

Officer Delegated Decision

Date: 14 December 2020
<p>Decision:</p> <p>(a) An order be made to modify the definitive map of rights of way by extending Footpath 57, Beaminster from Point A to Point A1 as shown on Drawing T578/20/1; and</p> <p>(b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.</p> <p>(The delegation is detailed within the Scheme of Delegation in the Council's Constitution.)</p>
<p>Key Decision:</p> <p style="text-align: center;">No</p> <p>Please see definition below.</p>
<p>Reason(s) for Decisions:</p> <p>(a) The available evidence shows, on balance, that the proposed right of way subsists or is reasonably alleged to subsist</p> <p>(b) The evidence shows, on balance, that the route proposed should be recorded as a footpath as described. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p>
<p>Decision Maker :</p> <p>Vanessa Penny (Definitive Map Team Manager)</p>
<p>Alternative options considered and rejected:</p> <p>None</p>
<p>Any conflict of interest declared by any member consulted:</p> <p>None</p>
<p>Any dispensation granted in respect of any declared conflict of interest:</p> <p>None</p>

Definition of Key Decisions

Key decisions are defined in the Constitution as decisions of the Cabinet which are likely to -

- "(a) result in Dorset Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making he decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms



Report to Executive Director of Place

Date: 11 December 2020

Report Title: Proposed Definitive Map Modification Order to modify the route of Footpath 57, Beaminster.

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr Rebecca Knox – Lead Member for Beaminster Ward

Executive Director: J Sellgren, Executive Director of Place

Report Author: Anne Brown
Title: Definitive Map Technical Officer
Tel: 01305 221565
Email: anne.brown@dorsetcouncil.gov.uk

Report Status: Public

Recommendation:

That:

- (a) The proposal be accepted and an order made to modify the definitive map of rights of way by extending Footpath 57, Beaminster from Point A to Point A1 as shown on Drawing T578/20/1; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

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

1. Executive Summary

This report considers the evidence relating to the recorded route of Footpath 57, Beaminster and considers modifying the definitive map to extend the path southwards to join the A3066 Bridport Road.

2. Financial Implications

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

3. Well-being and Health Implications

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

4. Climate implications

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

5. Other Implications

None

6. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: LOW

Residual Risk LOW

7. Equalities Impact Assessment

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

8. Appendices

1 Drawing T578/20/1

2 Law

3 Documentary evidence

- Ordnance Survey Map (1889), 25 inches : 1 mile
- Beaminster Parish Survey Map and Statement (1950's)
- First Definitive Map and Statement (1966-67)
- Revised Draft Map (1974)
- Current Definitive Map and Statement (sealed 1989)

Page 3 Proposal to modify the route of Footpath W21/57 in Beaminster Parish to correct a drafting error on the definitive map

9. Background Papers

The file of the Executive Director, Place (ref. RW/T578).

1 Background

Anomaly

- 1.1. The anomaly was identified in 2013 when a check of the route highlighted that the definitive route of Footpath 57, Beaminster did not extend to the highway at the southern end, despite the fact that the used route on the ground did.

Description of the recorded route

- 1.2. The recorded route commences at Point A (on Drawing T578/20/1) east of number 6 Southgate, 12.5 metres from Bridport Road A3066. It then follows the enclosed path known locally as 'Hams' in a northerly direction to cross the River Brit at Point B and continues on to St Mary's Well Street.

Description of the originally claimed route at the time of the Parish Survey (1950s)

- 1.3. The original claimed route commenced at Point A1 on Bridport Road, east of 2 Southgate. It went northwards, following the eastern side of the cottages, through point A then east of the River Brit to cross a footbridge over the river at Point B as above.

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 original route claimed. If so, it should be determined whether these are in addition to the currently recorded route, or in place of the currently recorded route. The Definitive Map should be amended accordingly.
- 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.

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T578)

- 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.

Ordnance Survey Maps

- 4.2 The Ordnance Survey maps at a scale of 25 inches : 1 mile (1889 and 1901) indicate a wide fenced / hedged route A1 – A – B and onward with a footbridge at B. It is labelled “Hams”.
- 4.3 The Ordnance Survey Map at the same scale (1964), the closest date to the parish claim for the footpath, replicates the situation seen in the earlier maps; A1 – A – B and onward is shown as a through route, it is labelled ‘Hams (path)’.

Dorset Council Records

- 4.4 The Beaminster Parish Survey Map (1950’s) appears to be drawn on a 6 inches : 1 mile scale map from 1904. It claims the route A1 – A – B through to St Mary’s Well Street as a through route number 78A.
- 4.5 The accompanying Parish Survey Statement describes the route (then footpath number 78A):

“At the end of St Mary’s Street branch left and continue along the side of the stream to a F.B. by a weir. After crossing the F.B. continue about 100 yards to join the Bridport Road at South Gate. This short F.P. known as ‘Hams’ is in good condition and constantly used. Note: In

March '51 the Parish Council decided to place adequate gates at either end to prevent unaccompanied small children using the path as drowning fatalities have occurred in recent years.”

4.6 The Draft Map (1953) shows the route (then Footpath 100) A1 – A – B as a through route to St Mary's Well Street.

4.7 The Provisional Map (1963) and First Definitive Map (1966-67) show the route in the same way (except it is now Footpath 57).

4.8 The Revised Draft map (1974) showed neither Footpath 57 nor Footpath 58 joining the Bridport Road at the eastern ends, but instead showed the two paths joining together in the vicinity of point A, and having only one number; 58. There is no documentation associated with the Revised Draft Map which would justify this change.

4.9 Officer comment: The discrepancy between the First Definitive Map and the Revised Draft Map appears to have no legal basis and is most likely to be due to a drafting error.

4.10 The Statement accompanying the First Definitive Map describes footpath 57 as:

“From Bridport Road at Hams (480010) to Beaminster (479011)”.

4.11 The current Definitive Map (sealed 1989) shows the same position as the Revised Draft Map with respect to Footpath 57. The accompanying statement continues to describe a separate Footpath 57 joining the Bridport Road, thus there is a discrepancy between the map and the statement.

4.12 Officer comment: Without any evidence that Footpaths 57 and 58 were combined into one path, and without any evidence that the paths no longer joined Bridport Road, it is assumed that these changes were due to poor drafting of the maps. The statement accompanying the current Definitive Map supports this.

Aerial photographs and other photographs

4.13 Tree cover and shadows mean that very little can be judged from the aerial photographs from 1947 – 1997.

Summary of documentary evidence

- 4.14 The through route A1 – A – B and onwards to St Mary's Well Street is supported by Ordnance Survey mapping as a through route.
- 4.15 All maps of rights of way up to and including the First Definitive Map show the path as a through route between Bridport Road and St Mary's Well Street. Only the Revised Draft Map and the Current Definitive Map show the route not to joining the Bridport Road but joining Footpath 58 (through houses) to the Old Mill. This change was not supported by a legal order or other evidence and it is believed it was erroneous.

5 User evidence (Appendix 4) (copies available in the case file RW/T578)

- 5.1 A full public consultation was carried out in August 2020. No user evidence was submitted although the route is obviously in constant use as judged by 3 site visits on which people were seen using the route on foot on each occasion.

Summary of user evidence

- 5.2 There is no user evidence to consider.

6 Landowner correspondence

The land over which the proposed route passes has no landowner and is not registered with Land Registry. Adjoining landowners were all consulted but no responses were received.

7 Consultation responses and other correspondence (copies available in the case file RW/T578)

- 7.1 No points were raised.

8 Analysis of the evidence under common law

- 8.1 This matter can be considered under common law, where it is considered whether 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

- 8.2 The Parish Survey of early 1950's provides evidence that the route was in common usage by the public at the time i.e. that it had been dedicated as a footpath under common law accepted by the public.

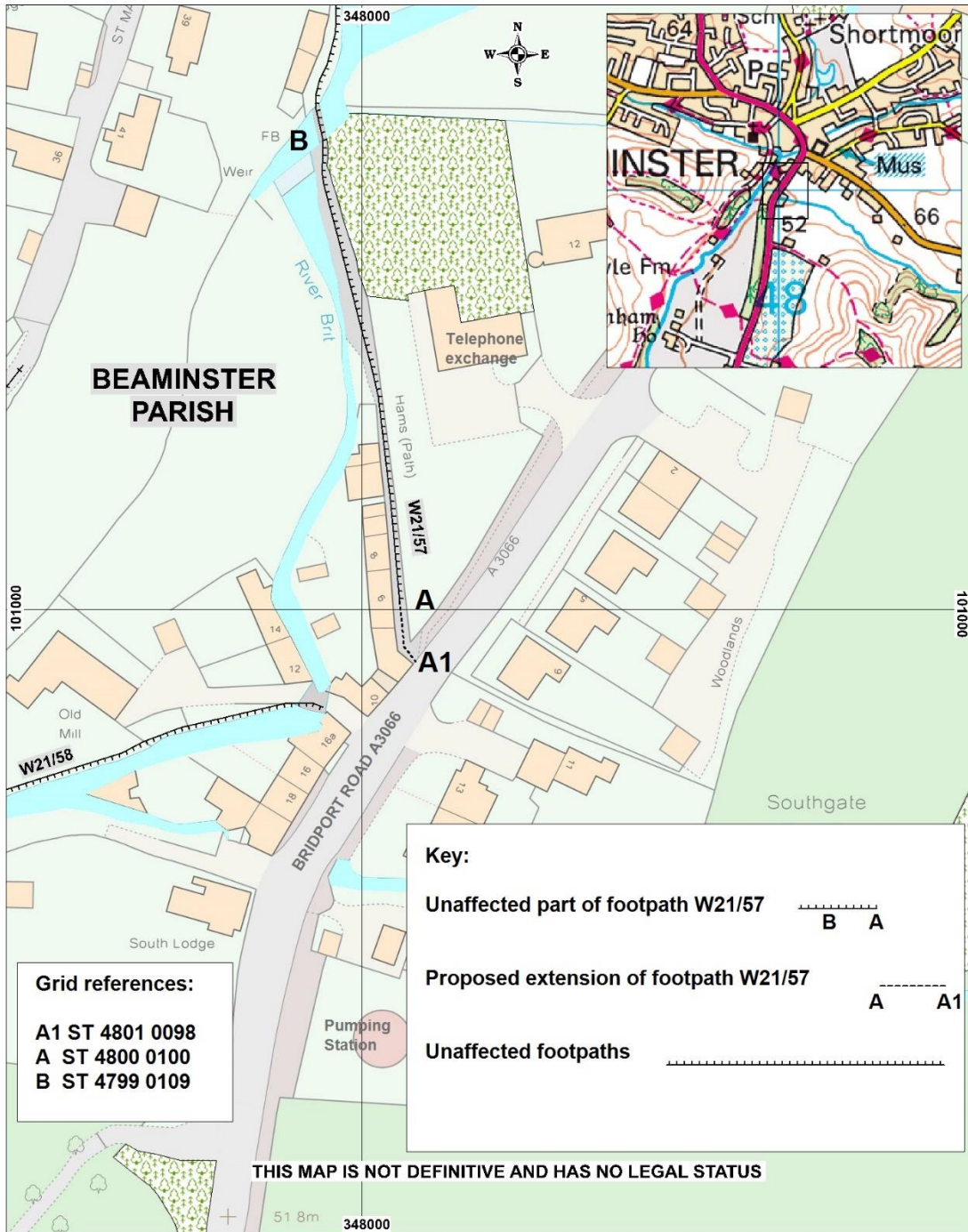
9 Conclusions

- 9.1 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 and/or the balance of evidence shows that the route 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.
- 9.2 The documentary evidence indicates that the through route between St Mary Well Street and Bridport Road has been in existence for over a hundred years, and the rights of way mapping up to, and including, the first definitive map provides strong evidence that there were public rights on foot along the whole length. The current definitive statement still records these rights today. There is no documentary evidence that these rights have been stopped up or altered in any way.

- 9.3 Therefore, the recommendation is that Footpath 57, Beaminster be extended on the Definitive Map in a southerly direction to join the A3066 (Bridport Road) at point A1 on Drawing T578-20-1, thus bringing it into agreement with the definitive statement.
- 9.4 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 as described does exist. It is considered that the evidence is sufficient to satisfy this test.

APPENDIX 1

Drawing T578/20/1



WILDLIFE & COUNTRYSIDE ACT 1981
 Proposed definitive map modification order, T578
 affecting footpath W21/57
 Beaminster Parish

Ref: T578/20/1
 Date: 18/08/2020
 Scale 1:1000
 Drawn By: AB
 Cent X: 348026
 Cent Y: 100998

Dorset Council

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 Geomapping Plc and BlueSky International Limited [2017]

LAW

APPENDIX 2

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

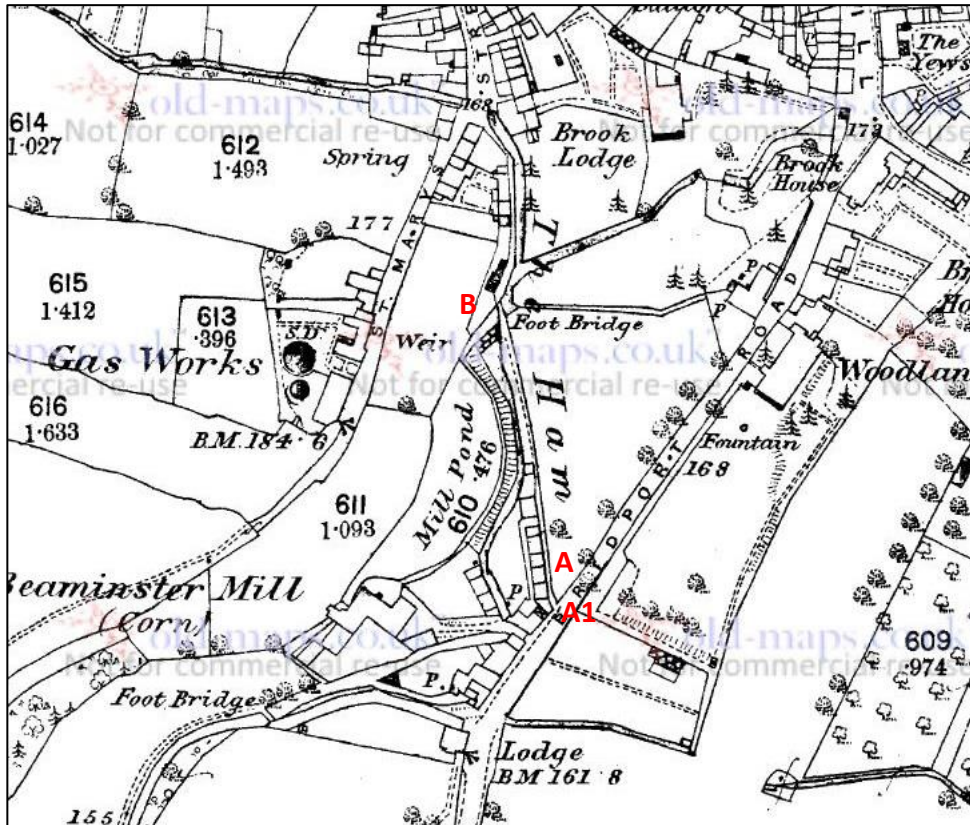
- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence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

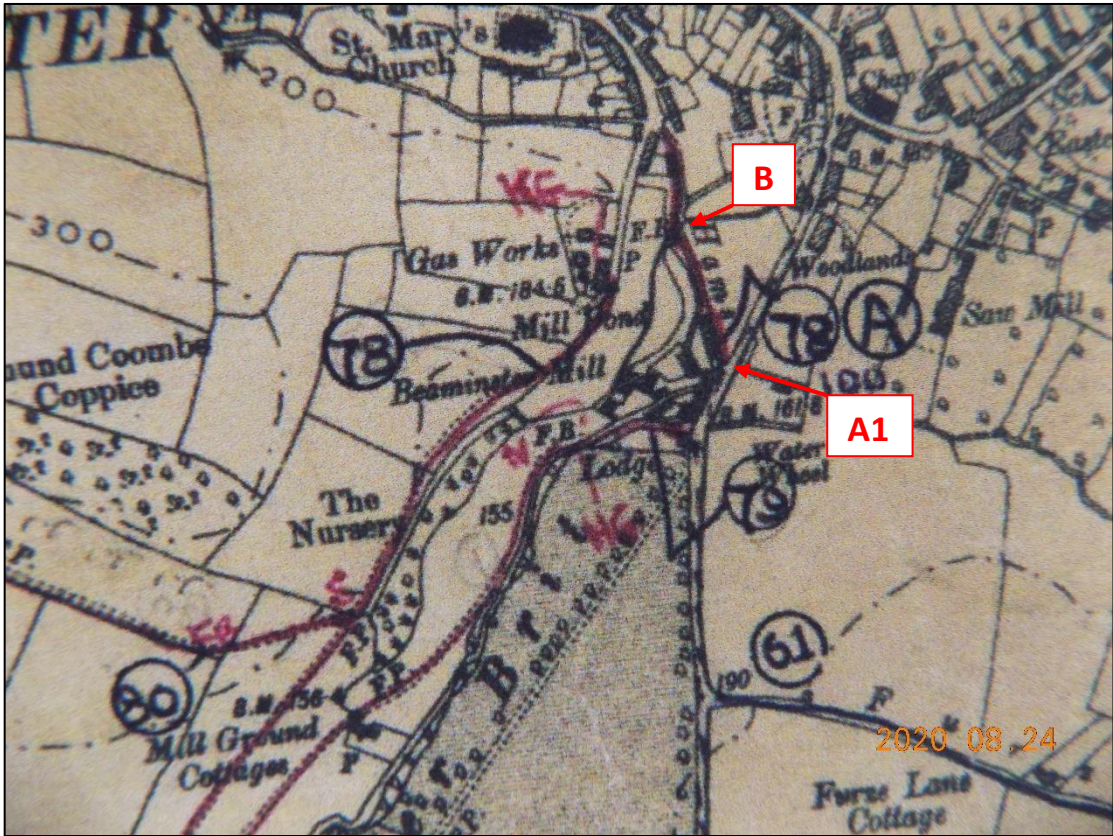
5 National Parks and Access to the Countryside Act 1949

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.

Ordnance Survey Map (1889) 25 inches : 1 mile



Parish Survey Map (1950's)



Parish Survey Statement (1950's)

BEAMINSTER PARISH.

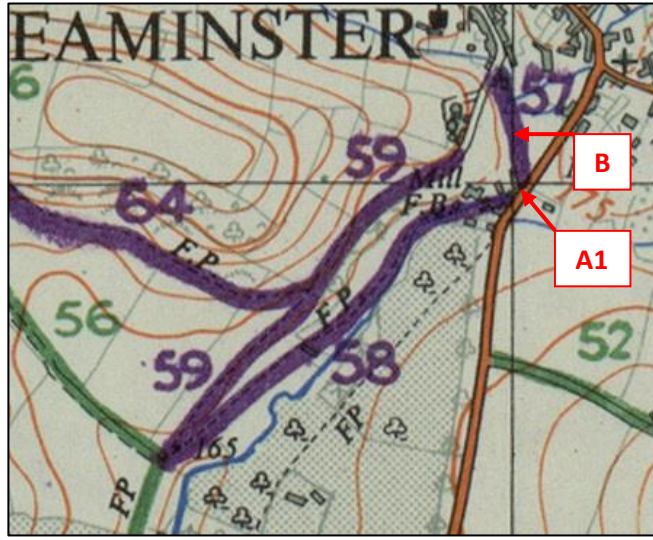
¹⁰⁰
F.P. 78A. St. Mary's Street to
South Gate (Bridport Rd.)

At the end of St. Mary's Street branch left and continue along the side of the stream to a F.B. by a weir. After crossing the F.B. continue about 100 yards road to join the Bridport/at South Gate.

This short F.P. known as "Hams" is in good condition and constantly used.

Note: In March '51 the Parish Council decided to place adequate gates at either end to prevent ~~small~~ small unaccompanied/children using the path as ^{drowning} fatalities have occurred in recent years.

First Definitive Map (1966-67)

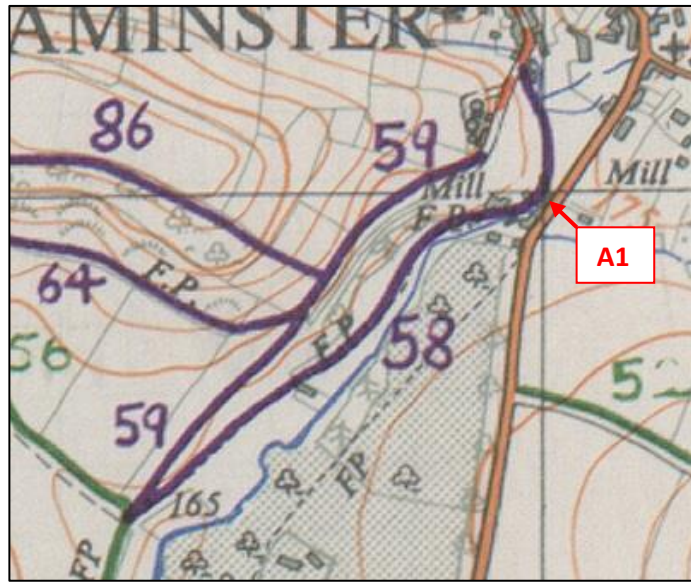


Statement accompanying the First Definitive Map (1966-67)

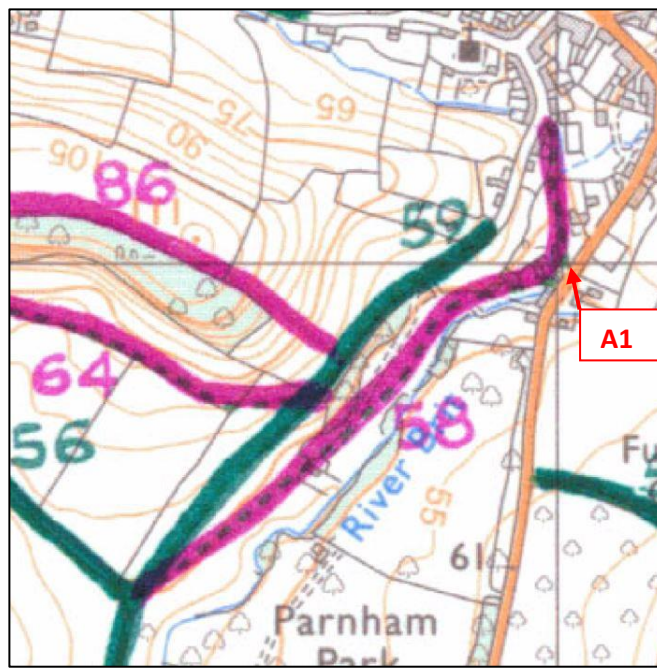
DORSET COUNTY COUNCIL
National Parks and Access to the Countryside Act, 1949
Part IV - Public Rights of Way
STATEMENT annexed to the Definitive Map in respect of:
(Parish) BEAMINSTER (Local Authority) BEAMINSTER RURAL DISTRICT
Relevant date in relation to the preparation of the Provisional Map: 1st January, 1953

FP or BR or M	Path Number	From	National Grid Map Ref	To	National Grid Map Ref
FP	52	Road north of Mapperton Farm	497995	Bridport Road at Furze Lane	479007
FP	53	Bridport Road at Coombe Down Farm	478002	join Path No.52	484002
FP	54	62&64 Path No.52 via Coombe Down Farm	488999	join Bridport Road	479004
FP	55	70 Path No.52 near Coombe Down Barn	492996	Netherbury Parish Boundary	487995
FP	56	82 Bridport Road via Parham	478002	Stoke Abbott Road	471012
FP	57	100 Bridport Road at Hams	480010	Beaminster	479011
			479009	join Path No.56	475006

Revised Draft Map (1974)



Current Definitive Map and Statement (sealed 1989)



WEST DORSET COUNTY COUNCIL
STATEMENT ANNEXED TO THE DEFINITIVE MAP IN RESPECT OF:

(PARISH) BEAMINSTER TOWN COUNCIL (LOCAL AUTHORITY) WEST DORSET DISTRICT COUNCIL

DATE 1 APR 1989

FP BR OR BY	PATH NUMBER	FROM	NATIONAL GRID MAP REFERENCE	TO	NATIONAL GRID MAP REFERENCE
FP	54	Path No 52 via Coombe Down Farm	488999	Join Bridport Road	479004
BR	55	Path No 52 near Coombe Down Barn	492996	Netherbury Parish boundary	487995
BR	56	Bridport Road via Parnham	478002	Stoke Abbott Road	471012
FP	57	Bridport Road at Hams	480010	Beaminster	479011
FP	58	Bridport Road near The Lodge	479009	Join Path No 56	475006
				Path No 56	475006

Recommendations accepted:

Signed:

REDACTED
REDACTED

Date:.....14 December 2020.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning