

## Report to the Executive Director for Place Services

### Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

#### For Decision

**Cabinet Member and Portfolio:** Cllr Shane Bartlett

**Local Councillor(s):** Cllr B. Bolwell; Cllr D. Bolwell; Cllr S. Williams

**Executive Director:** Mr Jan Britton, Executive Director for Place Services

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**Report Status:** Public

#### Brief Summary:

This report considers an application for a Definitive Map Modification Order (DMMO), based on user evidence, to add five lengths of footpath to the Definitive Map and Statement in Bridport Parish. Following an investigation of the evidence, a recommendation is made to accept the application in part and make five separate Orders to add four footpaths and one bridleway.

#### Recommendation:

That:

- (a) The application be accepted in part, and orders made to modify the definitive map and statement of rights of way as follows:
  - i) by adding a footpath from A-A1-B along Fourth Cliff Walk as shown on drawing T589/24/5,
  - ii) by adding a footpath from C-C1-D along Third Cliff Walk as shown on drawing T589/24/6;
  - iii) by adding a footpath from E-E1-F along Second Cliff Walk as shown on drawing T589/24/7;

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- iv) by adding a footpath from G-G1-H along First Cliff Walk as shown on drawing T589/24/8;
- v) by adding a bridleway from G-J1-J along Hill Rise as shown on drawing T589/24/09.

(b) If the Orders are unopposed, or if all objections are withdrawn, they be confirmed as made by the Council.

### **Reason for Recommendation:**

- (a) The available evidence shows, on balance, that the claimed rights of way routes subsist or are reasonably alleged to subsist.
- (b) The evidence shows, on balance, that the routes claimed along the four separate Cliff Walks should be recorded as footpaths, and the route claimed along Hill Rise should be recorded as a bridleway, as described. Accordingly, in the absence of objections, Dorset Council can itself confirm the Orders without submission to the Planning Inspectorate.

## **1 Background**

### **Applicant**

- 1.1. An application to record five lengths of footpath as shown A-B, C-D, E-F, G-H, and G-J at West Cliff, West Bay, Bridport, on drawing T589-24-4, (Appendix 1) was made by Mr Karl Rogers, local resident, on 27 February 2021.

### **Description of the routes**

- 1.2. The routes claimed are as follows:
  - a) Route 1: a footpath which commences at definitive bridleway W1/105 at the north-eastern end of the path known as Fourth Cliff Walk (Point A). The route continues south-west to point A1 where the route narrows, then continues south-west to meet definitive footpath W1/106 (Point B) for a total distance of approximately 150 metres.
  - b) Route 2: a footpath which commences at definitive bridleway W1/105 at the north-eastern end of the path known as Third Cliff Walk (Point C). The route continues south-west to point C1 where the route narrows, then continues south-west to meet definitive footpath W1/106 (Point D) for a total distance of approximately 130 metres.
  - c) Route 3: a footpath which commences at definitive bridleway W1/105 at the north-eastern end of the path known as Second Cliff Walk (Point E). The route continues south-west to point E1 where the route narrows, then continues south-west to meet definitive footpath W1/106 (Point F) for a total distance of approximately 115 metres.

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- d) Route 4: a footpath which commences at definitive bridleway W1/105 at the north-eastern end of the path known as First Cliff Walk (Point G). The route continues south-west to point G1 where the route narrows, then continues south-west to meet definitive footpath W1/106 (Point H) for a total distance of approximately 77 metres
  - e) Route 5: a footpath which commences at definitive bridleway W1/105 at the western end of the roadway known as Hill Rise (Point G). The route continues east-south-east to point J1 and then east-south-east widening to Point J where the route meets definitive footpath W1/24 at the western end of the public road known as Forty Foot Way for a total distance of approximately 106 metres.
- 1.3. Route one (A-B1-B) is 2.8 metres in width between point A and point A1, with a tarmacked surface, narrowing to 1.3 metres, with an unsurfaced track.
  - 1.4. Route two (C-C1-D) is 3.4 metres in width between point C and point C1, with a tarmacked surface, narrowing to 3.2 metres to point D, with an unsurfaced track
  - 1.5. Route three (E-E1-F) is 3 metres in width between point E and point E1, with a tarmacked surface, narrowing to 1.3 metres to point F, with an unsurfaced track
  - 1.6. Route four (G-G1-H) is 3 metres in width between point G and point G1, with a tarmacked surface, narrowing to 1.4 metres to point H, with an unsurfaced track
  - 1.7. Route five (G-J1-J) is 4 metres in width between point G and point J1, widening to 5 metres to point J, with a tarmacked surface.

### **Background to the application**

- 1.8. This application was submitted in 2021 by Karl Rogers (a local resident) because new signage and pedestrian gates were erected at the south-western ends of the Cliff Walk paths in 2020. The path along Hill Rise was added to the application to regularise the situation where no public path was recorded along this route.
- 1.9. In 2024, Dorset Council revised the Parish Boundaries in a number of locations across Dorset, and the West Cliff area is now subsumed within the Bridport Parish area, rather than Symondsbury Parish, causing the definitive path numbering to change to accord with the Bridport Parish prefix on the respective path numbers. The revised path numbers are referred to throughout this report.
- 1.10. The application includes five routes, with a claim of footpath status over each one.

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## **Use of Evidence**

- 1.11. The applicant submitted user evidence in support of this application.
- 1.12. Further evidence was submitted in support of this application and all evidence has been analysed.
- 1.13. Evidence submitted by the landowners, including the West Cliff House Owners' Association (WCHOA), was analysed concurrently with the user evidence.
- 1.14. Historic evidence in the form of Ordnance Survey maps, aerial photographs, and documents prepared for the purposes of The National Parks and Access to the Countryside Act (1949) for preparing a Definitive Map and Statement for Dorset are available and have been analysed.
- 1.15. A full consultation exercise was carried out between 15 December 2023 to 10 February 2024 in conjunction with DMMO application T732 (which also affects the West Cliff area), and included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding this application. Symondsburry Parish Council and Bridport Town Council, Cllr D Bolwell, Cllr K Clayton, and Cllr S Williams were also consulted. In addition, notices explaining the application were erected on site.
- 1.16. Relevant evidence submitted during the consultation period is discussed in this report.

## **2 Law**

### Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period (the Relevant Period) is counted back from when the right of the public to use the way is brought in to question.
  - 'As of right' in this context means without force, without secrecy and without obtaining permission.
  - A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.

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- 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.

- 2.2 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.3 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit
- 2.4 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality.
- 2.5 Further details on the law are contained in Appendix 2.

### **3 Issue to be decided**

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist (or are reasonably alleged to subsist) on the routes claimed. If the evidence shows that public rights exist, a decision based on the evidence needs to be made to determine at what status the route should be recorded.
- 3.2 It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.
- 3.3 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability.
- 3.4 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.
- 3.5 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.
- 3.6 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.

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- 3.7 The Council has a legal duty to record any rights that are found to exist even if they are not those claimed by the applicant.

### **4 Documentary evidence (Appendix 3) (copies available in the case file RW/T732)**

- 4.1 The claimed routes are based mainly on user evidence.
- 4.2 No documentary evidence was submitted with the application.
- 4.3 Aerial photographs dating from 1942 have been examined. These photographs show the Cliff Walk paths as clear routes leading between West Cliff Road and definitive footpath W1/106. They also show a defined roadway along the Hill Rise route.
- 4.4 Historic documentary evidence has been examined, including Ordnance Survey maps (1988 – 2000), 1843 Tithe Map, Finance Act Map 1910, Ilchester Estates sale map 1914.

#### **Tithe Map**

- 4.5 The 1843 Tithe map for Symondsbury has been examined. This map includes the area of West Bay. The map depicts the whole of the West Cliff area which is included within apportionment number 1004. The Tithe Award states that the owner of this land is Ilchester Estates, with the occupier being John Pitfield.
- 4.6 There is no depiction of any of the Cliff Walks or of Hill Rise on this map. The road known as Forty Foot Way is shown on this map, as a shaded route with no apportionment number which identifies it as a public carriageway.

#### **Finance Act 1910**

- 4.7 The Finance Act 1910 Map has been examined. The road known as Forty Foot Way is shown as a white road on the map (Appendix 2) and is excluded from the adjacent hereditaments (namely hereditament 1472 in the north, and hereditaments 1475, 1476, 1477 in the south, and hereditament 2727 to the west) which shows that public rights were recognised by the Commissioners who confirmed the Finance Act documents to be accurate. None of the five claimed routes are shown on this map.

#### **Ordnance Survey Maps**

- 4.8 The 1888 Ordnance Survey map shows Forty Foot Way as one length of enclosed road. Hill Rise and the four Cliff Walks are not shown on this 1<sup>st</sup> edition of the Ordnance Survey map.

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- 4.9 The 1929 Ordnance Survey 1:2500 map shows Forty Foot Way as one length of enclosed road which continues into Hill Rise, crossing the parish boundary at the junction of the two roads. The Cliff Walks are depicted on this map as cul de sac paths which stop short of definitive footpath W1/106. Two of these routes are shown braced to the adjoining land (the paths now known as Fourth and Third Cliff Walk), meaning that these paths are in the ownership of the adjoining plots of land. Similarly, Hill Rise is shown braced to adjoining land.
- 4.10 The Ordnance Survey maps dated 1960 and later, of various scales, depict distinct routes along all four of the Cliff Walks leading from West Cliff Road to join with the coast path. Also shown is a clear route along Hill Rise between West Cliff Road and Forty Foot Way. None of the claimed routes are marked as public routes.

### **Estate maps**

- 4.11 The Earl of Ilchester sold land at West Cliff, West Bay in 1914 by public auction. None of the Cliff Walks or Hill Rise are depicted on the Estate Plan provided for the auction pack. Plot 2 is the area of the current West Cliff housing.

### **Dorset Council Records**

- 4.12 The Symondsburry Parish Survey (1952) for this area did not claim a right of way corresponding to any of the application routes. None of the subsequent iterations of the Definitive Map preparation show any of the claimed routes as public rights of way.

### **Aerial photographs**

- 4.13 All available aerial photography held by Dorset Council for this site was examined. The claimed route at Hill Rise can be seen on the 1947 aerial photograph which shows the southern section of the West Cliff estate. The 1972 aerial photograph shows the Hill Rise route, and also the four Cliff Walk routes as paths leading to the coast path, at the west of the West Cliff housing. All other aerial photographs (1977-2023) show the same features, in the same locations.

### **Summary of documentary evidence**

- 4.14 The documentary evidence provides supporting evidence to the DMMO application whereby the Hill Rise claimed route has existed since at least 1929, and the claimed Cliff Walk routes can be seen to have existed from at least 1960.

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**5. User evidence (Appendix 4)**

Copies available in the case file (RW/T589).

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as part of application T589 in 2021 has been included in this analysis, as well as additional evidence provided as part of the public consultation on this application between 14 December 2023 to 10 February 2024, and subsequent evidence submitted in April-May 2024.
- 5.2 23 User Evidence Forms (UEFs) were submitted to accompany the application for the claimed routes in February 2021.
- 5.3 During the informal consultation period between December 2023 to February 2024 (which sought comment on DMMO application T589, and the associated DMMO application T732) an additional 176 UEFs were submitted. Not all of these UEFs included use of the Cliff Walks and/or Hill Rise.
- 5.4 Analysis of the total UEFs submitted resulted in an additional 56 UEFs relevant to DMMO T589
- 5.5 The total number of UEFs received for T589 was 83.
- 5.6 The DMMO submitted (T589) is claiming five separate routes: a footpath along each of the four Cliff Walk paths, and a footpath along the roadway known as Hill Rise. User evidence submitted for T589 includes use of all the claimed routes. For clarity, evidence has been analysed separately against each claimed route and is set out in the following paragraphs.
- 5.7 The consultation plan, ref. T589/24/4 dated 21/11/2024 is used to reference the routes, using the letter referencing thereon.
- 5.8 For the purposes of section 31 of the Highways Act 1980, the 20 year Relevant Period of use for Hill Rise is 2001-2021, and for the Cliff Walk routes is 2000-2020.
- 5.9 The landowners have not submitted any Statutory Declarations under Section 31(6) of the Highways Act 1980 which would prevent the accrual of public rights of access through use.

**Route A-B – claimed footpath - Fourth Cliff Walk**

- 5.10 The Chart of Use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route A-B (along Fourth Cliff Walk, between definitive bridleway W1/105 and definitive footpath W1/106), over a 20 year period, by a total of 77 witnesses.



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- 5.11 Of the total 77 witnesses, two are discounted because use is not within the Relevant Period of use; one is discounted because they have a private use of the paths; leaving a total of 74 witnesses, all of whom used the claimed bridleway within the 20 year Relevant Period 2000-2020.
- 5.12 This use is use on foot only.
- 5.13 The period of use by these 74 individuals ranges between 1 year up to the full 20 years each, and varies between use daily, to a couple of times a week, to a couple of times a month, to a couple of times a year. The entire stated use of the route spans a timeframe between 1950-2024.
- 5.14 Comments made by witnesses suggest that there has always been a public footpath along Fourth Cliff Walk between definitive footpath W1/106 and West Cliff Road.

**Pedestrian use**

- 5.15 4 of the 74 individuals used the path daily for walking during the time period they used the route.
- 5.16 25 of the 74 individuals used the path on a weekly basis during the time period they used the route.
- 5.17 2 of 74 individuals used the path on a fortnightly basis during the time period they used the route.
- 5.18 27 of the 74 individuals used the path on a monthly basis during the time period they used the route.
- 5.19 6 of the 74 individuals used the path bi-monthly basis during the time period they used the route.
- 5.20 3 of the 74 individuals used the path between 10-30 times/yr during the time period they used the route.
- 5.21 7 of the 74 individuals used the path less frequently: 1-10 times/yr during the time period they used the route.

**Route C-D – claimed footpath - Third Cliff Walk**

- 5.22 The Chart of Use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route C-D (along Third Cliff Walk between definitive bridleway W1/105 and definitive footpath W1/106) over a 20 year period, by a total of 69 witnesses.

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- 5.23 Of the total 69 witnesses, three are discounted because use is not within the Relevant Period of use; one is discounted because they have a private use of the paths; leaving a total of 65 witnesses, all of whom used the claimed bridleway within the 20 year Relevant Period 2000-2020.
- 5.24 This use is by people on foot only.
- 5.25 The period of use by these 65 individuals ranges between 1 year up to the full 20 years each, and varies between use daily, to a couple of times a week, to a couple of times a month, to a couple of times a year. The entire stated use of the route spans a timeframe between 1950-2024.
- 5.26 Comments made by witnesses suggest that there has always been open access to Third Cliff Walk between definitive footpath W1/106 and West Walk.

### **Pedestrian use**

- 5.27 2 of the 65 individuals used the path daily for walking during the time period they used the route.
- 5.28 23 of the 65 individuals used the path on a weekly basis during the time period they used the route.
- 5.29 3 of 65 individuals used the path on a fortnightly basis during the time period they used the route.
- 5.30 18 of the 65 individuals used the path on a monthly basis during the time period they used the route.
- 5.31 6 of the 65 individuals used the path bi-monthly basis during the time period they used the route.
- 5.32 6 of the 65 individuals used the path between 10-30 times/yr during the time period they used the route.
- 5.33 9 of the 65 individuals used the path less frequently: 1-10 times/yr during the time period they used the route.

### **Route E-F – claimed footpath - Second Cliff Walk**

- 5.34 The Chart of Use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route E-F (along Second Cliff Walk between definitive bridleway W1/105 and definitive footpath W1/106) over a 20 year period, by a total of 75 witnesses.

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- 5.35 Of the total 75 witnesses, two are discounted because use is not within the Relevant Period of use; one is discounted because they have a private use of the paths; leaving a total of 72 witnesses, all of whom used the claimed bridleway within the 20 year Relevant Period 2000-2020.
- 5.36 This use is by people on foot only.
- 5.37 The period of use by these 72 individuals ranges between 2 years up to the full 20 years each, and varies between use daily, to a couple of times a week, to a couple of times a month, to a couple of times a year. The entire stated use of the route spans a timeframe between 1950-2024.
- 5.38 Comments made by witnesses suggest that there has always been open access to Second Cliff Walk between definitive footpath W1/106 and West Walk.

**Pedestrian use**

- 5.39 2 of the 72 individuals used the path daily for walking during the time period they used the route.
- 5.40 24 of the 72 individuals used the path on a weekly basis during the time period they used the route.
- 5.41 3 of 72 individuals used the path on a fortnightly basis during the time period they used the route.
- 5.42 23 of the 72 individuals used the path on a monthly basis during the time period they used the route.
- 5.43 5 of the 72 individuals used the path bi-monthly basis during the time period they used the route.
- 5.44 6 of the 72 individuals used the path between 10-30 times/yr during the time period they used the route.
- 5.45 9 of the 72 individuals used the path less frequently: 1-10 times/yr during the time period they used the route.

**Route G-H – claimed footpath - First Cliff Walk**

- 5.46 The Chart of Use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route G-H (along First Cliff Walk between definitive bridleway W1/105 and definitive footpath W1/106) over a 20 year period, by a total of 73 witnesses.

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- 5.47 Of the total 73 witnesses, two are discounted because use is not within the Relevant Period of use; one is discounted because they have a private use of the paths; leaving a total of 70 witnesses, all of whom used the claimed bridleway within the 20 year Relevant Period 2000-2020.
- 5.48 This use is by people on foot only.
- 5.49 The period of use by these 70 individuals ranges between 1 year up to the full 20 years each, and varies between use daily, to a couple of times a week, to a couple of times a month, to a couple of times a year. The entire stated use of the route spans a timeframe between 1950-2024.
- 5.50 Comments made by witnesses suggest that there has always been open access to Fourth Cliff Walk between definitive footpath W1/106 and West Walk.

### **Pedestrian use**

- 5.51 2 of the 70 individuals used the path daily for walking during the time period they used the route.
- 5.52 26 of the 70 individuals used the path on a weekly basis during the time period they used the route.
- 5.53 3 of 70 individuals used the path on a fortnightly basis during the time period they used the route.
- 5.54 19 of the 70 individuals used the path on a monthly basis during the time period they used the route.
- 5.55 5 of the 70 individuals used the path bi-monthly basis during the time period they used the route.
- 5.56 6 of the 70 individuals used the path between 10-30 times/yr during the time period they used the route.
- 5.57 9 of the 70 individuals used the path less frequently: 1-10 times/yr during the time period they used the route.

### **Route G-J – claimed footpath - Hill Rise**

- 5.58 The Chart of Use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route G-J (along Hill Rise between definitive bridleway W1/105 and definitive footpath W1/24) over a 20 year period, by a total of 83 witnesses.

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- 5.59 Of the total 83 witnesses, four are discounted because use is not within the Relevant Period of use; one is discounted because they have a private use of the paths; leaving a total of 78 witnesses, all of whom used the claimed route within the 20 year Relevant Period 2001-2021.
- 5.60 This use is by people on foot, cycle and horse-back.
- 5.61 The period of use by these 78 individuals ranges between 1 year up to the full 20 years each, and varies between use daily, to a couple of times a week, to a couple of times a month, to a couple of times a year. The entire stated use of the route spans a timeframe between 1950-2024.
- 5.62 Comments made by witnesses suggest that there has always been open access to Hill Rise between West Walk and the public road known as Forty Foot Way (definitive footpath W1/24).

**Pedestrian use**

- 5.63 2 of the 78 individuals used the path daily for walking during the time period they used the route.
- 5.64 23 of the 78 individuals used the path on a weekly basis during the time period they used the route.
- 5.65 1 of 78 individuals used the path on a fortnightly basis during the time period they used the route.
- 5.66 16 of the 78 individuals used the path on a monthly basis during the time period they used the route.
- 5.67 7 of the 78 individuals used the path bi-monthly basis during the time period they used the route.
- 5.68 13 of the 78 individuals used the path between 10-30 times/yr during the time period they used the route.
- 5.69 16 of the 78 individuals used the path less frequently: 1-10 times/yr during the time period they used the route.

**Equestrian use**

- 5.70 2 of the 78 individuals used the path on a bi-monthly basis for horse riding during the time period they used the route.

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### **Cycle use**

- 5.71 8 of the individuals used the path for cycling during the time period they used the route.
- 5.72 5 of these 8 people used the path for cycling on a monthly basis.
- 5.73 2 of these people used the path for cycling on a bi-monthly basis.
- 5.74 1 of these people used the path for cycling on a weekly basis.

### **Analysis of the user evidence**

#### **Use by the public**

- 5.75 The evidence analysed above shows a clear acceptance by the public of the claimed routes as public ways, in sufficient number that the landowner must have been aware of this use.

#### **Signage**

- 5.76 The user form specifically asks the question regarding signs on the routes. Across all five of the claimed routes 20% of people state they did not see any sign on the routes. This means that 80% of people do claim to have seen signage on each of the routes but the user evidence states that the wording on the signage did not deter them from proceeding along the respective routes.
- 5.77 The WCHOA and residents have submitted photographic evidence (Figure 1) to show that signage displaying the wording 'Private Road' has been in existence at the western end (definitive footpath W1/106) of each of the Cliff Walk routes, together with signage at the eastern end of Hill Rise (Figure 2) since the 1950s.



**Figure 1: Evidence of 'Private Road' sign (no gate) at western end of Second Cliff Walk. Copyright ITV 'Broadchurch' series, filmed circa 2012.**

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**Figure 2: Eastern end of Hill Rise – signage showing 'Private Estate/Private Road/No Parking' signs**

- 5.78 User evidence and landowner evidence details that signage was replaced in 2020 on the Cliff Walk routes stating 'Private. Residents Access only' together with the installation of a pedestrian gate on each Cliff Walk access/egress point onto the Coast Path (Figure 3).



**Figure 3 – November 2022 – Sign and gate installed in 2020 on path leading from the definitive footpath W1/106 to Fourth Cliff Walk**

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- 5.79 The user evidence suggests that prior to 2020, the signs on the Cliff Walk routes did not deter the public from using them. Similarly, the signs on Hill Rise (Figure 2) did not deter the public from using the road.
- 5.80 WCHOA have themselves confirmed that the renewed signs were placed (and new pedestrian gates installed), in their present locations in 2020 on the Cliff Walk routes. The reasons stated by the WCHOA for the renewed signage and new gates is that due to the increase in public use of these paths during the Covid-19 Lockdown periods it was necessary to remind people that the estate was private.
- 5.81 Case law has determined that signage stating 'Private'; 'Private Road'; 'No Parking'; 'No through road'; does not explicitly inform the public that there is no right to walk, cycle or horse ride along a route.
- 5.82 The notion of how users may have interpreted the notices cannot be taken into account, following numerous case law judgements (see paras 8.79-8.100 below).
- 5.83 The case law determines that only factual information displayed on notices can be considered for the purposes of analysing a DMMO application. All the users who saw signs commented that the wording was 'Private Estate'; Private Road; No Parking. No user identified any sign which categorically stated 'No Public Access', or 'No Public Right of Way'.
- 5.84 The WCHOA as landowners over which the claimed routes are located consider that the signage was a sufficient deterrent to inform the public that they should not walk/cycle/horse ride along the West Cliff roadways.

### **Bringing into Question**

- 5.85 When assessing an application for a DMMO, there must be a formal 'bringing into question' of the use of the claimed route, i.e. some event which challenges the right of the public to use these routes.
- 5.86 The pedestrian gates do not call into question the public's right to use the claimed footpaths because none of them are locked. However, the signs attached to the gates do call into question the public rights as the wording 'Residents' Access Only' had the effect to place doubt in the mind of the users.
- 5.87 The 'bringing into question' of the four Cliff Walk claimed footpaths has been established from the date on which users note the placing of signage and gates on the four Cliff Walks in 2020. This date of bringing into question the use of the four Cliff Walk routes would make the 'Relevant Period' (of 20 years' use As of Right) for each of the claimed Cliff Walk footpaths the period 2000-2020.



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- 5.88 When considering the evidence of use for the Hill Rise route, evidence shows that the signage has not changed in its wording since first being placed circa 1940. No other obstructions to use have been declared (such as a gate, or signage explicitly stating 'No Public Right of Way') from either users or from the landowners. The date of bringing into question for Hill Rise is therefore the date of the DMMO application, which served to bring the public's rights to use of the path into question. Accordingly, the Relevant Period of use for Hill Rise is established to be 2001-2021.

### **Permission to use the claimed routes**

- 5.89 All user evidence states that a) no direct permission was given to users when using the claimed routes; b) no permission had been sought or given to use the routes, and c) users did not consider permission was necessary because there had always been public footpaths between the coast path and West Cliff Road, which they had used freely and openly.
- 5.90 By their own admission, the WCHOA have stated verbally and in their own Newsletters that none of the routes on the West Cliff estate are permitted for use by non-residents.

### **Unchallenged use of the claimed routes**

- 5.91 The users state they used all five of the routes in an open manner, and that the landowners must have been aware of the use by the public, but that their use was never challenged during the respective Relevant Periods. All users state they saw other people using the routes at the same time as they were using the paths.
- 5.92 Evidence that the WCHOA were aware of public use is contained in the December 2020 WCHOA Newsletter. The stated reason that the pedestrian gates and renewed signage were placed on the four Cliff Walk routes is the increased level of use by the public onto the estate.
- 5.93 The WCHOA publish and distribute Newsletters to the residents of the West Cliff estate on a regular basis. The December 2020 WCHOA Newsletter stated that the actions of erecting the gate and placing signage were "*to remind people that this is a private estate. The gates are not locked and therefore do not stop people from coming onto the estate, but we hope they will encourage people to treat the estate with respect*".
- 5.94 Officer comment: Whilst this newsletter offers some concern by the Trustees about the use by the public of the claimed routes, there is no indication that the Trustees (as landowners) wish the public to be excluded from the estate. In fact, the above statement is a clear acceptance of public use of the routes.

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- 5.95 WCHOA objections to the DMMO, however, appear to contradict this statement, suggesting that they (the Trustees) have never accepted public use on the private estate.

### **Intention to dedicate**

- 5.96 The Council is satisfied that any signage displayed on any of the five claimed routes during the respective 'Relevant Periods' failed to confer to the users that the route was not public.
- 5.97 Many users state that the routes are public because they have always used them freely, have seen others using the same routes, and because they have used them for many years without being challenged in their use.

### **Section 31 As of Right**

- 5.98 Use 'as of right' is taken to be use which is without force, without secrecy and without permission. The Council is satisfied that during the respective Relevant Periods i) no obstructions were in place to prevent use; ii) that public use was open and not undertaken in secret; and iii) that no permission was considered necessary (nor was it given by the landowners); thus all use of the five claimed routes, during this time is as of right and therefore meets the legal test.

### **Summary of user evidence**

- 5.99 Evidence of use on foot between 2000-2020 (for claimed footpaths A-B, C-D, E-F, G-H as shown on Plan ref. T589/24/4) is of sufficient number and frequency of use for a reasonable allegation to be made that public rights exist for footpath status.
- 5.100 Evidence of use on foot, cycle and horseback during 2001-2021 for claimed route G-J (on Plan ref. T589/24/4) is of sufficient number and frequency for a reasonable allegation to be made that public rights exist for bridleway status.
- 5.101 Evidence of use on pedal bike may also give rise to a reasonable allegation that the route should be recorded as a Restricted Byway.
- 5.102 According to case law, bicycle use before 1968 leads to carriageway rights. Bicycle use between 1968-2006 leads to bridleway rights, but bicycle use since 2006 leads to restricted byway rights.
- 5.103 On balance, the evidence of equestrian use together with bicycle use would support bridleway rights rather than restricted byway rights.

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- 5.104 There is no landowner evidence to show that signs indicating 'No public access' were in place on any of the claimed routes during the relevant period, or at any other time.
- 5.105 There is no evidence from users stating that the landowner(s) actively turned people away from the routes during the respective relevant periods, nor that they gave permission to users.
- 5.106 Officer comment: Some of the West Cliff residents wrote in their objection letters during the consultation period that people who they believed should not be using the routes (i.e. non resident) were turned away. No names were provided to allow a cross-check against the witness names, and these challenges appear to have taken place after the DMMO application was submitted, i.e. after the Relevant Period of use.
- 5.107 There is no user evidence stating that obstructions to use were in place on the respective routes prior to the dates of bringing into question.
- 5.108 There is no user evidence stating that direct permission to use the routes was provided.
- 5.109 The available evidence relating to the relevant periods suggests on balance that i) use of the Hill Rise claimed footpath by 83 users during the 20 year period of 2001 to 2021; and ii) use of the four claimed footpaths along the Cliff Walk routes (with varying numbers of users between 63-77 per route) during the 20 year period 2000-2020, was without force, without secrecy, and without permission, i.e. user was 'as of right'.

**6.0 Landowner correspondence** (copies available in the case file RW/T589).

- 6.1 The landowners for the site in which the claimed route is located were contacted as part of the public consultation.
- 6.2 The registered landowners of the roadways/paths on West Cliff over which the claimed routes are located are the Trustees of the WCHOA.
- 6.3 The curtilage of two of the properties along Hill Rise extend to the centre of the roadway (numbers 2 and 3 Hill Rise). For the purposes of this DMMO application, they are also registered landowners for part of the Hill Rise claimed route.
- 6.4 A letter of objection was written in response to the consultation letter from the WCHOA. No responses were received from the other individual landowners listed above.

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- 6.5 The Trustees provided evidence and put forward objections as to why they did not consider the use of any of the claimed routes to be ‘as of right’. These submissions are in the case file RW/T589 and analysed in section 7 of this report.
- 7.0 **Consultation responses and other correspondence** (copies available in the case file RW/T589).
- 7.1 A number of communications were received in response to the public consultation.
- 7.2 Dorset Council Archaeology commented that “*there are a number of recorded archaeological finds and features and historic buildings on and in the vicinity of the routes affected by this proposal. Considering the nature of the proposed change, however, I do not feel that historic environment considerations constitute a constraint in the context of this proposal*”.
- 7.3 The Ramblers representative provided no comment on DMMO application T589.
- 7.4 Natural England had no comments to make on this application.
- 7.5 Historic England had no comments to make on the application as “*no heritage assets are negatively impacted by this proposal*”.
- 7.6 Bridport Town Council stated they would discuss the application at their January meeting. No further response was received.
- 7.7 Dorset Wildlife Trust commented that their planning officer would comment. No further response was received.
- 7.8 Line Search Before You Dig (SGN/SSEN) commented that there is a high pressure gas main in the vicinity of the proposed routes, and reference should be made to the gas main map.
- 7.9 No correspondence was received from Local Councillors in respect of the claimed route.
- 7.10 Objections to the proposals were received from 14 residents (including two objections stated to be from friends of residents of West Cliff) – outlined at paragraph 7.16 below.
- 7.11 The WCHOA wrote to object to the proposals – outlined at paragraph 7.18 below.

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- 7.12 Two residents wrote in support of the proposals stating that they had always seen people using the claimed routes, on horseback, cycle and on foot. They did not consider that these people were anti-social in their behaviour.
- 7.13 12 individual members of the public wrote in support of the proposals, stating that they had always used the claimed routes freely, unchallenged, in a manner in which other members of the public were using the routes, and had always seen other people using the routes.
- 7.14 Many of the people who wrote in support of the application also completed and submitted a user evidence form and map. This has been included in the analysis of use.

**Residents' objections**

- 7.15 The main points of objection from residents were that:
- a. there have always been private signs at the entrance points to the estate
  - b. there is no public right of way over the routes
  - c. the DMMO process cannot create public rights of way
  - d. impacts to residents including increased costs for maintenance and property insurance; privacy concerns; antisocial behaviour, and potential danger from speeding cyclists
  - e. the application to record the Cliff Walk paths as public is opportunist
  - f. insufficient evidence to show 20 years' use
  - g. gates always locked
  - h. DMMO process not administered correctly
  - i. any users of the claimed routes who were unknown to residents of the estate were challenged when seen

7.16 **Officer comments on objections**

- a) 'Private' signs do not convey to users of the claimed routes that there are no public rights along the claimed routes. This terminology has been considered in the Courts of Law (see paragraph 8.89).
- b) The DMMO process exists to investigate the allegation that public rights of access exist within the area in question

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- c) This DMMO is not seeking to create new public rights of way; it is investigating the allegation that public rights already exist and therefore need to be 'added' or 'recorded' on the definitive map and statement.
- d) An increase in costs for insurance or maintenance of property, or issues of privacy are not matters which can be considered in the determination of a DMMO. Once a right of way is added to the definitive map and statement, if issues of danger or antisocial behaviour are reported to the council/police, these will be investigated and remedial measures put in place where appropriate.
- e) The DMMO application is a legal process which investigates evidence which may show that public rights exist over claimed routes.
- f) A total of 83 user statements relevant to the period under investigation have been received for application T589 which show use 'as of right' in excess of the 20 year Relevant Period.
- g) The gates present on West Cliff from the 1960s were on a definitive bridleway. No evidence has been presented to show that any gates existing on the Cliff Walk routes were locked.
- h) The council has followed the legal requirements in the administration of the subject DMMO application. The public consultation undertaken during December 2023-February 2024 was not a statutory event. This was an informal consultation to inform local property owners of the submission of a DMMO application and to seek any evidence relating to the claimed routes. A statutory objection period will arise if an Order is made to add the claimed routes to the Definitive Map and Statement
- i) None of the submitted user evidence showed a challenge by landowners of the estate. It is noted that some residents state they have challenged people using the claimed routes, but there are no details of names or dates to allow a cross-check of this information.

### **WCHOA objections**

- 7.17 The solicitor acting for the WCHOA (also a WCHOA committee member) provided an analysis of the actions of the landowners during the Relevant Period, accompanied by documentary evidence by way of committee minutes, and photographs. This submitted evidence is discussed below, in conjunction with the objections made.
- 7.18 Formal objections were received to the DMMO claimed routes from WCHOA. In summary these objections are that:

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- i) Records from the WCHOA show that there was never an intention to dedicate the route for public use
- ii) Private signage has always been displayed from the earliest development of the lower housing area
- iii) Gates were always on the esplanade access and the gate above Fourth Cliff Walk before the upper area was developed; these gates were regularly locked
- iv) In 1980 permission was sought by Dorset (County) Council from WCHOA to allow public access along Fourth Cliff Walk whilst repairs were undertaken to the Coastal path following a cliff collapse, and that following the 6 month temporary use of the Cliff Walk by the public, the council wrote that people would be illegally using the path from this point
- v) Third Cliff Walk did not originally meet with the coast path; householders have themselves installed an access with steps to the coast path
- vi) All the Cliff Walks have had private signs and gate installed since c.1964; Hill Rise has had private signs since c.1967. Signs replaced in 1993. Ref. WCHOA4/5/6.
- vii) Ref WCHOA7: Minutes stating that 'No public right of way' had been added to Cliff Walk signs
- viii) Ref WCHOA8: New gates and signs installed around the estate in 2020 ... not new additions but replacements for existing;
- ix) The applicant has not provided sufficient evidence of user of the Cliff Walks and Hill Rise over a period where it is shown that the gates were locked and signage was displayed.
- x) There are no paths in existence which can be 'saved' (as Highlands End claim) and use by non-residents is trespass

Officer comments:

- i) The DMMO process seeks to investigate allegations of public use of claimed routes, based on evidence discovered by the council. This evidence includes actions of the landowner which may show a lack of intention to dedicate. The legal tests to determine if public rights have accrued are set out in section 31 of the Highways Act 1980. There is insufficient evidence to show that the landowners had no intention to dedicate any part of the West Cliff Estate for public use. See paragraphs 8.12-8.19 for the analysis of the section 31 legal tests.

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- ii) Evidence provided by the landowners illustrates that the wording of the signs placed around the West Cliff estate included 'Private', 'No through road', 'Residents Parking Only'. No evidence has been presented to show that any sign has included wording to the effect that there is 'no public right' to use the paths through the estate. Paragraph 8.89 discusses the legal interpretation of wording on signage.

It is noted that the WCHOA committee minutes of 27 July 1978 state that a request was made to the former West Dorset District Council (WDDC) 'for advice to deter motorists' from using the estate as a main thoroughfare. The outcome of discussions was that a 'No Access' sign would be placed at the entrance to Forty Foot Way. It would appear from these actions that the intention of the WCHOA was that no motorised vehicles should use the estate. There was no mention of pedestrians, cyclists, or horse riders.

The gates identified (leading to the esplanade, and a gate at the boundary to the lower estate) were placed on an existing definitive bridleway (W1/105). The evidence of the locking of these gate does not support the case for the WCHOA.

Case law relating to an obstruction of a highway has been considered whilst investigating this application. Judge Byles (R v Mathias 1861) determined that the definition of an obstruction was "*a nuisance to a way (and is that) which prevents the convenient use of the way by passengers*".

User evidence states that gates were not installed on the Cliff Walk routes until 2020. Additionally, the landowner evidence states that these gates were newly installed post-Covid to 'remind the public that the estate is Private' (WCHOA Newsletter December 2020).

- iii) The statement that use of Fourth Cliff Walk is illegal relates to the time of correspondence in 1980. No DMMO had been submitted at this time. The subject DMMO (T589) seeks to investigate the existence or not of public rights, based on user evidence, within the provisions of the Wildlife & Countryside Act 1981 and the Highways Act 1980.

The 6 month period cited where permission was granted by WCHOA is outside the Relevant Period of use for DMMO application T589, and cannot therefore be taken into consideration in determination of this application, in accordance with the legislative requirements.

- iv) Documentary evidence shows that the Cliff Walks all linked with the coast path by 1960, when the respective Ordnance Survey maps were published. The user evidence relied upon for use within the relevant period is after this date.



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- v) As noted at ii) above, the wording of signage is not explicit that the public should not use these routes as footpaths. See paragraphs 8.89 – case law relating to wording on signage.
- vi) No evidence has been presented to show signs with the ‘No Public Right of Way’ wording stated. No evidence to this effect has been included on any user statement; nor is there is no mention of such signage in document WCHOA7, or any other document provided by WCHOA.
- vii) 2020 has been established as the date of the ‘bringing into question’ the public’s right to use the Cliff Walk routes; as a direct result of the installation of new signage and gates. The evidence from landowners and users states that signs were not direct replacements for the originals: the wording was updated from ‘Private Road’ to ‘Private. Access for Residents Only’.
- viii) Document ref WCHOA5 includes a photograph of second Cliff Walk which shows a pedestrian gate and building works. It is not clear whether or not the gate is locked. This route would not be passable during these construction works and would be classed in law as a temporary obstruction. Case law has determined that where a route is obstructed and there is an alternative route available in the same landownership (in this case Third Cliff Walk), then the obstructed route is not lost. Second Cliff Walk was reinstated to a useable path after these building works, as evidenced by user statements, and aerial photographs at Appendix 2.

No evidence has been submitted to show that any gates installed on the Cliff Walk or Hill Rise routes were locked. User evidence has been submitted for use of each Cliff Walk, and Hill Rise, in varying number between 69-83 users. The only two gates which are stated to have been locked were located on definitive bridleway W1/105.

The evidence presented of renewed signage in 1993 does not show a change in wording from the original signs.

- ix) The DMMO process seeks to investigate allegations of public use of claimed routes, based on evidence discovered by the council. It is correct to say that there are no paths to be ‘saved’. The legal tests set out in section 31 of the Highways Act 1980 determine whether public rights can be reasonably alleged to have accrued over the routes claimed.

## **8. Analysis of the evidence**

- 8.1 Evidence of public use of the claimed route spans a timeframe from 1950 up to the present day. This application contains five separate claimed footpaths: A-B, C-D, E-F, G-H, G-J. These will be analysed separately from paragraph 8.25 below.
- 8.2 The Relevant (20 year) Period for claimed footpath G-J is taken to be 2001-2021. The date of submission of the DMMO application (March 2021) is the event which 'brings into question' the use of this claimed route. No evidence has been presented to show that any relevant signage or other barrier was present on claimed footpath G-J (to indicate that the claimed route was not for public use) between the relevant period of 2001 to 2021. Case law on the matter of the wording of signage in this context is discussed at paragraph 8.89 below.
- 8.3 The Relevant (20 year) Period for the claimed footpaths A-B, C-D, E-F, G-H is taken to be 2000-2020, taking the installation of signs stating 'Private. Residents Access Only' and the pedestrian gates to be the event which 'brings into question' the use of the claimed routes as public footpaths.
- 8.4 The DMMO application was submitted in 2021. The WCHOA have submitted evidence to show that there was a temporary closure of the South West Coast path (definitive footpath W1/106) whilst repairs were undertaken to the path. An official request was made by West Dorset District Council to the WCHOA to allow the public to use Fourth Cliff Walk until the repairs were completed. This period of permission to use the Cliff Walk was dated 1980. The Relevant Period of use under consideration in the analysis of this DMMO application is beyond this permitted use, being 2000-2020. It is clear that the WCHOA were strict in allowing the Cliff Walk to be used for the requested 6 month period of time, and that permission was not formally extended for public use beyond this time.
- 8.5 Evidence has been submitted from both users and landowners stating that signage on the estate has been in place from the completion of the southern section of housing on West Cliff circa 1940, which has always stated 'Private Estate'; 'Private Road'; 'Parking for Residents Only', or 'No Through Road'. The wording of these signs has not changed significantly since the first installation of the signs at the inception of the estate. This wording is discussed at paragraph 8.89.

