

Application to add a footpath between Dorchester Road and Corfehill Lane,  
joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth

## Report to the Executive Director for Place

### Application to add a footpath between Dorchester Road and Corfehill Lane, joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth

#### For Decision

**Portfolio Holder:** Cllr D Walsh, Planning  
**Local Councillor(s):** Cllr Legg; Cllr Dunseith; Cllr Worth  
**Executive Director:** J Sellgren, Executive Director of Place

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**Report Status:** Public

#### Brief Summary:

This report considers an application for a Definitive Map Modification Order, based on historic evidence, to add a footpath to the Definitive Map and Statement partly in Chickerell Parish, but mainly in the Upwey & Broadway Ward of Weymouth. Following an investigation of the documentary evidence, a recommendation is made to refuse the application.

#### Recommendation:

That:

The application be refused.

#### Reason for Recommendation:

The available evidence, on balance, does not show that the claimed right of way subsists or is reasonably alleged to subsist.

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### **1 Background**

#### **Applicant**

- 1.1. On 26 July 2019 Mr David Northam submitted an application to add a footpath between Dorchester Road and Corfehill Lane where it meets Footpath S1/63 (near Westmacott Road), Redlands, Weymouth, as shown A – B - C on drawing T565/22/1 (Appendix 1). A revised application was submitted on 1 September 2019 accompanied by additional historic documentary evidence.

#### **Description of the route**

- 1.2. The claimed route commences on Dorchester Road, Weymouth, between property numbers 393 and 395 (Point A).
- 1.3. The route runs in a westerly direction for approximately 159 meters, before turning due south (Point B) for a distance of approximately 175 metres (Point C) where it meets footpath S1/63, on Corfehill Lane.
- 1.4. The measured width on the ground at Point A is approximately 13.5m metres. The width continues at an equal distance of 13.5m from Point A for approximately 60 metres where a field gate is installed. Due to the overgrown nature of the claimed route beyond the field gate, it is not possible to measure the width to Point B.
- 1.5. From Point B to Point C, there is no obvious sign of a used route. The line of the claimed path crosses an arable field before meeting some steel-clad farm barns. At the time of the site visit in August 2022, it was not possible to walk the claimed route due to the agricultural crop, and the barns at the southern end.
- 1.6. The field gate observed between Points A and B is not located on the claimed route.

#### **Background to the application**

- 1.7. This application was submitted on 26 July 2019. The applicant subsequently researched additional documents and submitted further evidence to support the application. Relevant evidence provided has been discussed in this report.
- 1.8. The catalyst for the application was a planning permission, granted in 2017 to CG Fry Ltd for a housing development of 350 dwellings, located within fields to the north of the application route.

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- 1.9. The planning consent comprises three Phases, and section A-B of the application route coincides with the southern boundary of Phase 3.
- 1.10. There is a Planning Application notice placed on the field gate at Point A, but no notices or signs to indicate that the landowner has no intention to dedicate the route.

**Use of Evidence**

- 1.11. The applicant submitted documentary evidence in support of this application.
- 1.12. A wider selection of documentary evidence has been researched from sources such as the Dorset History Centre and the National Archives, Kew.
- 1.13. A full consultation exercise was carried out during September to November 2022, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application.
- 1.14. The Councillors for Upwey & Broadwey Ward, Cllr Legg; and for Chickerell Ward, Cllr Dunseith and Cllr Worth, and Weymouth Town Council were notified during this consultation exercise.
- 1.15. In addition, notices explaining the application were erected on site.

**2. Law**

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

**3. Issue to be decided**

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

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- 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 has been examined to determine 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.
- 3.4 Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed.
- 3.5 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.
- 3.6 The Council has a duty to record any rights that are found to subsist even if they are not those claimed by the applicant.
- 3.7 No user evidence is available for scrutiny in this case. The application relies solely on the historic documentary evidence.

**4. Documentary evidence (Appendix 3) (copies available in the case file RW/T565)**

- 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 under the relevant headings below.

**Taylor Map 1765**

- 4.2 Isaac Taylor (1730-1807) was the first map maker to produce a large scale map of the county of Dorset, at a scale of one inch to the mile. The map is recognised as having various inaccuracies, such as incorrect place names.

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In the Redlands area, Taylor's map shows a road leaving the now Dorchester Road running westwards to the Mill, and north of this, there is a road leading west towards Nottingham. There is insufficient detail on the map to categorically state that one of these two roads is the application route.

### **Mudge Map 1817**

- 4.3 In March 1798, Captain William Mudge was appointed 'Superintendent and Director of the Trigonometrical Survey', "a body charged with conducting a nationwide triangulation that would underpin a new, pioneeringly accurate topographic map of the United Kingdom".
- 4.4 The map for Dorsetshire was published in 1817. No scale is printed on the map, but it appears to be one inch to the mile, comparing with maps of known scale.
- 4.5 The entire claimed route A-B-C is shown on this historic map as one continuous route, leading south across the river at Radipole. It is shown with solid lines both sides of the track, in the same manner as other known public highways (see Appendix 3).
- 4.6 No footpaths were shown on this map, just carriageways.

### **Greenwoods Map 1826**

- 4.7 Two brothers, Christopher and James Greenwood were surveyors working in the 19<sup>th</sup> century. They compiled and published large scale maps of most of the counties of England during the years 1817-1831.
- 4.8 The Greenwoods' mapping was an expensive project designed to appeal to country gentlemen and covered 34 counties in England. The maps record the state of the respective county (surveyed in great detail) at the height of the coach and canal era. Many features are shown including watermills, windmills, estates – both large and small, turnpike roads, and milestones, antiquities, and industrial sites. These maps were known for their accuracy and detail.
- 4.9 The mapping covering Dorset is dated 1826. The area around Radipole clearly shows the entire route as claimed; it leaves the major road (the now Dorchester Road) at point A, travelling west to point B, thence south to point C.

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- 4.10 The route is shown with double solid lines (indicating the route was fenced), drawn in the same manner in which other known public roads are depicted at this time.
- 4.11 Beyond point C, the route continues, drawn in the same manner with double solid lines (fenced), to East Chickerell where it becomes unfenced (shown by dashed lines), before resuming as a fenced road onto West Chickerell and beyond.
- 4.12 The definitive footpaths S1/61 and S1/63 are not shown on this map.
- 4.13 Officer comment: These maps were drawn specifically for country gentlemen, likely intended for them to follow routes on which to drive their horse and carriage.

**Tithe Map 1839**

- 4.14 The Tithe Commutation Act of 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system.
- 4.15 Maps were drawn up to show the tithable land, so that the amount of money to be paid could be assessed. The Act was amended in 1837 to allow maps produced to be either first class or second class.
- 4.16 First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch.
- 4.17 Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used which included Bridle Roads and Footpaths, but this was not strictly adhered to.
- 4.18 The tithe process received a high level of publicity. Landowners would be particularly keen not to be assessed for more tithe payment than necessary.
- 4.19 Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture.

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- 4.20 It was in the interest of the landowners for un-tithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture).
- 4.21 Although the tithe process was not directly concerned with rights of way, inferences can be drawn from tithe documents concerning the existence of public rights over land.
- 4.22 The Radipole Tithe Map and Award of 1839 covers the wider area in which the claimed route is located. The entire application route is shown on the Tithe Map; section A-B is shown as a track separate from the adjoining land parcels, and not identified with an apportionment number. This track leads to a clearly drawn route forming section B-C. This latter section is included within apportionment number 143, known as 'Cowleaze' and described as Pasture. It is drawn with a double pecked line, indicating that it was not fenced.
- 4.23 The Open Spaces Society note that "*Land that was not subject to tithes was generally accepted to be public or owned by the church or crown estate. Such land would not have an apportionment number on it. Public roads were also exempt from tithes (unless a crop could be taken) and so were often unnumbered*".
- 4.24 The application route, section A-B, is shown leaving the public road (now known as Dorchester Road) depicted with a double solid line boundary at each side of the track (Drove Road), (the drafting style in which a fenced or walled track was depicted on the maps at the time).
- 4.25 Officer comment: It is unlikely that the section A-B was considered suitable as pasture land as it is shown as a 'through route' to join with the route now recorded as S1/63.
- 4.26 Officer comment: In the absence of an apportionment number on the Tithe Map, and associated description in the Tithe Apportionment register, the land was clearly not titheable, and it is possible that this was a road provided for public use.
- 4.27 At point B of the application route, the direction changes to continue southwards across a field (apportionment no 143) with a double pecked line, generally considered to be a surfaced but unfenced track. This continues onto point C of the application route, and beyond, finishing at the wall surrounding apportionment 145.

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- 4.28 Section B-C of the application route is shown on the Tithe Map as a continuation of the Drove Road (section A-B) and is included within apportionment number 143.
- 4.29 There are deductions for Public Rights of Way in the Tithe Apportionment relating to apportionment 143. Deductions were only applicable where a route was considered to be public. Other public routes were included in this apportionment; therefore, it is not possible to be certain that the claimed route was considered to be public.
- 4.30 Officer comment: At the time of the drafting of the Tithe Map, it would appear that the Drove Road and continuation track were the primary means of access to the property contained within apportionment 145 (described as House, Buildings, Garden, Shrubbery and Lawn).
- 4.31 Officer comment: No other access track to this property is shown on the map. Whereas it may be interpreted that this unfenced track was a private road for access to the house only, there is no apportionment number allocated to the Drove Road suggesting that no deductions were made to this parcel of land.
- 4.32 Definitive footpath S1/63 is not shown on this map, and accordingly the current link to the application route at point C does not appear at the date of the Tithe Map drafting. The continuation of S1/63 southwards appears to be shown in the location of apportionment 148, described as 'South Hill - Pasture' in the ownership of Edward Balston.
- 4.33 Definitive footpath S1/61 is depicted on the Tithe Plan. This is drawn as a single dashed line, in the same manner as other definitive footpaths which now exist (S1/64, S1/65).
- 4.34 Officer comment: The absence of any apportionment number for the Drove Road (A-B) (and accordingly the absence of an associated tithe payment), together with the fact that the draughtsmen at the time showed the road on the map in the same manner as other known public roads in the vicinity, indicates that it is possible they considered the route to be public, but this cannot be proven.

**Bacon's maps (c.1895)**

- 4.35 GW Bacon was a 17<sup>th</sup> century entrepreneur who turned his hand to map making. He made a number of different maps, covering various counties within the UK.



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### **Bacon's geographical map**

4.36 The application route is shown in full from point A through B and onto C. The map legend interprets this as a 'Main and Cross road'. The drawn route runs south-west to West Chickerell, in the same manner as the earlier Greenwoods maps.

### **Bacon's revised geographical map**

4.37 Again, this version of the map shows the application route in full, identified as an 'Other Road' in the map legend.

4.38 Officer comment: The showing of the application route as a Main/Cross/Other road in this manner on the Bacon series of maps is evidence that the route was considered to be in public use at the time. These maps were published for sale to the general public, and it is unlikely that any routes shown would not be considered for public use.

### **Finance Act 1910**

4.39 The Finance Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited.

4.40 Although the valuation involved complicated calculations which are not relevant for highway purposes, two features do affect highways:  
i) Public vehicular roads were usually excluded from adjoining landholdings, and shown as 'white roads'. ii) Discounts could be requested for land crossed by footpaths or bridleways.

4.41 These facts are known, because s.35 of the 1910 Act provided that:  
*"No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a **rating authority**."*

4.42 It is recognised that a highway authority was a rating authority.

4.43 There was no obligation for a landowner to claim any of the discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

*"The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges; and to any **public rights of way or any public rights of user**, and to any right of common and to any easements affecting the land, and ... [other exclusions.]"*

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- 4.44 All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:
- “If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”*
- 4.45 Therefore, it was clearly not in the interests of any landowner to attempt to falsely claim exemptions to the land tax payments. However, there were no penalties for not declaring land as public.
- 4.46 The entire claimed route (A-B-C) is shown on the Ordnance Survey base map used for the 1910 Finance Act valuations held at the National Archives under reference IR125/2/571. ‘White roads’ shown on this Finance Act plan are also shown as highways on other historic documentary evidence.
- 4.47 However, interrogation of the plan and associated Field Books fails to reveal exemptions from land duty. The section A-B of the claimed route is drawn such that the land is included within the two separate adjoining hereditaments (Pt.510 to the north and 402 to the south), and no deductions were made for public roads or rights of way over this section. It can therefore be asserted that the section A-B was not considered to be public.
- 4.48 Taking the three Hereditaments of interest in relation to the application route (402; 520; 5420), the following has been deduced. The Field Books associated with the 1910 Finance Act record that the land over which the southern section of the route between A-B (hereditament 402) makes no allowance for rights of way/road over the land.
- 4.49 The Field Books associated with the 1910 Finance Act record that the northern section of the route between A-B (hereditament Pt510) makes no allowance for rights of way/road over the land.
- 4.50 The Field Books associated with hereditament 5420 which contains the section of the route between B-C makes an allowance for rights of way/road over the land. It is noted as £3 x 25.

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Officer comment: From this information it is not possible to deduce how many acknowledged footpaths affected Hereditament 5420, only that it suggests it was more than one and that it was estimated that the effect of these paths on the rental value of the land amounted to £75 per annum. This was a significant sum of money in the early 1900s and would indicate that the land was crossed by a number of paths used by the public. It is possible that one such deduction refers to the section B-C referred to on the map as 'FP' (footpath), but this cannot be confirmed.

- 4.51 As described in the documentary evidence analysis for this application, the footpath (section B-C of the route) is shown on a wide number of other printed plans and appeared to be an accepted route by the mapmakers at the time. However, there is little evidence to suggest that it carried public rights.

**HM Land Registry – Landowner Title documents 1930**

- 4.52 Title No. DT231431 dated 09 May 1930 relates to the land known as the Oddfellows' land, through which section B-C of the claimed route passes.
- 4.53 The plan associated with the Title Deeds at this date clearly shows the claimed route. Section A-B is marked as 'Drove', and section B-C is marked on the plan with a double pecked line, with a brace, indicating a route was excluded from the surrounding land.
- 4.54 This route joins with another footpath (now known as definitive footpath S1/63) running south. This route is shaded brown.
- 4.55 The Title Deeds refer to this brown shaded route thus: "*The land has the benefit of the following rights granted by the Conveyance dated 9 May 1930 referred to in the Charges Register: 'Together with a right for the Trustees and their successors in title to pass and repass with or without farm implements, farm vehicles, or live farm stock over and along the carriage drive coloured Brown on the said plan at any point between the entrance lodge on the Dorchester to Weymouth main road and the point marked 'H' on the said plan .....*'"
- 4.56 Officer comment: the brown route referred to is the track which is recorded as Footpath 63 on the Definitive Map and Statement.
- 4.57 This map provides evidence that the claimed route was excluded from the land within this title. It cannot be confirmed whether the Drove was considered to be public.

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**Ordnance Survey Maps**

- 4.58 The claimed route (A-B-C) is clearly shown on all scales of the first edition Ordnance Survey maps (1 inch 1889; 6 inch 1864; 25 inch 1889).
- 4.59 On the 25 inch, the section A-B is separate from the adjoining lands, as depicted by its own separate reference number of 134, with a total acreage of 0.363 depicted on the map. There are additional plot reference numbers and areas marked – indicating that the trackway was split into two – it is possible that two separate individuals were landowners for this parcel of land (one north and one south).
- 4.60 National Library of Scotland explains that “*The 25 inch maps record acreages of all land parcels. Land parcels were numbered consecutively within each parish, and acreages of fields were recorded in separate Parish Area Books or Books of Reference. Some of the first edition sheets were coloured, using:*
- *Blue for water features*
  - *Burnt sienna for roads*
  - *Carmine for buildings made of brick or stone*
  - *Grey for buildings made of wood or iron.”*
- 4.61 The first edition 1841-1852 (25 inch) Ordnance Survey map of the Redlands area is shown with the (now) Dorchester Road shaded in burnt sienna, as a fenced main road (public), and the buildings coloured in Carmine (red), depicting stone or brick.
- 4.62 The track between points A-B is unshaded, with a solid single line both sides of the track (indicating a fence, hedge, wall, bank or ditch). The entrance off the (now) Dorchester Road is shown to be open, with no gate.
- 4.63 The claimed route between points B-C is shown crossing a field with a double pecked line, braced with the adjoining land (indicating it is excluded from the total acreage of that land parcel). It is marked as Footpath (F.P.); depicted as a minor unfenced road and includes a ‘brace’ either side of its pecked lines to indicate that the land through which it passes is excluded from the plot reference number (139).
- 4.64 The section B-C of the claimed route is not shown on the OS 25 inch beyond the 1902 edition.

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- 4.65 The 6 inch series does not depict the section B-C on the 1930 edition, however, it reappears on the 1942 edition, but not beyond.
- 4.66 The one inch series continues to depict the section B-C up until the 1945 edition (sheet 178, Dorchester).
- 4.67 The section A-B of the claimed route is depicted on all scales and dates of the Ordnance Survey map, up to the 1960 one inch map, and 1948 six inch map.
- 4.68 Officer comment: The showing of the entire route on the Ordnance Survey maps between 1889 – 1942 is supporting evidence of the historic existence of the route; the Ordnance Survey was concerned with recording physical features on the ground, not the existence or otherwise of public rights.

## **1863 Ordnance Survey Boundary Sketch Book – Radipole – TNA OS27/1402**

- 4.69 The boundary sketch book for the Radipole area fails to offer much information about this section of the boundary in the vicinity of the claimed route.
- 4.70 The start of the track at point A is shown, but there are no further annotations (see Appendix 3).
- 4.71 The showing of the existence of a track off the main road would suggest that it was of some importance to be recognised by the surveyors compiling the boundary sketch books but is not a suggestion of the existence of public rights.

## **Highway Board Minutes**

- 4.72 None discovered.

## **Estate maps**

- 4.73 The Corfehill Estate Sale Map (1930) was produced for the purpose of the sale of the land. The map clearly shows the claimed route, the section A-B being marked as 'Drove' on the plan, but not included within the Lot for sale. The map also included section B-C marked as 'FP' (footpath).
- 4.74 The known major public road adjacent to this land is shown coloured brown on the map.

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- 4.75 Officer comment: the exclusion of the Drove within the Lot for sale is likely to have been shown as information for prospective purchasers, because it abutted the Estate. It is not an indication of public rights.
- 4.76 The Sale of this land was executed by HY Duke & Son auctioneers on 26 March 1930 at 3pm. Lot 2 (described as 'Redland Farm') contained the section B-C of the claimed route within field numbered 139 (described in the Auction papers as "Pasture – 7.59 acres"). This section is shown as a double pecked line (indicating it was unfenced), and marked 'F.P.' (footpath). There is no brace shown on this plan, separating the footpath from the acreage of the land through which it passes.
- 4.77 The routes of what are now definitive footpaths S1/61 and S1/63 are depicted on this plan.
- 4.78 Point C of the claimed route is shown on this estate plan as joining with definitive footpath S1/63 (which is shown transecting Lot 2 but is included within Lot 1).
- 4.79 Officer comment: The fact that A-B of the claimed route is shown marked as a Drove and excluded from the Sale indicates it was not part of the Estate. Section B-C annotated as 'F.P.' likely indicates that this plan was informing purchasers of the existence of a path through the land, although there is no mention of the footpath in the Sales Particulars.

**Quarter Sessions**

- 4.80 These records were not relevant to this route.

**Book – Ronald Good "The Old Roads of Dorset"**

- 4.81 The 1940 book by Ronald Good describes many old roads within Dorset, one of which describes a route leading from Portland to Dorchester.
- 4.82 The text states that "... there must have been, in the mediaeval centuries, a road from Portland to the county town which avoided both Weymouth and Melcombe Regis, and this is clearly enough indicated today by the High Street at Wyke Regis; by Radipole Lane; and by the old way from Radipole to Redlands over Corfe Hill".
- 4.83 Officer comment: The fact that this route was described as part of a longer route in a published book of Roads would indicate that the route

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may have been recognised as a public road at the time. The book provided instructions for travellers at the time to follow various routes, but the maps are very basic and precise routes cannot be determined. It is not therefore possible to deduce whether the route referred to in the book is the claimed route.

### **Dorset Council Records**

4.84 The Weymouth Parish Survey (1952) for this area did not claim a right of way corresponding to the application route, nor was it shown on the Draft Map (1954), Provisional Map (1964), Revised Draft Map (1974), or most recent sealed Definitive Map (1989).

### **Aerial photographs**

4.85 All available aerial photography (held by Dorset Council) for this site was examined. The section A-B of the claimed route is shown on the 1947 and the 1972 photographs as a double hedged track. The image appears to show that at the western end of this track, there is a gateway, or other means of continuing the route, which turns south to continue on the section B-C of the application route. The image appears to show a worn path on the approximate line of the claimed route B-C, which may represent the fact that people wishing to walk the route from point C northwards would not have been able to progress any further towards point A due to the vegetation overgrowth; or it may be a track created by farm animals. No farm buildings are in existence at the time of either photograph being captured. This provides supporting evidence for the applicant's assertion that the buildings were not in place until the 1970's. The double hedged track shows that a route did once exist between points A-B of the claimed route.

4.86 Officer comment: These photographs show that any walked track between points B-C would not have been impeded by farm buildings up until at least the 1970's, and that there was a hedged route in place between points A-B. Whilst not categoric that the route was open and used by the public, it provides some evidence that it is likely that a route was in place in the location of the application route.

### **Summary of documentary evidence**

4.87 The applicant stated in his submission that the section A-B had not been walked since approximately 1930 due to the overgrowth of vegetation along this section.

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- 4.88 Earlier documentary evidence clearly records the physical existence of the route A-B-C on the maps.
- 4.89 The 1839 Tithe Map shows the entire route as a road in similar manner to other public roads in the area, however, this document was not concerned with the recording of public rights. The Tithe Map shows a clearly defined route between points A – B – C. There is no barrier to access at point A on the map; no barrier to access at point B, and the Footpath running between B – C continues with no barrier, seamlessly joining the definitive public footpath (S1/63) at point C. However, this does not provide much support to the application whereby it is not possible to identify public rights on this section.
- 4.90 The 1910 Finance Act map, and associated Field Books, recognise the existence of the entire route A-B-C on the base map, and whilst it is possible that a deduction for public rights of way was made in the total valuation of the relevant hereditament for the section B-C, there were many other routes within that hereditament to which the deductions could apply. It is not clear from this evidence whether public rights exist or not.
- 4.91 The Field Books completed by the Valuers when undertaking land assessment as part of the 1910 land valuation included an allowance of £75 per annum for public rights of way crossing hereditament 5240 (which included the footpath; claimed route B-C).
- 4.92 Earlier mapping evidence, although at smaller scale and showing less detail does show the route in its entirety: Mudge 1817, Greenwood 1826, Bacon 1895.
- 4.93 Finally, the Corfehill Estate Sales documentation recognises the entire route, but does not refer to any public rights.
- 4.94 There is documentary evidence to show that the entire claimed route leading from Dorchester Road to Corfehill Lane has been in existence from 1739. From the 1889 Ordnance Survey plans, the entire route is shown. Aerial photos from 1947 and 1972 show the application route in situ on the ground. However, there is little evidence of public rights along the route.
- 5. User evidence (Appendix 4)**
- 5.1 This claimed route is based entirely on documentary evidence. No evidence of use was submitted or discovered.



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5.2 The applicant has stated in his application that the route was useable up to c. 1930, but in latter years, it has not been in use because of the overgrowth of vegetation between points A – B.

5.3 He notes that when the Corfe Hill Estate was divided up and sold in 1930, the Redlands estate was acquired by Oddfellows. It was at this point that the footpath seemed to disappear.

**6.0 Landowner correspondence** (copies available in the case file RW/T565).

6.1 The land over which the claimed route runs is in the ownership of two organisations: CG Fry Ltd (building company) (section A-B) and the Oddfellows Friendly Society (Manchester) Ltd (section B-C).

6.2 HM Land Registry records reveal that CG Fry Ltd. has owned this land since 2019; whereas Oddfellows have owned the land since 1930.

6.3 The Council received the Schedule 14 application for this claimed route in 2019. The landowners were unknown at this time, and the applicant requested a Notice under Schedule 14(d)(ii) to be placed on site. This notice prompted a CG Fry representative to contact the Council requesting information on the application.

6.4 No response to the Public Notice was forthcoming from Oddfellows.

6.5 No Statutory Declarations within the provisions of s.31(6) of the Highways Act 1980 have been deposited with the Council.

**7.0 Consultation responses and other correspondence** (copies available in the case file RW/T565).

On 6 September 2022 the Council commenced a 6 week public consultation in respect of the claimed route. Letters were sent to all the Statutory Consultees, the landowners (CG Fry and Oddfellows), and neighbouring properties within a 100m radius of the claimed route. Notices were also put up on site.

7.1 A small number of communications were received in response to the public consultation.

7.2 The Ramblers representative provided comment that she had no evidence of this path on any documentary evidence available to her.

7.3 Local Councillors did not make any response to the consultation.

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- 7.4 One neighbour wrote in response to the consultation, stating that he had never seen any person attempting to walk this route in the 40 years that he had lived at his address.
- 7.5 Officer comment: This application is not concerned with user evidence for the route as no evidence of public use has been discovered.
- 7.6 A response was received from CG Fry suggesting a pragmatic solution for dealing with the claimed route, subject to the final decision regarding the DMMO application. This involved diverting the claimed route. However, revised plans for the location of the footway and cycleway along the southern extent of Phase 3 (which coincides with the claimed route along the section A-B), submitted in December 2022, seek planning approval for the footway to be located along the approximate line of the claimed route, albeit with less width than the historic evidence would suggest.
- 7.7 Officer comment: The process of stopping-up part of the width of the claimed route between A-B could be employed if public rights are recorded on the definitive map and statement.
- 7.8 The Oddfellows stated that they were completely unaware of any path which crossed land in their ownership. No further comments were submitted.
- 7.9 Officer comment: The 1930 Title Deeds to the Oddfellows' land show a defined route crossing the land between points B-C and marked as Footpath.
- 7.10 The Council's Historic Environment officer responded stating that the topography of the section A-B suggests that it may have been associated with, or formed, through enclosure of open medieval fields, and may be medieval or very early post medieval in date.

**8. Analysis of the user evidence**

There is no evidence of public use (pursuant to s.31 of the Highways Act 1980) of the claimed route other than a sentence included in the covering statement which accompanied the application submission, stating that the route used to be walked regularly, up to 1930, when it was fenced off; and that the barns in the field through which section B-C passes were erected in the 1970's.

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- 8.1 In the absence of the submission or discovery of any user evidence to support this claimed route, the Council is unable to consider a presumption of dedication under the Highways Act 1980 or under Common Law.

**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 Environmental 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.

**Application to add a footpath between Dorchester Road and Corfehill Lane, joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth**

**15 Conclusions**

- 15.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on this route. On balance it is considered that there is not sufficient evidence for the “reasonably alleged” test to be met.
- 15.2 The application is not supported by user evidence. Use appeared to cease c.1930 when the section A-B became overgrown with vegetation. Consequently, the application is based solely on historic documentary evidence.
- 15.3 The documentary evidence indicates that the claimed route is shown in its entirety on historic maps dating to 1817 through to 1930. This confirms the physical existence of a route but does not provide sufficient evidence of public rights.
- 15.4 Therefore, the recommendation is that no Order is made to add the claimed route to the Definitive Map and Statement.

**16 Appendices**

- 1 Drawing 13/31
- 2 Law
- 3 Documentary evidence

Extracts from key documents:

- 1765 Taylor’s Map
- 1817 Mudge Map
- 1826 Greenwoods Map
- 1839 Tithe Map
- 1852 Ordnance Survey 25inch to the mile Sheet LIII 14 NLS
- 1863 Ordnance Survey boundary sketch book – Radipole TNA OS27-1402
- 1864 Ordnance Survey 6inch to the mile Sheet LIII NLS
- 1895 Bacon’s Maps

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- 1902 Ordnance Survey 25inch to the mile Sheet LIII 14 NLS
- 1908 Ordnance Survey 1" to the mile Sheet LIII 14 NLS
- 1910 Finance Act
- 1930 Sales Brochure – Corfehill Estate, Redlands
- 1942 Ordnance Survey 6 inch to the mile Sheet LIII SW NLS
- 1947 Aerial photograph

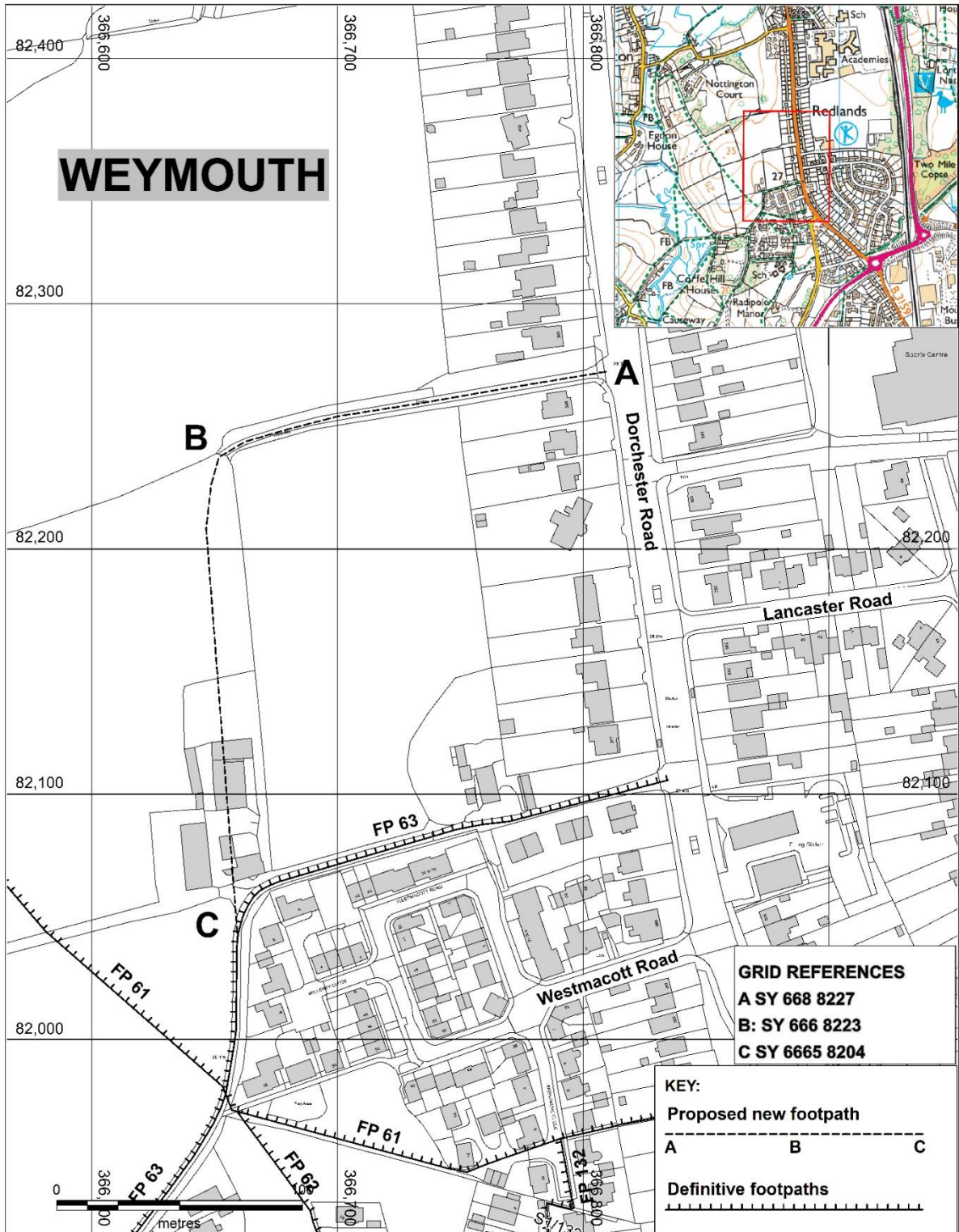
**17 Background Papers**

The file of the Executive Director, Place (ref. RW/T565).

**Date:** 22 March 2023


**Application to add a footpath between Dorchester Road and Corfehill Lane, joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth**

**APPENDIX 1**



**WILDLIFE & COUNTRYSIDE ACT 1981**  
 Application to add a footpath from Dorchester Road to  
 footpath 63, Weymouth at Corfe Hill Lane  
**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

Ref: T565/22/1  
 Date: 20/01/2023  
 Scale: 1:2000 at A4  
 Drawn by: BT  
 Cent X: 366,759  
 Cent Y: 82,171



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 OS 0100060963. Aerial Photography ©  
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 Limited (2017 onwards)

**Application to add a footpath between Dorchester Road and Corfehill Lane,  
joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth**

## **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

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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.



**Application to add a footpath between Dorchester Road and Corfehill Lane, joining Footpath S1/63 (near Westmacott Road), Redlands, Weymouth**

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 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.

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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.

Application to add a footpath from Portway Close to Rodwell Road, Weymouth

DOCUMENTARY EVIDENCE CONSIDERED

Taylor 1765 extract



For comparison: 1908 Ordnance Survey 1" to mile



Application to add a footpath from Portway Close to Rodwell Road, Weymouth

Mudge Map 1817 extract



Application to add a footpath from Portway Close to Rodwell Road, Weymouth

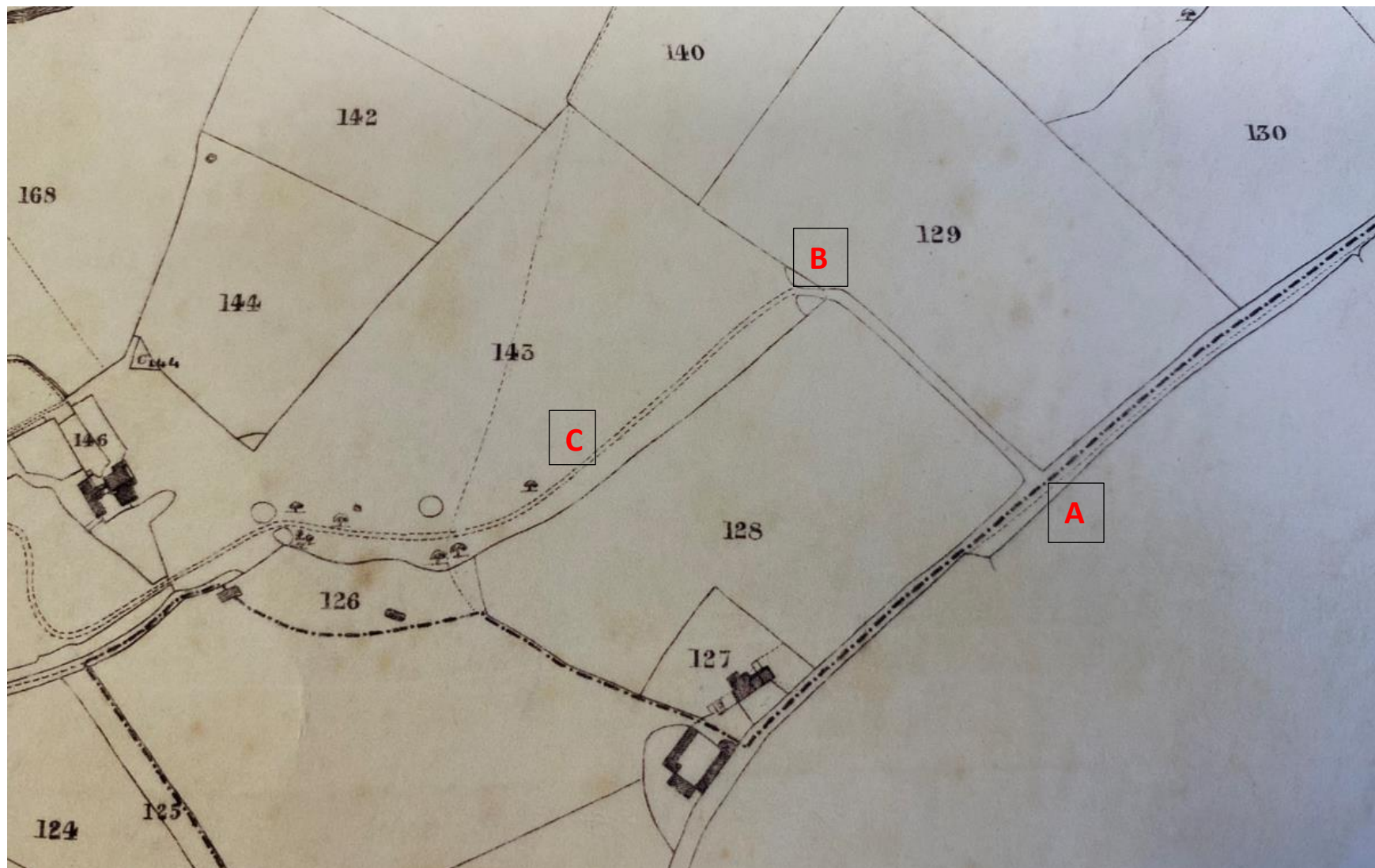
1826 Greenwoods Map extract





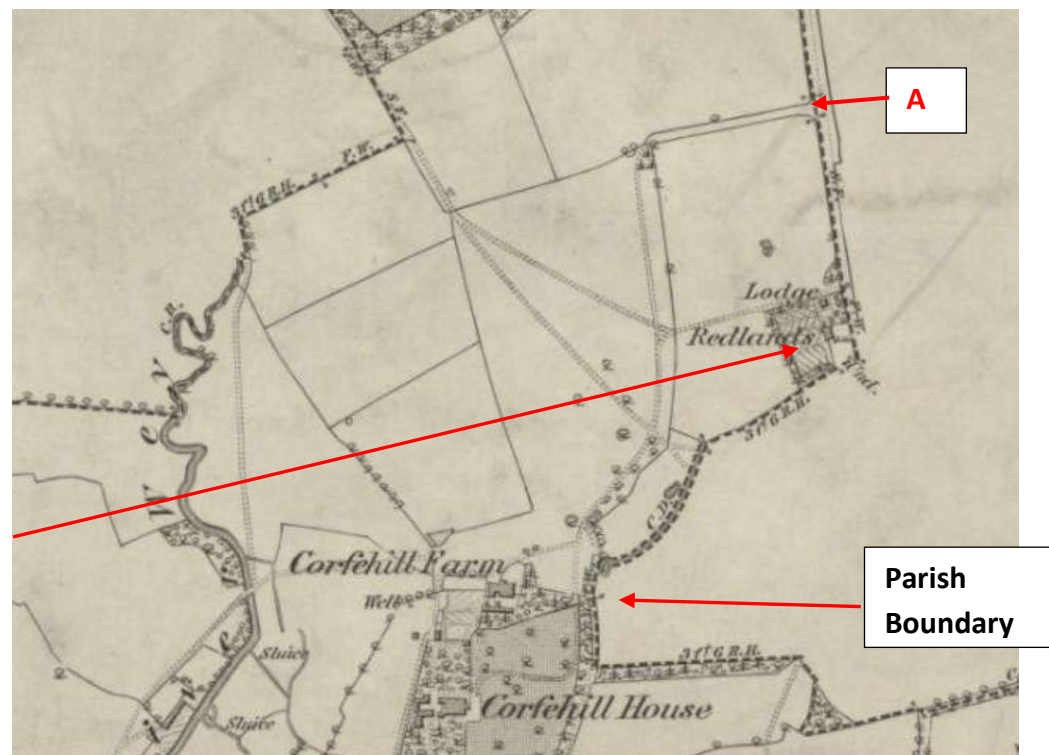
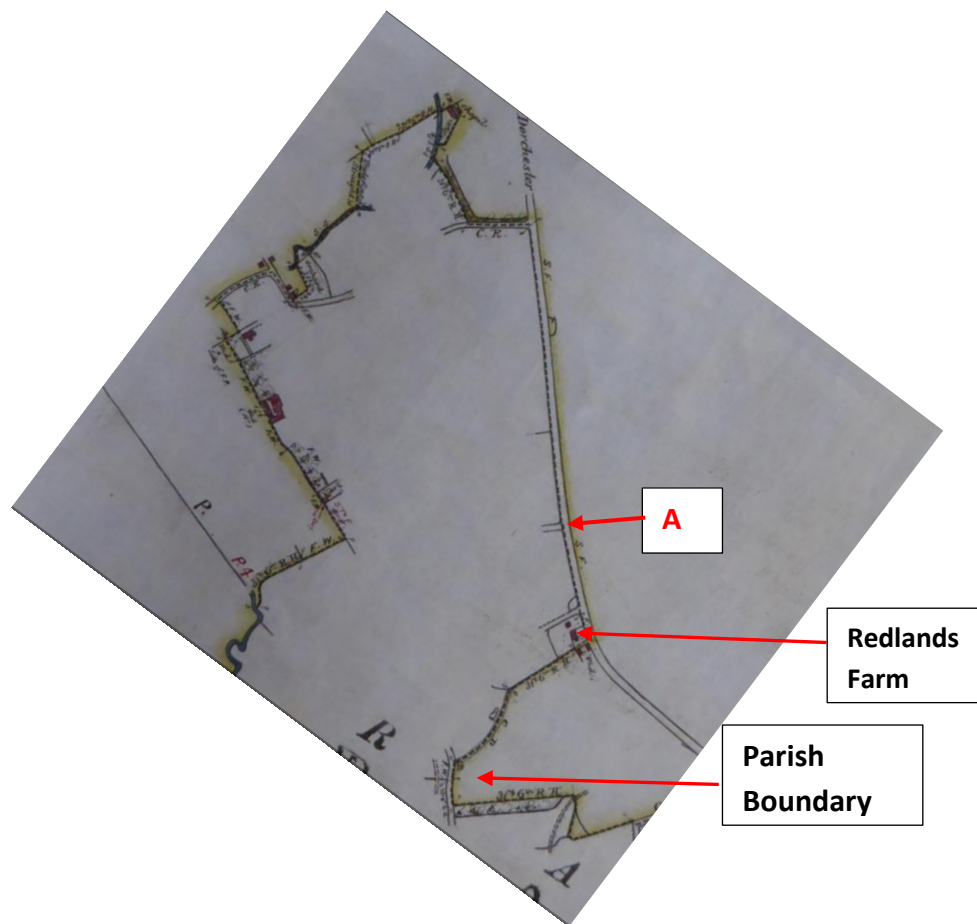
Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

1839 Tithe Map extract



Application to add a footpath from Portwey Close to Rodwell Road, Weymouth

1863 Ordnance Survey Boundary Sketch Book – Radipole – TNA  
OS27/1402



1864 Ordnance Survey 6" to one mile map (NLS)

Extract from Boundary Sketch Map – based on boundary for Radipole Parish. Junction at Point A shown.

1852 Ordnance Survey 25 inch to one mile





1895 – Bacon's geographical map



1902 Ordnance Survey 25inch to one mile





1908 Ordnance Survey - One inch to one mile



1910 Finance Act - Hereditaments 510 (north of Drove Road); 402 (south of Drove Road); FP runs through Pt5420 and deductions made



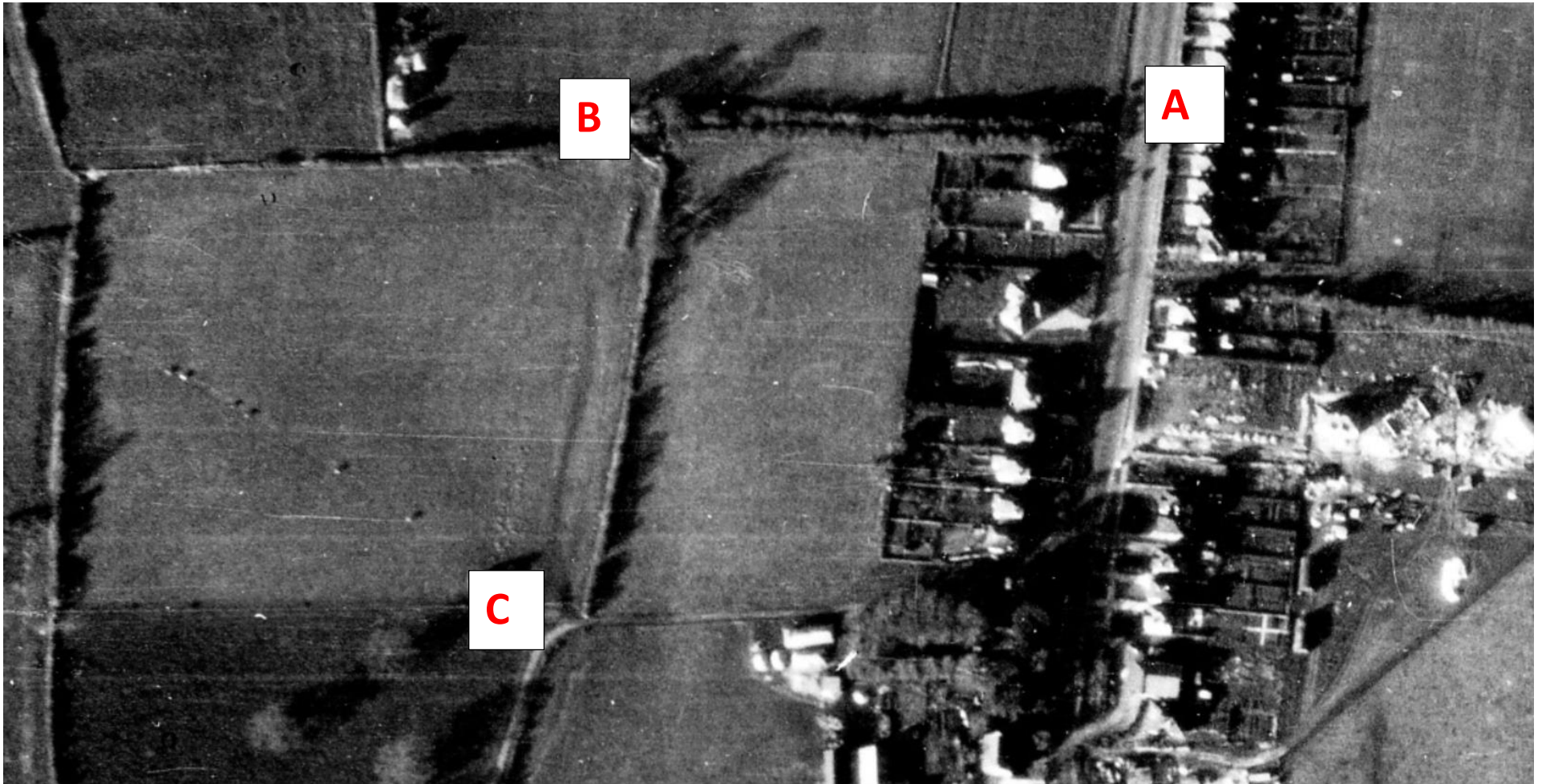




1942 Ordnance Survey 6inch to one mile



1947 Aerial photograph (enlarged section)



**Recommendations accepted:**

**Signed:**

.....*V Penny*.....

Date:.....23 March 2023...

**Vanessa Penny**  
Definitive Map Team Manager  
Spatial Planning