

# Report to the Executive Director for Place

## Proposed definitive map and statement modification order – part of Footpath 85, Weymouth

### For Decision

**Portfolio Holder:** Cllr D Walsh, Planning

**Local Councillor(s):** Cllr H Webb, Dorset Council Member for Upwey & Broadwey

**Executive Director:** J Sellgren, Executive Director of Place

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**Report Status:** Public

**Brief Summary:** This report considers the evidence relating to the recorded route of part of Footpath 85, Weymouth and considers modifying the definitive map and statement to correct the drafting error on the route of the footpath as shown on Drawing T579/22/1. A full consultation exercise was carried out in March 2022 and received no objections.

#### **Recommendations:**

That:

- a) An order be made to modify the definitive map and statement of rights of way to correct the route of part of Footpath 85, Weymouth from the recorded route as shown A-B-C-D to that shown A-E-F-G-H-I on Drawing T579/22/1 (Appendix 1); and
- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

#### **Reasons for Recommendations:**

- a) The available evidence shows, on balance, that the recorded route of Footpath 85, Weymouth requires modification as described.

b) The available evidence shows, on balance, that the correct route of Footpath 85, Weymouth is as proposed. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

## **1. Background**

1.1 The drafting error was identified in 2019 when the route of Footpath 85, Weymouth was checked due to the sale of a nearby property.

### **Description of the route**

1.2 The current recorded route of part of Footpath 85, Weymouth is from the unaffected part of Footpath 85, at the private road, north of Manor Stables at point A, south east across fields to the garden boundary of 735 Dorchester Road at point B and continuing south east through the gardens of 735-731 Dorchester Road to point C, then east south east through the property 731 Dorchester Road to point D, as shown on Drawing T579/22/1 attached as Appendix 1.

1.3 The proposed new route of part of Footpath 85, Weymouth is from the unaffected part of Footpath 85, at the private road, north of Manor Stables at point A, south south west along the road to point E, then turning east along a stone surfaced path, passing to the south of Manor Stables to point F and continuing east and south east across a field to the south eastern corner of the field at point G. It continues south south east and south, along an earth and stone surfaced path to point H, then east south east, passing between properties 731 and 729 Dorchester Road to its junction with Dorchester Road at point I, as shown on Drawing T579/22/1 (Appendix 1). The proposed route is also the route currently available to the public.

## **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 proposed 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 see whether depictions of the route point to them 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**

4.1 Extracts from the key documentary documents considered during this investigation are contained in Appendix 3.

**5. User Evidence**

5.1 As this case is not the subject of an application but is being investigated under the continuous review procedure, there is no user evidence available.

**6. Consultation responses**

6.1 Dorset Council carried out a wide consultation in March 2022 and no objections were received.

6.2 Cllr Howard Legg, the local ward member for Upwey and Broadway, was consulted on the proposals but made no comment.

6.3 The following nine submissions commented on the proposals to modify the routes of part of Footpath 85, Weymouth:

<b>Name</b>	<b>Comments</b>
The British Horse Society	If the evidence supports an error on the definitive map, then we would support the DMMO.
Historic England	On the basis of the information available to date, we do not wish to offer any comments.

Senior Archaeologist, Dorset Council	<p>The existing and proposed new route cross an area where a field system of mediaeval or later date has been recorded (HER reference MDO24917). The proposed change may have some impact upon this feature, however it is not likely to be significantly greater than the impact of use of the current route.</p> <p>Consequently, I do not feel that historic environment considerations constitute a constraint in the context of this proposal.</p>
Local Resident	<p>We have lived at 731 Dorchester Road for nearly 18 years and the footpath to the side of our property has not changed during that time and is in constant use today.</p> <p>I have no idea when the map containing the 'old' route of FP85 was created but 731 has been standing for over 60 years, so must be well before then. I can only assume 733 and 735 are also in a similar situation as the path B-C-D also runs across their gardens.</p>
Local Resident	<p>I have now looked at the definitive plan on-line and as the directions for use state it is a working document.</p> <ol style="list-style-type: none"> <li>1. On the on-line map this footpath appears to start in the front room property 731. It is drawn north of where the path is as used (between the properties 731 and 729). It is shown as crossing the gardens of the next two properties to the north; which I am assuming number 733 and 735. Although the line of the footpath (on the on-line definitive plan) mimics the line of path of the cut-through from Dorchester Road it is some yards north. The line suggested on the definitive map I feel must be in error.</li> <li>2. Footpath 85 is shown as traversing the field which is as but at the westerly point where it joins the access road to Manor Barn/ Stottingway Street, it joins much further North than presently.</li> <li>3. At present there is a stile then across a gateway onto the access road to Manor Barn and then to Stottingway Street.</li> <li>4. I understand that the buildings are to be developed to either side of the route between stile and gateway. But the new route proposed must surely greatly impede the existing smallholding (with sheep) along this suggested new route.</li> </ol>

	<p>The existing route is longstanding, my parents moved to the area in 1970 and so I have frequently walked it with them. And now latterly myself having been back in the area since 2012.</p> <p>The modified route A E F G H I; is the route Footpath 85 is as has always been used to my knowledge and makes sense of the stile and gate in place.</p> <p>Route as shown 1989 map A B C D is clearly in error.</p>
Cllr David Northam, Weymouth Town Council	<p>I used to live in Upwey and have walked this path since 1981. It has always run along the corrected route indicated.</p> <p>It should have been updated when the housing was built on Dorchester Road which included a passageway and footpath sign.</p>
The Ramblers	<p>I have no documentary evidence to either support or refute the proposal to modify the definitive map and statement of rights of way by correcting part of the route of Footpath 85, Weymouth (S1/85).</p>
Local Resident	<p>I am a resident living on the Upwey/Broadwey border adjacent to the footpath. Our property, 729 Dorchester Rd was built we believe in 1938, so the upper part of the footpath must have been in place for some considerable time.</p> <p>I attach some aerial photographs of our property, taken I believe circa late 1980's/ late 1990's/ and more recently, showing some of the route of the footpath.</p> <p>I also looked some images/ maps in a display at the Memorial Hall. The map is dated 1930 and I believe shows the footpath going to the corner between two buildings and coming down onto the barn/stables as it currently does. I did approach the Upwey Society but they could not cast anymore light on this.</p>
Wessex Water	<p>Nearby apparatus.</p>

## 7. Analysis of consultation responses

- 7.1 One of the submissions contained photographic evidence including aerial photographs and a 1930s map extract for consideration.

## **8. Analysis of documentary evidence**

### **Ordnance Survey Maps**

- 8.1 The Ordnance Survey First Edition map 1888 (scale 1:2500 or 25 inches to the mile) shows the footpath as a double pecked line (indicating an unfenced path) annotated alongside 'F.P' (footpath) from the north western side of a field at Manor Farm, south east across the field to its junction with Dorchester Road. At this time, no properties had been constructed along this section of Dorchester Road.
- 8.2 The Ordnance Survey Second Edition map 1903 (scale 1:2500 or 25 inches to the mile) also shows Footpath 85, Weymouth as a double pecked line from the north western side of a field at Manor Farm, south east across the field to its junction with Dorchester Road. At this time, no properties had been constructed along this section of Dorchester Road.
- 8.3 The 1929 Ordnance Survey map (scale 1:2500) shows Footpath 85, Weymouth as a double pecked line, annotated alongside 'F.P', from the north western side of a field at Manor Farm, south east across the field and passing through two gardens/properties to its junction with Dorchester Road.
- 8.4 The 1930 Ordnance Survey map (scale 1:10560) shows the route as the larger scale map but with less detail.
- 8.5 The 1938 Ordnance Survey map (scale 1:2500) shows Footpath 85, Weymouth as a double pecked line, annotated alongside 'F.P', from the north western side of a field at Manor Farm, south east across the field, then south and south south east as a solid double line (indicating a fenced path), passing between properties 729 and 731 Dorchester Road to its junction with Dorchester Road.
- 8.6 The Ordnance Survey maps (attached as Appendix 3) show the physical characteristics on the ground at the date of the map and in particular, the map from 1938 provides evidence of the path's position that supports the proposed modification A-E-F-G-H-I.

### **Parish Survey**

- 8.7 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.

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- 8.8 The 1952 Parish Survey map shows the route of Footpath 85, Weymouth as a black double pecked line from the north western side of a field at Manor Farm, south east across the field and passing through four gardens/properties to its junction with Dorchester Road. A kissing gate has been annotated in the south eastern corner of the field.
- 8.9 The 1952 Parish Survey describes Footpath 85, Weymouth from “Stottingway Street to Dorchester Road. The path commences off of the private road to Manor Farm where a stile has been provided alongside of a field gate. At the far side of the field a kissing gate opens on to the amended line of the F.P. which runs between Nos 729 and 733 Dorchester Road” (now between 729 and 731 Dorchester Road).
- 8.10 The 1952 Parish Survey documents are attached at Appendix 3.

**Dorset Council Records**

- 8.11 There were various maps produced by the Council leading up to the current definitive map published in 1989, all at smaller scale of 1:25000. They are attached at Appendix 3.
- 8.12 The 1959 Draft Map for the South area shows the route of Footpath 85, Weymouth from its junction with Stottingway Street, south along the private road, then south east across a field and turning south and east, passing between properties to its junction with Dorchester Road.
- 8.13 The 1964 Provisional Map, 1967 First Definitive Map and the 1974 Revised Draft Map all show Footpath 85, Weymouth from its junction with Stottingway Street, south along the private road, then south east across a field and turning south and east, passing between properties to its junction with Dorchester Road.
- 8.14 These maps all show the route of Footpath 85, Weymouth as on the 1938 Ordnance Survey map and as described in the Parish Survey.

**Aerial photographs**

- 8.15 Aerial photographs from 1973, 1997, 2002, 2009, 2014 and 2017 have been examined and all (apart from 1973) show evidence of use of the proposed route from points A-E-F-G-H-I. They are attached at Appendix 3.

## **9. Summary of documentary evidence**

- 9.1 The current Definitive Map of rights of way, sealed in 1989, shows the route of part of Footpath 85, Weymouth as a thick purple line corresponding with the route as shown A-B-C-D on Drawing T579/22/1 (Appendix 1).
- 9.2 Dorset Council records indicate that the route of part of Footpath 85, Weymouth as shown A-E-F-G-H-I was the path as recorded on the 1938 Ordnance Survey map and subsequent maps, however the route was incorrectly drafted on the current definitive map.
- 9.3 No legal orders have been discovered that have changed the route of Footpath 85, Weymouth.

## **10. Financial Implications**

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

## **11. Climate Implications**

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

## **12. Well-being and Health Implications**

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

## **13. Other Implications**

None.

## **14. Risk Assessment**

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

Current Risk: LOW

Residual Risk: LOW

## **15. Equalities Impact Assessment**

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



## **16. Conclusions**

- 16.1 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 the proposed route. It is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 16.2 It would appear that on the balance of evidence, the route shown from points A-B-C-D arose as a result of a drafting error when the Definitive Map was sealed in 1989 and the proposed route from points A-E-F-G-H-I is how the route of Footpath 85, Weymouth should be recorded.
- 16.3 Therefore, the recommendation is that that the Definitive Map and Statement should be modified to delete Footpath 85, Weymouth as shown A-B-C-D and instead add it as shown A-E-F-G-H-I on Drawing T579/22/1 (Appendix 1).
- 16.4 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.

## **17. Appendices**

- 1 Drawing T579/22/1
- 2 Law
- 3 Documentary evidence (extracts from key documents):
  - 1888 Ordnance Survey First Edition map
  - 1903 Ordnance Survey Second Edition map
  - 1929 Ordnance Survey map
  - 1952 Parish Survey Map and description
  - 1959 Draft Map for the South Area
  - 1964 Provisional Map
  - 1967 First Definitive Map
  - 1974 Revised Draft Map
  - 1989 Current Definitive Map
  - 1973 Aerial Photograph
  - 1997 Aerial Photograph
  - 2002 Aerial Photograph
  - 2005 Aerial Photograph
  - 2009 Aerial Photograph

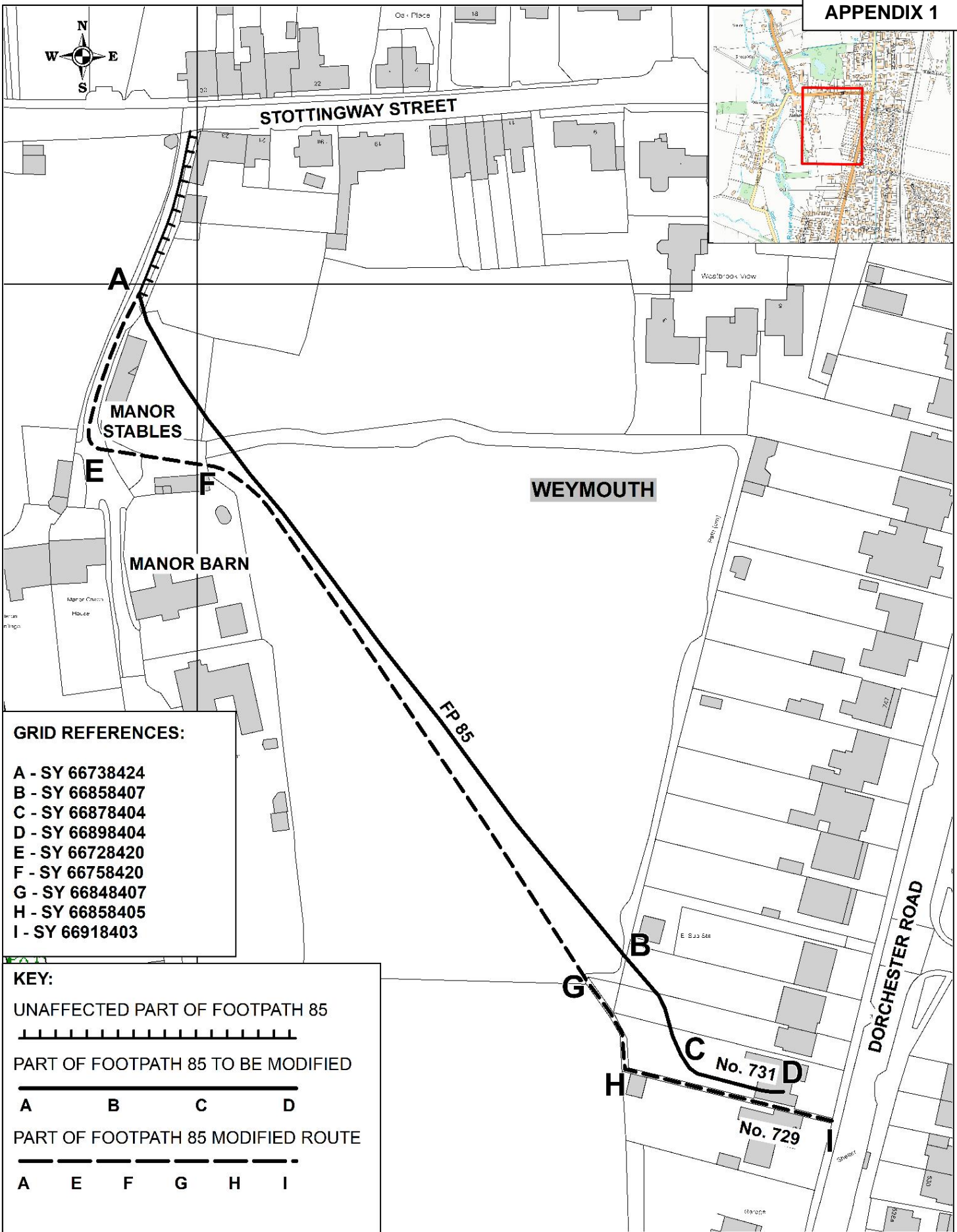
10 Proposed definitive map and statement modification order – part of Footpath 85, Weymouth

- 2014 Aerial Photograph
- 2017 Aerial Photograph

### **18. Background Papers**

The file of the Executive Director, Place (ref. RW/T579).

**Date: June 2022**



**GRID REFERENCES:**

- A - SY 66738424
- B - SY 66858407
- C - SY 66878404
- D - SY 66898404
- E - SY 66728420
- F - SY 66758420
- G - SY 66848407
- H - SY 66858405
- I - SY 66918403

**KEY:**

UNAFFECTED PART OF FOOTPATH 85

PART OF FOOTPATH 85 TO BE MODIFIED

A B C D

PART OF FOOTPATH 85 MODIFIED ROUTE

A E F G H I

**WILDLIFE & COUNTRYSIDE ACT 1981**  
**PROPOSAL TO MODIFY PART OF FOOTPATH 85,**  
**WEYMOUTH**

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

**Ref: T579/22/1**

**Date: 10/03/2022**

**Drawn by: KJS**

**Scale: 1:1250**

**Cent X: 366,822**

**Cent Y: 84,165**



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 OS 0100060963. Aerial Photography ©  
 UKPerspectives 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).

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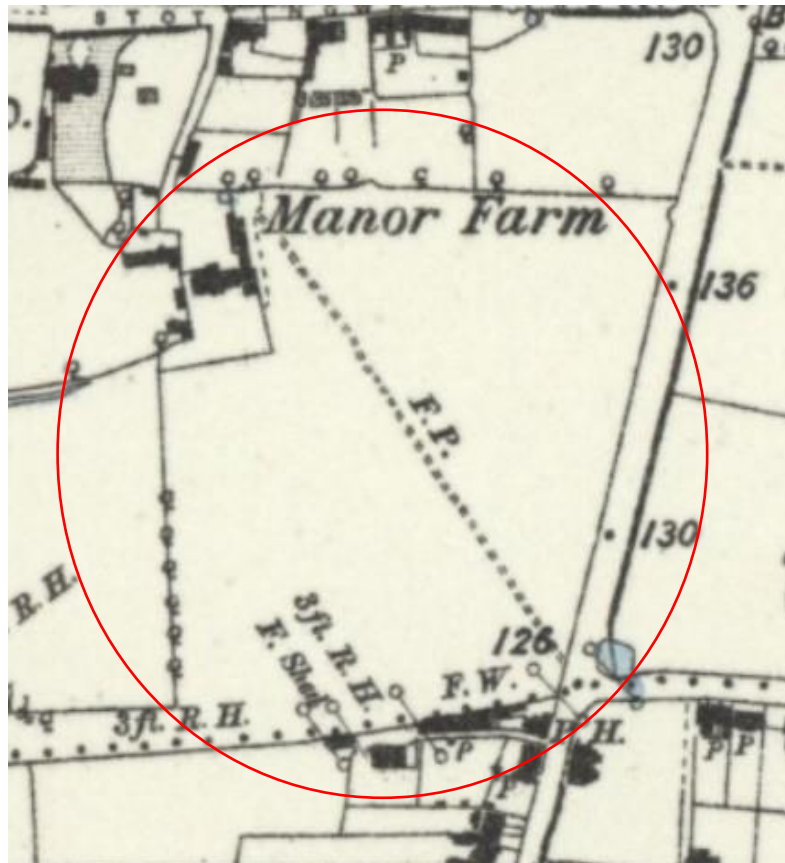
**Case specific law**

- 4 National Parks and Access to the Countryside Act 1949
- 4.1 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.

**Extracts from key documents**

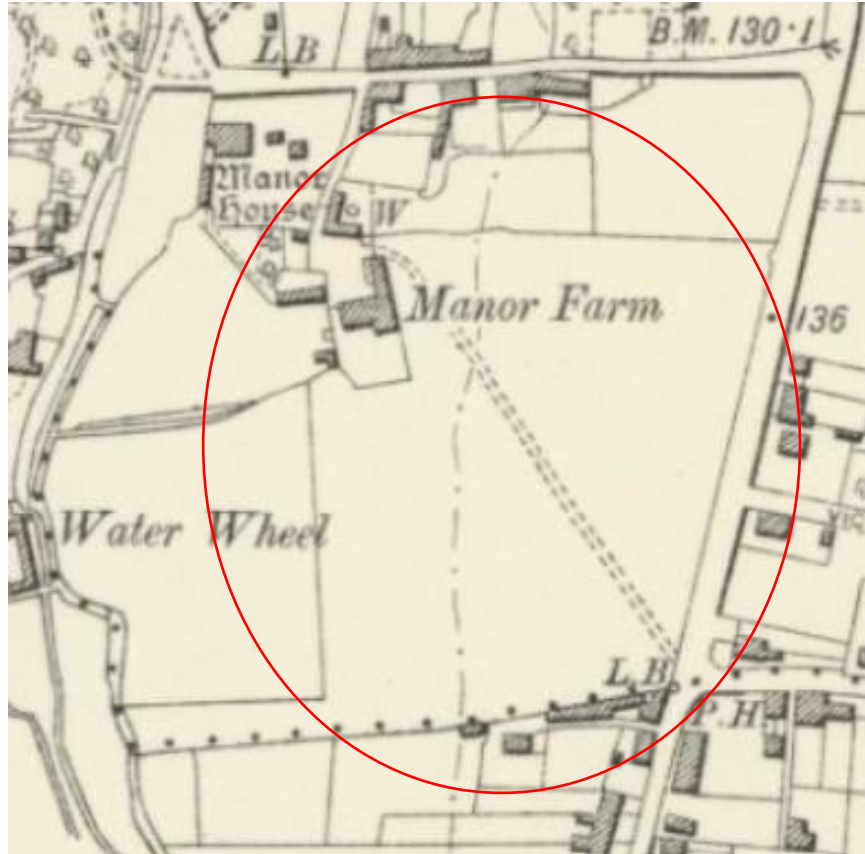
(See the file of the Executive Director, Place (ref. RW/T579) for copies of other documents mentioned)

**1888 Ordnance Survey First Edition map (enlarged)**





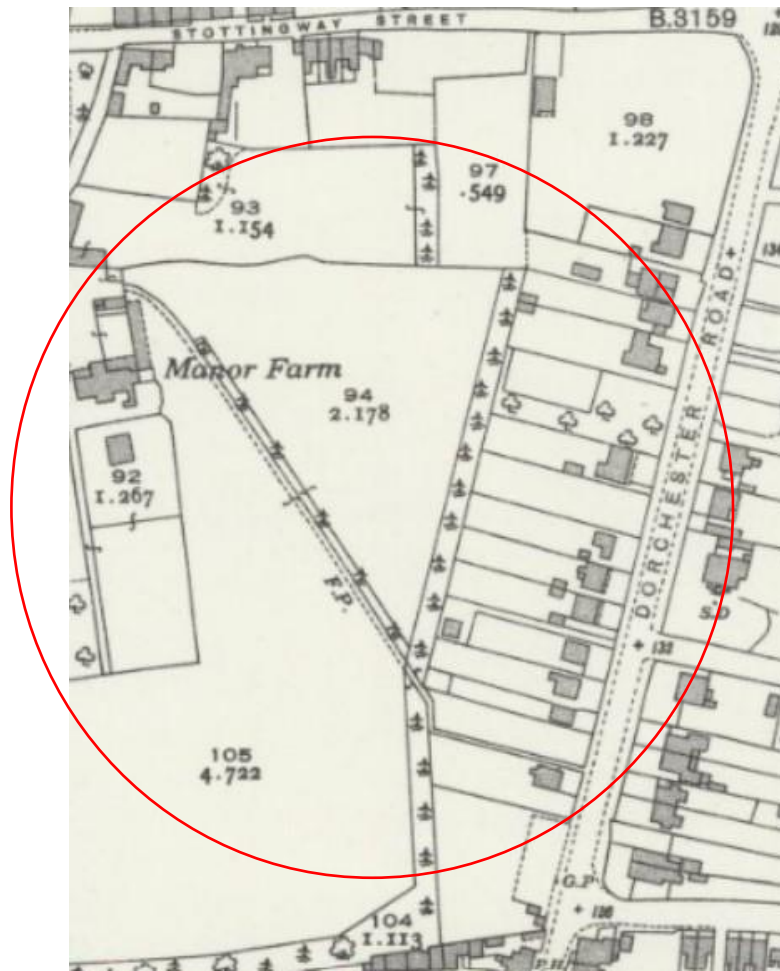
**1903 Ordnance Survey Second Edition map (enlarged)**



**1929 Ordnance Survey map (enlarged)**



**1938 Ordnance Survey map (enlarged)**



**1952 Parish Survey****Map (enlarged)****Description**

85 F.P. Stottingway Street to Dorchester Road.  
 The path commences off of the private road to Manor Farm  
 where a stile has been provided alongside of a field  
 gate. At the far side of the field a kissing gate opens  
 on to the amended line of the F.P. which runs between  
 Nos. 729 and 733 Dorchester Road.  
 Walked 8.3.1951 by N.J.L.

now between  
 729 + 731 Dorchester  
 Rd.

**1959 Draft Map for the South Area (enlarged)**



**1964 Provisional Map (enlarged)**



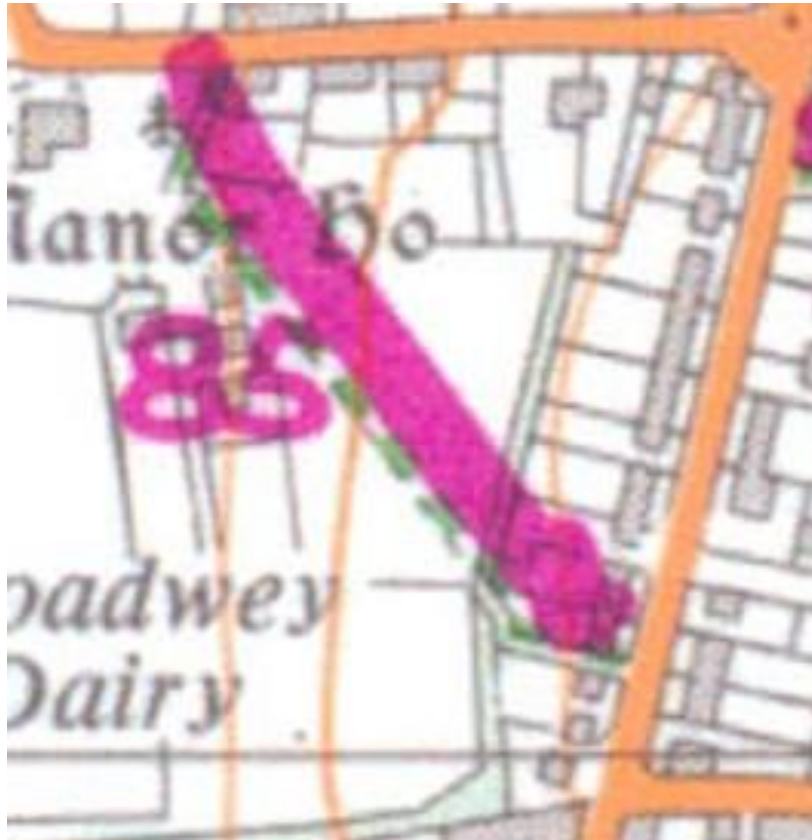
**1967 First Definitive Map (enlarged)**



**1974 Revised Draft Map (enlarged)**



**1989 Current Definitive Map (enlarged)**



**1973 Aerial Photography**



**1997 Aerial Photograph**





**2002 Aerial Photograph**



**2005 Aerial Photograph**



**2009 Aerial Photograph**



**2014 Aerial Photograph**



**2017 Aerial Photograph**



**Recommendations accepted:**

**Signed:**

.....V Penny.....

Date:.....23 June 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning