

Report to the Executive Director for Place

Application for a Definitive Map Modification Order to record Footpaths through Home Plantation in the Parish of Spetisbury

Choose an item.

Cabinet Member and Portfolio: Cllr S Bartlett, Planning and Emergency Planning

Local Councillor(s): Cllr Barrie Cooper

Executive Director: Jan Britton, Executive Director for Place

Report Author: Sue Phillips
Title: Definitive Map Technical Officer
Tel: 01305 221409
Email: susan.phillips@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary: This report considers an application for a Definitive Map Modification Order, based on user evidence, to add footpaths to the Definitive Map and Statement in the Parish of Spetisbury. 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 footpaths from A – B - C and from D – C - E - F as shown on Drawing T557/24/1; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

- (a) The available evidence shows, on balance, that the claimed rights of way subsist or are reasonably alleged to subsist;
- (b) The evidence shows, on balance, that the routes claimed should be recorded as footpaths 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 two footpaths as shown A – B – C and D – C - E - F on Drawing T557/24/1 (Appendix 1) was made by Mr Simon Lauder on 11 March 2019 with 35 supporting User Evidence forms.

Description of the routes

- 1.2. The first route claimed (Route 1) commences at Point A, its junction with footpath E17/16 heading north west along an initially enclosed route and continuing north west along a grass verge strip with hedging to the eastern side and open field to the west to enter Home Plantation at Point B and continuing in a west, north westerly direction to meet the second claimed route at Point C. The second claimed route (Route 2) commences at its junction with existing footpath E17/16, Point D, at the southern most tip of Home Plantation. The route heads north into Home Plantation and meanders through the mature woodland north on a compact earth surface passing Point C and descending to the northern end of Home Plantation to meet Point E where the route exits Home Plantation and enters open ground to join existing footpath E17/10 at Point F. The widths vary from 1.7 metres at Point A continuing at 1.7 metres to Point B and entering Home Plantation to follow a worn earth path to Point C where the route reaches 4 metres between the trees. The width of the second route is open ground at Point D narrowing to 2 metres as the route enters the Home Plantation with variable widths between the mature trees reaching 5 metres at Point E before meeting the junction of footpath E17/10 at Point F on open ground.

Background to the application

- 1.3 The land, over which the claimed routes run, changed ownership in 2012. In 2018, signs were erected by the current landowners informing users entering Home Plantation that the routes across the woods were

with permission of the landowners. This prompted an application for a Definitive Map Modification Order.

All of the land affected by the claimed routes is in the same ownership.

The claimed routes remain accessible and available to the public at the time of the report being written.

2 Law

2.1 A summary of the law is contained in Appendix 2

3 Issue to be decided

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

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

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

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T557)

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 Spetisbury (1839) shows apportionment 117, across which part of the claimed route runs. Home Plantation is shown on the Tithe Map and is noted as Tithe Free. Several areas on the Tithe Map, around the area of the claimed routes, are also notated as Tithe Free.
- 4.3 Tithe Apportionment 117 states the Landowner is John Samuel Wanley Sawbridge Erle Drax Esquire and that the land is arable.
- 4.4 The Tithe Inclosure Award (1839) schedule states *“There are lands lying dispersed in different parts of the said Parish belonging to John Samuel Wanley Sawbridge Erle Drax, Esquire, comprising together by estimation about three hundred and eighty six acres and three perches, statute measure, which are exempt from Tithes by prescription.”*
- 4.5 Officer’s Comment: No evidence of land use for Home Plantation has been identified through Tithe and the use of apportionment 117 is described as arable land. Both Home Plantation and Apportionment 117 are free of Tithe by virtue of their ownership.
- 4.6 The Tithe Map and Tithe Inclosure Award (1839) provide no weight in evidence towards the claimed routes.

Finance Act 1910

- 4.7 The Finance Act 1910 plan records the parish name as Spettisbury. The Finance Act 1910 plan depicts the areas surrounding the routes being claimed. Home Plantation is parcelled as Hereditament 183 and the remaining land affected by the claimed routes is Hereditament 182.
- 4.8 Officer Comment: There is no available Field Assessment Book accompanying the Finance Act 1910 Survey and Plan for Spetisbury to offer any further information as to the owner(s) or use of the lands surveyed and labelled as Hereditaments 182 and 183.
- 4.9 The Finance Act 1910 documents provide no weight in evidence towards the claimed routes.

Ordnance Survey Maps

- 4.10 The Ordnance Survey (OS) Map of 1888 depict the fields and wooded area over which the claimed routes run. No defined tracks or routes are depicted on and near to the areas affected by the claimed routes. The Ordnance Survey documents provide no weight in evidence towards the claimed routes.

Dorset Council Records

- 4.11 The application routes were not claimed at the time of the Parish Survey (Circa 1950's) and were not recorded on the First Definitive Map (1967). They were not recorded on the Definitive Map (sealed 1989).
- 4.12 Officer Comment: The versions of the Definitive Map, up to and including the Definitive Map (sealed 1989) shows footpaths 10 and 16 recorded consistently following the same line but no routes as detailed in the claimed routes are recorded. See Appendix 3.
- 4.13 Officer Comment: Footpath 16 is currently not available due to dense overgrowth. It is possible to see evidence of an historic stile that would have given access across the field to follow the legally recorded line at both Point A and a further point approximately 20 metres north where footpath 16 leads west from the claimed route.
- 4.14 Officer Comment: Dorset Council records offer little weight of evidence in support of the claimed routes.

Aerial photographs

- 4.15 The aerial photograph from 2002 depicts the area over which the claimed route runs from Point A to B at which point the routes enter Home Plantation and become obscured by dense woodland.
- Officer Comment: The claimed route from Points A to B is on a stretch of field headland that separates two fields. The field over which the claimed routes run includes the headland and is in separate ownership to the open field to the west of the field alongside which the claimed routes run. See Appendix 3.
- 4.16 The aerial photograph taken in 2014 shows the same field system with the field to the south of the claimed route Points A to B as having an established crop growing. The same headland is evident as in the aerial photograph of 2002 along which the claimed route Point A to B

runs. At a close zoomed in view, the claimed route appears available at this time due to a faint desire line appearing along Points A – B by suggesting that a route was visible on the ground.

4.17 Officer Comment: The claimed route diverges from the recorded Public Right of Way E17/16 at Point A and continues north west to Point B where the claimed route enters the heavily wooded area known as Home Plantation. The dense woodland obscures the claimed routes from Point B – C and from Points D – C – E – F.

4.18 Officer Comment: The aerial photographs add a little weight of evidence towards the claimed route between Points A – B.

Summary of documentary evidence

4.19 The documentary evidence shows open land and a plantation across some of which the application routes run.

4.20 Officer's Comment: The historic documentary evidence provides little weight of evidence for the existence of public rights along the application routes.

5 User evidence (Appendix 4) (copies available in the case file RW/T557)

5.1 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.

5.2 The claimed public rights were brought into question in July 2018 when signs informing people that the route was permissive were installed at Point B. See Appendix 4

5.3 Officer Comment: Permissive signs being installed in July 2018 results in a bringing into question of the claimed routes and a relevant 20 year period from July 1998 to July 2018.

5.4 35 user evidence forms were submitted with the original application. A full public consultation was carried out between July and August 2024. No further user evidence forms were submitted during this period.

- 5.5 A total of 35 people submitted user evidence forms. All 35 forms were admissible evidence. No user evidence forms recorded that any use was with permission of the landowner or any other representative of the landowner. No users describe their use as being challenged, whether verbally or by written instruction, at any time.
- 5.6 Of the 35 users who provided evidence, only one user did not claim to use the route for the entirety of the 20 year period leading up to the route being brought into question as their use began one year into the relevant 20 year period.
- 5.7 All 35 of the users were of an independent age when using the claimed routes.
- 5.8 The first date of admissible recorded use was 1954. Claimed use has continued without interruption and the routes have been available since this time.
- 5.9 All 35 users who provided evidence of their use of the route claim to have done so on foot.
- 5.10 The lowest number of uses of the claimed routes occurred in the years 2010 to 2016 when 3,411 uses were recorded for each of those years. The highest levels of use occurred in the years 2006 to 2009 when 4,117 uses per year were recorded.
- 5.11 Officer Comment: The minimum and maximum number of uses on foot of the claimed route by the 35 users in the relevant period provides strong evidence to support the claim that public rights exist at a status of footpath along the claimed routes.
- 5.12 Of the 35 users, two claimed to have made use of the routes on pedal cycle. No users claim to have ridden a horse on the routes being claimed.
- 5.13 Officer Comment: This number of people claiming use of the route on bicycle does not provide sufficient evidence for a status other than footpath.
- 5.14 12 users of the routes claim a single strand of wire at Point E has been in situ for most of the years during their use of the routes. See Appendix 4

- 5.15 Officer Comment: Of the 12 users who describe a single strand of wire at Point E, four users on their evidence forms describe the wire as either, having “a hook opening” (User 24) a “hook fastening” (User 12) or “easy opening and shutting access” (User 17) or “easily opened and shut with easy access for walkers” (User 20).
- 5.16 Officer Comment: Under interview three of the 12 users who describe a single strand of wire clarified that they either recalled a hook or made use of a hook to enter/exit Home Plantation at Point E. These were users numbered 19, 24 and 33.
- 5.17 Officer Comment: Given the passage of time and the familiarity of the strand of wire, no users were able to place exact dates or time frame on the appearance of the wire.
- 5.18 Officer Comment: A strand of wire with a hook for releasing it to allow entry/exit into the woods known as Home Plantation does not require force, in the same way a shut gate that is not locked requires no force to be opened other than by use of the latch.
- 5.19 Four users of the route describe on their evidence form that their understanding for the reason for the single strand of wire was to keep cattle or horses out of the woods. Over the years the field has housed cattle or horses at different times.
- 5.20 Of the users who recall the wire, not all made use of the hook to undo the wire, preferring to either ‘duck under’ the wire or step over the wire.
- 5.21 Of the 35 user evidence forms analysed and during the eight in person interviews undertaken, no person recorded or recalls being stopped or turned back from using the routes. No one recorded or recalled being advised, either verbally or via notices, that there was no public right of way along the claimed routes.
- 5.22 All 35 users of the claimed route state in their user evidence forms that they witnessed others making use of the claimed routes.
- 5.23 Officer Comment: For all 35 users of the claimed routes to have witnessed others using the route suggests the evidence submitted reflects only a proportion of the actual use.
- 5.24 Photographs of worn paths, throughout the Plantation of the route D – C – E – F and the route from B – C, taken at the time of the application, is strong evidence of use of the claimed routes. See Appendix 3.

- 5.25 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 T557.
- 5.26 At the time of the Definitive Map Modification Order application submission in 2019, a site visit was undertaken to record details of the application route. Photographs were taken to record evidence of the routes claimed at the time of the application.
- 5.27 Officer Comment: Photographs taken during the site visit depict the Route 1 (from Points A – C) and Route 2 (from Points D – C – E – F). These provide evidence of well worn routes across Home Plantation which cannot be viewed from the air due to dense tree cover throughout the entire plantation.

Summary of user evidence

- 5.28 The data of 35 users was analysed for the number of users and frequency of use during the relevant period of July 1998 to July 2018. A minimum number of uses of 3,411 occurred in each year from 2010 and 2016. The 35 analysed evidence forms recorded a maximum number of uses of 4,117 in each of the four years from 2006 to 2009. See Appendix 4.
- 5.29 The users evidence gives substantial weight to support the claim that public rights exist along the claimed routes.

6 Landowner correspondence (copies available in the case file RW/T557)

- 6.1 Several letters were sent to the previous landowner and current landowner, seeking their views on the Definitive Map Modification Order application both before and during the public consultation.
- 6.2 To date, no response has been received from the previous landowners.
- 6.3 The current landowner, via a Public Rights of Way consultant, advised that there was no intention to dedicate, and evidence would be forthcoming to support this. An extension to the public consultation response deadline was requested and granted to 30 September 2024 to enable the landowner to gather and submit the relevant evidence.

- 6.4 On the extension deadline date, the landowner advised that the evidence is being gathered but cannot be submitted by the extended deadline. No indication was given as to when any evidence may be submitted.
- 6.5 Officer Comment: At the time of writing the report, no evidence has yet been submitted that supports a claim of a lack of intention to dedicate public rights along the claimed routes.
- 6.6 There do not appear to have been any applications made by either the previous or current landowners to protect the land affected by the claimed routes from the accrual of public rights of way under Section 31 (6) of the Highways Act 1980, also known as Landowner Deposits.
- 6.7 Officer Comment: Landowners can protect their land against claims for public rights of way, by showing that at the relevant time they did not intend these rights to be acquired/dedicated. This can be done by physical actions such as displaying notices, fencing the land or locking gates. It can also be achieved by the deposit of a combined document, under a new provision in the Growth and Infrastructure Act 2013. This allows a landowner to submit a deposit under Section 31(6) of the Highways Act 1980 and a landowner statement under Section 15A(1) of the Commons Act 2006 on the same document.
- 6.8 Officer Comment: No evidence appears to be available that a deposit under Section 31 (6) of the Highways Act 1980 has been registered at any time by either the current landowner or the previous landowner.

7 Consultation responses and other correspondence (copies available in the case file RW/T557)

- 7.1 Dorset Council carried out a wide consultation running from July to August 2024.
- 7.2 The following submissions commented on the application to add footpaths in the parish of Spetisbury:

Name	Comment
Jan Wardell – Ramblers North Dorset Group Ramblers Footpath Secretary	Thank you for your e-mailed consultation..... I am authorised to respond on behalf of the Ramblers, North Dorset Group. Whilst having no personal or group user evidence for these paths, nor any historic documentary evidence, we would welcome the addition of F-E-C-D and C-B to the definitive map. However, I would question why a diversion of E17/16 from A-D, onto A-B is not being put forward to rationalise the paths?

7.3 Officer Comment: The application to record routes A – B – C and D – C – E - F does not consider the existing Public Rights of Way network. Rationalisation of the existing network would be a separate consideration made through a Public Path Order application.

8 Analysis of the evidence

8.1 There is evidence of public use of the claimed routes since 1954 and the user evidence put forward supports the claim that the routes have 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

Physical nature of the routes

- 8.3 The routes claimed are capable of being public rights of way at common law, given that they follow a well-defined, linear routes.

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

- 8.4 It is considered that the erection of Permissive Path signs in July 2018 brought public use of the routes into question, giving a relevant period of July 1998 to July 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 July 1998 to July 2018.

Without force, secrecy or permission

- 8.6 There is no evidence to suggest that the routes have ever been used by force. Use of the routes has been open.

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.

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 routes 'as of right' for a full period of twenty years between July 1998 and July 2018. No evidence is available to demonstrate action on behalf of the landowners during the qualifying 20 year period which would indicate a lack of intention to dedicate.

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 paths 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 routes as public rights 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 those ways 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.

9. Financial Implications

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

10 Natural Environment, Climate and Ecology Implications

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

11 Well-being and Health Implications

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

12 Other Implications

None

13 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

14 Equalities Impact Assessment

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

15 Conclusions

- 15.1 In deciding whether or not it is appropriate to make an order, consideration must be given whether public rights subsist or are reasonably alleged to subsist on these routes and/or the balance of evidence shows that the routes ought to be recorded with a different status e.g. There is disagreement between the parties as to whether the test is met in this case, but on balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 15.2 The documentary evidence provides little support for the application.
- 15.3 The user evidence is strong and there is no evidence of interruption to use during the 20 year period 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 application to add footpaths from A – B – C and from D – C – E – F as shown on Drawing T557/24/1 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 not exist. It is considered that the evidence is sufficient to satisfy this test.

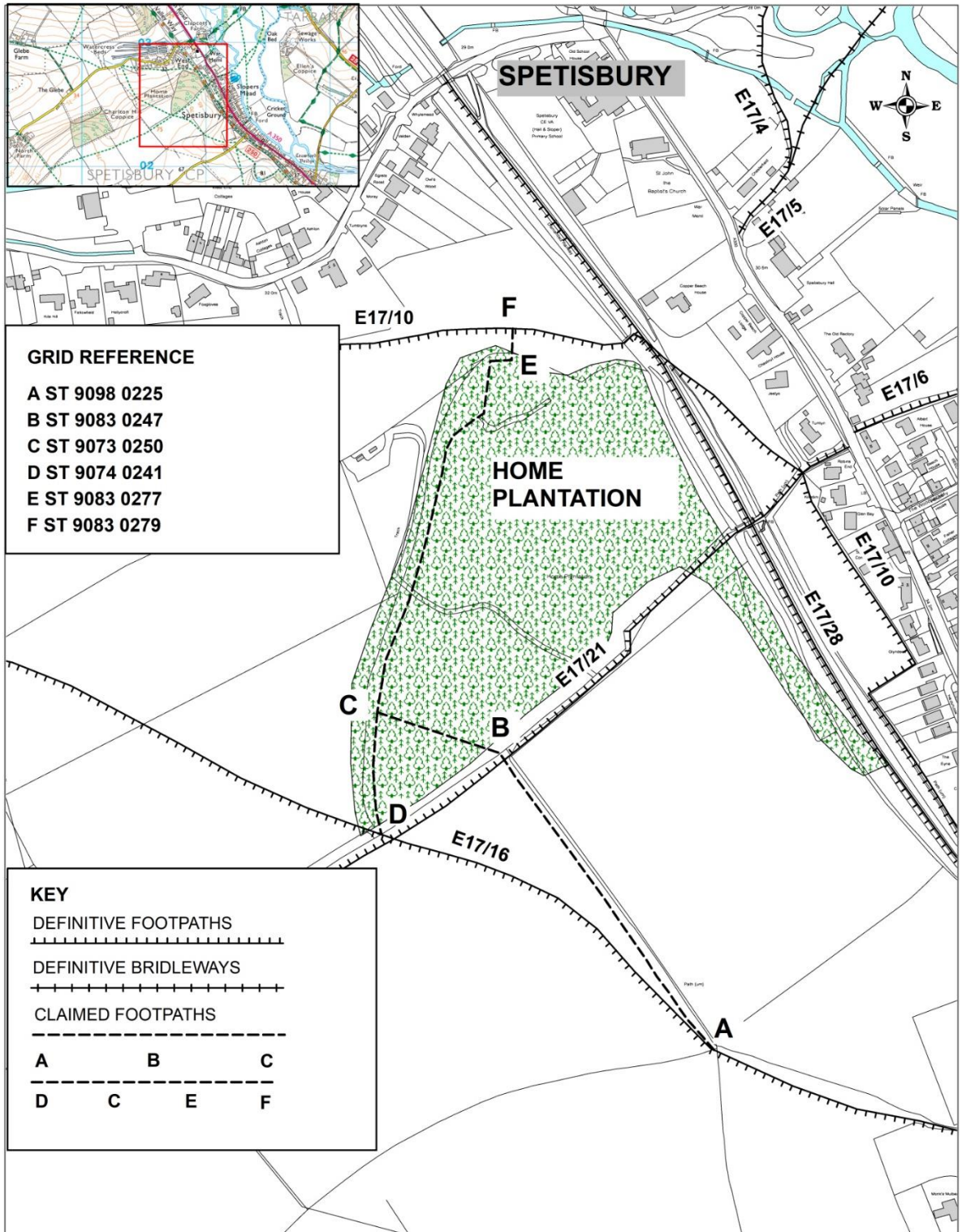
16 Appendices

- 1** Drawing (ref T557/21/1)
- 2** Law
- 3** Documentary evidence
 - Finance Act 1910
 - Parish Survey 1950
 - First Definitive Map 1967
 - Definitive Map 1989
 - Aerial Photography 2002
 - Aerial Photography 2014
- 4** Charts to show periods and level of use
 - Home Plantation Claimed Routes Points B, C, D and E (photos taken 2019)
 - Permissive Path Sign (photo taken 2019)

17 Background Papers

The file of the Executive Director, Place (ref. RW/T557).

Date: January 2025



GRID REFERENCE
A ST 9098 0225
B ST 9083 0247
C ST 9073 0250
D ST 9074 0241
E ST 9083 0277
F ST 9083 0279

KEY
 DEFINITIVE FOOTPATHS


 DEFINITIVE BRIDLEWAYS
 - - - - -
 CLAIMED FOOTPATHS

A **B** **C**

D **C** **E** **F**

WILDLIFE AND COUNTRYSIDE ACT 1981
APPLICATION TO ADD FOOTPATHS IN THE PARISH OF SPETISBURY
THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T557/24/1
Date: 11/06/2024
Drawn by: SP
Scaes: 1:3.500 (at A4)
Cent X: 390,816
Cent Y: 102,574



© Crown copyright and database rights 2024
 OS 0100060963, Aerial Photography ©
 UK Perspectives 2002 & © Getmapping 2005, 2009
 & 2014, © Getmapping Plc and Bluesky International
 Limited (2017 onwards)

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).

Case specific law

4 Finance Act 1910

- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these

valuations certain deductions were allowed, including deductions for the existence of public rights of way.

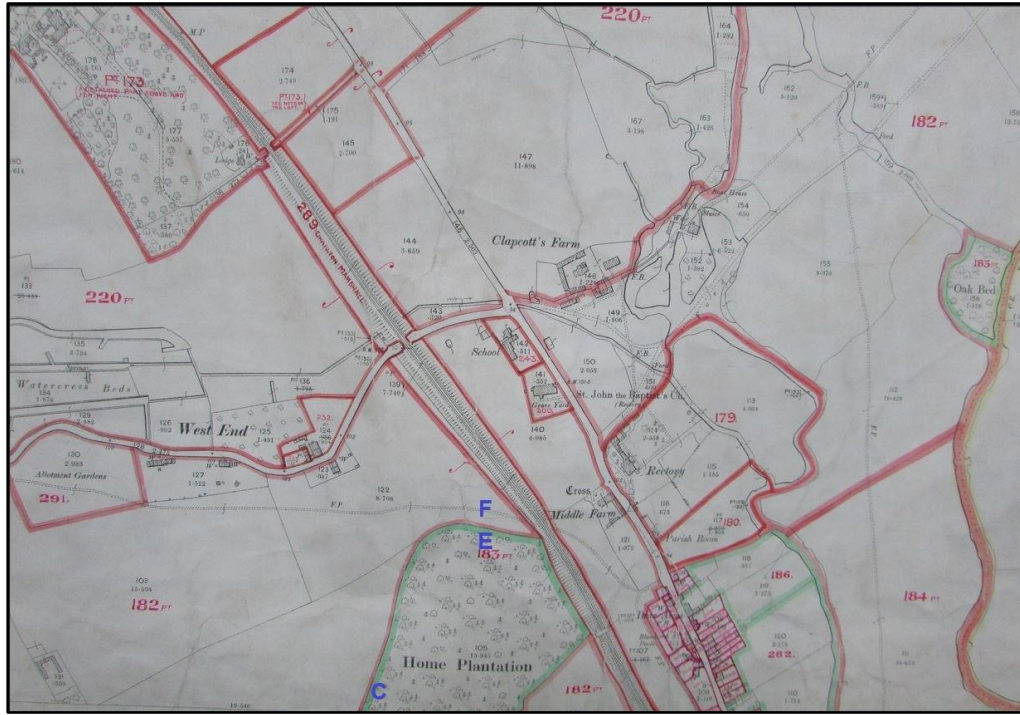
- 4.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

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

DOCUMENTARY EVIDENCE

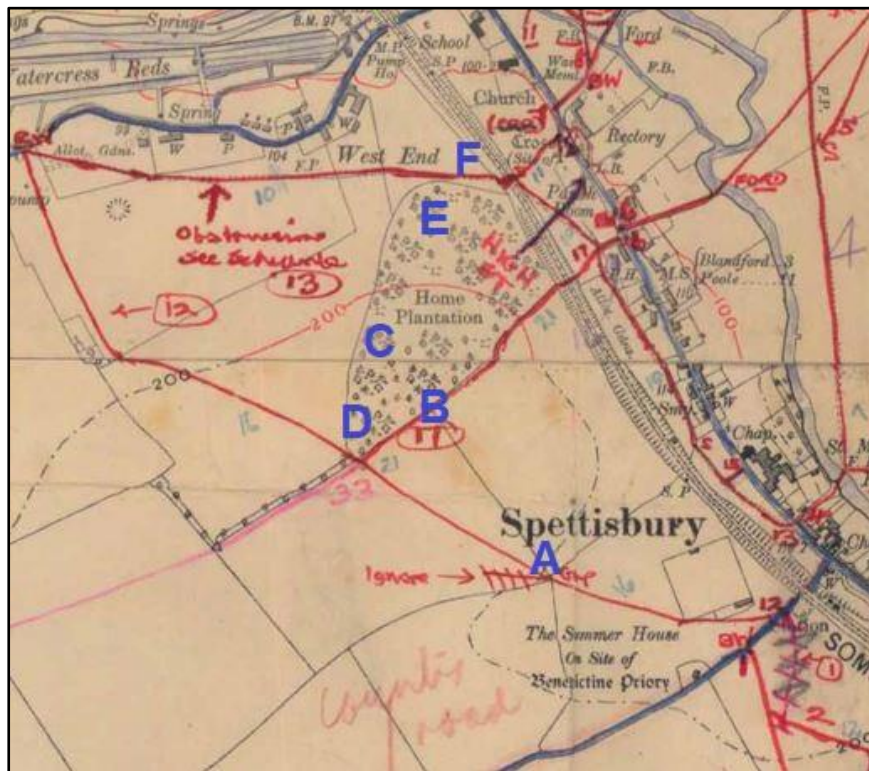
Finance Act 1910 (northern section)



Finance Act 1910 (southern section)



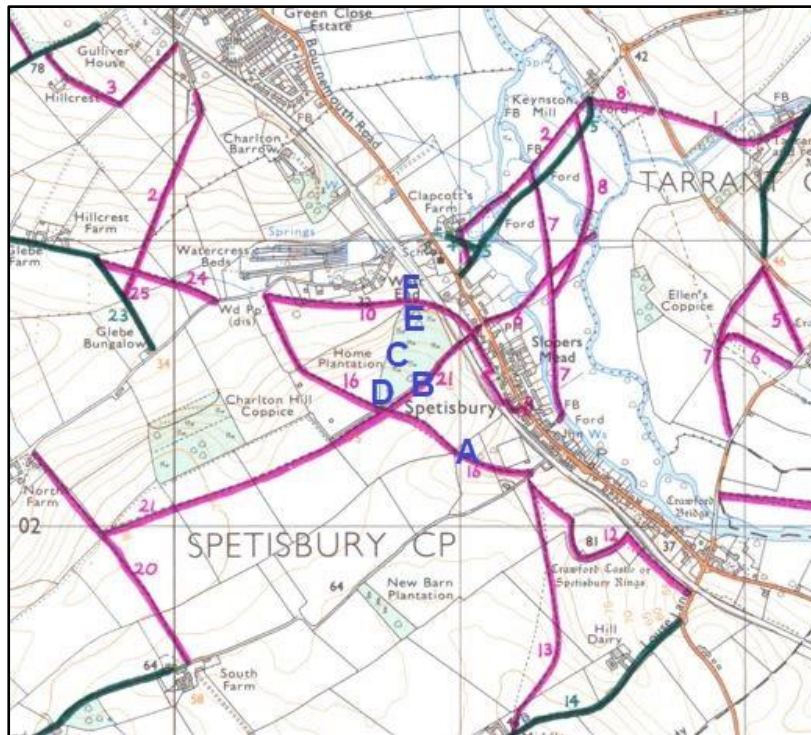
Parish Survey 1950



First Definitive Map 1967



Current Definitive Map 1989



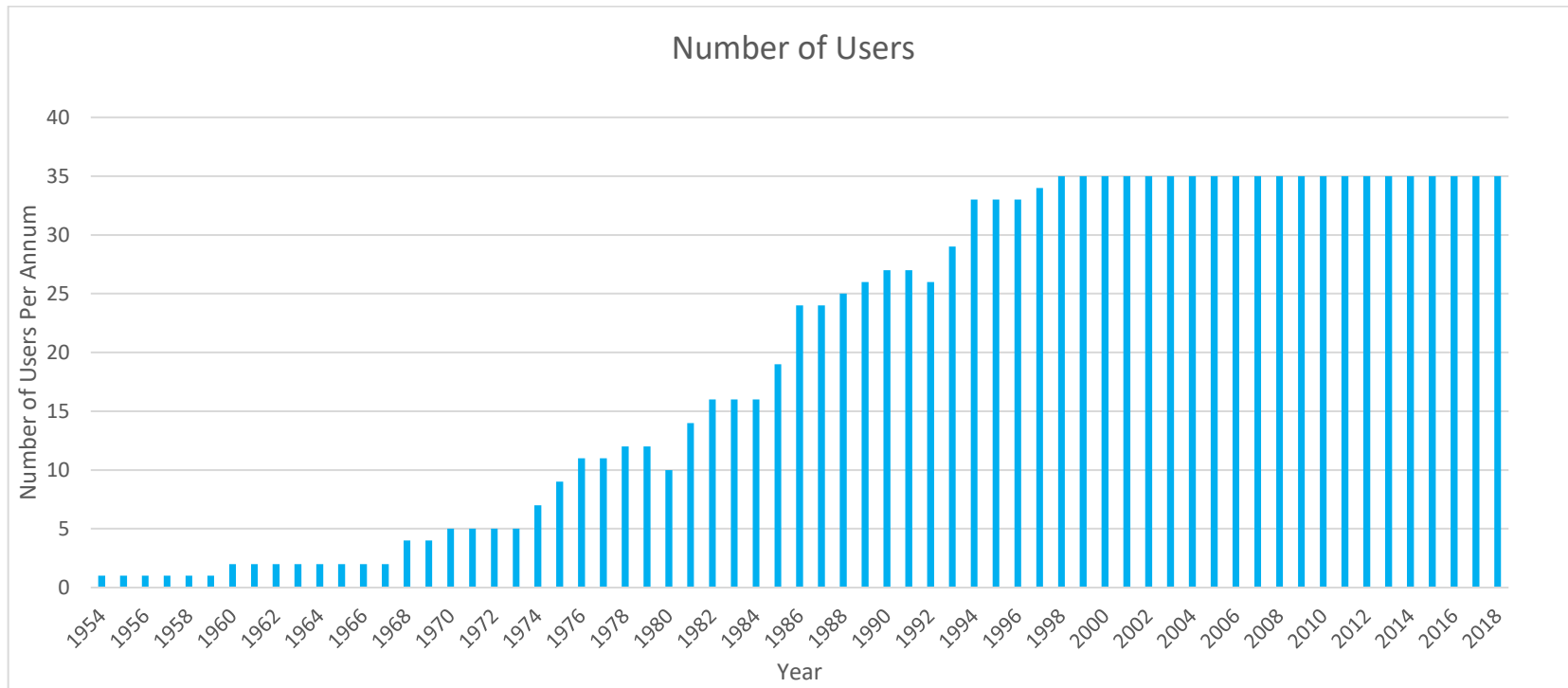
Aerial Photography (2002)

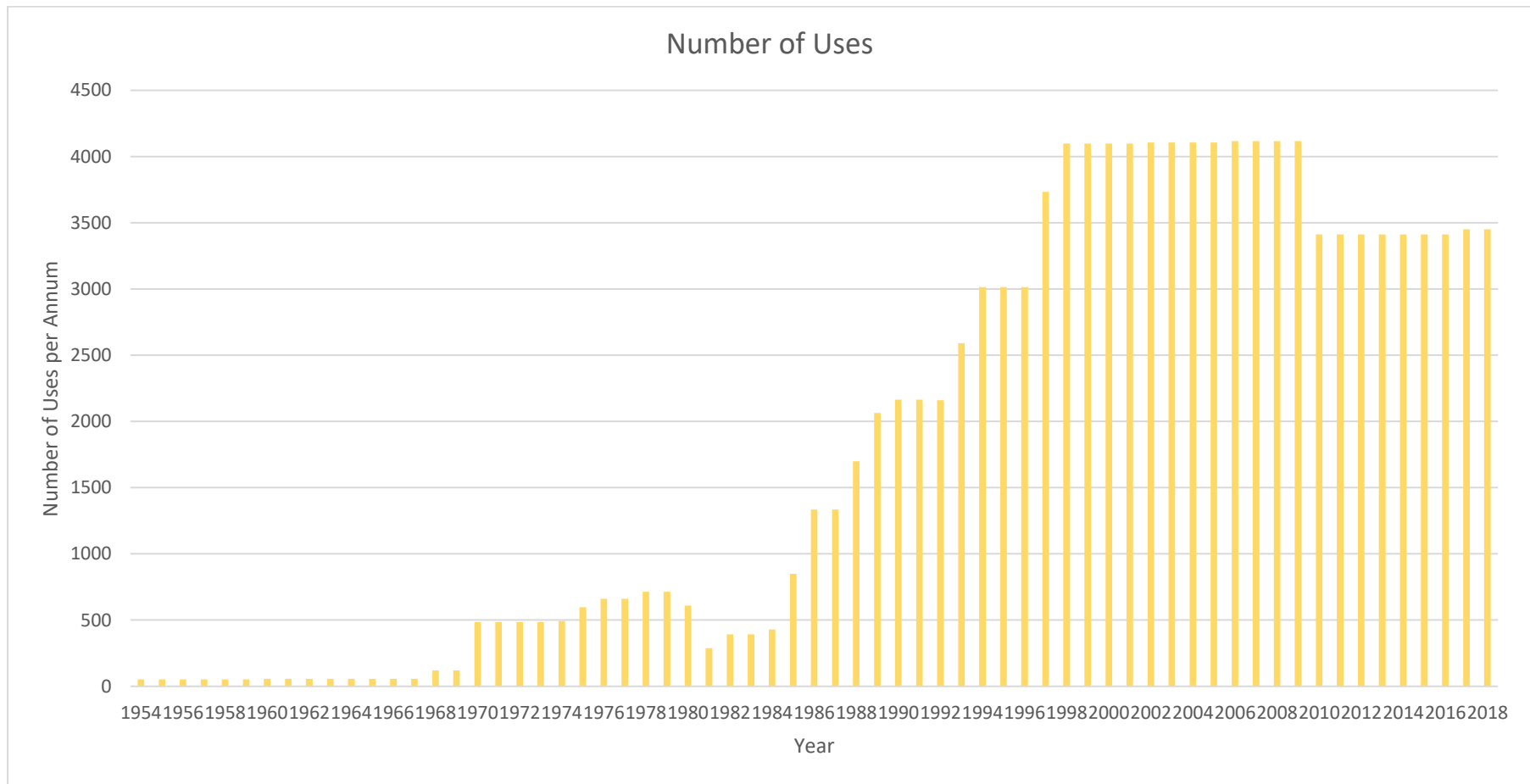


Aerial Photography (2014)

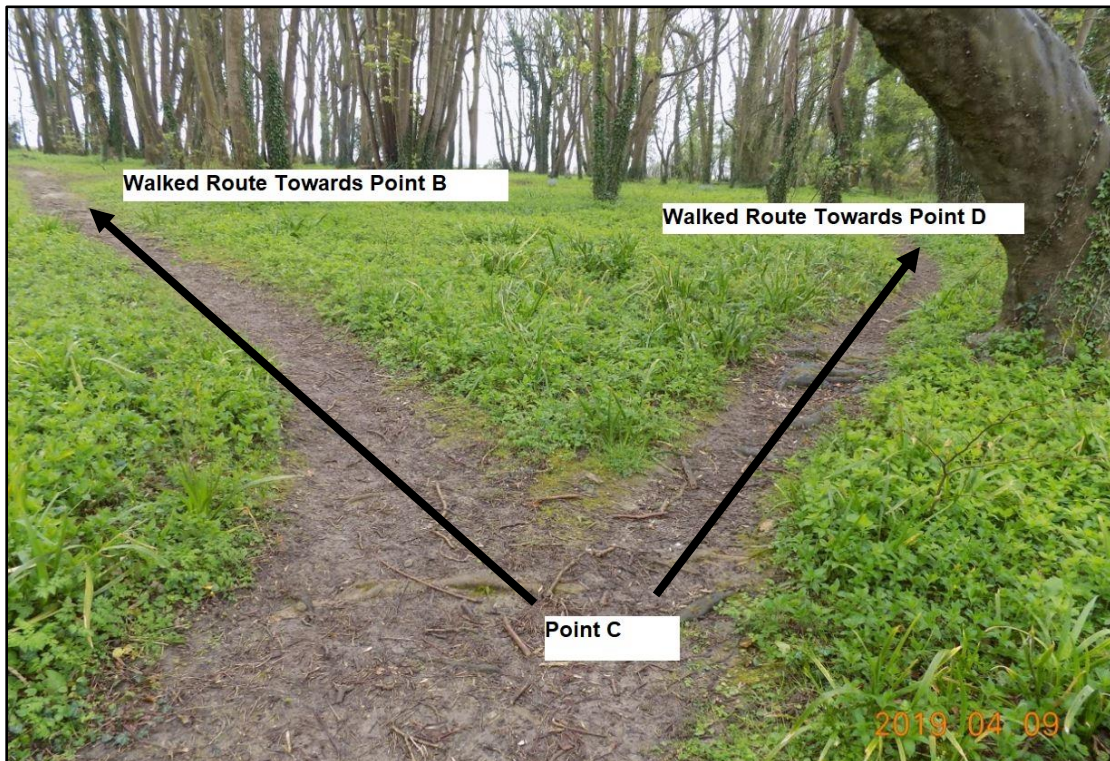


Charts to show level of use





Home Plantation Claimed Routes (Photos taken 2019)





Permissive Path Sign (2019)



Recommendations accepted:

Signed:

Redacted

Date:.....3 January 2025.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning