

Report to the Executive Director of Place

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

For Decision

Cabinet Member: Cllr S Bartlett, Planning and Emergency Planning

Local Councillor(s): Cllr M Bell, Cllr L Bown, Cllr S Gifford, Cllr D Northam, Cllr G Taylor

Senior Leadership Team: Jan Britton, Executive Director of Place

Report author and job title: Sue Phillips, Definitive Map Technical Officer

Email: susan.phillips@dorsetcouncil.gov.uk

Statutory Authority: Highways Act 1980, Wildlife and Countryside Act 1981

Report status: Public

Executive summary

This report considers an application for a Definitive Map and Statement Modification Order, based on user evidence, to add a footpath at land known as Marwells in the parishes of Chickerell and Weymouth. Following an investigation of the user evidence and documentary evidence a recommendation is made to accept the application and make an Order.

Recommendation:

That:

- (a) The application be accepted and an order made to modify the definitive map and statement of rights of way by adding a footpath from A-B-C-D-E as shown on Drawing T555/25/1; and

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for the 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 claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

The Report

1 Background

Applicant

- 1.1. An application to add a footpath as shown A-B-C-D-E on Drawing T555/25/1 (Appendix 1) was made by Cllr David Northam and Mr David Phillips on 12 December 2018.

Description of the route

- 1.2. The route starts at the junction with Footpath 54 in Chickerell parish at point A where a 3 metre wide vehicle gate is in situ alongside a 0.90 metre gap between two gate posts hung with a pedestrian gate. The route continues east across open fields, passing through a 5.5 metre wide gap in the hedge at point B and turning south, south east at point C. The route continues south east through a 4 metre wide gap in the hedge at point D to reach its junction with Footpath 66 at point E in Weymouth parish.
- 1.3. Due to the topographical features of the area, the claimed route is isolated and obscured from view of the residential properties closest to the claimed route by the crest of a hill.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

Background to the application

- 1.4. In June 2018, the land affected by the claimed route was sold. The new owner engaged in a community consultation to offer a permissive route across the land known as Marwells, while considering a diversion for the recorded public rights of way. This permissive route was not the same as the claimed route that is the subject of this application. During this time, the new owner took measures to fence the recorded public footpaths numbered 54, 108 and 66, which cross the affected land. In October 2018 Heras type fencing was installed at points A and E of the claimed route (see Appendix 1) blocking access to the claimed route.
- 1.5. The Definitive Map Modification Order application was made by David Phillips and David Northam in December 2018 in response to the blocking of the access to the claimed route.
- 1.6. Since the application was registered, David Northam has been elected as a Parish Ward Councillor representing Broadway and Upwey and in 2024, he was elected as a Local Councillor and sits as a Member on Dorset Council's Strategic and Technical Planning Committee.

2 Law

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.
 - 'As of right' in this context means without force, without secrecy and without obtaining permission.
 - 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.
 - 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.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 2.2 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.
- 2.3 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.
- 2.4 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality.
- 2.5 Further details on the law are contained in Appendix 2

3 Issue to be decided

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route claimed and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

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

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T555)

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

Finance Act 1910

- 4.2 The Finance Act 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.
- 4.3 The Finance Act 1910 Plan records the parish name in which the claimed route runs as Radipole. The area across which the claimed route runs is contained entirely within Hereditament 5416.
- 4.4 Officer Comment: Hereditament 5416 is part of a large parcel which extends across two separate Finance Act 1910 Plans. The entirety of the claimed route is contained within the northern Finance Act 1910 Plan (see Appendix 3). The Ordnance Survey base map used for the Finance Act 1910 Plan shows a route as a double pecked black line noted as FP (footpath) crossing Hereditament 5416. This route was later recorded on the Definitive Map and is currently shown as Footpath 54 in the parish of Chickerell which becomes Footpath 108 as it crosses into the parish of Weymouth.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

- 4.5 The Field Assessment book for Hereditament 5416 records a deduction for public rights of way (see Appendix 3).
- 4.6 Officer Comment: A deduction for public rights of way does not indicate where these public rights are, nor how many public rights of way there are, nor the status of the public rights of way within the hereditament.
- 4.7 Officer Comment: The Finance Act 1910 Plan and associated Field Assessment book provide a small amount of weight in support of a claim for public rights of way due to the depictions of and deductions for public rights of way, but this evidence is not conclusive.

Ordnance Survey Maps

- 4.8 The Ordnance Survey (OS) Map of 1889 shows the fields over which the claimed route runs. The map shows a double pecked line marked as F.P (footpath) to the west of the area across which the claimed route runs (see Appendix 3).
- 4.9 Officer Comment: The recording of the double pecked line on the OS map is similar in its location to that of the double pecked lines shown on the Finance Act 1910 Plan. The footpath shown on the OS map is in the same location as the public footpath now recorded as Footpath 54 in the parish of Chickerell and continuing as Footpath 108 in the parish of Weymouth
- 4.10 Officer Comment: The depiction of double pecked lines notated as F.P (footpath) does not add weight of evidence to the existence of public rights along the claimed route.

Dorset Council Records

- 4.11 The application route was not claimed at the time of the Parish Survey (Circa 1950's) and was not recorded on the First Definitive Map (1967). It was not recorded on the current Definitive Map (sealed in 1989).
- 4.12 Officer Comment: The versions of the Definitive Map, up to and including the current Definitive Map (sealed in 1989) show Footpath 54, in the parish of Chickerell, from which the claimed route starts, Footpath 54 becoming Footpath 108 in the parish of Weymouth. Footpath 66 in the parish of Weymouth, where the claimed route ends is also shown (see Appendix 3).

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

Summary of documentary evidence

- 4.11 The Finance Act Plan (1910) and Field Assessment Book record public rights of way in hereditament 5416 in which the claimed route lies. The Finance Act Plan and Field Assessment book adds a little weight of evidence in support of the claimed route, but it is not conclusive.
- 4.12 The Ordnance Survey Map (1889) shows a feature of a double pecked line to the west and south of the start and end points of the claimed route. This follows what is now recorded as Footpath 54 in the parish of Chickerell and continues on as Footpath 108 in the parish of Weymouth. No double pecked line features along the line of the location of the claimed route. This document adds no weight of evidence in support of the claimed route.
- 4.13 Dorset Council records consistently show recorded footpaths across the land known as Marwells. There is no evidence of a recorded route with public access along the line of the claimed route. These documents add no weight of evidence in support of the claimed route.

User evidence (Appendix 4) copies available in the case file RW/T555)

- 5.1 25 user evidence forms were submitted alongside the application in 2018. At the start of the consultation one further user evidence form was provided by the applicants. A total of 26 user evidence forms were received from witnesses claiming knowledge and use of the claimed route.
- 5.2 Charts showing the number of users each year, and frequency of use form Appendix 4. Detailed witness evidence forms are available in the case file T555.
- 5.3 Officer Comment: Of the 26 user evidence forms, a total of 10 forms were inadmissible as evidence. The reasons for this are as follows:
- 5.4 One witness recorded being given permission to use the claimed route for 'rabbiting' with their dogs.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 5.5 Officer Comment: Permission being granted for use of a claimed route invalidates the evidence of user as it must be without force, without permission and without secrecy. In this case, this same witness also later claimed an inability to declare their use of the claimed route, via a statement provided by the current landowner (see paragraph 6.3). The current contact details for this witness could not be obtained during the investigation therefore, due to the declaration of the route being used with permission, this user evidence is considered inadmissible.
- 5.6 One user evidence form was dated but neither the evidence form nor supporting map were signed and the map was not dated.
- 5.7 Officer Comment: On meeting with this witness, the witness confirmed the form was in their handwriting, but the witness could not recall the route or their use of it up to the year 2018. The form remained unsigned, and the evidence was excluded from the analysis of evidence for the claimed route.
- 5.8 A further eight user evidence forms were inadmissible for analysis in support of the claimed route as the routes claimed on the witness maps did not follow the line of the claimed route either at all or for only part of the claimed route.
- 5.9 Officer Comment: The routes being claimed on these eight inadmissible user evidence forms did not provide sufficient consistent use of a single alternative route to that of the application route to give rise for a claim in support of an alternative route.
- 5.10 Officer Comment: Receiving 26 user evidence forms of which 10 were inadmissible as evidence in support of the claimed route, suggests a higher number of users walking across the land known as Marwells than could be included in the analysis of evidence of use of the claimed route.
- 5.11 The remaining 16 user evidence forms were admissible as evidence for analysis in support of the claimed route.
- 5.12 The first date of admissible evidence of recorded use of the claimed route was 1976 with uninterrupted use until 2018 when use of the route was brought into question. This provides 42 years of evidence of continual use of the claimed route.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 5.13 Use of the claimed route was brought into question in 2018 as a result of Heras style fencing being installed to prevent access through and over pedestrian and vehicle gates, from the existing recorded public rights of way, on and off the claimed route. This results in a relevant 20 year period from 1998 to 2018.
- 5.14 Not all of the 16 witnesses were making use of the claimed route over the same periods which results in fluctuations in the number of users during the relevant period. A minimum of eight users were recorded during the relevant period in the years 1998 and 2002 – 2004. The number of users of the claimed route rose to a maximum of 16 during the year 2017 (see Appendix 4).
- 5.15 Of the 16 witnesses, 14 made use of the claimed route either daily or weekly with the remaining two witnesses claiming use of the route on at least a monthly basis.
- 5.16 During the relevant period, the claimed route was used a minimum of 1,784 times in each of the years 1998 and 2002 – 2004. All other years in the relevant period resulted in uses in excess of 2,000 with a maximum number of 3,725 uses recorded in the year 2017. See Appendix 4.
- 5.17 All 16 witnesses claim use of the route on foot only.
- 5.18 Officer Comment: The number of users (see paragraph 5.14) and the number of uses (see paragraph 5.16) supports the claim for a route of footpath status.
- 5.19 All 16 witnesses record seeing other users on the claimed route. These other users are described as '*other dog walkers*' or '*ramblers*' or '*hikers*' or '*holiday makers*'. One witness records on their form that it was '*...unusual NOT to meet someone*' on the claimed route.
- 5.20 None of the 16 witnesses record seeing any notices on the claimed route informing the users that they should not be using the route.
- 5.21 None of the 16 witnesses record seeing any notices on the claimed route informing them they were not using a public right of way.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 5.22 Four of the witnesses make no mention of any furniture on the claimed route but describe 'gaps' in hedges. 10 of the witnesses recall a gate being in situ at Point B (see Appendix 1). The 10 witnesses, describe the gate variably as being 'not locked', 'open' or 'dilapidated'.
- 5.23 Of the 16 witnesses, two report being challenged in their use of the route in 2018, shortly prior to the Heras style fencing being installed. One of the two records being stopped in September 2018 and the other witness describes *'25th August 2018 a man walked towards me and stopped in front of me. He said, 'Do you know this is not a public right of way?' I replied 'no'. He told me, 'Well, it isn't'. I asked, 'do you want me to go back' He replied 'No, I'm just telling you'. He then walked on.'*
- 5.24 Four of the other witnesses record being aware of two people being approached when using the route in 2018, one to be told it was not a right of way and were forced to turn back; the other that they were told it was a permissive route and were allowed to continue. No other witness recalls being challenged or verbally instructed by landowners or tenant farmers about their use of the claimed route during the relevant period.
- 5.25 Three of the 16 witnesses record seeing the landowner and/or tenant farmer while they were using the claimed route.
- 5.26 Of these three witnesses, one witness records *"During my seven years of access, I have never been challenged by the owners, whom I have seen on many occasions"*. The second witness records seeing other people on the application route whilst they have been using it *'including the tenant farmer on many occasions'* and the third witness states *'I believe but cannot be certain that the farmer was Mr Swaffield but certainly nobody ever objected to me walking along the route'*.
- 5.27 Officer Comment: It appears that tenant farmers of the land known as Marwells during the relevant period and the preceding years did not verbally challenge people who were making use of the claimed route.
- 5.28 One witness who claims use of the route on a daily basis stated that: *"The cottage at Marwells was derelict for about 10 years or so before it was renovated"*

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 5.29 Officer Comment: The above observation suggests the owner of the land known as Marwells from 1980, was not present and therefore relied upon tenant farmers to enforce use of the public rights of way and/or to dissuade people from making use of the claimed route (see paragraph 6.20).

Summary of user evidence

- 5.30 Evidence of use on foot between 1998 to 2018 (and in preceding years) 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 5.18).
- 5.31 There is no evidence that the users were challenged during this period either by locked gates or the presence of notices (see Paragraphs 5.20, 5.21 and 5.22)
- 5.32 The available evidence suggests that use during the relevant 20 year period of 1998 to 2018 plus the preceding 22 years prior to the relevant period was without force, without secrecy and without permission i.e. it was used as of right.

6 Landowner correspondence (copies available in the case file RW/T555)

- 6.1 The current landowner took ownership of the affected land, known as Marwells, in June 2018, the year in which the claimed route was brought into question. The landowner provided 11 typed statements taken from individuals.
- 6.2 Officer Comment: 10 of the statements were from people who believe there to be a lack of intention to dedicate public rights of way on the affected land throughout the relevant period.
- 6.3 Officer Comment: One statement was a declaration that a user evidence form completed in their name was not completed by them. This statement requested their user evidence be withdrawn as they claimed an inability to declare their use of the claimed route on a written form. This statement, provided by the current landowner, was not in support of a lack of intention to dedicate.
- 6.4 Officer Comment: The evidence of this user has been discounted from the User Evidence analysis (see paragraph 5.5).

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 6.5 Of the 10 typed statements in support of a lack of intention to dedicate, nine are hand signed by the individuals from whom the statements were taken. One of the statements is not signed.
- 6.6 Officer Comment: The typed statements have been re-supplied electronically via the current landowner's solicitors. The typed statements with original signatures have been requested from the current landowner but have yet to be made available.
- 6.7 Of the 10 statements recording an understanding of a lack of desire to dedicate a public right of way across the land known as Marwells, four individuals were unable to be contacted. Of these four people, three have left the area with no current contact details and one person has died since providing their statement. Two other individuals were not contacted for further information beyond the detail offered in their statements.
- 6.8 Officer Comment: A total of six people who provided statements were not approached to clarify details contained in their statements.
- 6.9 All three of the statements from people who have left the area and cannot be contacted record identical paragraphs/sentences to those contained in other statements.
- 6.10 Officer Comment: As it has not been possible to contact these individuals to verify their statements, the elements of the statements which are duplicated have been dismissed from the evidence.
- 6.11 Of the 10 statements in support of a lack of intention to dedicate a public right of way during the relevant period, two people recorded their concerns for the poor behaviour of dog walkers leaving dog faeces in the area and one person's statement records their concern at fly tipping near the claimed route. These statements also record an awareness of signs that instructed people to '*keep their dogs on leads*' and '*stick to the footpaths*'.
- 6.12 Of the 10 statements provided, seven statements contained identical phrasing and sentences.
- 6.13 Officer Comment: It is unusual for individual statements to contain identical wording to one another. This calls into question whether the statements were produced independently of one another.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 6.14 Officer Comment: In cases where the individuals could not be contacted, the identical information has not been included in the analysis as it has not been possible to verify the originator of the information.
- 6.15 Of the 10 statements included in the evidence in support of a lack of intention to dedicate, four people were contacted to request further information to clarify details provided in their statements. Three were interviewed by telephone and the fourth was interviewed in person.
- 6.16 Of the 10 statements provided, four people experienced and/or witnessed the owner of the land up until 1980, who for the purposes of this report is referred to as [WB], enforcing the line of the existing public rights of way verbally, instructing people onto the existing public rights of way;

“the boyswould tell me how [WB] would tell them off if they strayed from the path”

“my brother and I were always reminded by [WB] if we strayed off the footpaths”

“Indeed as a child growing up in the area, [WB] would be constantly reminding us of the need to stay off his land”

- 6.17 Officer Comment: Of the four individuals with whom further interviews were conducted, three confirmed the tenacity of [WB] who berated people in person should anyone stray from the public rights of way at Marwells.

- 6.18 One person who provided a statement, during further interview, remarked:

“[WB] never left the farm at Marwells apart from his daily trip to a local café when he would get in his car and leave the property from about 10.30am and return an hour or so later. I do not recall [WB] ever going any further or away for any longer. As [WB] was always so present and he would walk the fields all the time, he would see people wandering off the footpaths or when their dogs were off leads.”

- 6.19 Officer Comment: The above statement details the almost constant presence of the owner [WB] of the land known as Marwells up until 1980, to be aware of users people walking the fields and footpaths.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 6.20 The owner of the land known as Marwells, who inherited the land from [WB], provided a statement to the current landowner with their knowledge and understanding of their time as owner of the land at Marwells, from 1980 to 2018, across which the claimed route runs. From the information provided in their statement and from further questioning, the following information was provided:

“ Further to my statement made in May 2018, nothing has changed from what was recorded at this time, other than the existing footpaths have been securely fenced.”

“ the last tenant of the land at Marwells, [under my ownership] would put up notices on the land telling people it was private property and to stick to the Public Footpaths. Previous tenants did the same.”

“ I would see people several times a year walking across the fields but not every week.”

“[after] an extensive renovation undertaken over many years” and “...we became residents at Marwells Cottage in January 2008”

- 6.21 Officer Comment: The owners of the land at Marwells who inherited the fields and associated cottage following the death of [WB] in 1980 did not move to Marwells Cottage until 2008. This suggests a reliance by the new owner following on from [WB] on tenant farmers to enforce use of the recorded public rights of way.
- 6.22 Officer Comment: One witness providing evidence of their use and knowledge of the claimed route before and during the relevant period states the cottage known as Marwells was un-occupied for many years (see paragraph 5.28). This statement appears to be supported by the information provided in paragraph 6.20.
- 6.23 Officer Comment: From the year 1982, the land at Marwells was under constant tenancy by local farmers following the death of [WB] up to and including the relevant 20 year period, 1998 to 2018.
- 6.24 Officer Comment: From the first year of recorded use of the claimed route in 1976 to the year of the death of [WB] in 1980, the number of uses was limited at less than 100 times a year. By 1985 the number of recorded uses was in excess of 700 times per year and from 1986 levels of use exceeded 1,000 times per year each year up to and including the relevant 20 year period of 1998 to 2018.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 6.25 Officer Comment: Following the death of [WB], whom several people recall being tenacious in the enforcement of the use of only the recorded public rights of way across the land at Marwells, the frequency of use of the claimed route began to increase significantly by 1985, approximately five years after the death of [WB]. See Appendix 4.
- 6.26 Officer Comment: During an accompanied site visit during the investigation, the current landowner of the land at Marwells stated it is not possible to see the claimed route from the three residential properties, which run adjacent to Footpath 66. The occupants of two of these properties are the current landowner of Marwells, who resides in Meadows Cottage and the previous landowner, who resides in Marwells Cottage.
- 6.27 Following the purchase of the land at Marwells in June 2018, a Highways Act s.31 (6) Statements and Declaration Form CA16 was lodged on behalf of the current owner in July 2018.
- 6.28 Officer Comment: The Highways Act s.31 (6) Statement and Declaration Application – Form CA16 was registered in July 2018 with Parts A, B and F completed. This acknowledged existing Public Rights of Way on the land at Marwells and is Step 1 in the process of depositing a Statement and Declaration. Step 2 of the process completing Part C, which is the declaration of a lack of intention to dedicate further public rights of way on land at Marwells was not made in July 2018. At the time of this report being written, Part C of Form CA16 has yet to be received by Dorset Council.
- 6.29 Officer Comment: Paragraph 13 of The Defra Guidance to completing form CA16 states: *'You may then within 20 years of the statement lodge a highways declaration that confirms you did not dedicate any additional ways over the land, or only those mentioned in the declaration, since the date of the highways statement. By completing both steps you confirm your intention not to dedicate any ways, or only those ways mentioned, during the time between the date of the statement and the date of the declaration. Declarations do not affect anything which took place prior to the deposit of a statement.'*

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

7 Consultation responses and other correspondence (copies available in the case file RW/T555)

7.1 The following communications were received in response to the consultation:

From the Ramblers: *"I have no documentary evidence to either support or refute the proposal to modify the definitive map and statement of rights of way by adding a footpath in the parishes of Chickerell and Weymouth but we would welcome this additional footpath."*

7.2 From Ashfords LLP (Solicitors representing the current landowner): *"I am writing to you to set out my client's position in respect of a site visit which took place on the land with the case handler and her line manager recently. The line of the purported right of way was walked and my client was present. He made the point that because public access was completely restricted it was not possible for any single person to walk on the land for the last 5 years, yet despite this, the tracks on the land which were present on the previous site inspection on 14 February 2019 are still in the same location showing heavy wear. It is the position of the client that this heavy wear has not been caused by anyone walking the route, but these are the tracks caused by stock on the land which are presently sheep. Indeed it was the clear opinion of Mrs Brown, who conducted the first site inspection 5 years previously, that their (sic) was no evidence of human traffic on the path and I believe her subsequent report stated this fact. Therefore the position in respect of those tracks and their usage I believe is established as being caused by stock on the land and not being caused by any public user. I would also add that my client made a Section 31(6) Deposit on 19 July 2018 in respect of the landholding at Marwells Farm."*

7.3 Officer Comment: The receipt of the Section 31 (6) Deposit, Form CA 16 is acknowledged, see paragraph 6.27 and considered in paragraphs 6.28 and 6.29.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 7.4 From Dorset Council's Senior Archaeologist: *"With reference to your email/letter of 11 February, the proposed new route crosses the remains of medieval field systems (Historic Environment Record references MDO6603 and MDO24818). These remains are fragments of what would once have been a more extensive system; aerial photographs and LiDAR show them surviving as slight earthworks, both appearing to have been in arable for some time. Neither block is designated as a Scheduled Monument. Consequently, I do not feel that historic environment considerations constitute a constraint in the context of this proposal."*

8 Analysis of the evidence

- 8.1 There is evidence of public use of the claimed route since 1976 and the user evidence put forward supports the claim that the route has been dedicated as a public right of way. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.
- 8.2 Analysis of the evidence under Section 31, Highways Act 1980

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

- The physical nature of the path must be such as is capable of being a right of way at common law
- The use must be brought into question i.e. disputed or challenged in some way
- Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question
- 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

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

Physical nature of the route

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

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

- 8.4 It is considered that the installation of Heras style fencing in October 2018 brought public use of the route into question, giving a relevant period of October 1998 to October 2018.

Twenty years use without interruption

- 8.5 Based on user evidence, it would appear that there has been no interruption to public use during the qualifying 20 year period from October 1998 to October 2018.

Without force, secrecy or permission

- 8.6 There is no evidence to suggest that the route has ever been used by force. Use of the route has been open and in the single case where permission was alleged to be granted, this evidence was excluded from analysis.

Use by the public

- 8.7 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business. The evidence put forward in support of the application indicates that during the years 1998 to 2018, the number of users and frequency of use was sufficient to be considered use by the public at large that has come to the attention of the landowner. A total of 26 user evidence forms were submitted claiming use of routes across the land known as Marwells. 10 were dismissed for evidence towards the claimed route but all 26 user evidence forms describe and map use of routes across land at Marwells. This suggests the level of use was generally at a higher volume than that which could be used as evidence specifically towards the claimed route.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

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 1998 and 2018.

Analysis of the evidence under common law

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

Conclusions under common law

- 8.10 There is sufficient evidence from which a deemed dedication at common law can be inferred. There is a small amount of evidence that an historic previous landowner of the land known as Marwells, affected by the claimed route, may have demonstrated a lack of intention to dedicate up to the date of death in 1980. However, there is little evidence for the 18 years preceding the relevant period, nor during the relevant period of 1998 to 2018, that a lack of intention to dedicate was communicated to the public by the landowners or tenant farmers.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

9. Conclusions

- 9.1 In deciding whether or not it is appropriate to make an order, it should be considered whether public rights subsist or can be 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.
- 9.2 The documentary evidence offers a small amount of weight of support for the application.
- 9.3 The user evidence leading up to the application is strong. There is no interruption to use during the period of twenty years leading up to the date when public use of the route was brought into question.
- 9.4 The available evidence is also sufficient for a common law presumption to be inferred.
- 9.5 Therefore, it is recommended that the application to add a footpath from A to E as shown on Drawing T555/25/1 be accepted and an order made.
- 9.6 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.

10 Alternative options considered

- 10.1 None.

11 Legal considerations

- 11.1 See paragraph 2 above.

12 Financial Implications

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

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

13 Natural environment, climate & ecology implications

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

14 Well-being and Health Implications

- 14.1 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.

15 Other Implications

- 15.1 None

16 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

17 Equalities

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

18 Appendices

1 Drawing T555/25/1

2 Law

3 Documentary evidence

- Finance Act 1910 Plan and Field Assessment Book
- Ordnance Survey Map (1889)
- Dorset Council Records:
 - Parish Survey Circa 1950s

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- First Definitive Map 1967
- Current Definitive Map 1989

4 User evidence – charts showing number of users and uses

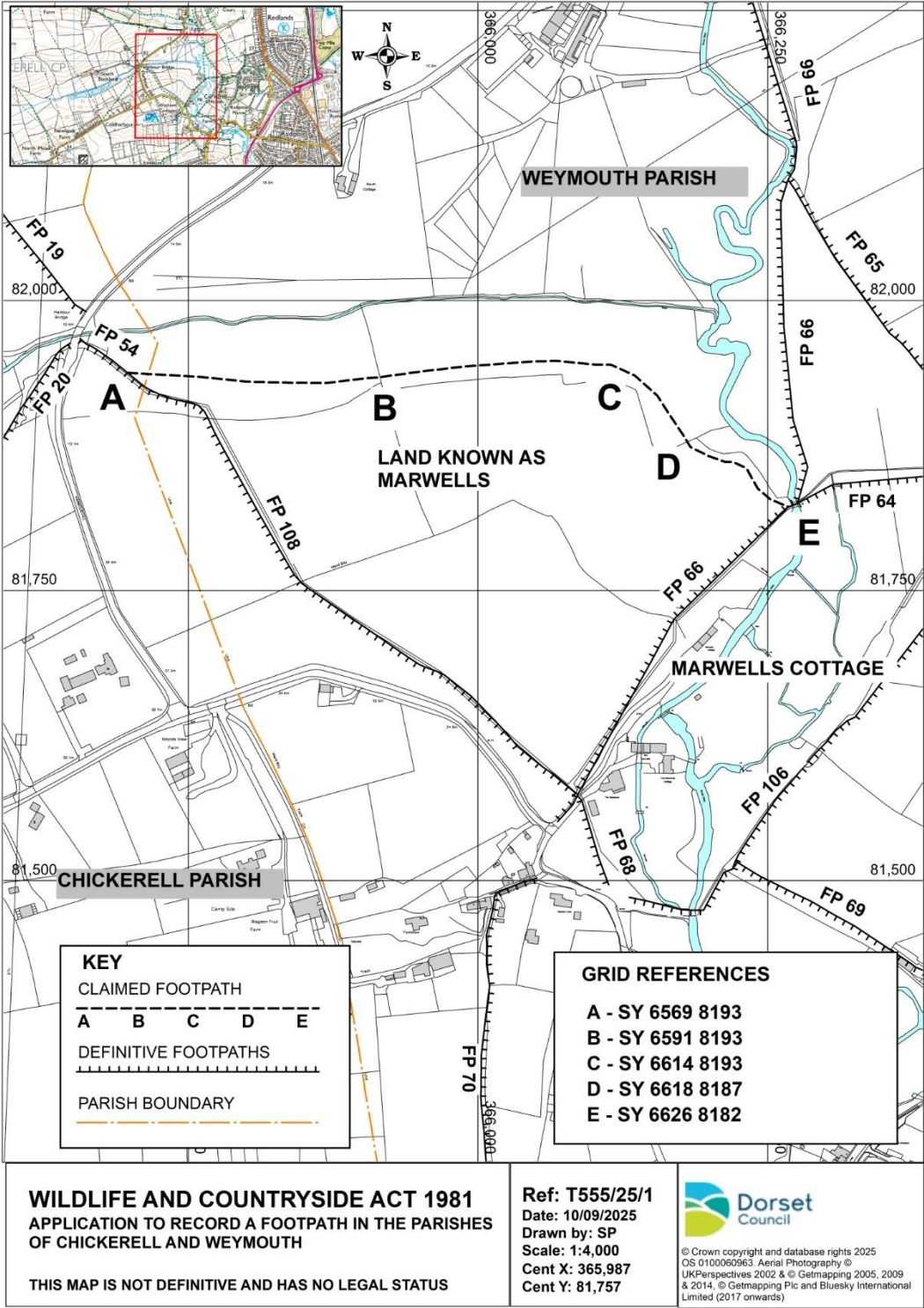
19 Background Papers

The file of the Executive Director, Place (ref. RW/T555).

Date: September 2025

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

APPENDIX 1 - DRAWING



Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

APPENDIX 2 - LAW

1. 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:
 - that a right of way subsists or
 - 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.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 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.
- ‘As of right’ in this context means without force, without secrecy and without obtaining permission.
 - 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.
 - 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.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

- 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 (section53) 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).

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

4 Finance Act 1910

- a. 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.
- b. 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.

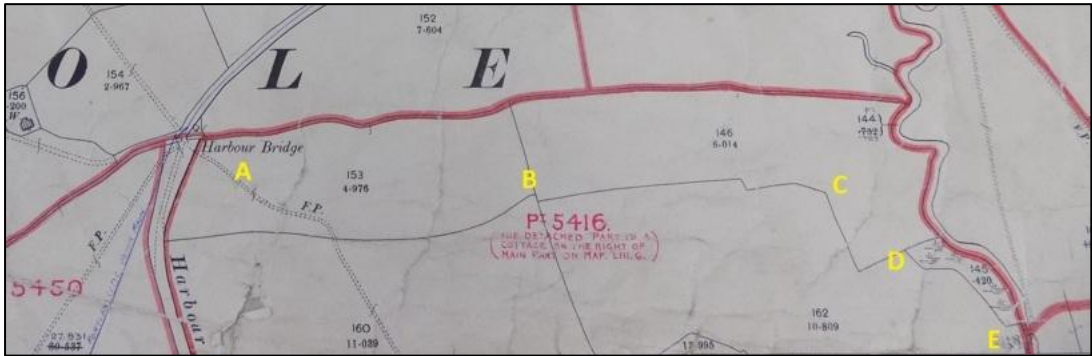
6 R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs and Cambridgeshire County Council [2007] UKHL 28.

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.

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

APPENDIX 3 - DOCUMENTARY EVIDENCE

Finance Act 1910 Plan

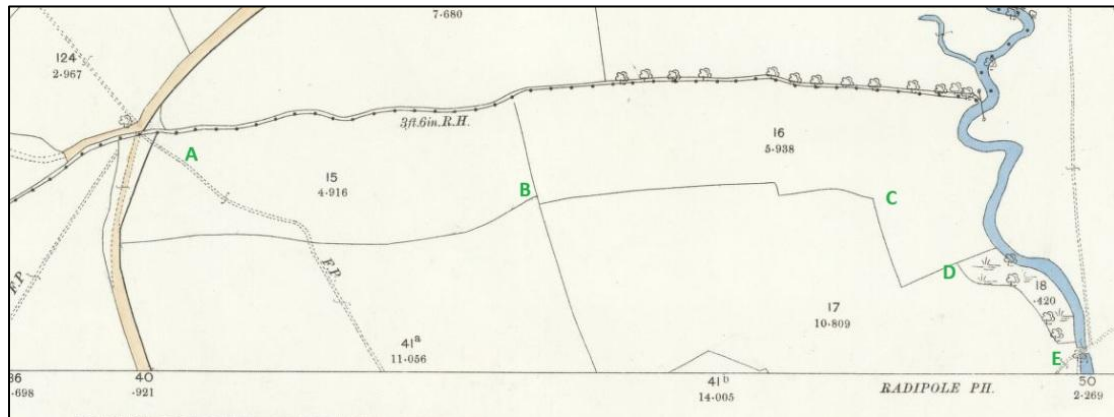


Field Assessment Book

Reference No.....	5416
GROSS VALUE.....	£ 3 995
Less Value attributable to Structures, timber, &c. (as before) £	735
FULL SITE VALUE.....	£ 3 260
Gross Value (as before).....	£ 3 995
Less deductions in respect of—	
Fixed Charges, including—	
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize.....	£
Any other perpetual rent or Annuity.....	£
Tithe or Tithe Rent Charge.....	£ 375
Other Burden or Charge arising by operation of law or under any Act of Parliament	£
If Copyhold, Estimated Cost of Enfranchisement.....	£
Public Rights of Way or User	£ 50
Rights of Common	£
Easements	£
Restrictions	£
	£ 425
TOTAL VALUE.....	£ 3570

Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

Ordnance Survey Map (1889)



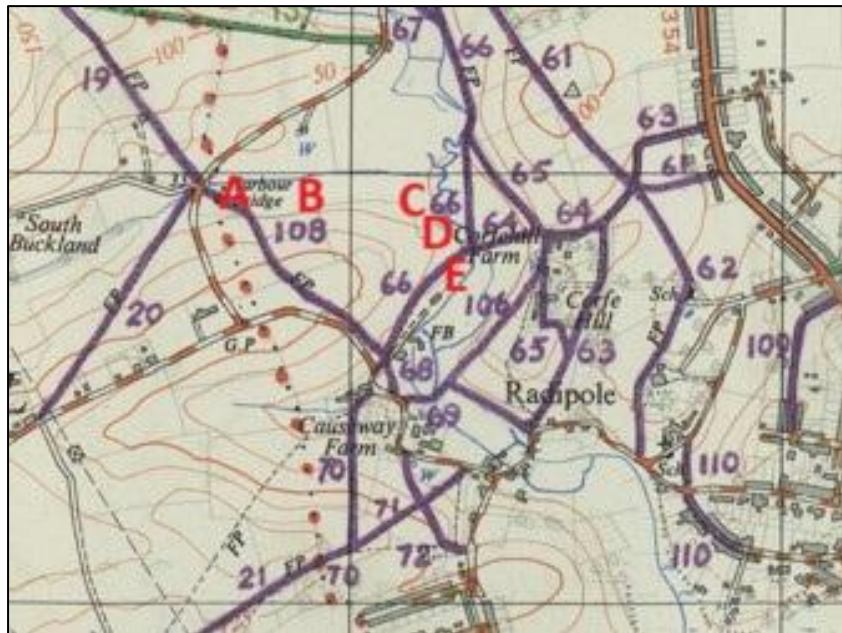
Dorset Council Records

Parish Survey (Circa 1950s)

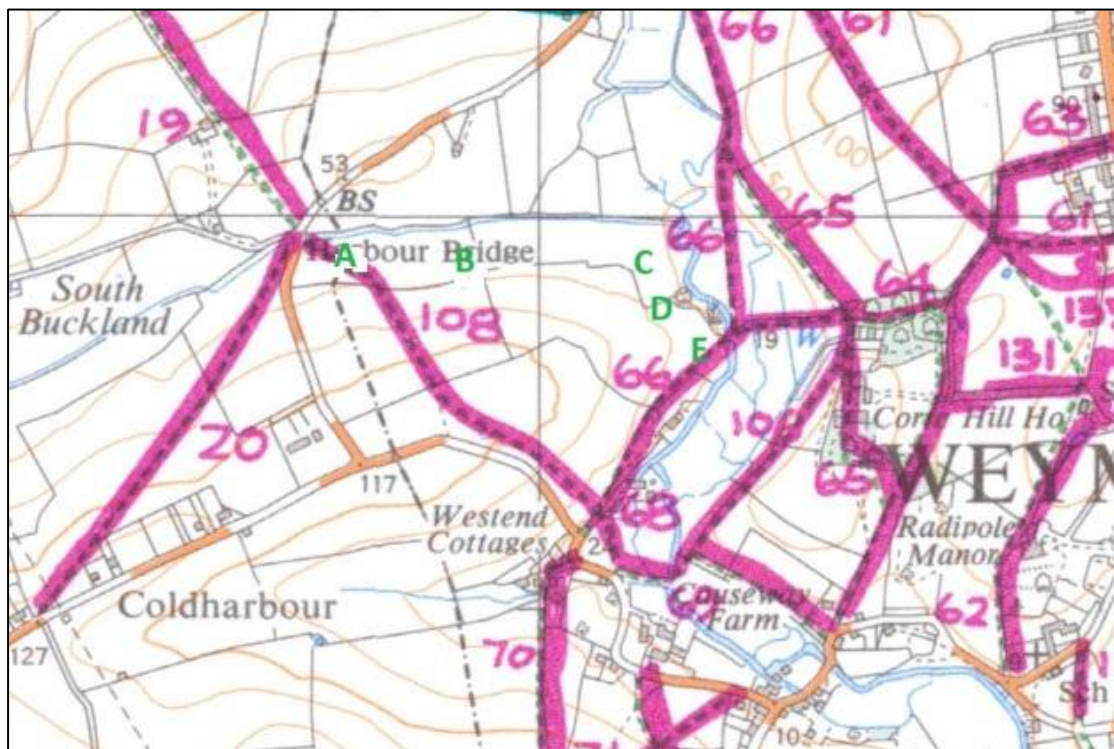


Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickereil and Weymouth

First Definitive Map (1967)

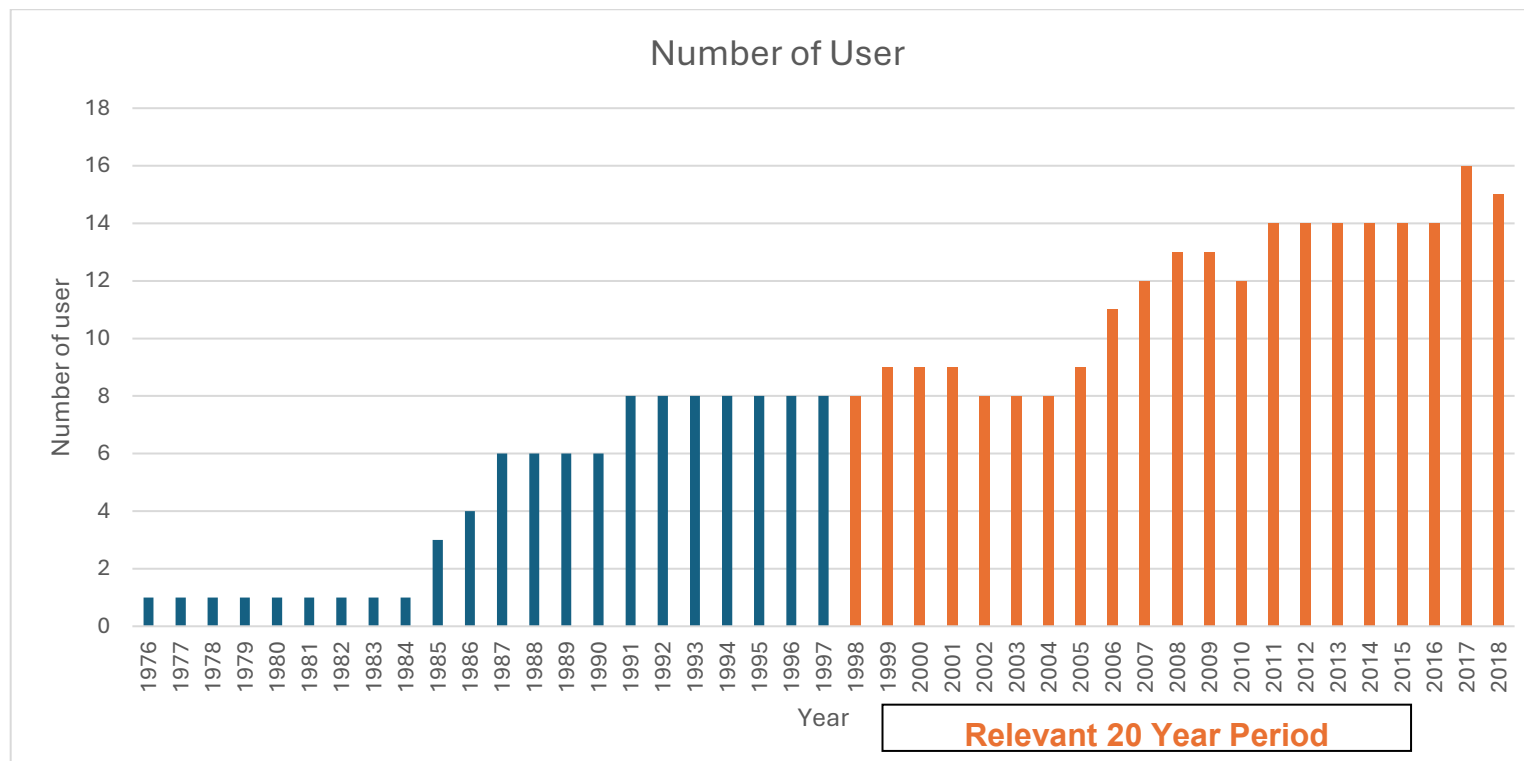


Current Definitive Map (1989)

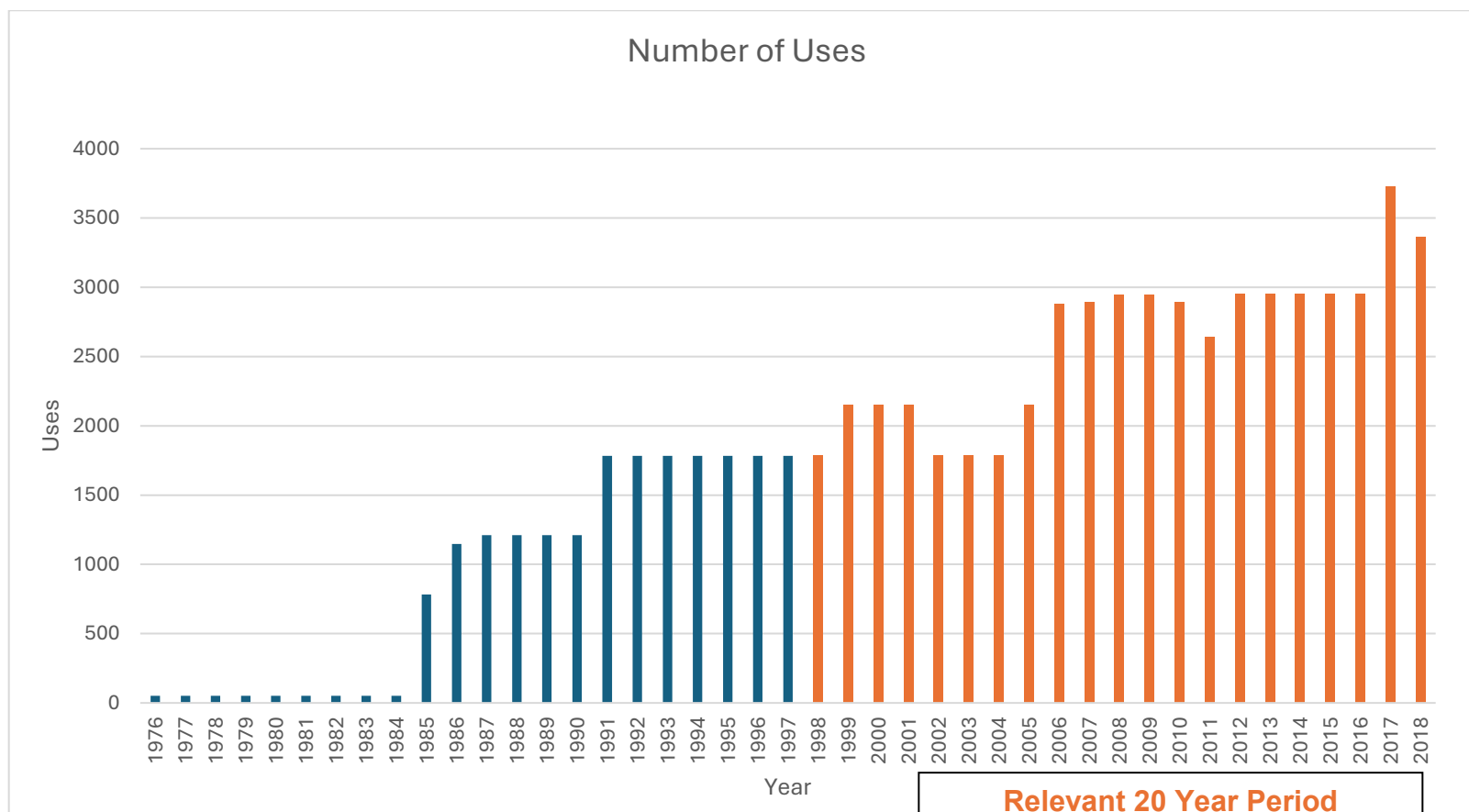


Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

APPENDIX 4 – CHARTS TO SHOW LEVEL OF USE



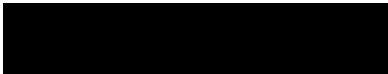
Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth



Definitive Map Modification Order Application to add a footpath between Harbour Bridge and the River Wey in the parishes of Chickerell and Weymouth

Recommendations accepted:

Signed:

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

Date:.....18 September 2025

Vanessa Penny

Definitive Map Team Manager

Spatial Planning

Authorised by the Executive Director of Place to sign on his behalf.