

Report to Executive Director of Place

Application to add a footpath from Church Lane to A350 in Lower Blandford St Mary in the Parish of Blandford St Mary

Choose an item.

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Local Councillor(s): Cllr A Kerby

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Report Status: Public

Brief Summary:

This report considers a proposed Definitive Map Modification Order, based on user evidence, to add a footpath to the Definitive Map and Statement in the Parish of Blandford St Mary. Following an investigation of the user evidence and documentary evidence a recommendation is made to accept the proposal and make an Order.

Recommendation:

That:

- (a) The proposal be accepted and an order made to modify the definitive map and statement of rights of way by adding a footpath from A/B to E as shown on Drawing T546/21/1; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

- (a) The available evidence shows, on balance, that the proposed right of way subsists or is reasonably alleged to subsist;
- (b) The evidence shows, on balance, that the route proposed should be recorded as a footpath as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

1 Background

Applicant

- 1.1. An application to add a footpath from Church Lane to the A350 as shown A/B – C – D - E on Drawing T546/21/1 (Appendix 1) was made by Blandford St Mary Parish Council on 15 February 2016. The application was withdrawn by Blandford Parish Council in April 2017 but due to the evidence submitted with the application, Dorset Council has a duty to investigate the case under Schedule 15 of the Wildlife and Countryside Act (Section 53).

Description of the route

- 1.2 The route begins on Church Lane in the village of Lower Blandford St Mary, at the triangular junction Points A and B outside St Mary's Church. At Point C the route heads north-west, passing through gateways for pedestrian and vehicular access with gates in situ. The total width of the route at point C is approximately 6.8 metres where the grass verges are approximately 0.95 metres wide on each side of the drive. The verge at the boundary of the church has a pedestrian gate which broaches the gap between a vehicular gate pillar and the wall of the church. This gateway is 0.95 metres wide between pillar and wall. The route continues along the tarmac drive heading west, north-west, where the path widens to approximately 4.5 metres, passing the entrance to Clerkenwell House; at point D the path is approximately 6.2 meters wide from walled boundary to walled boundary. The route continues in a westerly direction to a further set of double gates, here the width of the route is approximately 3.4 metres between the gate posts. The route ends at Point E as it joins the A350 where the tarmac drive widens to approximately 7.2 metres. All widths include grass verges that run along the route on both sides.

1.3 **Background to the application**

The property, over which the claimed route runs, changed ownership in 2015 at which time signs withdrawing deemed permission to the route were erected alongside Health and Safety Notices for renovation works being carried out at the property.

Law

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

2 **Issue to be decided**

3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.

3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

3.3 Historical documentary evidence and user evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

3 **Documentary evidence (Appendix 3) (copies available in the case file RW/T546)**

4.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below. Information on the background and evidential weight which should be attached to particular historical

sources is included at Appendix 3 which should be read in conjunction with this section.

Tithe Map

- 4.2 The Tithe Map for Blandford St Mary (1840) shows apportionment number 84, across which part of the proposed route runs. A number of buildings are recorded on land around the claimed route. St Mary's Church, situated at the eastern end of the proposed route, is shown on the Tithe Map. See Appendix 3.
- 4.3 Tithe record for Apportionment 84 states the land is a Barn, Stable, Granary, Yard, etc. See Appendix 3.
- 4.4 Officer's Comment: The agricultural nature of this apportionment at this time would suggest access was available to those undertaking tasks in relation to farming activities as described in the Tithe record for Apportionment 84. The Tithe Map and Apportionment documents do not support the proposal.

Blandford to Poole Repeal and Re-enactment Turnpike (1824)

The Blandford to Poole Turnpike does not mention a junction at Point E of the proposed route. The Turnpike does not support the proposal.

Finance Act 1910

- 4.5 The Finance Act 1910 depicts the area surrounding the route being claimed. The field book associated with the Finance Act does not support a public right of way along the proposed route.

Ordnance Survey Maps

- 4.6 Both Ordnance Survey (OS) Maps 1809 and 1881 depict the area that the claimed route passes across but no defined lane or track is visible. The OS Maps show the Blandford to Poole Turnpike with the lane, now known as Church Lane, passing through the village of Lower Blandford St Mary and re-joining the turnpike. The Ordnance Survey documents do not support the proposal.

Dorset Council Records

- 4.7 The proposed route was not claimed at the time of the parish survey (circa 1950's) or during the Special Review of the Definitive Map (1970's). It was not recorded on the Definitive Map (sealed 1989). See Appendix 3.

Aerial photographs

- 4.8 The aerial photograph from 1972 depicts the area over which the claimed route runs, between the rear of what is now a developed area known as Manor Farm Close and the boundary for Clerkenwell House. See Appendix 3.
- 4.9 The aerial photograph from 2002 shows a much clearer defined route running in front of the wall within the footprint of the Clerkenwell House grounds and to the rear of the Manor Farm Close development that was built in the grounds of the former agricultural yard as mentioned in paragraph 4.3. The proposed route appears to be surfaced in tarmac for its entire length. See Appendix 3.
- 4.10 Officer Comment: The physical feature of a lane on the ground as shown on the aerial photographs does not provide any evidence of a route with public access.

Blandford St Mary Parish Meeting Minutes (1978)

- 4.11 Blandford St Mary Parish Council Meeting Minutes document the evolution of the Definitive Map where the network was established in the parish of Blandford St Mary. The minutes of the meeting held on 7 November 1978 record the owner of Clerkenwell House at the time, responding to the question of whether the drive at Clerkenwell House was private or a public right of way, stating that he had “previously purchased this piece of land, had repaired the road and it was his private property”. See Appendix 3.
- 4.12 Officer Comment: The statement by the owner at the time of Clerkenwell House clarifies that the ownership of the drive, over which the claimed route runs, is private. Ownership and maintenance by a private individual do not preclude the existence, or future acquisition, of public rights. Therefore, the statement by the previous owner does not provide sufficient evidence to demonstrate a lack of intention to dedicate the route as a public right of way.

Summary of documentary evidence

- 4.13 There is documentary evidence that depicts a way into an agricultural yard area which, over time, developed into a drive running alongside the internal wall boundary for the property of Clerkenwell House and north of the boundary with the residential properties of Manor Farm Close and St Mary’s Church. The drive of Clerkenwell House, enters/exits Church Lane in Lower Blandford St Mary and at the opposite end of the drive is an entry/exit point at the A350 main road.

4.14 Officer's Comment: A route shown on a map with a way in to and out of an area does not provide sufficient evidence to conclude access was available for public use nor that the public made use of the route.

4.15 Officer's Comment: The documentary evidence provides little support for the existence of public rights along the application route.

4 **User evidence (Appendix 4) (copies available in the case file RW/T546)**

5.1 16 user evidence forms were submitted with the original application. A full public consultation was carried out between November and December 2021 during which time a further 10 user evidence forms were submitted.

5.2 Charts showing the number of users each year, and frequency of use form Appendix 4 and detailed witness evidence forms are available in the case file T546.

5.3 A total of 26 witnesses submitted User Evidence forms. A further 9 people made contact to give their support to the route but did not give sufficient detail nor did they complete a User Evidence form to allow their experience and knowledge of the route to be included in the analytical data. Of the 26 witnesses, the evidence of three had to be discounted because they described their use as being with the permission of the landowner during their time of use. One further User Evidence form was discounted as, despite an original signature, the content of the form was a photocopy of another user's evidence so did not constitute independent evidence.

5.4 From the total 26 User Evidence Forms submitted, the evidence of 22 was eligible for analysis. All 22 witnesses were resident in the parish of Blandford St Mary for all or some of the time they made use of the route proposed.

5.5 Of the 22 witnesses from the User Evidence forms, the data was adjusted for three witnesses to reflect that their initial use was recorded as being from birth or an age so young as to be dependent on an adult to assist/accompany them.

5.6 Officer Comment: As babies, toddlers and very young children these three witnesses could not have been deemed to have independent choice to use the route. Therefore, for these three witnesses, their use as recorded on the User Evidence form from birth up until the age of 11 years of age has been excluded from the analytical figures.

- 5.7 A further adjustment was made for the witness whose use of the route for their initial 23 years was with permission by virtue of their employment as an agricultural worker. As such, these 23 years are not included in the analytical figures.
- 5.8 The first date of admissible recorded use was 1956 and claimed use continued without interruption until 2015 when the route was brought into question as a result of work site Health and Safety notices that also claimed withdrawal of deemed permission for use of the route and later, temporary fencing being erected. See Appendix 4.
- 5.9 The claimed route was brought into question in 2015 which results in a relevant 20 year period from 1995 to 2015.
- 5.10 Not all 22 witnesses were making use of the claimed route over the same periods. Based on user evidence, the minimum number of users during the relevant period was 16 (years 2006, 2014 and 2015). A maximum number of users, 20, was recorded in 1999. See Appendix 4.
- 5.11 Of the 22 witnesses, a significant number made daily or weekly use of the claimed route. During the relevant period, the route was used a minimum of 965 times in the year 2006. All other years in the relevant period resulted in uses in excess of 1,000 with a maximum number of uses recorded of 1,684 in the year 2013. See Appendix 4
- 5.12 21 of the 22 witnesses made use of the route always or sometimes on foot. Of these 21 witnesses, 8 made use of the route on foot frequently, either daily or weekly.
- 5.13 Officer Comment: This level of use in this manner supports the proposal for a route of footpath status.
- 5.14 6 of the 22 witnesses declared use of the route by pedal cycle. Of these 6 witnesses, 2 made use of the route by pedal cycle frequently, either daily or weekly.
- 5.15 Officer Comment: This level of use by pedal cycle does not support a proposal for a status higher than footpath. Three witnesses did provide evidence they made use of the route on horse back. However, the evidence of these witnesses has been discounted as it was use with permission and therefore this data is not included as part of the analysis.
- 5.16 9 of the 22 witnesses made occasional use of the route by car. Of these 9 witnesses, 1 made use of the route once a week by car.

- 5.17 Officer Comment: This level of use of the route in this manner does not support a proposal for a route of a status higher than footpath.
- 5.18 The proposed route gives access to the gate entrance for St Mary's Church on the eastern boundary of St Mary's Church, the parish Church for Blandford St Mary. 5 witnesses gave Church attendance as one of their reasons for use of the route being claimed.
- 5.19 7 witnesses gave evidence for use of the claimed route in order to post letters in the post box situated in the internal wall boundary of Clerkenwell House to the western end of the route proposed. Several witnesses recall the post box being relocated from the wall in Clerkenwell House to its current position, outside St Mary's Church, sometime during the 1980's.
- 5.20 Officer Comment: The Royal Mail were unable to specify the date of relocation of the post box. Two Royal Mail workers verified that the post box has been in its current position, outside St Mary's Church wall, for at least 20 years. The available Blandford St Mary Parish Council Meeting minutes do not mention the relocation of the post box to verify the date of the relocation.
- 5.21 Several of the witnesses describe using the claimed route to access Ward's Drove. Ward's Drove, along which Bridleway 3 runs, also gives access to the local trailway.
- 5.22 3 witnesses record having seen notices on the lane when the property was in previous ownership. One witness records a notice stating 'Private' and this witness went on to clarify the sign was "erected in the 1980's at the time of the barn development to deter builder's traffic". A second witness records "at some point in the 1980's the owner of ...Clerkenwell House, erected a small notice at the end of the route stating the word 'private'". The third witness records a small low wooden notice stating the word 'private' when the barn was being developed. This witness also states "a chain - small - at the top of the lane was installed, probably at the same time as the small wooden signs....I have never seen it stretched across the lane".
- 5.23 Officer Comment: A sign or notice that states the word/s 'Private' or 'Private Property' it is informing people that the notice is on land that is privately owned. Notices with these words on are not informing or declaring to the public that a Public Right of Way does or does not exist. Therefore, the notices mentioned in the witness user forms do not give weight to the evidence that the previous owner of Clerkenwell House showed a lack of intention to dedicate the proposed route.

- 5.24 Several witnesses made comment of the previous owner of Clerkenwell House, actively engaging with users of the route being proposed. One witness stated that “Owners of Clerkenwell House spoke to passers-by amicably” and another witness recorded “The previous owner would walk and talk with me”. A further witness stated that “The previous owner talked to people walking in the lane”. Another witness recorded “the owners prior to 2015 regularly saw people using the lane and never objected to this. We often stopped and chatted with either of them”. Two of these witnesses made use of the route on a daily basis for recreational purposes. No witnesses report being told by the previous owners that they had no right to use the route.
- 5.25 Officer Comment: Engagement by the previous owners with the users of the proposed route as the witnesses made use of the route undermines the notion that there was a lack of intention to dedicate by the previous owners. No overt acts were undertaken by the owner at the time to dissuade or inform these witnesses not to use the route or that they were using it with permission. See Appendix 2 Case Law.

Summary of user evidence

- 5.26 Evidence of use on foot between 1995 to 2015 is of sufficient number of users and frequency of use for there to be a reasonable allegation that public rights on foot exist (see Paragraph 5.13).
- 5.27 There is no evidence that the users were challenged during this period either by locked gates / notices (see Paragraph 5.22) or by direct challenge by the landowner (see Paragraph 5.24).
- 5.28 The available evidence suggests that use during the relevant 20 year period of 1995 to 2015 plus the 39 years prior to 1995 was without force, without secrecy and without permission i.e. it was used as of right.

6.0 Landowner correspondence (copies available in the case file RW/T546)

Response from the owners of Clerkenwell House

- 6.1 The current owners purchased Clerkenwell House in 2015 following the death of the previous owners. The previous owners resided in Clerkenwell House from 1971. The previous owners’ daughter, as executor, oversaw the sale of Clerkenwell House.
- 6.2 Officer Comment: Clerkenwell House and its grounds are privately owned property.

- 6.3 Officer Comment: Due to the death of the previous owners of Clerkenwell House, it is not possible for them to contribute to this investigation with their knowledge, experience and intention of the route being claimed.
- 6.4 Historical documents and publications, relating to Clerkenwell House and the parish of Blandford St Mary were passed to the current owners during the purchase of Clerkenwell House. The current owner supplied a copy of a letter composed by the previous owner, written to the Reverend of St Mary's Church, Blandford St Mary. This letter states that the previous owner felt he had given permission to parishioners, via the Reverends for the Church, to use the lane along which the claimed route runs. See Appendix 4.
- 6.5 Officer Comment: It is not known if this letter was received by the addressee. There is no evidence of this letter or the information it contains being publicly displayed or circulated in the parish of Blandford St Mary. It cannot be assumed that all parishioners of Blandford St Mary and/or users of the route were attendees of St Mary's Church. 5 out of 22 witnesses gave evidence of attending Church as one of the reasons they used the route. It is reasonable to conclude that the parishioners of Blandford St Mary were not aware of the written communication between the previous owner and the Reverend for St Mary's Church in 2003.
- 6.6 Officer Comment: The letter between the previous owner and the Reverend offers a little weight to a lack of intention to dedicate the route being claimed. However, there is a lack of evidence that this letter was shared with the public at large nor are there any witnesses who attended the church on a regular basis who claim knowledge of this communication and understanding between the previous owner and the Reverend of St Mary's Church. As a result insufficient weight can be given to this evidence proving a lack of intention to dedicate. Case Law specifies a landowner needs to undertake overt acts to show a lack of intention to dedicate. See Appendix 2.
- 6.7 A letter from the previous owners' daughter (acting as executor) to the current owner states that her father, "did not believe anyone had a right of way over the Lane".
- 6.8 Officer Comment: The statement of the daughter can only be taken as hearsay. The letter is not sufficient to demonstrate a lack of intention to dedicate the route being claimed on behalf of the previous owner. See Appendix 4.

- 6.9 The current owner of Clerkenwell House supplied contact details for the gardener used by the previous owners of Clerkenwell House.
- 6.10 The information recalled by the gardener is as follows:
- 6.11 The previous owners of Clerkenwell House hired a self employed gardener from October 1992 to 2014 (the year of the previous owners death). The gardener reports maintaining the grounds and garden at Clerkenwell House three days a week in the high gardening season and once a week in the low gardening seasons.
- 6.12 The gardener reports being asked to install a post and chain across the drive of Clerkenwell House at some point in the late 1990's but could not recall the exact date. The posts and chain were located at the end of the drive with the junction of the main road, Point E on Drawing T564/21/1 (See Appendix 1). At the same time two wooden signs each stating the word 'Private' were also installed; one at the end of the drive with the post and chain and the other sign at the opposite end of the drive nearest the church.
- 6.13 Officer Comment: The signs placed at each end of the drive clarified that the drive was privately owned.
- 6.14 The gardener did not know the exact reason for the posts and chain being installed. He believed it was to put off large vehicles that were incorrectly sent down the drive from the A350 main road as a result of Satellite Navigation systems.
- 6.15 Officer Comment: Posts and chain were only placed at the end of the drive with the junction with the A350 main road, Point E. The drive was freely available at the junction with Church Lane, Point A/B. This information seems to support the view held by witnesses that the previous owner of Clerkenwell House did not desire commercial or industrial vehicles from turning off the main road and making use of the drive. See paragraph 5.22.
- 6.16 Officer Comment: There is a conflict of dates whereby witnesses report signs stating 'Private' being erected in the 1980's and the gardener recalls the signs being erected in the 1990's. However, the differences in dates may have arisen given the passage of time since the signs were erected. The gardener and witnesses are in agreement that signs stating 'Private' were in situ on the drive of Clerkenwell House.
- 6.17 The gardener was required to maintain the drive on each visit to Clerkenwell House, such as cutting the grass verges, clearing horse muck and tending to plants along the length of the drive.

- 6.18 The gardener recalls seeing people frequently walking along the drive as well as one particular village resident riding their horse along the drive.
- 6.19 The gardener recalls the previous owner of Clerkenwell House talking with people walking along the drive and that the previous owner did not mind people walking along the drive.
- 6.20 Officer Comment: The gardener witnessed the previous owner engaging with people walking along the drive and the previous owner did not instruct users of the drive not to use the drive.
- 6.21 The gardener recalls people driving along the drive to get from the main road to the church car park. The gardener stated that the previous owner did not have an issue with church goers using the lane. The gardener was asked by the previous owner to place large stones on the grass verge along the drive at Clerkenwell House to stop people from parking their cars on the verge.
- 6.22 Officer Comment: The information recalled by the gardener suggests the previous owner of Clerkenwell House did not desire large vehicles to drive along the length of the drive but did not object to domestic vehicles making use of the drive for getting to church.
- 6.23 The gardener recalls frequently rehanging the chain across the drive upon his arrival to work in the garden at Clerkenwell House. The gardener did not know by whom or when the chain was taken down each time. Towards the latter years of the time the gardener worked at Clerkenwell House, he reports that he no longer rehung the chain and it remained on the ground to the side on the grass verge.
- 6.24 The gardener described the posts as standing approximately two feet high on posts approximately two inches square; the chain reached across a little short of the top of the posts. The gardener felt it would have been possible to squeeze around the outer edge of the posts if on foot but it would not have been easy.
- 6.25 Officer Comment: The nature of the posts and chain was such that people were not dissuaded from walking along the drive which was demonstrated as they continued to use the drive after the installation of the posts and chain. At a maximum of two feet high, although the mid section is likely to have hung slightly lower due allow for flexibility when placing chain onto the post hook, a person would have been able to step over the chain if it had been hanging in situ.

- 6.26 Officer Comment: The collective information provided by the gardener does not provide sufficient evidence of a lack of intention to dedicate by the previous owner of Clerkenwell House of the claimed route.
- 6.27 The current owners began extensive renovations to Clerkenwell House and its grounds following their purchase of the property in 2015. In this year Health and Safety Notices were erected with a notice that also claimed withdrawal of deemed permission for use of the route. Following planning permission being granted, gates were installed in May 2018 at the southern end of the claimed route. In March 2020 gates were installed at the western end of the claimed route, at its junction with the A350.
- 6.28 Officer Comment: Health and Safety Notices were erected in 2015 when renovation work began at Clerkenwell House and grounds, including the drive of Clerkenwell House. The additional notice that claimed withdrawal of deemed permission for use of the route brought use of the route by the public into question.

7.0 Consultation responses and other correspondence (copies available in the case file RW/T546)

- 7.1 Various communications were sent in relation to the application route. The following points were raised:
- 7.2 The Ramblers wrote in support of the application but were unable to provide any documentary or further user evidence to support the application.
- 7.3 Officer comment: The desirability of the application route is not a matter that can be taken into consideration.
- 7.4 Four members of the public offered their support for the application as they feel the application route offers the safest way to cross the main road (A350) to access Wards Drove.
- 7.5 Officer comment: Safety is not a matter that can be taken into consideration in determining the application.

8.0 Analysis of the evidence

- 8.1 There is evidence of public use of the claimed route since 1956. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.
- 8.2 Analysis of the evidence under Section 31, Highways Act 1980

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

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

Physical nature of the route

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

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

- 8.4 The erection of a health and safety notice withdrawing deemed permission (Appendix 4) followed by temporary fencing in 2015 at the junction with the A350 end of the route being claimed (point E) mentioned by several witnesses satisfies the requirements of an act that brought the public's use of the route into question, giving a relevant period of 1995 to 2015.

Twenty years use without interruption

- 8.5 Based solely on user evidence, it would appear that there has been no interruption to public use during the qualifying 20 year period from 1995 to 2015.

Without force, secrecy or permission

- 8.6 There is no evidence to suggest that the route, prior to 2015 has been used by force. Use of the route has been open. Three witnesses evidence was discounted due to permission being given to use the route. No other witnesses evidence states they had use of the route because of the landowner's permission.

Use by the public

- 8.7 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business. The evidence put forward in support of the application indicates that during the first 19 years of use, from 1956, the number of users and frequency of use were insufficient to have resulted in a deemed dedication. During more recent years, from 1975 to 2015, the date the route was brought into question, the number of users and frequency of use was sufficient to be considered to be use by the public that has come to the attention of the landowner.

Conclusions under Section 31, Highways Act 1980

- 8.8 It is considered that the requirements of Section 31 have been satisfied in this case and that the public have been using the route 'as of right' for a full period of twenty years between 1995 and 2015.

Analysis of the evidence under common law

- 8.9 Under common law it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied by a sufficient period of public use without force, secrecy or permission and the acquiescence of those landowners in that use. This is needed to meet the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient use is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as turning people back, putting up a physical barrier or erecting notices stating that the route is not a public right of way of the type being claimed.

Conclusions under common law

- 8.10 There is sufficient evidence from which a deemed dedication at common law can be inferred. Several of the users state that the previous landowner was aware of and acquiesced in the use of the path by the public. There is a small amount of evidence that the previous landowner may not have intended to dedicate however there is no evidence that this view has been communicated to the public or enforced.

9 Financial Implications

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

10 Climate Implications

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

11 Well-being and Health Implications

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

12 Other Implications

None

13 Risk Assessment

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

Current Risk: LOW
Residual Risk: LOW

14 Equalities Impact Assessment

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

15 Conclusions

- 15.1 In deciding whether or not it is appropriate to make an order, it is necessary to consider whether public rights subsist or are reasonably alleged to subsist on this route and/or the balance of evidence shows that the route ought to be recorded with a different status. On balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 15.2 The documentary evidence offers no support for the application.
- 15.3 The user evidence leading up to the application is strong and there is no interruption to the period of twenty years leading up to the date when public use of the route was brought into question.
- 15.4 The available evidence is also sufficient for a common law presumption to be inferred.
- 15.5 Therefore, it is recommended that the proposal to add a footpath from A/B to E as shown on Drawing T546/21/1 be accepted.
- 15.6 If no objections are received, then the Council can itself confirm the order provided the criterion for confirmation has been met. An order can be confirmed, if on the balance of probability, it is shown that the route described does exist. It is considered that the evidence is sufficient to satisfy this test.

16 Appendices

- 1 Drawing T546/21/1
- 2 Law
- 3 Documentary Evidence
 - Tithe Map and Apportionment of Blandford St Mary 1840
 - Blandford St Mary Parish Survey Map
 - First Definitive Map 1967
 - Definitive Map (sealed) 1989
 - Aerial Photographs 1972 and 2002
 - Blandford St Mary Parish Council Meeting Minutes 1978
- 4 User Evidence

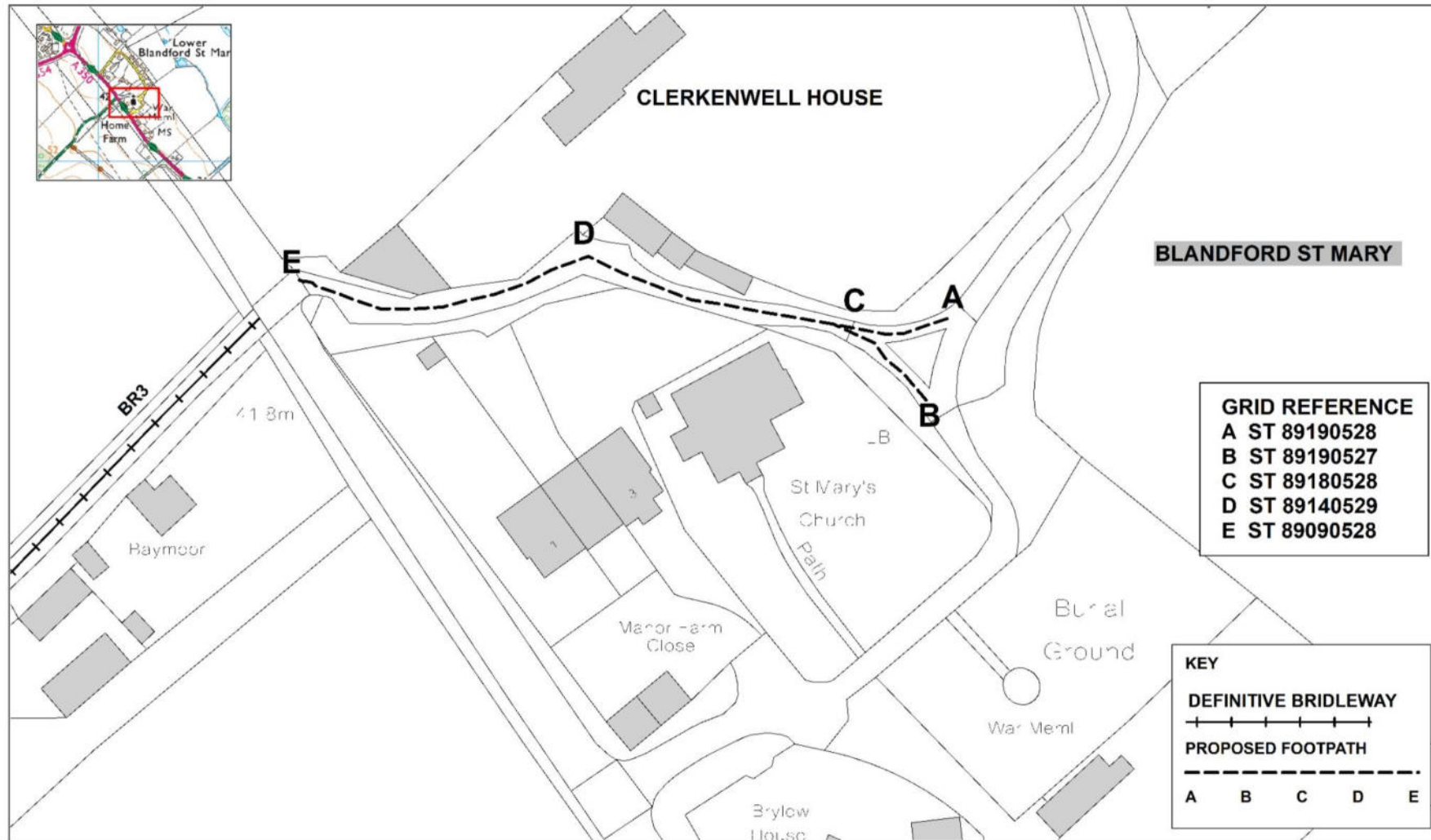
- Chart to show number of users per year
- Chart to show number of uses per year
- Clerkenwell House Health and Safety Notice 2015
- Letter from previous owner to the Reverend of St Mary's Church 2003
- Letter from the daughter of the previous owner of Clerkenwell House to the current owner

17 Background Papers

The file of the Executive Director, Place (ref RW/T546)

Date: June 2021


APPENDIX 1



WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD A FOOTPATH AT LOWER
BLANDFORD ST MARY

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T546/21/1
 Date: 20/10/2021
 Scale: 1:800 at A4
 Drawn by: SP
 Cent X: 389,164
 Cent Y: 105,267

 **Dorset Council**

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LAW

General

Wildlife and Countryside Act 1981

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

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

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

- 1.9 Where an objection has been made to an order, the Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

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

- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

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

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

- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit

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

- 2.5 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

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

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

4 **R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs and Cambridgeshire County Council [2007] UKHL 28.**

- 4.1 This case held that the test to establish what is sufficient is an objective one. That is, "intention" means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. This confirms the law as stated by Lord Denning in **Fairey v Southampton County Council [1956] 2 All ER 843 at 846 to 847**. There must be "evidence of some overt acts on the part of the landowner such as to show the public at large – the public

who used the path ... - that he had no intention to dedicate". It must be clear that the reasonable user would understand that the landowner was intending to deny that the land was a public highway of the particular status sought.

5 Finance Act 1910

5.1 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.

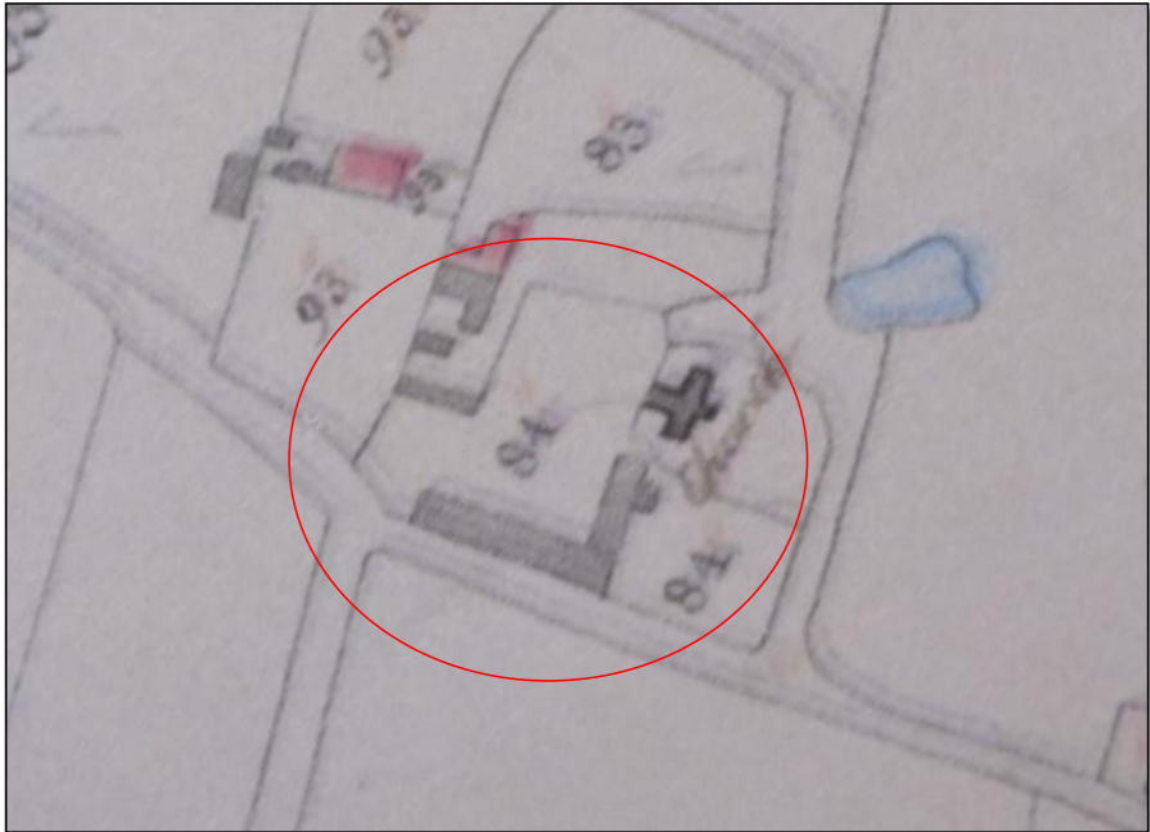
5.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

6 National Parks and Access to the Countryside Act 1949

6.1 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.

DOCUMENTARY EVIDENCE

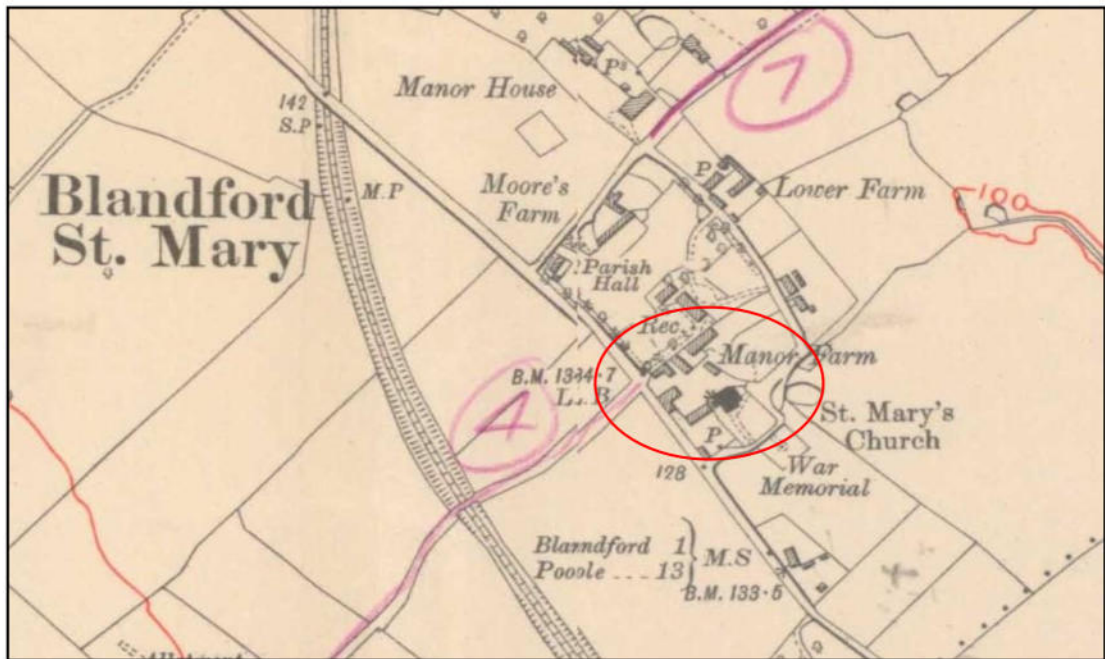
Tithe Map of Blandford St Mary 1840



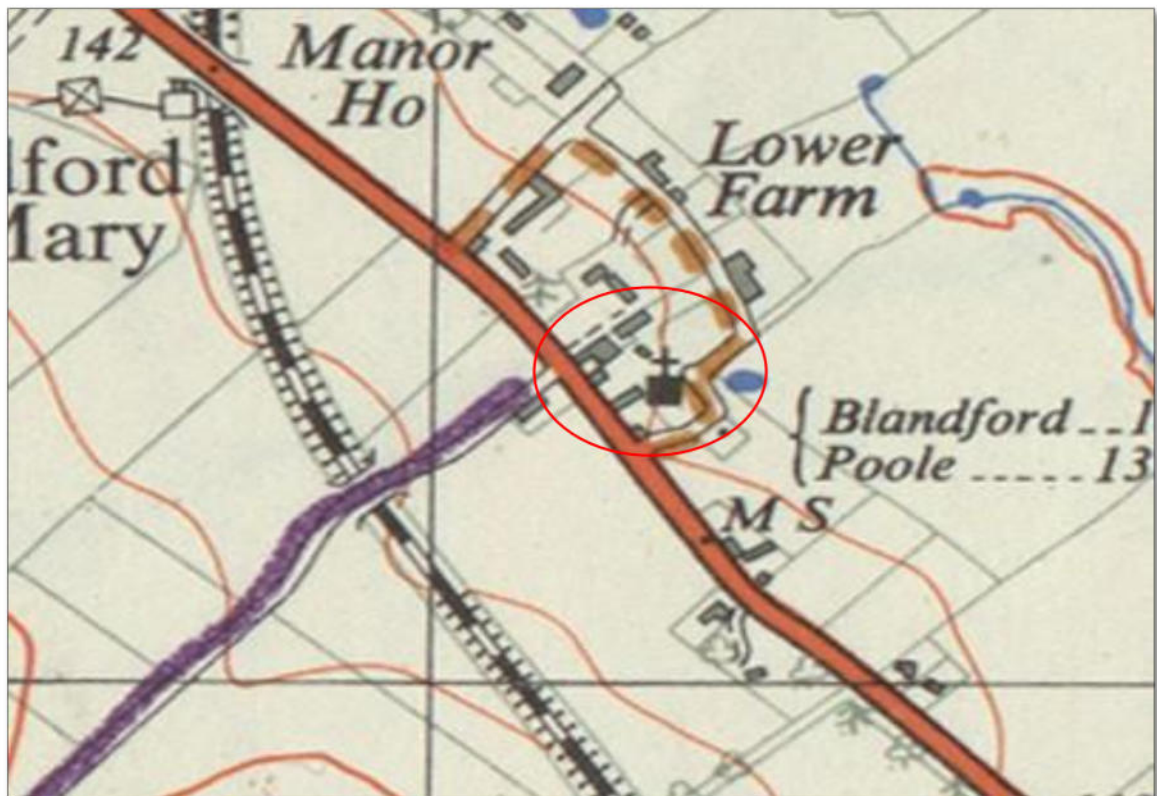
Tithe Apportionments for Blandford St Mary (1840)

TITHE APPORTIONMENT		BLANDFORD ST. MARY		T/BLM
	<u>Landowners</u>	<u>Occupiers</u>	<u>Name & Description of Lands & Premises</u>	<u>State of Cultivation</u>
80	Sir John WYLDSTORE SMITH, bart.	Robert RICKMAN	Three Cottages & Garden	
81	Samuel KERLEY	Samuel KERLEY	Two Cottages & Garden	
82	Sir John WYLDSTORE SMITH, bart. Lessee Thomas BRINE	Jon CROMEY & others	Six Cottages & Garden	
83	Sir John WYLDSTORE SMITH, bart.	Robert RICKMAN	Farm House, Outbuildings & Garden	
84	Sir John WYLDSTORE SMITH, bart.	Robert RICKMAN	Barn, Stable, Granary, Yard etc.	
85	Sir John WYLDSTORE SMITH, bart.	Robert RICKMAN	Marsh Cow Leaze	Pasture

Parish Survey Map (Circa 1950)



First Definitive Map (1967)



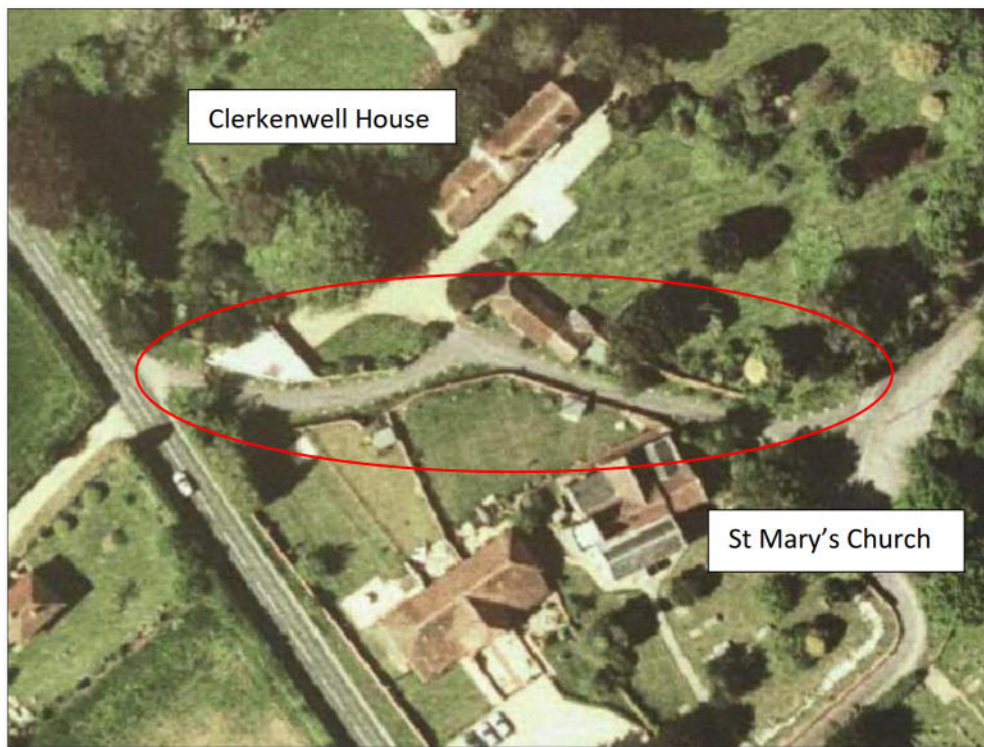
Definitive Map (Sealed 1989)



Aerial Photograph (1972)



Aerial Photograph (2002)



Blandford St Mary Parish Council Meeting Minutes 7 November 1978

CLERKENWELL DRIVE

present

raised the question whether the drive was private or a public right of way. advised the meeting that he had previously purchased this piece of land, repaired the road and it was his private property.

USER EVIDENCE

Chart to show number of users per year

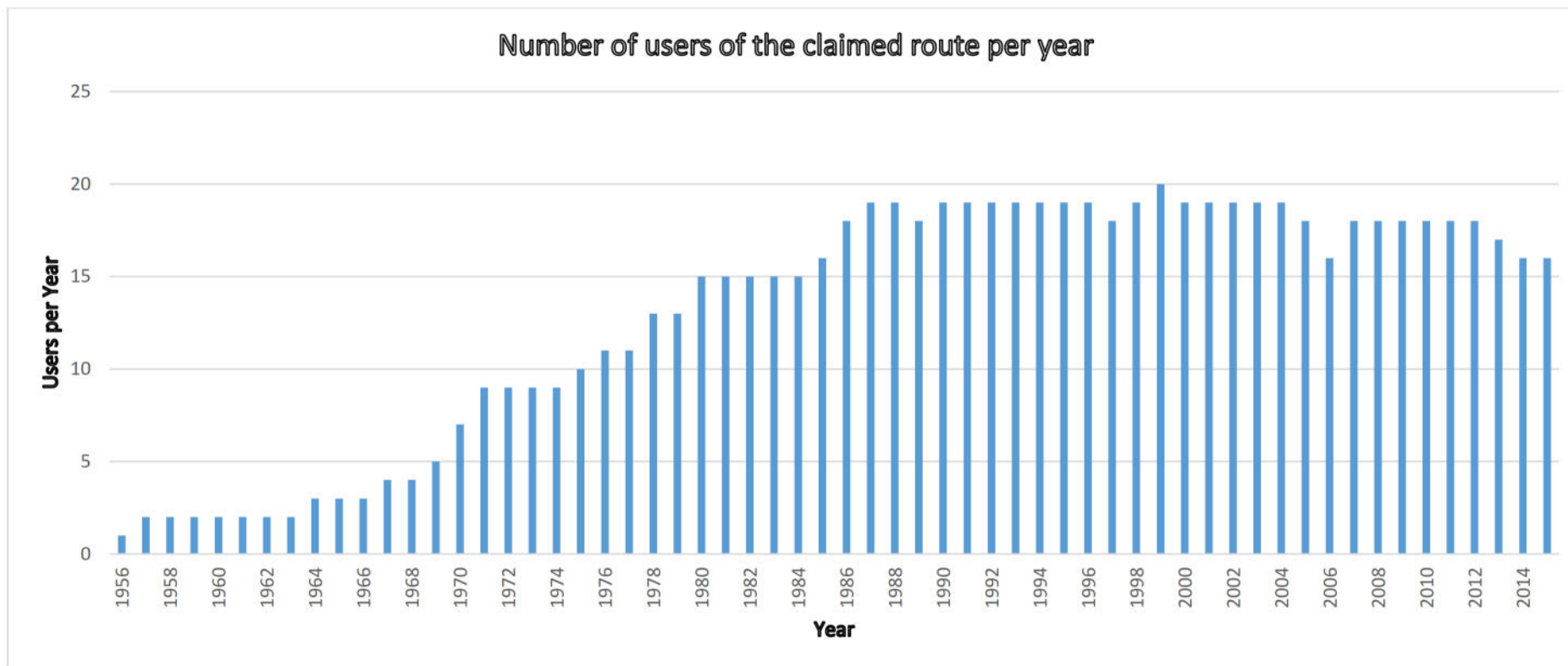
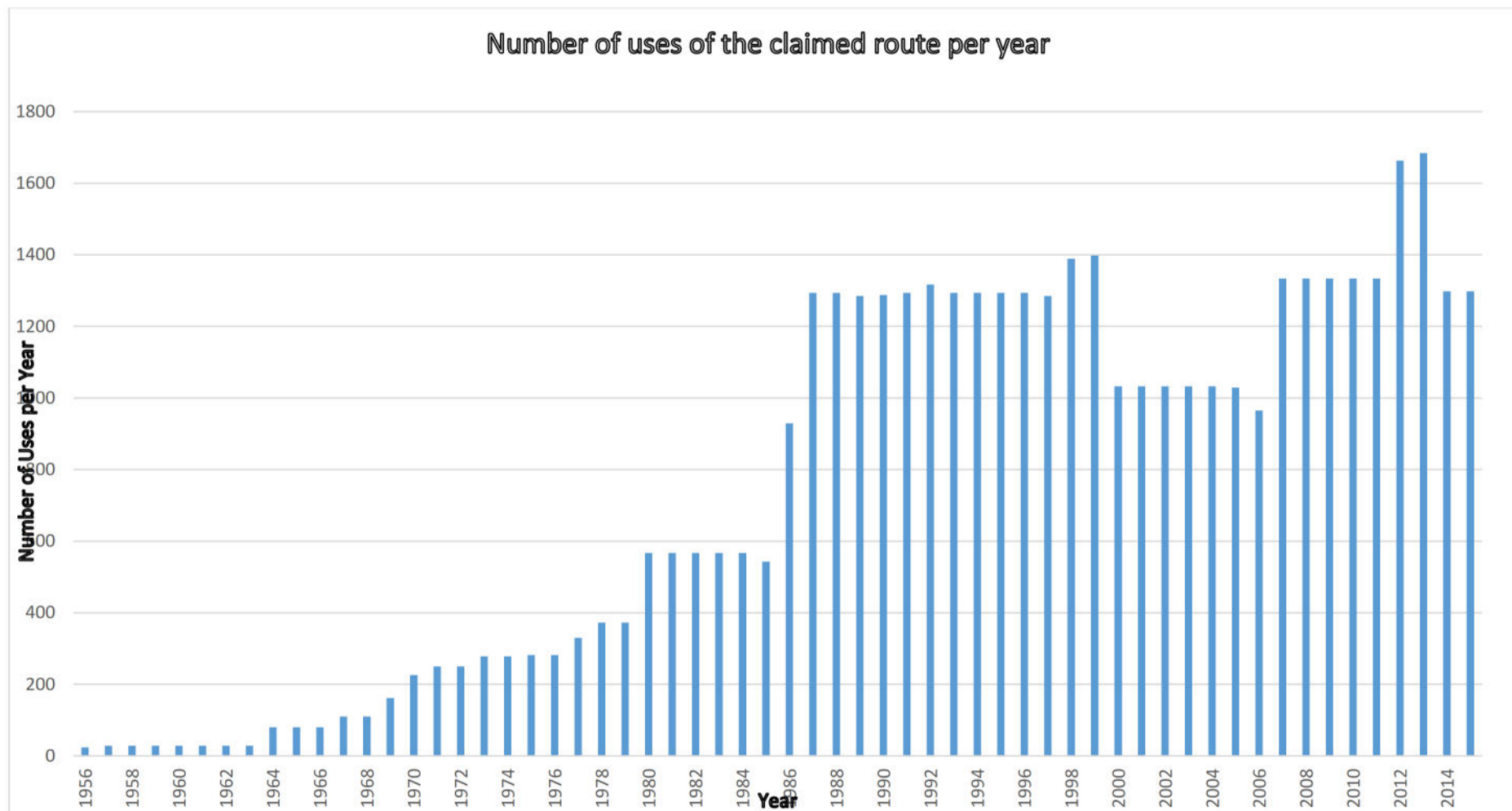


Chart to show number of uses per year



Clerkenwell House Health and Safety Site Notice erected in 2015



Letter from Previous Owner to the Reverend of St Mary's Church (2003)

Dorset DT11

Dear Redacted

I was asked this week to write a history of St Mary's church at Blandford St Mary. I am just in the final stages of completing a two hundred page book on the village and church covering the period from before the Norman Conquest up to today. I was originally asked to write a paper for the Dorset Natural History and Archaeological Society, but publication will now be by the Blandford Museum Trust. I would be happy help but I would be glad of a word with you as to exactly what is required I appreciate that it should be more popular rather than academic in form.

I would also like to mention another matter to you regard the user of our driveway. When we moved here in 1971, your predecessor, the Reverend Redacted, asked me if I would have any objection to his parishioners using the muddy track which then existed as a short cut from Poole Road to Church Lane. The track ran close to the post and wire fence separating Redacted barn and yard from Clerkenwell House. I agreed to this on a personal basis and not as a formal grant of a legal right of way. The arrangement has continued during the incumbency of the late Redacted and that of Redacted. As both my wife and I are over eighty, circumstances may well arise where we have to move and the present arrangement will cease. Should I have any say in the matter, I would encourage any new owners to continue the existing arrangement.

I look forward to hearing from you,

With best wishes,

Letter from the previous owner's daughter to the current owner

The title to CH includes ownership of the Lane and this can be evidenced by a Land Registry search. In 1971 the Lane was a muddy farm track and the conveyance of CH to my parents reserved a right of way over the Lane in favour of a local farmer who owned the land that now contains the Owls Roost properties and then contained just an ancient barn and a farm worker's cottage. CH had the benefit of restrictive covenants relating to the use of the Owls Roost land and, when the Owls Roost land was developed at the beginning of this century, the right of way was extinguished as part of the deal under which my parents consented to the development.

Soon after my parents bought CH they built the garage block with the high brick wall on the CH side of the Lane and had the Lane surfaced with tarmac. My parents maintained the Lane throughout their ownership, including mowing the verges and pruning and maintaining the plants they planted on the verges. They put up "Private" signs at each end of the Lane.

My father wrote a letter dated 3rd October 2003 to the then rector of St Mary's Church confirming that permission for parishioners to use the Lane when going to church was given on a personal basis and was not a formal grant of a right of way. My father also gave an oral personal permission to Redacted to take her horses to and from Wards Drove via the Lane, thereby avoiding having to ride along the A350. I am not aware of my parents giving anyone else permission to use the Lane. From conversations with my father I know that he did not believe that anyone had a right of way over the Lane, still less that it was a public right of way.

Recommendations accepted:

Signed:

Redacted

Date:.....9 June 2022.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning