3162) to the field boundary behind 79/81 Court Orchard Crescent, as shown C – H on Drawing 16/17/4.</p> <p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>

<p>Reasons for Recommendations</p>	<p>(a) The available evidence shows, on balance, that public vehicular rights subsist or are reasonably alleged to subsist along the whole of Donkey Lane. As the application was submitted after 20 January 2005, and there is no evidence that exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made to add a restricted byway. (Restricted byway status includes public rights to use the application route on foot, on horseback or leading a horse, and therefore incorporates footpath and bridleway rights).</p> <p>(b) The evidence shows, on balance, that Donkey Lane should be recorded as a Restricted Byway as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Maintaining the Definitive Map and Statement of public rights of way is a duty of the County Council and supports the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Work in partnership to ensure the good management of our natural and historic environment • Work with partners and communities to maintain cycle paths, rights of way and disabled access • Encourage tourism to our unique county • Support community transport schemes <p>Promoting Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Actively promote physical activity and sport • Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that is conducive to cycling and walking • Improve the provision of, and access to, green, open spaces close to where people live
<p>Appendices</p>	<p>1 - Drawing 16/06 – application consultation plan</p> <p>2 - Drawing 16/17/4 – plan showing proposed Restricted Byway</p> <p>3 - Law</p>
	<p>4 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ Finance Act Plans 1910 ▪ Allington Tithe Plan 1840 ▪ Turnpike Plan 1827

	<ul style="list-style-type: none"> ▪ Bridport Borough Housing Plan 1954 ▪ Ordnance Survey Drawing 1805 ▪ Allington Parish Survey (undated) ▪ Bridport Borough Survey 1951 ▪ Draft map 1953 ▪ Provisional map 1964 ▪ First definitive map 1966 ▪ Current definitive map 1989 <p>5 - User evidence</p> <ul style="list-style-type: none"> • Tables summarising user evidence and rejected user evidence • Charts to show periods and level of use
	<p>The file of the Director for Environment and the Economy (ref. RW/T532).</p> <p>Most of the original historic maps and documents referred to are in the custody of the Dorset History Centre, except for the Finance Act maps, which are at the National Archives, Kew.</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T532, which will be available to view at County Hall during office hours.</p>
<p>Report Originator and Contact</p>	<p>Name: Anne Brown Definitive Map Technical Officer (DMMO) Regulation Team, Dorset Highways Tel: (01305) 221565 Email: Anne.K.Brown@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add a footpath / bridleway along part of Donkey Lane as shown A – B on Drawing 16/06 (Appendix 1) was made by Allington Parish Council on 21 March 2016. A full consultation in respect of the application was conducted during June 2016.
- 1.2 Since the consultation plan was prepared the routes of the footpaths joining Donkey Lane from the north have been altered slightly as their routes were found to be incorrectly digitised. The amended footpaths and the points referred to in the following descriptions of the claimed route and Donkey Lane are shown on Drawing 16/17/4 (Appendix 2).
- 1.3 The claimed route commences at point A, where Footpath 3, Allington joins Donkey Lane, Bridport at the parish boundary. Footpath 3 is both signed and waymarked. From here the claimed route proceeds in a generally easterly direction along Donkey Lane for approximately 29 metres to point B, where it connects to the public road known as Court Orchard Road.
- 1.4 From point A the claimed route leads east-south-east to point G, where it is obstructed by a low stone wall, fence and an established hedge. Save for a small area of grass at point A, the surface comprises mainly of concrete, the width, as defined by the adjacent hedges/fences/banks, being approximately 10 metres.
- 1.5 From point G to point B the claimed route continues in a generally easterly direction through a section of Donkey Lane that has been enclosed with the adjacent property, Meadowside. It appears users of Donkey Lane have been forced to deviate around this wall/fence/hedge by means of a narrow route to point B that can be seen on the base mapping in Drawing 16/17/4.
- 1.6 The wall/fence/hedge extends for approximately 23 metres, the eastern extent of the wall/fence/hedge being defined by the fence and hedge running north to south across Donkey Lane north of the junction with Court Orchard Road. At Point B there is a 1.2 metre gap between a wall to the west and a bank to the east. There are no signs or way-markers present.

Donkey Lane (refer to Drawing 16/17/4 at Appendix 2)

- 1.7 **Donkey Lane**, Bridport extends from point C on Drawing 16/17/4 (its junction with Dottery Road, B3162), east south east along the boundary between Bridport and Allington, bounded by houses to the south and fields to the north. Footpaths 4 and 3, Allington join Donkey Lane from the northern side at points F and A respectively and Court Orchard Road is accessed via point B. The route continues east south east, extending to the parish boundary with Allington at point H, a total distance of approximately 162 metres. Its width, ignoring the present obstructions, varies from between approximately 2.6 metres (next to No. 224 North Allington) to approximately 10.5 metres at its widest point, east of the junction with Court Orchard Road.

Page 6 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- 1.8 At point C the width of the lane, including the splay, is approximately 6.5 metres, being defined by a high bank to its northern side. The surface is tarmac with the exception of a strip on the northern edge, which is compacted hard-core, where it appears the bank may have been cut back to widen the access or visibility. A sign on the bank reads "**Meadowside Donkey Lane**".
- 1.9 From point C the lane continues in a generally easterly direction to a 3.8 metre wide metal gate, which was open, with an adjacent 1.1 metre wide pedestrian gate located at point D. The large metal gate displays signs saying "**Meadowside Donkey Lane**", "**Please do not allow your dog to foul this area**" and "**Notice, Parking Prohibited**". The surface is tarmac and widens to approximately 5.5 metres at E, being defined by a bank to the north and the garden wall of 224 North Allington to the south.
- 1.10 At point E, the surface changes to concrete. There is an electricity pole located within the southern boundary of the lane to the western side of the outbuildings.
- 1.11 From point E, the lane continues east south east through its junction with Footpath 4, Allington at point F to its junction with Footpath 3, Allington at point A. The width is approximately 8.8 metres at point F, widening to a maximum width of approximately 10 metres at point A, outside the entrance gate to 'Meadowside'. This width appears to have been attained by cutting back the bank on the north, beyond the parish boundary and original field boundary (as drawn on older maps).
- 1.12 From point A the route of Donkey Lane is then partially obstructed through encroachment from the neighbouring property 'Meadowside', see paragraphs 1.4 – 1.6 above.
- 1.13 The eastern end of the lane is overgrown. Its extent is defined to the north by a fenced field boundary (also parish boundary) and to the south by the boundaries of the gardens of properties in Court Orchard Road and Court Orchard Crescent.
- 1.14 No part of Donkey Lane is registered with the Land Registry, and no owners have been identified. However, Mr Raymond of 'Meadowside' has applied for possessory title over part of the lane.

2 Law

- 2.1 A summary of the law is contained in Appendix 3.

3 Documentary evidence (Appendix 4) (copies available in the case file RW/T532)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 4. Extracts from the key documents are also attached.

Page 7 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

4 User evidence (Appendix 5) (copies available in the case file RW/T532)

4.1 A table of user evidence summarised from witness evidence forms together with charts showing their periods and level of use form Appendix 5. An analysis of the user evidence is contained at paragraph 9 of this report.

5 Additional evidence in support of the application (copies available in the case file RW/T532)

5.1 One written submission and three verbal submissions were received in support of the application.

Name	Comments
Richard Meatyard, Ramblers (Emails 8/03/2016 and 27/03/2016)	Points out that Footpaths 3 and 4, Allington terminate at the Bridport boundary (edge of Donkey Lane) and states that there is a well-established path on the ground linking them to Court Orchard. Also includes copies of some of the documentary evidence referred to in Paragraph 3.
Simon and Sam Mazzei-Scaglione, residents 224 North Allington (discussion 20/06/2016)	They have been using Donkey Lane for 26 years to access an outbuilding at the bottom of their garden. They are not aware of having private rights and assumed it was public access.
IR & D P G, owners of fields north of Donkey Lane (telephone call 15/07/2016)	Cannot offer any evidence as to the status of Donkey Lane, unaware of any private rights over it, it is the only access to their land. Inherited the land and have only visited three times. Tenant farmer deals with day to day affairs.
Mr A H, tenant of land north of Donkey Lane, (telephone calls 15/07/2016 & 5/12/2016)	Can provide no evidence as to the status of Donkey Lane but uses it to access his fields, is not aware of any private rights over Donkey Lane.

6 Evidence opposing the application (copies available in the case file RW/T532)

6.1 One submission was received before the consultation started and a further three as a result of the consultation.

Name	Comments
Kitson & Trotman on behalf of Mr Raymond. (Letter and attachments 22/06/2016)	Documents relating to property known as 'Meadowside': Finance Act, Indenture, Conveyance Deeds, personal declaration of John J Roper. Discussed in report at paragraphs 11.26 – 11.28.

Name	Comments
Kitson & Trotman on behalf of Mr Raymond (Letter 28/06/2016)	Raises a question of what happened to the right of way, which formerly ran along the eastern boundary of 'Meadowside' from 1870 – 1940s. There is also a claim that the conveyance for the property (1920) said that Donkey Lane was " <i>a private lane</i> ".
Mr Raymond of 'Meadowside' 14/07/2016	Mr Raymond submitted a written statement, including a separate statement from Mrs J Crabb, which is analysed within the body of the report at paragraphs 11.3-11.20.
Ms Turner of 'Meadowside' 14/07/2016	Ms Turner submitted a written statement, which is analysed within the body of the report at paragraphs 11.21-11.25.

7 Other submissions received (copies available in the case file RW/T532)

7.1 A further 14 submissions were received, nine of which were in response to the consultation.

Name	Comments
Bernard Paull, Bridport Town Surveyor (Letter before application 13/11/2001)	Requests that Donkey Lane be recorded on the definitive map, cites evidence of use by several councillors over many years. (Application forms were sent but no application made). No evidence for consideration.
Kitson & Trotman, on behalf of Mr Raymond (27/04/2016)	Letter in respect of their client's application for title over Donkey Lane. No evidence for consideration.
Kitson & Trotman, on behalf of Mr Raymond (23/05/2016)	Copy of letter sent to Land Registry in respect of objections to his application for possessory title and details of proposed modification of his application. No evidence for consideration.
Kitson & Trotman, on behalf of Mr Raymond (24/05/2016)	Copy of letter and attachments sent to Allington Parish Council in respect of the application. No evidence for consideration.
Kitson & Trotman, on behalf of Mr Raymond (Letter and attachments 24/05/2016)	Mr Raymond objects to the application. Refers to a highway search that stated that Donkey Lane is not a maintainable highway. Suggests DCC may be in breach of Human Rights Act 1998 if the definitive map modification order (DMMO) were granted.
Amy Stephenson, Clerk to Allington Parish Council (8/06/2016)	Copy of letter to Mr Raymond's Solicitor clarifying the position of the parish boundary, cites user evidence of the route and photographic evidence prior to obstruction (not provided). No evidence for consideration.
Claire Pinder, DCC Archaeologist (15/06/2016)	No objection.

Name	Comments
Porter Dobson, on behalf of landowners to north of application route (Letter 20/06/2016)	Messrs G approve the proposed route A – B, oppose Mr Raymond's application for possessory title of the land. No evidence for consideration.
Carol Shoopman, British Horse Society (Email 24/06/2016)	States that they are unable to offer evidence for or against the application. No objection.
SGN Plant Location Team (29/06/2016)	No SGN pipes in the area of the application route, or Donkey Lane. No objection.
Bob Gillis, Clerk, Bridport Town Council (Email 4/07/2016)	Supports the application, quoting previous reports to them that the path had been used for a large number of years, but offers no evidence for consideration
Letter from Kitson and Trotman (14/07/2016)	Enclosed statements and exhibits from Mr Raymond and Ms Turner (see evidence opposing application).
Western Power Wayleaves (Email 15/07/2016)	Have no evidence of ownership of Donkey Lane, cannot pass on details of any wayleave affecting their apparatus. No evidence for consideration.
Mr J R, Symonds & Sampson (telephone call 21/7/2016)	Involved in previous sale of fields to the north of Donkey Lane. Confirms that Donkey Lane is the only access to these fields and believes it has full and open rights. Not aware of any private rights over Donkey Lane.

8 Analysis of documentary evidence

Inclosure Award

8.1 There is no Inclosure Award for the parish of Allington.

Finance Act 1910

Finance Act Plans 1910

8.2 The base maps used in compiling the Finance Act were Ordnance Survey Second Edition 25 inch: 1 mile sheets, numbers Dorset 38.5 and 38.6 (1902).

8.3 Donkey Lane, as shown between points C and H on Drawing 16/17/4, is shown on the Finance Act Plans to have been excluded from valuation, this being defined by the colour wash to either side, thereby excluding it from adjacent hereditaments. The resulting parcel lacks any hereditament number. The route is not named and extends across Finance Act sheets **IR125/2/379** and **380**. The application route A – B falls within the boundaries of Donkey Lane, between points C and H.

- The fact that the route, as shown from C to H (which includes the application route as shown from A to B) was excluded from valuation provides a strong indication that it was considered to be a public highway.

Page 10 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- Vehicular roads were typically depicted in this manner, suggesting that Donkey Lane may have been regarded as a public carriageway at that time.

Finance Act Field Books

- 8.4 Donkey Lane, including the application route, is bounded to the north by **Hereditament number 29** and to the south by **Hereditaments** numbered **2148, 8** and **2211**.
- 8.5 The Field Book entries for **Hereditaments 8** and **2148** do not record that any deductions were allowed in respect of 'public rights of way or user'.
- 8.6 The Field Book entry for **Hereditament 29** (Washingpool Farm) records that a deduction of £50 was allowed for 'public rights of way or user'. Under the heading "Charges, Easements and Restrictions affecting market value of Fee Simple", two 'Footpaths' are identified, along with a deduction of £25 in respect of each path. In determining the Gross Value of the site footpaths are specifically referred to twice including an entry against 'restrictions' totalling £50.
- There are three footpaths marked on the base-map within Hereditament 29, including the currently recorded Footpaths 3 and 4, Allington.
- 8.7 The Field Book entry for **Hereditament 2211** (Allington Meadows, now called 'Court Orchard') records a deduction of £70 for 'public rights of way or user'. In the section determining the Gross Value of the site a 'Footpath' is identified as a restriction with a corresponding deduction of £70.
- Details are not given, but the only path marked on the base map in Hereditament 2211 is a footpath heading south from Donkey Lane (from point A on Drawing 16/17/4) along the western boundary of the hereditament, just to the east of what is now 'Meadowside' (not a recorded right of way).
 - Without any evidence to the contrary it seems reasonable to suggest that the deductions made may be attributed to the footpaths shown on the base map (Ordnance Survey – Dorset 38.6 (1902)).
 - The fact that rights of way were acknowledged as departing from the northern and southern boundaries of Donkey Lane, but not marked within the lane suggests that Donkey Lane was probably considered to be a public highway at that time.

Tithe Maps

8.8 The **Allington Tithe Map of 1840** depicts a route corresponding to that known as Donkey Lane as shown between points C and H on Drawing 16/17/4. The Tithe Map also depicts an outbuilding near H and a continuation of the route extending northwards from H, before ending in a field. The lane is bounded on both sides by solid lines, suggesting that it was fenced or hedged, and is coloured white, in the same manner as Dottery Road and many other roads in the locality, many of which are recorded as highways today. It has no apportionment number and is not described in any of the adjoining apportionments.

- Tithe documents, in isolation, rarely provide conclusive evidence as to the status of the ways shown upon them. However, they can and do provide positive evidence that a particular route physically existed at the time of the apportionment.
- It is of some significance that it was not ascribed an apportionment number, indicating that it was not subject to tithe, which may suggest that it was regarded as a 'public' highway.
- No independent route within Donkey Lane, matching that of the application route as shown from point A to point B, is shown.

8.9 The **Allington Tithe Redemption Map 1952 – 1953** depicts Donkey Lane, which includes the application route, in exactly the same manner as the **Tithe Map of 1840** with the exception that the part of the route extending north is now defined by two parallel broken lines, suggesting that it was no longer fenced or hedged.

- This evidence would support the conclusions reached in respect of the **Tithe Map of 1840**.

Turnpike Roads

8.10 The **Plan and Book of Reference for a Turnpike Road from Allington (Dorset) to Clapton (Somerset) (1827)** sets out the turnpiking of what is now Dottery Road. It shows the western end of Donkey Lane as an open ended spur, leading off the proposed turnpike. It is coloured ochre, the same colour as the turnpike itself and some of the other roads leading to or from it. In common with the other spur roads shown on it, it is not described in the book of reference.

- This document demonstrates that Donkey Lane existed in 1827 but does not provide any evidence as to its status.

Bridport Borough Plans for the Court Orchard Estate

8.11 The **1954 Bridport Borough Housing Plan** for the building of 75a and 75b Court Orchard Road is annotated "Remove Gate" at a point on the southern boundary of Donkey Lane adjacent 'Meadowside' (shown as south of point A on Drawing 16/17/4) and "Form New Bank" just to the north. It is also annotated "Cut hole for Footpath & Gate" further to the west at point B to provide for a footpath and gate, thereby creating access from Donkey Lane to the footway of Court Orchard Road.

- As there was no provision made for the creation of a highway along Donkey Lane this suggests that the Borough considered that highway rights already existed over Donkey Lane.

Other documents

Ordnance Survey maps

Drawings

8.12 The **Ordnance Survey drawings**, which were made in preparation for the publication of the First Edition 1 inch: 1 mile scale map, are drawn at a scale of 2 inches: 1 mile and therefore generally contain more detail than the later 1 inch: 1 mile scale maps.

8.13 The drawing that includes the area of Allington and Bridport parishes was completed in **1805** and clearly depicts Donkey Lane throughout its length as shown between points C to H on Drawing 16/17/4. It is defined by two parallel solid lines, suggesting that it was fenced or hedged throughout its length, and is depicted in exactly the same manner as other public roads in the vicinity. There is an extension to the north of point H and a solid line across the northern end of the route, which may suggest the presence of a gate or barrier.

- This evidence confirms the existence of Donkey Lane in 1805 and, although not indicative of any status, it does suggest that the route was capable of accommodating vehicular traffic at that time.

One Inch Series

8.14 The **1811 First Edition Ordnance Survey map** at a scale of 1 inch: 1 mile also depicts the route of Donkey Lane as shown between points **C** and **H** and continues, turning northwards. It is defined in the same manner as the earlier drawing, suggesting that it was bounded by fences or hedges, although the end of the part of the route extending north is now shown without the solid line across it suggesting that, had a gate been present, this was no longer there.

- 8.15 The **1898 Revised New Series Ordnance Survey Map** at a scale of 1 inch: 1 mile depicts Donkey Lane as shown from point C to H. Although similar to the earlier 1 inch scale map it shows a number of changes, the part of the route extending north is no longer shown and the depiction of buildings shows increased development within the immediate area. Of particular interest is the broken black line terminating at the northern edge of Donkey Lane, which corresponds to Footpath 3, Allington. This broken line is shown to continue from the south side of Donkey Lane southwards, corresponding to the route of the 'unrecorded' footpath alongside Meadowside (see paragraph 8.11).
- The depiction of Footpath 3 on a small scale map suggests that it may have been regarded as a route of some significance at that time, the fact that it is not shown to cross over Donkey Lane supports the conclusion that Donkey Lane itself was considered to be a highway.

Six Inch Series (1:10560)

- 8.16 The **1888 First Edition Ordnance Survey Map, surveyed in 1886** at a scale of 6 inches: 1 mile (1:10560) shows Donkey Lane from point C to point H, defined by two parallel solid lines indicating that it was fenced or hedged to both sides. There is no indication of a gate or barrier at point C, its western junction with Dottery Road/North Allington. The solid lines across the lane north of G and at H may indicate that gates or barriers were present. The lane is not annotated 'F.P.' or 'B.R.', but paths labelled 'F.P.' (now Footpaths 3 and 4, Allington) are shown meeting but not crossing Donkey Lane as shown at points F and A on Drawing 16/17/4.
- 8.17 The **1903 Second Edition Ordnance Survey Map, surveyed in 1901** at a scale of 6 inches: 1 mile (1:10560) shows Donkey Lane in a similar manner to the earlier 1888 map, but without the barrier near point G, suggesting that if it had been gated this had now been removed. It is defined in the same manner, parallel solid lines, suggesting it was still fenced or hedged. The lane is not annotated 'F.P.' or 'B.R.', although the path that is now Footpath 4 leading north west from the lane and the path leading south from the lane to the south of point A are now annotated 'F.P.'
- 8.18 The **Ordnance Survey map revised in 1938 and published circa 1947**, scale 6 inches: 1 mile (1:10560) is similar to the 1903 map with the exception that it shows the beginning of the development of the Court Orchard Estate and the 'incorporation' of the unrecorded footpath to the south of Donkey Lane within the estate.

25 Inch Series (1:2500)

- 8.19 The area of Donkey Lane is covered by two sheets of the **1890 First Edition Ordnance Survey Map (revised in 1888)** at a scale of 25 inches: 1 mile (1:2500), Both of these maps depict Donkey Lane (uncoloured), as shown between points C – H, in a similar way to the 1888 six inch scale map, although the suggested gate or barrier near point G now shows a brace joining the two halves of the lane together. In addition, both the footpaths to the north (corresponding to the current Footpaths 3 and 4, Allington) and the path to the south of point A on Diagram 16/17/4 are all annotated 'FP'.

Page 14 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- 8.20 The **1902 Second Edition Ordnance Survey Map, revised in 1901**, at a scale of 25 inches: 1 mile (1:2500), (which is the map used for the Finance Act valuation), depicts the claimed route in a similar manner to the 1890 edition with the exception that the path shown corresponding to that of Footpath 3, Allington is not annotated 'F.P.'
- 8.21 The **1961 Ordnance Survey Plan** at a scale of 1:2500 annotates the lane as "Donkey Lane", depicting it in a similar manner to the earlier maps. The lane is shown from point C to point H, being defined by two parallel solid lines, suggesting it was bounded by hedges or fences on both sides. The eastern end is similarly depicted with a solid line, suggesting that here there may have been a gate, hedge or barrier. Footpaths corresponding to Footpaths 3 and 4, Allington are shown but the path formerly depicted on earlier maps running south from near point A on Drawing 16/17/4 has been 'incorporated' within the Court Orchard development.
- 8.22 The **1991 Ordnance Survey Plan** at a scale of 1:2500 is similar to the 1961 plan, the lane is annotated "Donkey Lane" and is defined in the same way. However, one difference is the annotation of an unmade path "Path (um)", the location of which generally corresponds to the location of the obstructed part of Donkey Lane. This path is located broadly on the route of the narrow path now shown on the base map used on the Drawing 16/17/4 from east of point A curving round to point B.
- Although not conclusive as to status, Ordnance Survey maps do provide evidence as to the physical existence of ways on the ground at the time of the survey. In respect of Donkey Lane, the Ordnance Survey maps demonstrate that Donkey Lane, as shown from point C to point H on Drawing 16/17/4, has existed from at least 1805. (Other Commercial maps suggest it has been in existence since at least 1765 – see paragraph 8.26.
 - Until 1991 none of the Ordnance Survey maps examined suggest that a route, matching that of the application, as shown from point A to B, existed independently within Donkey Lane.
 - In addition the Ordnance Survey maps have consistently depicted Donkey Lane in a similar manner to other roads in the vicinity, many of which are known to be 'public' highways, namely carriageways. It has never been annotated with an 'F.P.' or 'B.R.', which suggests that if it was considered a highway it would be of a higher status than a footpath or bridleway.
 - The Ordnance Survey maps have also consistently depicted the existence of several paths, two of which are now recorded as public footpaths, Footpaths 3 and 4, Allington and one that was claimed but subsequently incorporated within the Court Orchard Estate, all of which terminated at either the northern or southern boundaries of Donkey Lane, but not passing through it. This suggests that Donkey Lane itself was probably considered to be public highway at the time.

Ordnance Survey Boundary Sketch Map and Boundary Remark Book

- 8.23 The **1886 Ordnance Survey Boundary Sketch Map for Bridport** at a scale of 1 inch: 12 chains (1:792) shows a lane corresponding to that part of Donkey Lane from point C to near point B (it was at this time within Allington Parish). It is depicted with double solid lines with the addition of a pecked line inside the northern border. This suggests it was fenced or hedged, and the extra pecked line may depict the bank at the northern perimeter. It is open to the road at the western end, but closed with a solid line at point G on Drawing 16/17/4, possibly indicating a gate or barrier. Beyond this line the lane is not shown.
- 8.24 The **1885 Ordnance Survey Boundary Remark Book** includes a sketch of a lane called Green Lane corresponding to that part of Donkey Lane from point C to near point B. It is depicted similarly to the Boundary Sketch Map.

Bridport Borough Boundary Maps and Reports

- 8.25 The **Bridport Borough boundary maps and reports** dated **1831, 1832, 1835 (2), 1837** and **1868** were prepared by members of the Royal Engineers with the purpose of defining the boundary of the town. They all depict a route that corresponds to that of Donkey Lane although many of the maps and reports refer to this as '**Green Lane**'.
- These documents provide no conclusive evidence as to the status of 'Green Lane' (Donkey Lane), although they do provide evidence as to its physical existence at the time. The fact that it was named suggests that it was well known within the locality and in conjunction with other evidence examined may support the conclusion that Donkey Lane was considered to be a highway.

Commercial maps

- 8.26 **Taylor's map of Dorset 1765** depicts a route that would generally correspond to that of Donkey Lane, as shown from point C to point G, it also shows the route continuing beyond point G in an easterly direction. It is depicted in the same manner as other roads in the vicinity, many of which are known to be public carriageways. The accompanying key defines it as a road "enclosed with hedges".
- 8.27 **Greenwoods' Map of Dorset 1826** also depicts a route corresponding to that of Donkey Lane, it is defined by two parallel solid lines and reference to the accompanying key defines it as a 'cross road'.
- Whilst the evidence from these maps provides nothing conclusive as to the status of Donkey Lane, it does provide evidence as to its physical existence at the time, and the manner in which is depicted and described suggests that it may have been considered to be a highway since at least 1765.

Conveyance and Indenture Documents

- 8.28 The **Rose Collection Indenture for Allington, 1851** describes a parcel of land owned by Thomas Moore, 'Scriver's Close', as being "***bounded on the West by the turnpike road leading from Bridport to Broadwinsor, on the North by a Lane, and on the East by a close of land called Court Orchard***".
- This document appears to relate to the same parcel of land as that described in the **1840 Tithe Apportionment** as 'Skivers Croft', occupied by Thomas Moore, apportionment 131, which corresponds to the area of land currently occupied by 'Meadowside' (formerly Paradise Cottage), and properties in North Allington and Allington Mead.
 - This suggests that the lane described as bounding Scriver's Close to the north is the lane now known as 'Donkey Lane'. It confirms that no part of Donkey Lane fell within the boundaries of the property known as Meadowside.
- 8.29 Various **Indenture** and **Conveyance** documents describe the plot of land known as "Meadowside", these are dated **1855, 1858, 1907, 1912, 1920, 1926, 1936, 1947, 1977** and **1983**. They describe the dimensions of the plot, which broadly correspond to the current plot of "Meadowside", and some include a plan.
- 8.30 The indenture from **1855** sets out the sale of a strip of land from a parcel named 'Court Orchard' to the owner of 'Meadowside'. This was described as being 30 feet 6 inches from north to south, and 5 feet from west to east. The transaction was conditional upon the sellers having the right to dedicate a public footpath across it, if they saw fit.
- 8.31 The indenture dated **1920** describes the plot as being "***bounded on the north by a lane giving access from the main road to the said premises***".
- Donkey Lane, including that part of Donkey Lane over which the application route passes and which is also subject to a possessory title claim, is shown to be outside of the boundary of Meadowside and does not form a part of this land parcel.
 - All of the indentures and conveyances from 1858 to 1977 describe the property as being "***bounded on the north by a lane***". One document describes that access to Meadowside was along the lane now known as Donkey Lane, but none of the documents describe the existence of any private rights or easements along this lane.
 - There is no evidence to suggest that the granting of a right for a public footpath through the eastern-most parcel of land, now included in 'Meadowside', was ever exercised (see paragraph 8.32 below).

- No evidence has been discovered to suggest that Meadowside or the former cottage that occupied the site, Paradise Cottage, enjoyed any private rights or easements along Donkey Lane, even though this was described as their means of access to the property. This may suggest that none was needed as Donkey Lane was already considered to be a 'public' highway.

Statutory Declaration

8.32 The **Statutory Declaration** of James Roper (Solicitor and Notary Public) **1926** relates to the parcel of land described in the indenture of 1855 (see paragraph 8.30) and was made to support the conveyance of 'Meadowside' in 1926. It states "***the Public Footpath running along the outside of the Eastern Boundary of the said hereditament [Meadowside] runs, and has always within my recollection run outside, and to the eastward of the strip of land conveyed by the indenture of 1855...***"

- This suggests the existence of a public footpath running in a southerly direction south of point A on Drawing 16/17/4, from Donkey Lane, along the eastern side of 'Meadowside'.
- This appears to correspond to the path marked "FP" on the Ordnance Survey maps of 1902 and 1929, at a scale of 25 inches to 1 mile, and the 'footpath' referred to in the Finance Act Field book for Hereditament number 2211, for which a deduction of £70 was granted.
- The existence of this path is further supported by the Allington Parish Survey (no date) and the Bridport Parish Survey (1951) (see paragraphs 8.35-8.39 below).
- There is no record of any formal extinguishment or diversion of this alleged public right of way.

Sales Documents

8.33 **The Particulars for the sale of Washingpool Farm, Allington, 1913**, include a plan that depicts a lane corresponding to Donkey Lane (uncoloured) adjoining Lot 1, but which was not included in the sale and was not described in the sale particulars.

- This document suggests that Donkey Lane did not form part of the landholding located immediately to the north of it, but provides no evidence as to its status.

Public Notices

8.34 **The Electricity Commissioners' Notice in The London Gazette, 1926**, refers to the Borough of Bridport applying for a Special Order in respect of the provision of an electricity supply for all public and private purposes. Amongst other measures it included special powers to "***break up the streets and parts of streets not repairable by the local Authority***". Included within the list of streets that would be subject to these powers was the following *entry*, "***Lane (unnamed) from North Allington Road to "Meadowside"***".

Page 18 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- Whilst not named, from this description the lane from North Allington to Meadowside is, in all probability, Donkey Lane.
- Although this document provides further evidence as to the existence of Donkey Lane it provides no evidence as to its status.

National Parks and Access to the Countryside Act 1949

Parish Surveys

- 8.35 The **Allington Parish Survey** (no date, but pre 1953) does not claim Donkey Lane as a public right of way. However, the paths currently recorded as Footpath 4, and Footpath 3, Allington are shown coloured red on the Survey map and recorded as footpath 1 and footpath 2 respectively.
- 8.36 Both these paths are shown to connect with the northern side of Donkey Lane (points F and A), to merge within the lane and then footpath 1 continues in a generally southerly direction, towards what was then the Parish Boundary between Allington and Bridport.
- 8.37 The **Allington Parish Survey Statement** describes footpath 1 as running from the "**Boro Boundary**" to "**Washingpool Lane**", and footpath 2 as running from "**Opposite 'Meadowside'**" to "**Middle Pymore Farm**". The crossing of Donkey Lane is not mentioned.
- 8.38 The **Bridport Borough Survey of 1951** records the western part of Donkey Lane, as shown from point C to point A on Drawing 16/17/4, as footpath 28. The footpath is then shown continuing eastwards to Court Orchard Road at point B, but following a route just outside the southern boundary of Donkey Lane. The unrecorded path shown on the Ordnance Survey base map, heading south from point A on Donkey Lane, alongside 'Meadowside' is annotated with the following, "***Path out of use Road used instead***".
- 8.39 In the Bridport Survey Statement footpath 28 is described as leading from the "***North end of Court Orchard to Allington Butts. Footpath from Court Orchard Road along hedge to iron kissing gate into lane by 'Meadowside' to main Allington Road in R.D.C. area, thence to Middle Pymore or Washingpool Farm.***"
- The Allington Parish Survey suggests that there may have been evidence of a public right of way that led from what are now recorded as Footpaths 3 and 4, over Donkey Lane and on towards the parish boundary.
 - The Bridport Borough Survey provides evidence of a claimed right of way on foot from the main Dottery Road (B3162) to 'Meadowside', along the route of Donkey Lane, as shown from point C to point A, its junction with the currently recorded Footpath 3, Allington and its continuation from 'Meadowside' to Court Orchard, from point A leading south through the southern boundary of Donkey Lane, and then east alongside the southern boundary of Donkey Lane to a point in the vicinity, but to the south, of point B. At the time of the Survey this path was wholly within the parish of Allington.

- The Bridport Survey also acknowledges the existence of a footpath running south from point A on Donkey Lane. This path is referred to in both Parish Surveys but the Court Orchard development had begun, leading to the use of Court Orchard Road as an alternative route when the route was built over. There is no record of this path being legally diverted.

Draft map

8.40 The **draft map for the west area 1953** shows footpaths 1 and 2, Allington (currently 4 and 3, respectively), which had been claimed in the Allington Parish Survey, and footpath 28 claimed in the Bridport Borough Survey, with the exception of its 'extension' located to the south of the southern boundary of Donkey Lane and leading to Court Orchard Road. Footpath 28 is clearly shown extending along Donkey Lane as shown from point C to point A on Drawing 16/17/4.

- There is no record as to why the 'extension' to the south of Donkey Lane was deleted.
- There is no record of any objections being received as a result of the public consultation.

Provisional map

8.41 The **provisional map of 1964** shows footpaths 1 and 2, Allington, these having been renumbered as 4 and 3 respectively. Footpath 28 in Bridport no longer has a number, although it is still shown clearly, extending along Donkey Lane from point C, its junction with Dottery Lane, to point A, its junction with the currently recorded Footpath 3, Allington. (The parish boundary had been moved to its current position on 1 April 1954.)

First definitive map

8.42 The **first definitive map of 1966** replicates the provisional map for this area: Footpaths 3 and 4, Allington are recorded, as is the western part of Donkey Lane (formerly recorded as footpath 28) from point A to point C, although it remains unnumbered. No part of the eastern end of Donkey Lane, as shown from point A to point H, is recorded as a right of way. The accompanying **Statement** describes both Footpaths 3 and 4, Allington ending at their junction with Donkey Lane. Although recorded on the map there is no accompanying statement for the path as shown from point A to C, previously recorded as footpath 28, Bridport.

Revised draft map

8.43 In **1973** a **Special Review** Committee considered the status of Donkey Lane to determine how the route should be shown on the revised draft map. A letter to the Bridport Roads & Pathways Committee, from a local resident dated 14 March 1973, states "***An article in the Bridport News asked readers to notify any questions of Rights of Way in the area. Have you considered the ancient lane known as 'Donkey Lane'?***"

Page 20 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- There is no record of a reply. However, there was nothing within the list of proposed amendments relating to Donkey Lane.

8.44 The **1974 revised draft map** shows Footpaths 3 and 4, Allington as terminating at the northern boundary of Donkey Lane. The previously recorded footpath 28, as shown extending along Donkey Lane between point C and point A, has now been deleted.

- There is no record of any formal extinguishment of this previously recorded public right of way.

Current definitive map

8.45 The current **definitive map (sealed in 1989)** replicates what is shown on the revised draft map, Footpaths 3 and 4, Allington terminate at the northern boundary of Donkey Lane, but no part of Donkey Lane as shown from point A to point H is recorded as a public right of way.

8.46 Although Donkey Lane is not recorded on the definitive map as a public right of way, this is not prejudicial to the existence of any public rights over it.

- The **Allington Parish and Bridport Borough Surveys, draft, provisional and first definitive maps** provide evidence that the section of Donkey Lane from 'Meadowside' westwards to the main Dottery Road (B3162), as shown from point C to point A on Drawing 16/17/4 (footpath 28 on the draft and provisional maps), was regarded as a highway of at least the status of a footpath.

Highway Searches 2003 and 2013

8.47 The response to the **Highway Search** from **2003** states ***"The area shaded in green on the enclosed plan is NOT highway maintained at public expense by Dorset County Council"***. The area shaded green on the plan extends from point C to just east of point H as shown on Drawing 16/17/4).

8.48 In 2013 a further Search of "Land at North Allington, off Dottery Road" showed the whole of Donkey Lane as not being highway maintainable at public expense.

- The responses given by Dorset County Council were correct as, at the time of the searches, the route was not recorded as a highway maintainable at the public expense.
- However, evidence now suggests that the land is a highway and this investigation will determine whether any public rights exist.

Land Registry

8.49 Donkey Lane as shown from point C to point H is currently unregistered, although that part as shown between points C and B is recorded as pending first registration (DT418577).

8.50 Dorset County Council has objected to the application for possessory title subject to the determination of this investigation.

- 8.51 In March 2016 Kitson and Trotman informed Dorset County Council that Mr Raymond had limited his application for possessory title to that land currently bounded by 'Meadowside' garden fence shown between points A and just east of point B (opposite the centre of Court Orchard) on Drawing 16/17/4, and termed '**grey land**', in an effort to limit objections. This land includes the application route A – B.
- The County Council has maintained its objection as the land still comprises part of the claimed route.

Aerial Photographs

- 8.52 The aerial photograph of **1947** shows Donkey Lane throughout its length as shown between points C and H. It appears to be bounded to both its northern and southern sides by a combination of hedges and adjacent properties, the lighter shading indicating its course and extent. It does not appear to be obstructed at any point and the visible parallel lines shown within the lane and extending into the field from point H may suggest vehicular use, possibly agricultural.
- (a) The lighter shading on the ground, in the vicinity of points F and A, appears to indicate entrance points into the fields located to the north and these would generally coincide with the termination points of the currently recorded Footpaths 3 and 4, Allington with Donkey Lane. The lighter shading to the south of point A, which continues in a south easterly direction, may indicate the presence of a 'path' at this time, although there is nothing to suggest that it was used by the public.
- 8.53 The **1972** aerial photograph is not as clear as that of 1947, although it does appear to suggest a similar situation. The lane appears still to be defined by hedges but the lack of clarity masks any finer detail. The 'path' extending in a south easterly direction from point A is no longer apparent, there being houses built on the land.
- 8.54 The **1997** aerial photograph also lacks clear definition, the course of Donkey Lane can still be defined, broadly corresponding to the route as shown between points C and H. The lighter definition of the northern boundary of the lane, approximately between point D and just to the east of the junction with Court Orchard Road, as compared to that from this point and point H, suggests that here the hedge may have been removed or extensively cut back. The dark line within the lane, extending from approximately point A to point B, may indicate the presence of a fence or hedge that would broadly correspond to the present obstruction within Donkey Lane.
- 8.55 The **2002** aerial photograph also lacks clear definition, nevertheless it does confirm the suggestion arrived at from examination of the 1997 photograph that a hedge had been planted within Donkey Lane that corresponds to the present obstruction as indicated on Drawing 16/17/4. This can be seen more clearly in the **2005**, **2009** and **2014** aerial photographs.
- The aerial photographs from 1947 and 1972 confirm the existence of Donkey Lane and suggest that throughout that period it was of sufficient width to accommodate vehicular traffic.

- The 1997 aerial photograph suggests that at some time between 1972 and 1997 a hedge was planted, thereby obstructing that part of Donkey Lane, between 'Meadowside' and Court Orchard Road, as shown between points A and B.

9 Analysis of user evidence supporting the application

- 9.1 A total of 16 user evidence forms were submitted by 16 witnesses with the application in March 2016. Two of these witnesses submitted further evidence following the public consultation, which was conducted in June 2016.
- 9.2 A summary of these forms of evidence is set out below, but reference should be made to the actual forms contained within the file of the Director of Environment and the Economy Ref RW/T532 for all the information.
- 9.3 Seven witness's evidence forms have not been taken into consideration for all or some of the following reasons;
- The witness did not provide an accompanying plan.
 - The witness did not indicate on the plan or within the form any route they may have used.
 - The witness did not use the application route or it was unclear as to which route they used.
- 9.4 It is noted that of the remaining nine evidence forms five of the witnesses did not sign the accompanying plan. However, the application route is clearly marked on the plan and their description of the route they used corresponds to that of the application route.
- 9.5 All of these witnesses state that they used the route, as shown between points A and B on Drawing 16/06 (Appendix 1) and that this use was on foot, one witness also used the route on a bicycle. All of the witnesses state they had seen others using the route on foot, two witnesses observed use on horseback and one on a bicycle. All of the witnesses used the route for pleasure / dog walking.
- 9.6 The earliest date of reported use is 1958 and 2016 is the last date of use. This encompasses a period of 58 years of continuous use.
- 9.7 Frequency of use ranges from twice a day to 10 or 15 times a year. The evidence indicates the route was used daily.
- 9.8 All witnesses refer to a stile, several stating it was located opposite Meadowside by the field entrance (Footpath 3, Allington). Two witnesses refer to a kissing gate that used to be located at the top of Court Orchard Road (point B) and several to a recently installed kissing gate located near the entrance to Meadowside (just east of point A). Several witnesses refer to other gates although these appear to be the neighbouring field gates, not gates on the application route.

9.9 One witness states that the route has always followed the same course, eight state that it has been gradually moved/changed/diverted through gradual encroachment by the owner of Meadowside. None of the witnesses specifically state a width for the route although they all state that it has been reduced in width. One witness states that it was useable by tractors in the 1970s, two claim that 'three parts' of it has been claimed/fenced by Meadowside. None of the witnesses knew who the owner of the land was.

9.10 Several of the users state that the garden of Meadowside has been extended into Donkey Lane. One witness, Mr Hayward, states that he was advised by Mr Raymond in 2015 that the route was not public.

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

10.1 One written submission and three verbal submissions were received supporting the application.

10.2 The question of the anomaly, whereby several footpaths terminate at but do not cross Donkey Lane, suggesting that Donkey Lane was itself a public highway was raised. A sketch of the Allington Tithe Map was also provided, noting the fact that Donkey Lane originally extended much further than today, and also an extract from the London Gazette relating to the provision of an electricity supply within Bridport.

- The issues raised and documents referred to have all been discussed within the main body of the report.

10.3 A verbal report from the residents of 224 North Allington stated they had been using Donkey Lane for 26 years to access an outbuilding at the bottom of their garden. They were not aware of having any private rights and assumed it was public access.

10.4 In a telephone conversation with the owner of the land to the north of Donkey Lane the owner confirmed that they were not aware of any evidence as to the status of Donkey Lane, they were not aware of having any private rights over it but it was the only access to their land.

- All of these verbal submissions support the suggestion that Donkey Lane may have public rights over it, but less weight can be attached to them as no written statements were provided.

11 **Analysis of evidence opposing the application**

11.1 All submissions opposing the application were received from the owner / occupiers of 'Meadowside', Donkey Lane – Mr Raymond and Ms Turner or through their solicitors Kitson & Trotman, acting on their behalf.

11.2 Both Mr Raymond and Ms Turner provided witness statements, submitted by their solicitor along with accompanying exhibits.

Statement of Mr S Raymond

- 11.3 Mr Raymond confirms that he owns the freehold of Meadowside. He objects to the application. On 6 November 2015 Mr Raymond made an application to the Land Registry to register what is referred to as the 'grey land', which forms part of the lane known as Donkey Lane. Mr Raymond has no knowledge as to whether the 'grey land' is or was ever a highway but acknowledges that it now forms part of his garden and has remained enclosed since he purchased Meadowside on 5 August 1983.
- 11.4 Mr Raymond continues, stating that until 1997 Donkey Lane was a "muddy/dirt track connecting the main road [Dottery Road] to Meadowside and fields to the North". It continued as an unmarked path to the north of the 'grey land' leading on to Court Orchard. He states that from 1998 he has improved the lane to make it easier and more convenient to get to his property.
- 11.5 Mr Raymond refers to a conveyance of 1920 in which Donkey Lane is described as "a lane giving access from the main road to the said premises", the said premises, he states, is a reference to Meadowside and he is not aware of the true freeholder of Donkey Lane.
- The document referred to is considered within the report. However, although the document describes Donkey Lane as the means of access to Meadowside there is no mention of this access being by way of an easement or private right. As this was the only 'vehicular' means of access it may suggest that Donkey Lane had public rights over it.
- 11.6 Mr Raymond states that the unmarked footpath to the north of the 'grey land' has been used by the public for 33 years and if there should be a modification then this is the route that should be used.
- The fact that there is evidence to support Mr Raymond's statement is noted. However, taking into consideration all of the available evidence there is a strong possibility that the whole of Donkey Lane is a public highway, not just the 'strip' to the north of the 'grey land'.
- 11.7 Mr Raymond confirms that during the 33 years he has lived at Meadowside he has treated the 'grey land' as an extension to his garden and placed locked gates at either end. Throughout this period nobody has claimed ownership or disputed that the land did not belong to him, nor has he been asked to pay anything in regard of his possession of the land. His occupancy of it has been without consent or licence.
- Mr Raymond confirms that the 'grey land' was fenced when he purchased the property in 1983 and as a consequence access over it to the public was denied.
 - Case law has decided that it is not possible to adversely possess a highway and, even if it were, possession of land would be subject to any existing highway rights.

- 11.8 Mr Raymond states that from his purchase of Meadowside in 1983 he occupied the property with his partner at the time, Jane Streeter (now Crabb), who has provided a supporting statement. At the time of purchase, the 'grey land' had a mixture of hedges and fencing running west to east, with 75b Court Orchard the other side of a wooden fence, the other three sides being defined by concrete posts and wire. It was overgrown and had rubbish dumped within it. Mr Raymond cleared the site and used it to store materials and park his car and later a caravan. His former partner left Meadowside in 1992.
- 11.9 During his early years of occupancy Mr Raymond erected a wooden fence alongside the original hedge and fence that ran from east to west along the boundary of 75b Court Orchard, in order to make the site more secure. In July 1994 Ms J Turner moved into Meadowside.
- 11.10 The land to the north of Donkey Lane was leased to Mr Hutchings in April 1997. Mr Raymond states that Mr Hutchings informed him that he was going to widen Donkey Lane slightly in order to accommodate agricultural vehicles. In 1998 an area of concrete was laid, this was necessary because of the "mess" caused by the tractors using Donkey Lane. Shortly after this, tarmac was also laid from the concrete area to the main road [Dottery Road]. A stone wall was laid to the north side of the 'grey land' and a path was also laid alongside the wooden fence with steps leading to a gate in the south-east corner of the 'grey land', which was secured with a chain and padlock. The gate at the entrance to the 'grey land', at the end of the concrete, was also locked.
- Mr Hutchings, the tenant of the land to the north of Donkey Lane, confirmed that he was not aware that he held any private rights over the lane.
 - The action of laying a stone wall to the northern side of the 'grey land' suggests that further encroachment may have taken place.
 - Mr Raymond confirms that the gates at either end of the 'grey land' remained locked.
- 11.11 Mr Raymond refers to an article about encroachment in Donkey Lane that was published in the Bridport News 16 November 2001, he states that he has never received any correspondence in relation to this article.
- 11.12 On 30 October 2003 Meadowside was put up for sale, the 'grey land' was referred to within the advert as "Further garden area which is laid to lawn and a path leading to a gate giving access to Court Orchard estate".
- 11.13 In May 2004 they had found a prospective purchaser for Meadowside, the purchasers requested proof of title to Donkey Lane. Mr Raymond was not aware of who owned Donkey Lane and the property was withdrawn from sale as he and Miss Turner had been unable to find a suitable property for themselves.
- Mr Raymond confirms that he did not own the land over which Donkey Lane runs and he was not aware of who the owner was.

Page 26 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

11.14 In June 2011 Mr Raymond replaced the east-west fence alongside the garden of 75b Court Orchard. In September 2013 Mr Raymond removed the inner fence of concrete posts and attached 'pig' fencing to the posts alongside the 'footpath' that runs alongside the 'grey land'.

11.15 In March 2015 Western Power requested permission to lay a new cable along and erect a post in Donkey Lane. They would make good any damage and paid £100 for inconvenience.

- Western Power confirmed by email that they did not know who owns Donkey Lane and that they were unable to divulge any details in respect of wayleaves affecting their apparatus.

11.16 In June 2015 Symonds and Sampson enquired as to the ownership of Donkey Lane. Mr Raymond believes that this was in connection with possible development of the fields to the north of Donkey Lane.

11.17 Mr Raymond refers to incidents with neighbours relating to a bonfire and repairs to the fence alongside the 'grey land'. He also refers to the statements made by users of the claimed footpath, in particular to the suggestion that he made the stile higher, which he states was not done by himself but by the farmer.

11.18 Mr Raymond refers to his own investigations into Donkey Lane from which he discovered that there was a footpath that ran north-south along the side of his garden, continuing to the bottom of a field then known as Court Orchard, but was unable to find any record of this path being stopped up or diverted. He also notes that on the 1947 aerial photograph there appears to be a path running north westerly across the land now occupied by 75a and 75b Court Orchard. He further notes that there is a record from the Borough Surveyor in respect of the construction of 75a and 75b in 1954, in which it stated that a gate was to be removed and relocated to the north east corner to accommodate a footpath. Mr Raymond could not find any documentation relating to this 'diversion'.

- The evidence in respect of former or additional rights of way is discussed within the report.

11.19 Mr Raymond also included a statement from Mrs Jane Crabb, who lived at Meadowside from 1983 until 1992. Mrs Crabb confirms that the strip of land was "fenced off and bounded by 75b Court Orchard and a footpath on the opposite side leading round to Court Orchard". She confirms that no pedestrians walked across this strip or challenged ownership while she lived there. In about 1988 a caravan was placed on the fenced off strip.

- Mrs Crabb's statement corroborates the evidence provided by Mr Raymond.

11.20 In conclusion Mr Raymond requests that the application be dismissed and the unmarked footpath that has been used for the past 33 years be put on the definitive map.

Statement of Ms J Turner

- 11.21 Ms Turner confirms that she has resided at Meadowside since 1994 and that she objects to the application.
- 11.22 Ms Turner states that a footpath already exists, which runs to the north and alongside the 'grey land' and that it is used frequently by walkers and has been so for at least the last 23 years. The 'grey land' has been enclosed as a family garden for even longer. Mr Raymond has maintained the area, cutting the grass and clearing rubbish all at his own expense.
- 11.23 Ms Turner states that to her own knowledge the 'grey land' has been fenced off since 1993 and that the public have never sought access to the area without invitation from herself or Mr Raymond. The gates to the west and east sides of the 'grey land' are locked.
- Ms Turner's statement in respect to the locked gates at each end of the 'grey land' concurs with that of Mr Raymond.
- 11.24 Ms Turner's statement concurs with the majority of events described within the statement of Mr Raymond. However, Ms Turner also mentions that in November 2003 they instructed Nantes Solicitors to undertake searches in an attempt to discover who owned the lane. Ms Turner states that the files in respect of these searches were destroyed in 2012, although Dorset County Council stated in a letter dated 17 November 2003 that the lane was not maintained at public expense, a copy of which she provided.
- As discussed within the report the statement made by Dorset County Council was correct, as at that time the route was not and is not currently recorded as a highway maintainable at public expense on the List of Streets.
- 11.25 Ms Turner refers to research she undertook at the Dorset History Centre, when she examined old Ordnance Survey Maps and other documents. She discovered evidence of the existence of the footpaths to which Mr Raymond also refers (paragraph 11.18 above), Ms Turner states that she could find no evidence of any stopping up or diversion of these footpaths. Ms Turner also refers to the incidents with neighbours that Mr Raymond related in his statement (see paragraph 11.17 above).
- The evidence in respect of former or additional rights of way is discussed within the report.

Kitson & Trotman Solicitors

- 11.26 On 24 May 2016, Mr Clegg of Kitson and Trotman, wrote to confirm that their client, Mr Raymond, objects to the application. He stated that their client has had "exclusive enjoyment" of the land for 33 years and the land is subject of an application to the Land Registry for adverse title. He suggests that the application, in interfering with their client's private rights, may be in breach of the Human Rights Act 1998. Refers to a response to his client's former solicitors on 17 November 2003 stating that Donkey Lane was not a highway.

Page 28 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- A decision confirming an Order 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 (see Law paragraph 3 at Appendix 3).
- The response provided in 2003 was correct as at that time, and currently, the land which was the subject of the query and which is also the subject of this application was not recorded on the List of Streets as a highway maintainable at the public expense.

11.27 On 22 June 2016 Mr Clegg of Kitson and Trotman, provided a schedule of deeds relating to his client's property, covering a period from 1855 to 1977. He also provided records from the Finance Act 1910 in respect of the provisional valuation, dated 19 January 1912, in respect of a property called Paradise Cottage, which he states was the previous name of their client's property, Meadowside. He notes that according to this record there is no deduction allowed to its gross value in respect of public rights of way or user.

- A summary and analysis of the Finance Act Documents are discussed within the main body of the report (see paragraphs 8.2-8.7 above).

11.28 On 28 June 2016 Mr Clegg of Kitson and Trotman, on behalf of their client Mr Raymond, raised a number of issues. He asked whether there was any reason why the footpath identified by his client as running from north to south on the eastern side of Meadowside was discontinued. He suggests that it may have been "re-designed" to follow Court Orchard Road during the development of the Court Orchard Estate, in particular those properties from 69 to 75b Court Orchard.

(a) Mr Clegg also referred to the copies of the original Title Deeds and Documents he had provided. In particular he refers to the 1920 indenture in which he states it was said that Donkey Lane was a private lane serving his client's property. As such he suggests this would indicate that Donkey Lane was not a highway.

- These documents are discussed and summarised from paragraph 8.28 above.
- The 1920 indenture describes how the parcel of land (Meadowside) is bounded on "***the north by a lane giving access from the main road to the said premises***".
- The lane referred to within this document is Donkey Lane, the lane was not part of the landholding and there is nothing within the description to suggest that it was considered a 'private' means of access to the property.

12 Analysis of other submissions

12.1 None of these submissions contained or were accompanied by any evidence requiring consideration.

13 Date public use was brought into question

13.1 In respect of the application, although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication, it does require that their use must have been for a minimum period of 20 years preceding the date the right to the use the route was first brought into question.

13.2 Possible dates for consideration:

- Evidence stated by Mr Raymond that the 'grey land' was fenced and enclosed when he bought the property in **1983**.
- Several witnesses refer to encroachment into the lane by the garden and fence of Meadowside, but **no dates** were provided.
- Mr Hayward states he was challenged by Mr Raymond in **2015**.
- The application, made on 21 March **2016**.

13.3 On balance 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 and B on Drawing 16/06, is 1983, when the 'grey land' is known to be fenced.

14 Conclusions

14.1 As the whole of Donkey Lane C – H, including the claimed route as shown A – B, is not recorded with public rights it is necessary for members to decide whether a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.

14.2 The documentary evidence, in particular that provided by the **Finance Act, Tithe Apportionment Plan, and Conveyance Documents** is sufficient to demonstrate, on balance, that Donkey Lane, as shown between points C and H on Drawing 16/17/4, was dedicated as a carriageway under common law. If members are not satisfied that the documentary evidence shows, on balance, that a public carriageway subsists then they should consider the evidence provided by the **Bridport Borough Housing Plan, Parish Surveys, draft, provisional and first definitive maps**, which is considered sufficient to demonstrate, on balance, that a public footpath was dedicated under common law as shown between points C – B on Drawing 16/17/4.

14.3 As no exception to the provisions contained in Section 67 of the Natural Environment and Rural Communities Act 2006 appears to apply, these unrecorded public mechanically propelled vehicular rights have been extinguished and an order could be made to add the whole of Donkey Lane (C – H) as a restricted byway only.

14.4 If members are not satisfied that rights have been dedicated under common law in respect of the part of the route C – B, then they should consider whether rights have been dedicated under Section 31 of the Highways Act 1980 for the part A – B for which there is a record of user evidence.

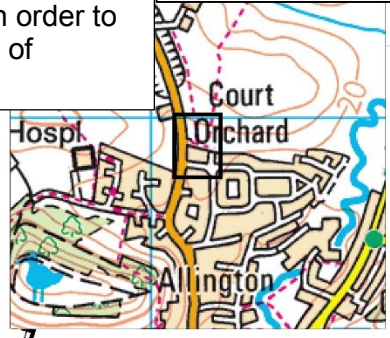
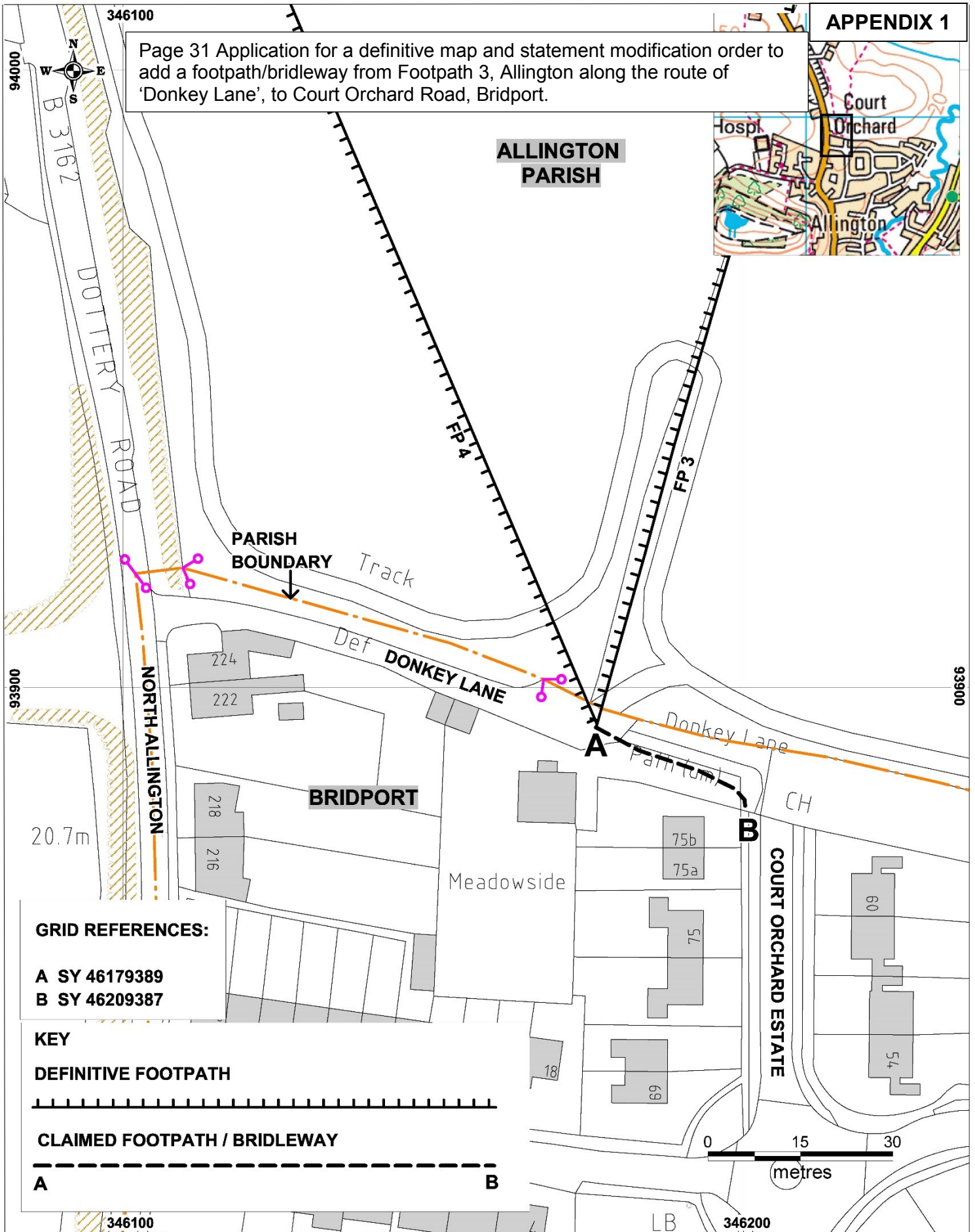
Page 30 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

- 14.5 The relevant period of use by members of the public, as of right and without interruption, to establish rights between points A and B by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to the date of challenge in 1983.
- 14.6 The evidence of use on foot covers the period from 1958 – 2016. However, the relevant period used in order to satisfy the presumption of dedication is taken between 1963 and 1983. In 1963 there were two users on foot, and in 1983 there were eight users of the route as shown between points A and B on foot.
- 14.7 It is considered, taken by itself, that the user evidence is insufficient to demonstrate use by the general public throughout the relevant 20 year period.
- 14.8 On the basis of the documentary evidence, it is therefore recommended that an order be made to record the full extent of 'Donkey Lane' as shown between points C – H on Drawing 16/17/4 as a restricted byway.
- 14.9 If there are no objections to a modification order, the County Council can itself confirm the order if the criterion for confirmation has been met.

Andrew Martin
Service Director Highways

March 2017

Page 31 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.



GRID REFERENCES:

A SY 46179389
B SY 46209387

KEY

DEFINITIVE FOOTPATH



CLAIMED FOOTPATH / BRIDLEWAY



WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD A FOOTPATH OR BRIDLEWAY FROM DONKEY LANE TO COURT ORCHARD, BRIDPORT
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 16/06
Date: 11/05/2016
Scale 1:800
Drawn By: JLC
Cent X: 346159
Cent Y: 93911

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

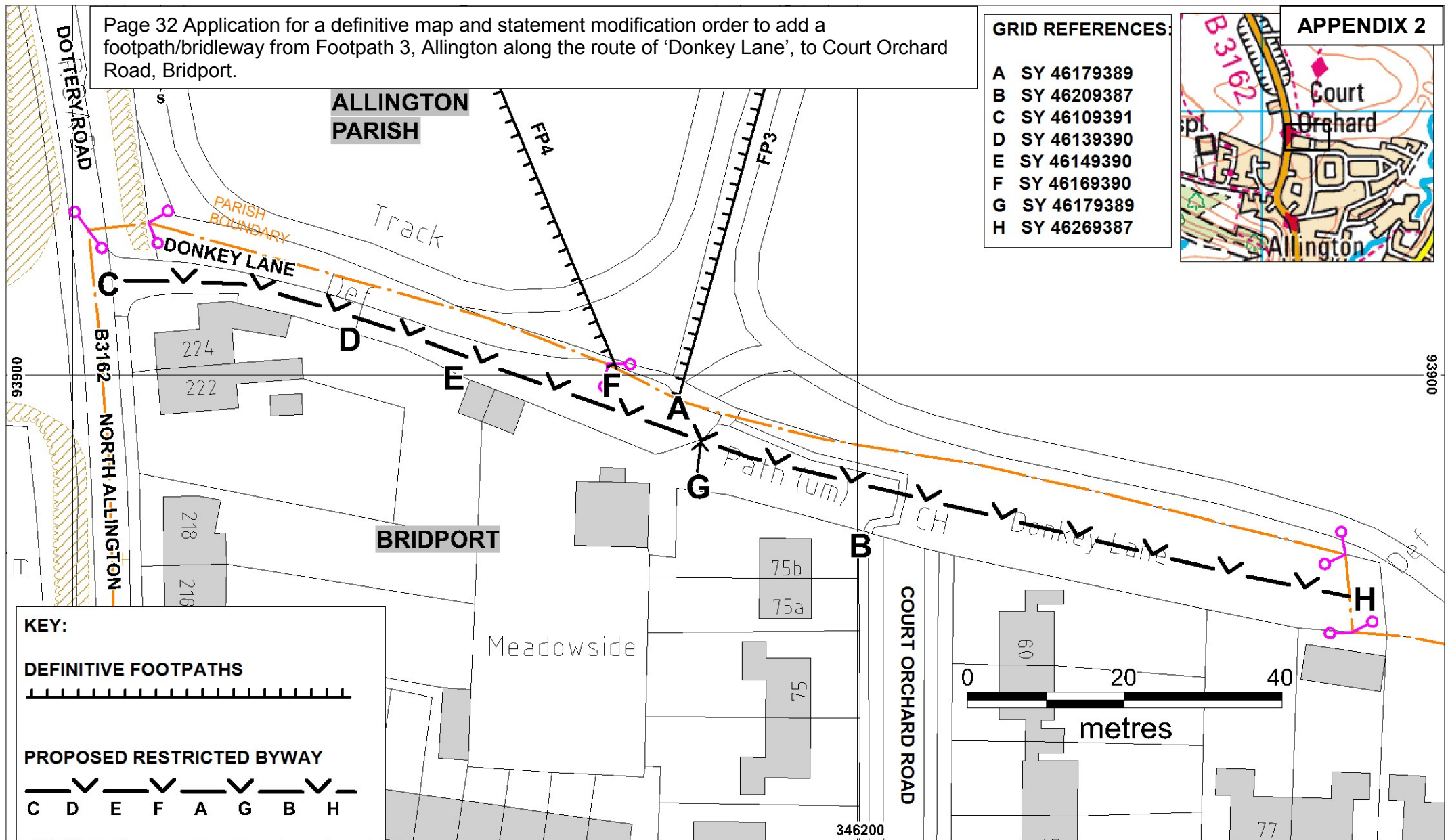
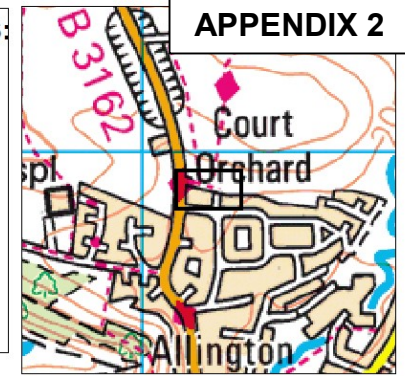
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Page 32 Application for a definitive map and statement modification order to add a footpath/bridleway from Footpath 3, Allington along the route of 'Donkey Lane', to Court Orchard Road, Bridport.

GRID REFERENCES:

- A SY 46179389
- B SY 46209387
- C SY 46109391
- D SY 46139390
- E SY 46149390
- F SY 46169390
- G SY 46179389
- H SY 46269387

APPENDIX 2



KEY:

DEFINITIVE FOOTPATHS



PROPOSED RESTRICTED BYWAY



WILDLIFE AND COUNTRYSIDE ACT 1981

PROPOSED RESTRICTED BYWAY - DONKEY LANE, BRIDPORT

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

T532

Ref: 16/17/4

Date: 9/2/2017

Scale 1:650

Drawn By: JLC

Cent X: 346183

Cent Y: 93893

GEOGRAPHICAL INFORMATION SYSTEMS



Dorset County Council

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LAW

General

1 Wildlife and Countryside Act 1981

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

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).

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

- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.4 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.
- 3 Human Rights Act 1998
 - 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
 - 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

Case specific law

4 Finance Act 1910

4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.

4.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

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

6 Natural Environment and Rural Communities Act 2006

6.1 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes (subject to certain exceptions) unrecorded rights of way for mechanically propelled vehicles. DEFRA guidance states that where it is found that a route was historically a public vehicular route before NERC, that route should be recorded as a restricted byway rather than a byway open to all traffic.

Table of documentary evidence

Date	Document	Comment
1765	Isaac Taylor's Map of Dorset	Shows a lane corresponding to Donkey Lane – key: road “enclosed with hedges”.
1805	Ordnance Survey Drawings	Shows a lane, corresponding to Donkey Lane.
1811	Ordnance Survey First Edition map scale 1 inch:1 mile	Shows a lane, corresponding to Donkey Lane.
1826	Greenwoods' Map of Dorset	Shows a lane corresponding to Donkey Lane - Key: Cross road.
1827	Allington to Clapton Turnpike, Plan and Book of Reference	A lane entrance, corresponding to Donkey Lane is depicted on the plan.
1831	R Cartwright, Bridport Town Boundary Map	Shows a lane called 'Green Lane', corresponding to Donkey Lane.
1832	R Cartwright, Bridport Town Boundary Map	Shows a lane called 'Green Lane', corresponding to Donkey Lane.
1832	J E Drinkwater, Bridport Town Boundary Report	Refers to “ <i>the first lane on the right called Green Lane</i> ”. This corresponds to Donkey Lane.
1835	Creighton, Bridport Map	Shows 'Green Lane', corresponding to Donkey Lane.
1835	J C Walker, Borough of Bridport Map	Shows 'Green Lane', corresponding to Donkey Lane.
1837	Ordnance Survey Borough of Bridport Boundary Map	Shows a lane, corresponding to Donkey Lane.
1840	Allington Tithe Map	Depicts lane, corresponding to Donkey Lane, which is un-apportioned.
1851	Rose Collection Indenture for Skiver's Close	Land described as “bounded on the north by a lane”, this being Donkey Lane.
1855	Indenture for strip of land at NW corner of Court Orchard field	Land was sold to the owner of the cottage (now called 'Meadowside'),
1858	Indenture and plan for property and land now known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1868	H James (Colonel Royal Engineers), Bridport Boundary Map	Depicts a lane called 'Green Lane', corresponding to Donkey Lane.
1868	Report on the Borough of Bridport	Refers to “ <i>the first lane on the right called Green Lane</i> ”. This corresponds to Donkey Lane.
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	

Date	Document	Comment
1885	Ordnance Survey Boundary Remark Book, Allington Bridport	A lane named 'Green Lane', corresponding to the current Donkey Lane is shown (western portion only).
1886	Ordnance Survey Boundary Sketch Map, Allington Bridport	An un-named lane, corresponding to the current Donkey Lane is shown (western portion only).
1888	Ordnance Survey First Edition map scale 6 inches:1 mile	An un-named lane, corresponding to the current Donkey Lane is shown.
1889	NOTE: The statement that "the representation on this map of a road, track or footpath is no evidence of a right of way" has appeared on Ordnance Survey maps since 1889.	
1890	Ordnance Survey First Edition map scale 25 inches:1 mile	An un-named lane, corresponding to the current Donkey Lane is shown.
1896	NOTE: By 1896 roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and unmetalled roads are shown without shading.	
1898	Revised New Series Ordnance Survey map scale 1 inch:1 mile	An un-named lane, corresponding to the current Donkey Lane is shown. Also shows black pecked line, indicating a path, leading north and south from the lane.
1901	Ordnance Survey Object Names Book	Green Lane and Donkey Lane are not listed.
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	An un-named lane, corresponding to the current Donkey Lane is shown, FPs 3 & 4 also shown, and another footpath continues south from this junction.
1903	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	An un-named lane, corresponding to the current Donkey Lane is shown, without shading. FPs 3 & 4 also shown.
1907	Indenture for property and land now known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1910	Finance Act plans	The full length of Donkey Lane is excluded, and has no hereditament number.
1910	Finance Act Field books	Hereditament 29 (to the north of Donkey Lane) includes a deduction of £50 for footpaths. Hereditament 2211 (to the south of the eastern half of Donkey Lane) includes a deduction of £70 for footpath.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	

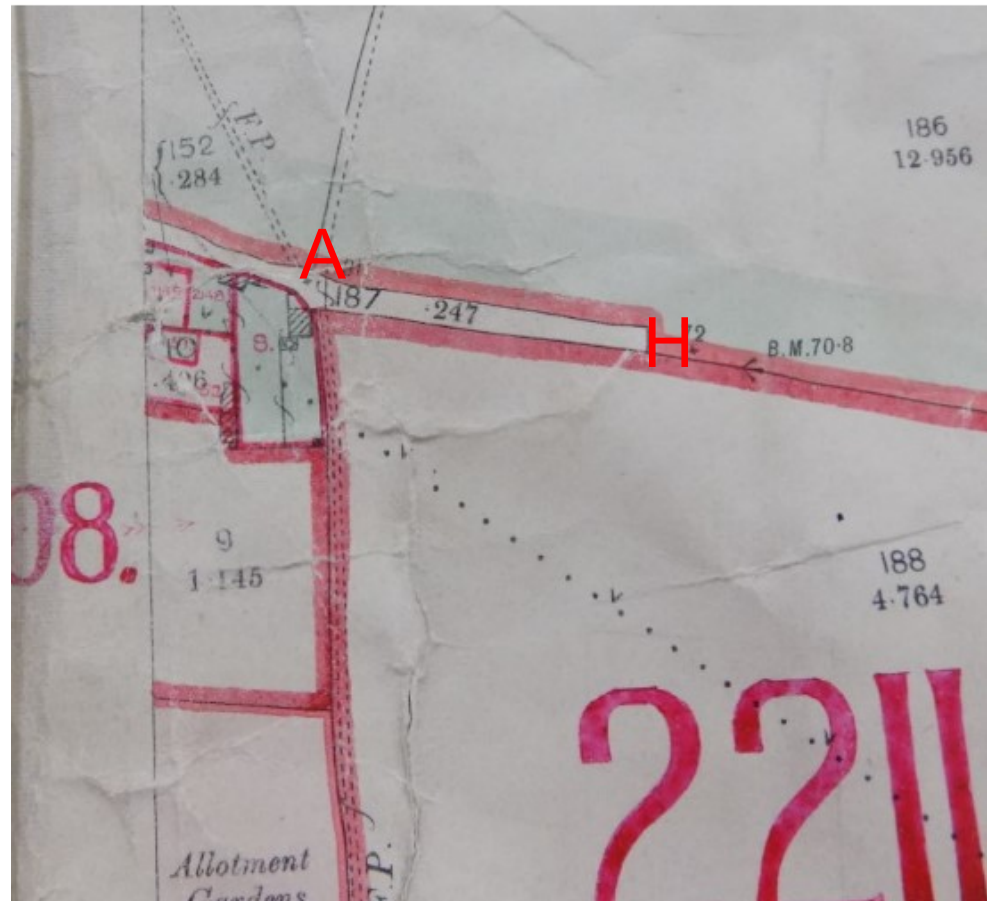
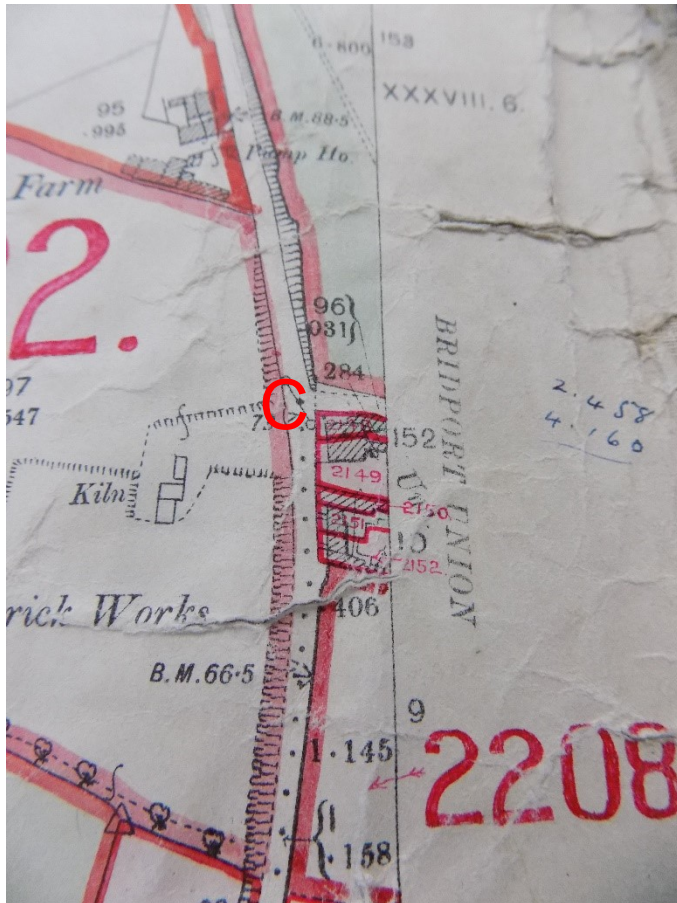
Date	Document	Comment
1912	Indenture for property and land now known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1912	Finance Act Proposed Valuation for land and property now known as 'Meadowside'.	Does not mention any deduction for Rights of Way.
1913	Washingpool Farm Sale plan and particulars	Donkey Lane is adjacent Lot 1 fields, but excluded from the sale.
1920	Indenture for property and land now known as 'Meadowside'.	Describes the plot as being " <i>bounded on the north by a lane giving access from the main road to the said premises</i> " (Donkey Lane).
1926	Electricity Commission notice in London Gazette	Describes the breaking up of streets to supply electricity, including "Lane (unnamed) from N Allington Rd to Meadowside" (Donkey Lane).
1926	Conveyance and plan for property and land known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1926	Statutory declaration of John J Roper (solicitor and notary public)	Declares that the footpath which is used to the east of 'Meadowside' lies outside the boundary of the property, and has done so for fifty years.
1936	Conveyance for property and land known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1936	Search of Local Land Charges Register (Land Charges Act 1925)	Relates to "Dwellinghouse, garden and premises known as <i>Meadowside</i> . Provides no relevant information.
1939	Vesting Assent for property and land called 'Meadowside'.	Provides no detail of the property or access.
1946	Ordnance Survey 1 inch to 1 mile New popular edition sheet 178	Shows Donkey Lane, key defines it as "Minor Roads in Towns. Drives and Unmetalled Roads".
1946	Borough of Bridport Court Orchard Estate approved plan no 1503	Shows Court Orchard Road abutting " <i>existing lane</i> " (Donkey Lane).
1947	Conveyance for property and land known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (Donkey Lane).
1947	Ordnance Survey map scale 6 inches: 1 Mile (1:10560) (<i>map used for the Bridport Borough Survey</i>)	Shows Donkey Lane unnamed and the beginning of Court Orchard development incorporating the path south from Donkey Lane within the estate.

Date	Document	Comment
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
pre 1953	Allington Parish Survey <i>(uses the 1930 OS map)</i>	Shows current FPs 3 & 4, and the footpath running south from their junction with Donkey Lane, to the Borough Boundary.
1951	Bridport Parish Survey map and schedule <i>(uses the 1947 OS map, including the initial layout of Court Orchard)</i>	Western half of Donkey Lane is claimed as footpath 28, it also shows a path continuing east alongside southern boundary of Donkey Lane to Court Orchard Rd. A note on the map indicates that the footpath south from Donkey Lane is "out of use, road used instead".
1953	Draft map for the west of Dorset	Western part of Donkey Lane, to current FPs 3 & 4 is shown as footpath 28. Extension to Court Orchard Rd not included.
1953	Allington Tithe Redemption District Record Map	Shows Donkey Lane with no apportionment number, similar to the 1840 tithe map.
1953-54	Bridport Borough Boundary Extension Plan no 1202	Shows Bridport Borough being extended to southern edge of Donkey Lane.
1954	Borough of Bridport Court Orchard Housing Plan for building of 75a and 75b Court Orchard Road	Depicts Donkey Lane adjacent the development and shows plans to remove a gate from its boundary next to 'Meadowside' and replace with a bank, then to cut a hole in the bank 84'0" to the east for "footpath and gate".
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1961	Ordnance Survey Plan 1:2500	Shows Donkey Lane and includes a pecked line running the full length, possibly suggesting the existence of a path. FPs 3 & 4 are shown, but the footpath running south from Donkey Lane is now built over.
1964	Provisional map of rights of way	Western part of Donkey Lane to Footpaths 3 and 4 coloured as a footpath but unnumbered. Shows FPs 3 & 4.

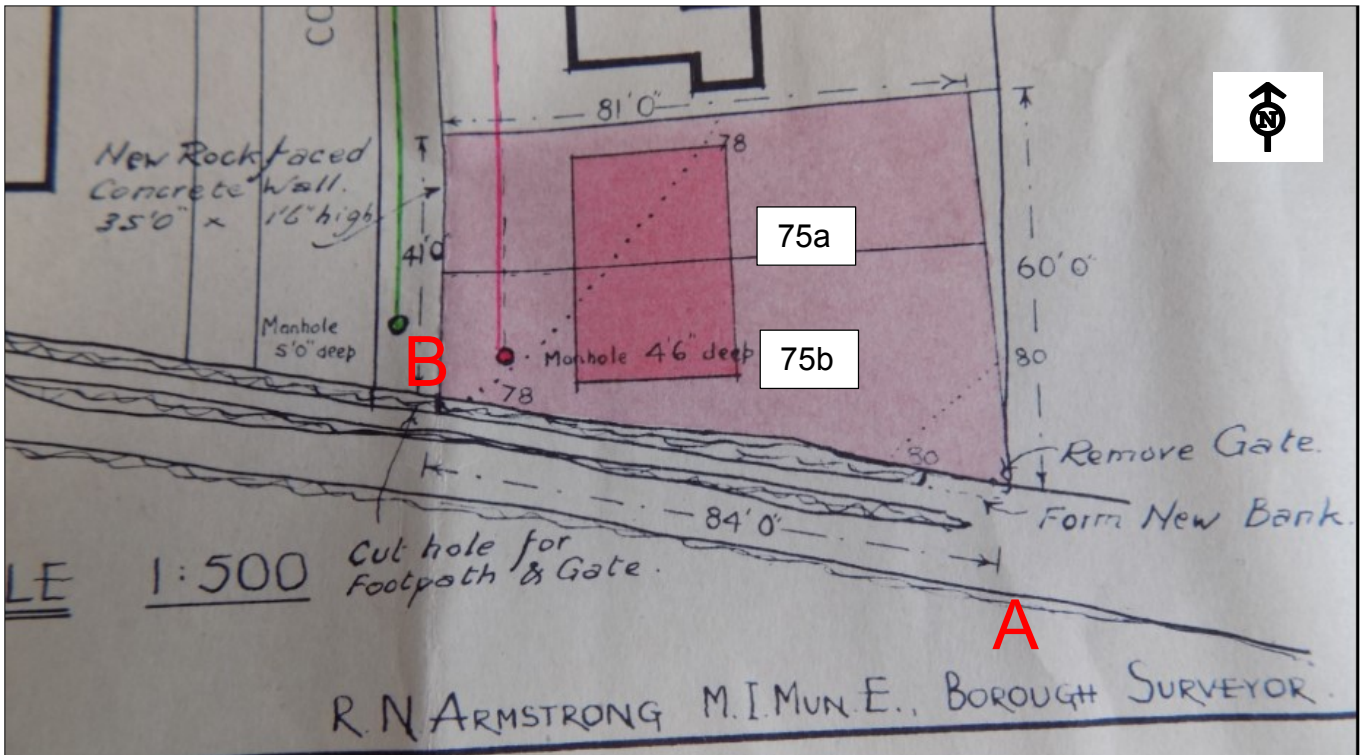
Date	Document	Comment
1966	First definitive map and Statement	Same as provisional map.
1973	Letter from resident Edith Coleman 14 July 1973 to Roads and Rights of Way Committee, Bridport	Questions whether 'the ancient lane known as Donkey Lane' should be on the Definitive Map (no record of a reply).
1974	List of Streets	Donkey Lane was not recorded as a maintainable highway.
1974	Revised draft map	FPs 3 & 4 are shown, but Donkey Lane is now not recorded as a right of way.
1977	Conveyance and plan for property and land known as 'Meadowside'.	Describes the plot as being bounded on the north by a lane (attached plan names this as Donkey Lane).
1983	Conveyance for property and land known as 'Meadowside'.	Description same as that of 1977.
1989	Current definitive map	FPs 3 & 4 are shown, but Donkey Lane is not recorded as a right of way.
1991	Ordnance Survey Plan 1:2500	Shows Donkey Lane labelled as 'track'. FPs 3 & 4 are not shown, unmade path depicted running east from 'Meadowside' along Donkey Lane to Court Orchard Rd.
2003	Dorset County Council Highway Search	Confirms that Donkey Lane is not highway maintained at public expense.
2013	Dorset County Council Highway Search	Response that Donkey Lane is not recorded as highway maintained at public expense.
2016	Application by Mr Raymond for possessory title DT418577 (pending)	County Council objection as land includes the claimed route.
1947	Aerial Photograph	Shows Donkey Lane, appears to be unobstructed, marks on ground may indicate vehicular use (agricultural).
1972	Aerial Photograph	Shows a similar situation to that in 1947.
1997	Aerial Photograph	Similar to previous photographs, indication that parts of hedges may have been removed and suggestion that a fence or hedge corresponding to that of the obstruction was in place.
2002	Aerial Photograph	Similar to that of 1997, fence / hedge obstruction shown more clearly.
2005 2009 2014	Aerial Photographs	Similar to 2002, provide confirmation of ongoing obstruction in Donkey Lane.

Extracts from key documents
(See the Director for Environment's file RW/T532 for copies of other documents mentioned)

Finance Act Plans 1910



Bridport Borough Housing Plan 1954
(North arrow and house numbers in Court Orchard Road added)



Ordnance Survey Drawing 1805



Allington Parish Survey (undated)



Bridport Borough Survey 1951



Draft definitive map 1953



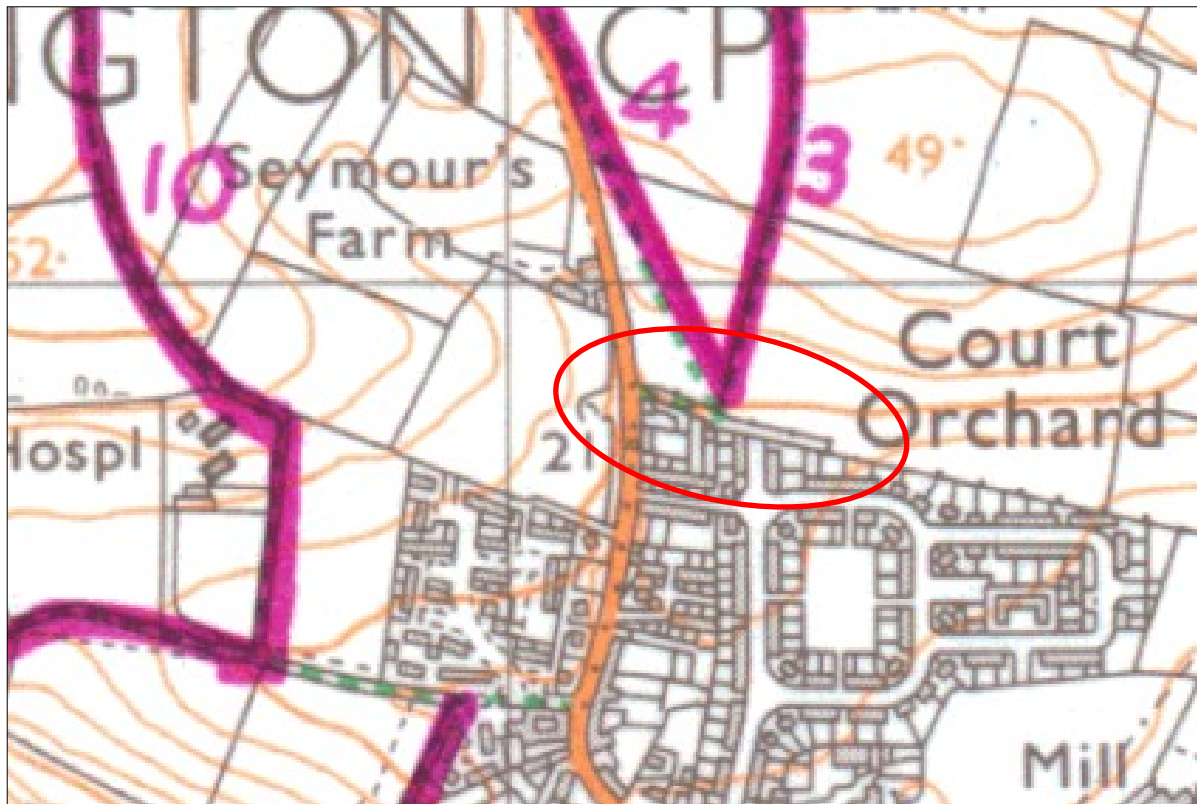
Provisional definitive map 1964



First definitive map 1966



Current definitive map 1989



User Evidence
Table summarising user evidence from forms completed in 2016

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mrs Linda Ashton	1978 - 2016	10-15x per year	Foot	Used for pleasure, others used on foot, path recently diverted. Stiles (no location), kissing gate (no location), owner unknown. Not working for owner / tenant, never been turned back, believes owner aware because always been used. Claims private right "to watch children play and walk dogs", unable to clarify. Claims path has been changed and made more difficult to use by owner of Meadowside.
Mr Paul George Bowditch	1963 - 2016	Twice daily	Foot	Used for dog walking, others used it also for dog walking, path has moved over years as Meadowside garden has been extended. Stiles from lane into fields, used to be kissing gate at top of Court Orchard, into lane, remembers footpath sign on stile. Way obstructed with rubbish, and by making stile higher – believes Mr Raymond responsible, and that he has challenged dog walkers. Believes lane is right of way. Initially said had not personally been stopped, but over phone claimed that Mr Raymond stopped him and said "this is not a right of way". Whole lane used to be approximately 14 feet wide, and used by tractors accessing fields, now approximately 3 feet wide.
Mr Peter Hayward	1964 – 2016 (since age 6)	4 – 5x per year	Foot	Used for pleasure, others used on foot. Path has been diverted – used to run as lane through 'grey land' and tractors would access fields by Dibden View, now narrow fenced path for approximately 7-8 years. Stile to FP3 raised recently, extra stile near Court Orchard approximately 5 years, kissing gate moved from Court Orchard to near Meadowside. Unsure who owns land, no permission. Challenged by Mr Raymond July 2015 saying he could not use the lane.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr Barry William Hounsell	1968 - 2016	20x per year	Foot	Used for pleasure, others used it on foot. Part of width of original lane now claimed and fenced by Meadowside. Stile and gate into field, notice about fly-tipping. Recently stile made higher making it difficult to use. Newer stile near end Court Orchard. No evidence of ownership, not had permission, or been challenged. Originally, kissing gate at top of Court Orchard led onto full width lane, cleared by farmer and used to access fields approximately 20years ago.
Mrs Mekaja Lathey	1977 – 2016 (since birth)	2x daily	Foot	Used for pleasure, others used on foot and horse. Route has changed gradually over years due to Meadowside garden encroaching (no dates). Stiles to access FP3 (recently made higher) and newer one nearly opposite end Court Orchard. Recently kissing gate across lane near Meadowside (not locked). Owner unknown, not used with permission, not challenged, but daughter challenged by Mr Raymond (2014). Thinks owner aware because used by so many. Originally, lane was full tractor width but quite overgrown, now narrowed by garden. Maintained by Mr Raymond.
Mr Philip Lathey	1964 – 1974 (since age 3) 1974 - 2016	1-2x per week Daily	Foot and Bicycle	Used for pleasure, others used on foot, horse and bike. Route has been moved by owner of Meadowside – original route now garden. In 1970's was wide enough for tractor, now narrow footpath. Stile to access FP3 (recently raised), and newer one near top Court Orchard. Originally kissing gate at top of Court Orchard, now gone but newer one near Meadowside (not locked). Unknown owner / no owner, not used with permission, not challenged. Originally a small electricity substation was beside Donkey Lane, near 75B Court Orchard, now removed.

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Mr Peter Alan Matthews	From 1999 - ?	"all year"	Foot	Used for pleasure, others used on foot. Path has always run over same route, there are stiles and gates (not locked) – no details given. Not used with permission, not challenged. Route has got narrower over years due to encroachment of garden to Meadowside.
Mrs Rita Shearing	1978 - 2016	200+ per year	Foot	Used for pleasure, others used it "very often". Path has recently been diverted by "owner". Stiles and gates present but no details. Not used with permission, not challenged. Route was always used for walking and by children playing. No width given.
Mr Paul Turner	1958 – 2016 (since age 6)	10 – 15x per year	Foot	Used for pleasure, others used on foot. Part of width claimed by owner of Meadowside. Stile to access FP3 and gates to access fields. Sign says no fly-tipping. Stile to FP3 has been raised in recent years to discourage use. Believes no-one owns lane – it is an old drivers' track.

Rejected user evidence

NAME	REASON FOR REJECTION
Andrew Clarke	Accompanying plan shows this witness was using a route outside of Donkey Lane, to the north, not the application route.
Audrey Clarke	Accompanying plan shows this witness was using a route outside of Donkey Lane, to the north, not the application route.
Edwin Fyrsman	Accompanying plan is not signed and is not marked, providing no indication of which route he may have been using.
Catherine Harvey	Accompanying plan does not indicate clearly that she used the application route.
J Harvey	Accompanying plan not at an appropriate scale, insufficient detail to determine which route was being used.
Phillipa Kane	Accompanying plan is not signed and is not marked, providing no indication of which route she may have been using.
Colin Sweet	No accompanying plan, unable to determine which route was being used.