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- 8.6 Upon completion of the two northern sectors of the estate, signage was erected at various points around the estate. More recently, in 2020, the West Cliff House Owners Association (WCHOA) renewed the signage at the northern and southern access/egress points of the estate, keeping the same broad wording as the original, which states 'Private Estate', 'No Parking', 'Parking for Residents'. It is these signs which are present at the eastern end of Hill Rise.
- 8.7 Evidence shows that the wording of these new signs did not differ significantly from the signs originally placed at various points around the West Cliff housing development and cannot be taken as an obstruction to use (within the provisions of section 31 of the Highways Act 1980).
- 8.8 There is no evidence of signage stating that routes through the estate were not for use by the public. User evidence received and analysed indicates that the Private signs were insufficient to deter the public from using the routes.
- 8.9 Paragraphs 8.86-8.100 below discuss case law relating to an interpretation of signage on land.
- 8.10 The user evidence put forward supports the claim that all the claimed routes have been dedicated as public rights of way within the legislative requirements. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.
- 8.11 Historic documentary evidence in the form of Ordnance Survey maps, aerial photographs, and documents prepared for the purposes of The National Parks and Access to the Countryside Act (1949) for preparing a Definitive Map and Statement for Dorset provide evidence of the existence of pathways on the ground. This documentation cannot, however, show the existence of public use of the claimed routes.

### **Analysis of the evidence under Section 31, Highways Act 1980**

- 8.12 For Section 31 of the Highways Act to give rise to a presumption of dedication, the following criteria must be satisfied:
- The physical nature of the path must be such that it is capable of being a right of way at common law
  - The use must be brought into question i.e. disputed or challenged in some way
  - Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question

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- Use must be 'as of right' i.e. without force, without secrecy and without permission
- Use must be by the public at large
- There must be sufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

### **Physical nature of the routes**

- 8.13 The claimed Cliff Walk footpath routes A-B, C-D, E-F, G-H are capable of being public rights of way at common law, given that they follow well-defined routes along the Cliff Walk paths, linking with public paths shown on the definitive map and statement (W1/106 to the west of the claimed routes, and W1/105 to the east of the claimed routes).
- 8.14 Witness evidence states that they have used the claimed footpath routes freely, without challenge, and noted the 'Private Road' signage, but did not consider this prevented public use.
- 8.15 The claimed route G-J along Hill Rise is capable of being a public right of way at common law, given that it follows a well-defined route along the roadway and pavement, leading eastwards from definitive bridleway W1/105 to join with the Forty Foot Way public road, and definitive footpath W1/24.
- 8.16 Witnesses stated that they have used the claimed Cliff Walk routes freely, without challenge, until 2020, when new signage stating 'Residents Access Only' was placed on the coast path end of the routes, together with the installation of new (unlocked) pedestrian gates.

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

- 8.17 The following provides the events which can cause a claimed route to be called into question.
- a. Filing of a Deposit of Statement and Map under the Highways Act 1980, Section 31(6) (with associated declaration) is sufficient evidence to show that the landowner had no intention to dedicate.
  - b. The evidence of a lack of intention to dedicate does not affect the use before the date when use of the route was first brought into question (in this case 2020 for the claimed Cliff Walk routes, and 2021 for the claimed route along Hill Rise).
  - c. Presumed dedication may be claimed under the Highways Act 1980, section 31.

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- 8.18 No section 31 (Highways Act 1980) Declarations for this area of land have been deposited with the Council.
- 8.19 Prior to the respective dates of bringing into question of all five of the claimed routes, the landowners acquiesced in the use by the public of all the routes, as detailed in the user evidence forms, and by the actions of the landowners. These actions are corroborated by the WCHOA in their Newsletters published on their website.

### **Twenty years use as of right and without interruption**

#### **Claimed footpath A-B – Fourth Cliff Walk**

- 8.20 Based on analysis of the user evidence from 74 of the 77 submitted witness evidence forms, it is clear that there has been no interruption to public use of the claimed route during the qualifying 20-year period 2000-2020, as follows

#### **Without force, secrecy or permission**

- 8.21 There is no evidence by the 74 witnesses to suggest that the route has ever been used by force. The witnesses state there has always been free access along the Cliff Walk from the West Cliff housing roadways to definitive footpath W1/106.
- 8.22 All the witness evidence states that the route has always been available for use by the public, with the Private Road signs not creating a deterrent to use of the claimed routes. The use of the route has been open and not undertaken covertly.
- 8.23 There is no evidence to suggest that use of the route within the respective relevant periods has been because of a landowner's permission.

#### **Use by the public**

- 8.24 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.
- 8.25 There is much evidence in the form of WCHOA newsletters, and emails to the Council stating that the general public has used the claimed route over the years, which increased significantly during the Covid19 Lockdown in 2020.

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- 8.26 Evidence has been submitted from 77 witnesses stating that use of the claimed footpath route has continued from 1950 to the present day. Of these 77 individuals, 74 have used the claimed route during the years of the defined relevant period (2000-2020). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test contained in section 31 of the Highways Act 1980.
- 8.27 The applicant has formally stated that the volume of people using this path continues to the present day and has increased since 2020.
- 8.28 The relevant period of use (2000-2020) has been exceeded in years, both prior to and beyond the dates, confirmed by evidence submitted to the Council.
- 8.29 Landowner evidence shows that the landowners were aware of the use by the public during the relevant period, but no gates or barriers were constructed at the access/egress points of the claimed footpath to prevent public use, and no signage clarifying that the private estate was not for public use was erected (see para 8.81 to 8.95 setting out case law analysis).

### **Claimed footpath C-D – Third Cliff Walk**

- 8.30 Based on analysis of the user evidence from 65 of the 69 submitted witness evidence forms, it is clear that there has been no interruption to public use of the claimed route during the qualifying 20-year period 2000-2020, as follows.

#### **Without force, secrecy or permission**

- 8.31 There is no evidence by the 65 witnesses to suggest that the route has ever been used by force. The witnesses state there has always been free access along the Cliff Walk from the West Cliff housing roadways to definitive footpath W1/106.
- 8.32 All the witness evidence states that the route has always been available for use by the public, with the Private Road signs not creating a deterrent to use of the claimed routes. The use of the route has been open and not undertaken covertly.
- 8.33 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

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### **Use by the public**

- 8.34 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.
- 8.35 There is much evidence in the form of WCHOA newsletters, and emails to the Council stating that the general public has used the claimed route on foot over the years, which increased significantly during the Covid19 Lockdown in 2020.
- 8.36 Evidence has been submitted from 69 witnesses stating that use of the claimed footpath route has continued from 1950 to the present day. Of these 69 individuals, 65 have used the claimed route during the years of the defined relevant period (2000-2020). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test contained in section 31 of the Highways Act 1980.
- 8.37 The applicant has formally stated that the volume of people using this path continues to the present day and has increased since 2020.
- 8.38 The relevant period of use (2000-2022) has been exceeded in years, 0both prior to and beyond the dates, confirmed by evidence submitted to the Council.
- 8.39 Landowner evidence shows that the landowners were aware of the use by the public during the relevant period, but no gates or barriers were constructed at the access/egress points of the claimed footpath to prevent public use, and no signage clarifying that the private estate was not for public use was erected (see para 8.81 to 8.95 setting out case law analysis).

### **Claimed footpath E-F – Second Cliff Walk**

- 8.40 Based on analysis of the user evidence from 72 of the 75 submitted witness evidence forms, it is clear that there has been no interruption to public use of the claimed route during the qualifying 20-year period 2000-2020, as follows.

#### **Without force, secrecy or permission**

- 8.41 There is no evidence by the 72 witnesses to suggest that the route has ever been used by force. The witnesses state there has always been free access along the Cliff Walk from the West Cliff housing roadways to definitive footpath W1/106.
- 8.42 All the witness evidence states that the route has always been available for use by the public, with the Private Road signs not creating a deterrent to use of the claimed routes. The use of the route has been open and not undertaken covertly.

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- 8.43 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

### **Use by the public**

- 8.44 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.
- 8.45 There is much evidence in the form of WCHOA newsletters, and emails to the Council stating that the general public has used the claimed route on foot over the years, which increased significantly during the Covid19 Lockdown in 2020.
- 8.46 Evidence has been submitted from 75 witnesses stating that use of the claimed footpath route has continued from 1950 to the present day. Of these 75 individuals, 72 have used the claimed route during the years of the defined relevant period (2000-2020). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test contained in section 31 of the Highways Act 1980.
- 8.47 The applicant has formally stated that the volume of people using this path continues to the present day and has increased since 2020.
- 8.48 The relevant period of use (2000-2020) has been exceeded in years, both prior to and beyond the dates, confirmed by evidence submitted to the Council.
- 8.49 Landowner evidence shows that the landowners were aware of the use by the public during the relevant period, but no gates or barriers were constructed at the access/egress points of the claimed footpath to prevent public use, and no signage clarifying that the private estate was not for public use was erected (see para 8.81 to 8.95 setting out case law analysis).

### **Claimed footpath G-H – First Cliff Walk**

- 8.50 Based on analysis of the user evidence from 70 of the 73 submitted witness evidence forms, it is clear that there has been no interruption to public use of the claimed route during the qualifying 20-year period 2002-2022, as follows.

#### **Without force, secrecy or permission**

- 8.51 There is no evidence by the 70 witnesses to suggest that the route has ever been used by force. The witnesses state there has always been free access along the Cliff Walk from the West Cliff housing roadways to definitive footpath W1/106.



## **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 8.52 All the witness evidence states that the route has always been available for use by the public, with the Private Road signs not creating a deterrent to use of the claimed routes. The use of the route has been open and not undertaken covertly.
- 8.53 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

### **Use by the public**

- 8.54 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.
- 8.55 There is much evidence in the form of WCHOA newsletters, and emails to the Council stating that the general public has used the claimed route on foot over the years, which increased significantly during the Covid19 Lockdown in 2020.
- 8.56 Evidence has been submitted from 73 witnesses stating that use of the claimed footpath route has continued from 1950 to the present day. Of these 73 individuals, 70 have used the claimed route during the years of the defined relevant period (2000-2020). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test contained in section 31 of the Highways Act 1980.
- 8.57 The applicant has formally stated that the volume of people using this path continues to the present day and has increased since 2020.
- 8.58 The relevant period of use (2000-2020) has been exceeded in years, both prior to and beyond the dates, confirmed by evidence submitted to the Council.
- 8.59 Landowner evidence shows that the landowners were aware of the use by the public during the relevant period, but no gates or barriers were constructed at the access/egress points of the claimed footpath to prevent public use, and no signage clarifying that the private estate was not for public use was erected (see para 8.81 to 8.95 setting out case law analysis).

### **Claimed footpath G-J – Hill Rise**

- 8.60 Based on analysis of the user evidence from 78 of the 83 submitted witness evidence forms, it is clear that there has been no interruption to public use of the claimed route during the qualifying 20-year period 2001-2021, as follows.

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Without force, secrecy or permission**

- 8.61 There is no evidence by the 78 witnesses to suggest that the route has ever been used by force. Each witness states there has always been free access from the West Cliff housing roadways down to West Bay centre along Hill Rise then Forty Foot Way.
- 8.62 All the witness evidence states that the route has always been available for use by the public, with the Private Road signs not creating a deterrent to use of the claimed routes. The use of the route has been open and not undertaken covertly.
- 8.63 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

**Use by the public**

- 8.64 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.
- 8.65 There is much evidence in the form of WCHOA newsletters, and emails to the Council stating that the general public has used the claimed route on foot, cycle and horseback over the years, which increased significantly during the Covid19 Lockdown in 2020.
- 8.66 Evidence has been submitted from 83 witnesses stating that use of the claimed bridleway route has continued from 1950 to the present day. Of these 83 individuals, 78 have used the claimed route during the years of the defined relevant period (2001-2021). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test contained in section 31 of the Highways Act 1980.
- 8.67 The applicant has formally stated that the volume of people using this path continues to the present day and has increased since 2020.
- 8.68 The relevant period of use (2001-2021) has been exceeded in years, both prior to and beyond the dates, confirmed by evidence submitted to the Council.
- 8.69 Landowner evidence shows that the landowners were aware of the use by the public during the relevant period, but no gates or barriers were constructed at the access/egress points of the claimed footpath to prevent public use, and no signage clarifying that the private estate was not for public use was erected (see para 8.81 to 8.95 setting out case law analysis).

**Conclusions under Section 31, Highways Act 1980**

- 8.70 It is considered that the As of Right tests contained in Section 31 have been met for all of the claimed routes in this case: i) the public have been using the routes for a full period of twenty years between 2001 to 2021, and 2000 to 2020 respectively; ii) no direct permission was sought or given by the landowners; iii) no obstructions to use were evident; iv) all use was open and not undertaken secretly.
- 8.71 Evidence of use began in 1950, through to 2021 when the DMMO application was submitted. As mentioned earlier, the use continues to the present day, providing longevity of use, clear acceptance of the route by the public, and a lack of acknowledgement of any challenge to use.
- 8.72 It is reasonable to assume that the complete width of the Cliff Walk routes, and Hill Rise has been used by the public in the respective uses of the routes, given that there are no pavements along the Cliff Walk routes, and Hill Rise only has pavement along part of its length. As has been shown from photographic evidence for DMMO T732, groups of people using routes will use the complete width rather than walking in single file.
- 8.73 The widths of the Cliff Walk routes vary between a 1.3 metre and 3.4 metre measurement on the ground. The width of the Hill Rise route measures between 4 and 5 metres on the ground. Based on these measurements and the evidence submitted, the Council considers that the widths specified in paragraphs 1.3 - 1.7 should be recorded for the claimed routes.

**Case Law (full citations in Appendix 2)**

- 8.74 The landowners (WCHOA) state in their submitted consultation response that:
- a) there has never been any intention to dedicate any of the claimed routes.
  - b) from 1940 there have been signs on the entrances to the estate showing that there is no public access to the estate. These signs stated 'Private Estate', 'Private Road', and 'Parking for Residents Only';
  - c) residents have turned people away from using the estate;
  - d) no direct permission has been given for people to use the routes.
- 8.75 This evidence seeks to disprove that the s.31 'As of Right' tests have been met by the public.

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- 8.76 The case determined by Lord Hoffman in 2007 (Godmanchester Town Council v DEFRA) on the matter of determining use ‘as of right’ is relevant to the landowners’ assertions:

Lord Hoffman held that *“in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of **some overt acts on the part of the landowner such as to show the public at large** – the people who use the path...that he had no intention to dedicate”*.

Lord Hoffman continues to explain that *“‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be.”*

- 8.77 Officer comment: In the above judgement, Lord Hoffman opines that *“what matters is the impression given to members of the public”*. In this case, words such as ‘Private Estate’; ‘Private Road’; ‘Parking for residents only’ do not convey to the public that the roads are not to be used for walking, cycling, or horse riding by the wider public.

- 8.78 Lord Hoffman also cites the case of Barraclough v Johnson (1838) where judge Littledale J said:

*“A man may say that he does not mean to dedicate a way to the public, and yet, if he had allowed them to pass every day for a length of time, his declaration alone would not be regarded, but it would be for a jury to say whether he had intended to dedicate it or not”*

- 8.79 Further, Lord Hoffman cites Denning LJ who opined that *“...in order for the right of the public to have been ‘brought into question’, the landowner must challenge it by some means **sufficient to bring it home to the public** that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge.’*

- 8.80 Evidence has been provided to show that no fencing/gates were in place over the access/egress points of the claimed routes during the respective relevant periods of use to prevent access. Witnesses state that they freely accessed the claimed routes with no barriers.

- 8.81 There is evidence that signage was in place, and users have mentioned that the estate was signed as ‘Private’.

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 8.82 Officer comment: The word 'Private' has many meanings. Users have not interpreted the signs as an instruction from the landowner that the public should not use the routes through the estate for walking, cycling or horse riding. The Godmanchester (2007) case law applies.
- 8.83 The WCHOA itself commented in their December 2020 Newsletter (paragraph 5.93 above) that they were not stopping the public using the routes, merely reinforcing to the public that the estate is private in nature.
- 8.84 In the case of Burrows v SSEFRA (2004), the matter of the existence of signage is considered. The court upheld the finding of an inspector that the existence of a sign with the words 'Private Road' was not sufficient to show that there was no intention to dedicate the way as a right of way for use by walkers and horse riders.
- 8.85 Officer comment: The user evidence submitted suggests that the impression given to the members of the public by the 'Private' signage was not a challenge to their use of the route. Therefore, the existing signage was not '*sufficient to bring it home to the public*' that they should not be using the routes.
- 8.86 Only when the sign stating 'Access for Residents Only' and the pedestrian gates were installed on the claimed Cliff Walk routes did the public interpret the signage as a challenge to use.
- 8.87 Officer comment: The legal test to be applied to signs is what the objective reader would understand them to mean – not what the landowner/objectors are claiming the signs to mean. Consequently, if the only notices/signs present on the estate stated 'Private', and the public did not have to use force to enter the estate roads (for instance by breaking a fence/cutting a wire fence), then case law has determined users cannot reasonably be expected to 'understand (what) the owner's intention' was.
- 8.88 The Godmanchester case (2007) also discussed deemed dedication. Lord Hope observed: "*Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way had been dedicated, and the owner has taken no steps to disabuse them of that belief.*"
- 8.89 The Lewis v Redcar and Cleveland case (2010) discussed the matter of the mindset of the person who placed the 'sign', and also the mindset of the user. This case determined that the mindset of a person is irrelevant in statutory consideration under section 31, Highways Act 1980, as detailed in the judgment dated 3 Mar 2010 in R (Lewis) v Redcar and Cleveland BC [2010] 2 AC 70.

## **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 8.90 Officer comment: The term “private road” is stated by the courts to be a widely misunderstood or misinterpreted phrase. This phrase does not explicitly convey to users that the owner does not intend to dedicate a public right of way on foot, cycle, horseback. The sign is, at least, ambiguous on that front; whereby the landowners may have interpreted its meaning as one thing, but users interpreted the meaning of the sign in another way.
- 8.91 The matter of signage stating ‘Private’ has been considered in *Winterburn v Bennett*, 2016. In this case it was determined that a sign stating Private was insufficient to relay to the user that there was no intention to dedicate the route for public use. The wording in the judgement in fact states the sign is not an ‘appropriate’ sign.
- 8.92 The judgement also determined that if a sign on land indicates that a certain activity is prohibited, then this **is** sufficient to render that activity “contentious”, and thus prevent an easement from prescription from arising. For instance, ‘No Horseriding permitted’ would be applicable.
- 8.93 Officer comment: A ‘Private Road’ or ‘Private Parking’ sign is not considered to be an ‘appropriate sign’ which would direct walkers or riders to the notion that the landowner does not intend to dedicate a route to the public as a footpath or bridleway.
- 8.94 The Courts have determined that signs must explicitly prohibit the relevant activity. Thus, ‘private road’ would imply that the landowner did not wish non-resident cars to use their land to drive over. No signs have been shown to exist prohibiting pedestrian, cycle or equestrian use.
- 8.95 Accordingly, the words Private Road are of doubtful adequacy (to show a lack of intention to dedicate) because of their ambiguity: the words could be interpreted as showing an intention to deny the existence of a carriageway, but not a right of way on foot. This is backed up by the evidence provided where the WCHOA sought assistance in 1997 from West Dorset District Council to prevent motorists from using the West Cliff estate roads (paragraph 7.18(ii))

### **Analysis of the evidence under common law**

- 8.96 This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The applicant has made it clear that the landowners had full knowledge of use of the path by the public, and that no attempts to prevent use were made until 2020. WCHOA Newsletters make it clear that the WCHOA were aware of and acquiesced in use of the roadways by the public.

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- 8.97 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.
- 8.98 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.
- 8.99 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.
- 8.100 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.
- 8.101 There is mention in some of the objection representations that residents turned people away. There is no identification of these users, therefore it is not possible to determine whether the users turned away are the same people who have completed user evidence forms.
- 8.102 It is clear that the landowners acquiesced in the use of the claimed footpath route along Hill Rise by the public, until 2021 when the submission of the DMMO application caused the WCHOA to state that the route was not public.
- 8.103 Similarly, the landowners acquiesced in the use by the public of the claimed footpaths along the Cliff Walk routes until 2020 when pedestrian gates and ‘Private. Residents Access Only’ signs were erected on the respective gates which sought to prevent onward movement onto the West Cliff estate from definitive footpath W1/106.
- 8.104 Lord Hope observed in the Godmanchester (2007) case that "*Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way had been dedicated, and the owner has taken no steps to disabuse them of that belief.*"
- 8.105 Officer comment: the above citation is applicable to this case, whereby the landowners have identified an awareness of ‘*user by the public for so long*’ in a manner by which the public would consider the way to have been dedicated to the public; this being the stated reason for installation of the pedestrian gate and sign, and renewal of other signage on the estate.

## **Conclusions under common law**

- 8.106 There is evidence from which a deemed dedication at common law can be inferred for all five of the claimed footpath routes.
- 8.107 During the relevant periods, the access onto the estate roads was open with no fencing or gates. There was no 'appropriate signage' on any of the five claimed footpath routes to make it sufficiently clear to the public that they should not use the routes, as determined in *Winterburn v Bennett* (2016).
- 8.108 The public at large have used all five of the claimed routes in sufficient number and over a sufficient time period for them to have accepted the routes as public. No user of the routes who completed a user evidence form has been turned away from using the claimed paths until after the dates of the Relevant Periods.

## **9. Financial Implications**

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

## **10 Natural Environment, Climate and Ecology Implications**

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

## **11 Well-being and Health Implications**

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

## **12 Other Implications**

None

## **13 Risk Assessment**

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

Current Risk: LOW

Residual Risk: LOW

## **14 Equalities Impact Assessment**

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



## **15 Conclusions**

- 15.1 In deciding whether or not it is appropriate to make Orders to add these claimed routes to the definitive map and statement, it must be considered whether public rights subsist or are reasonably alleged to subsist on the routes.
- 15.2 The user evidence is clear that there were no obstructions to use during the respective relevant periods; and that the signs lacked clarity and did not implicitly state that there was no right for the public to walk, cycle, or horse ride along the estate roads, this subject having been tested in the Courts of Law.
- 15.3 Therefore, on the balance of probability it is considered that there is sufficient evidence to meet the section 31 As of Right tests, and to show that public rights can be reasonably alleged to subsist along all five of the claimed routes.
- 15.4 The evidence from the landowners also meets the tests for common law dedication.
- 15.5 It is clear that the owners were aware of, and acquiesced in, the use of the paths by the public, as identified in the landowner evidence and in the WCHOA Newsletters (notably the December 2020 newsletter where they state that '*the gates are not locked and therefore do not stop people from coming onto the estate*').
- 15.6 The use was obvious to the landowners, but they failed to rebut any suggestion of a dedication by acts such as turning people back (evidence suggests turning away vehicles, not pedestrians, equestrians, or cyclists before 2020 and 2021 respectively); putting up physical barriers or erecting notices stating that the routes are not public rights of way of the type being claimed.
- 15.7 Signage erected was not sufficiently explicit in its wording to make it clear to the public that the ways were not public in nature (i.e. the wording was not '*sufficient to bring it home to the public*' in the words of Lord Hoffman).
- 15.8 The conduct of the landowners in failing to place obstructions or signage of explicit wording implies that there was no intention not to dedicate the routes as public rights of way of the type that have been applied for.
- 15.9 This dedication is implied by the longevity of public use without force, secrecy or permission and the acquiescence of those landowners in that use. The length of time that is required to demonstrate sufficient user is not fixed under common law.
- 15.10 Therefore, the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use - have been met.

## **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 15.11 The landowners have not shown any evidence to effectively counter the As of Right tests contained in s.31 of the Highways Act 1980.
- 15.12 Aerial photography shows the existence of all the claimed routes along the estate roads from 1947 through to the aerial photos taken in 2023.
- 15.13 The user evidence in the form of witness statements confirms continuous use of all five routes from 1950 through to the date of the Schedule 14 application, 5 February 2021, and beyond, to the present day.
- 15.14 Therefore, the recommendation is that five Orders are made to distinguish each path from the other and to add each route to the Definitive Map and Statement.
- i) An Order to be made to add a footpath to the Definitive Map and Statement between points A-A1-B.
  - ii) An Order to be made to add a footpath to the Definitive Map and Statement between points C-C1-D.
  - iii) An Order to be made to add a footpath to the Definitive Map and Statement between points E-E1-F.
  - iv) An Order to be made to add a footpath to the Definitive Map and Statement between points G-G1-H.
  - v) An Order to be made to add a bridleway to the Definitive Map and Statement between points G-J1-J.
- 15.15 If no objections are received to the Orders, the Council may itself confirm the Orders.
- 15.16 If objections are received to the Orders, the Council must submit the Order/s to the Planning Inspectorate, with the objections, for determination.

## **16. Appendices**

- 1** Drawing T589/24/4 – claimed routes
- 2** Drawings T589/24/5, T589/24/6, T589/24/7, T589/24/8, T589/24/9
- 3** Law
- 4** Documentary evidence

Extracts from key documents:

- Tithe Map 1843

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- Finance Act 1910
- Ilchester Estates map 1914
- Ordnance Survey maps 1888, 1929, 1940, 1940, 1968
- Schedule 2 and Map of the 1961 Stopping Up Order

**5 Aerial Photographs**

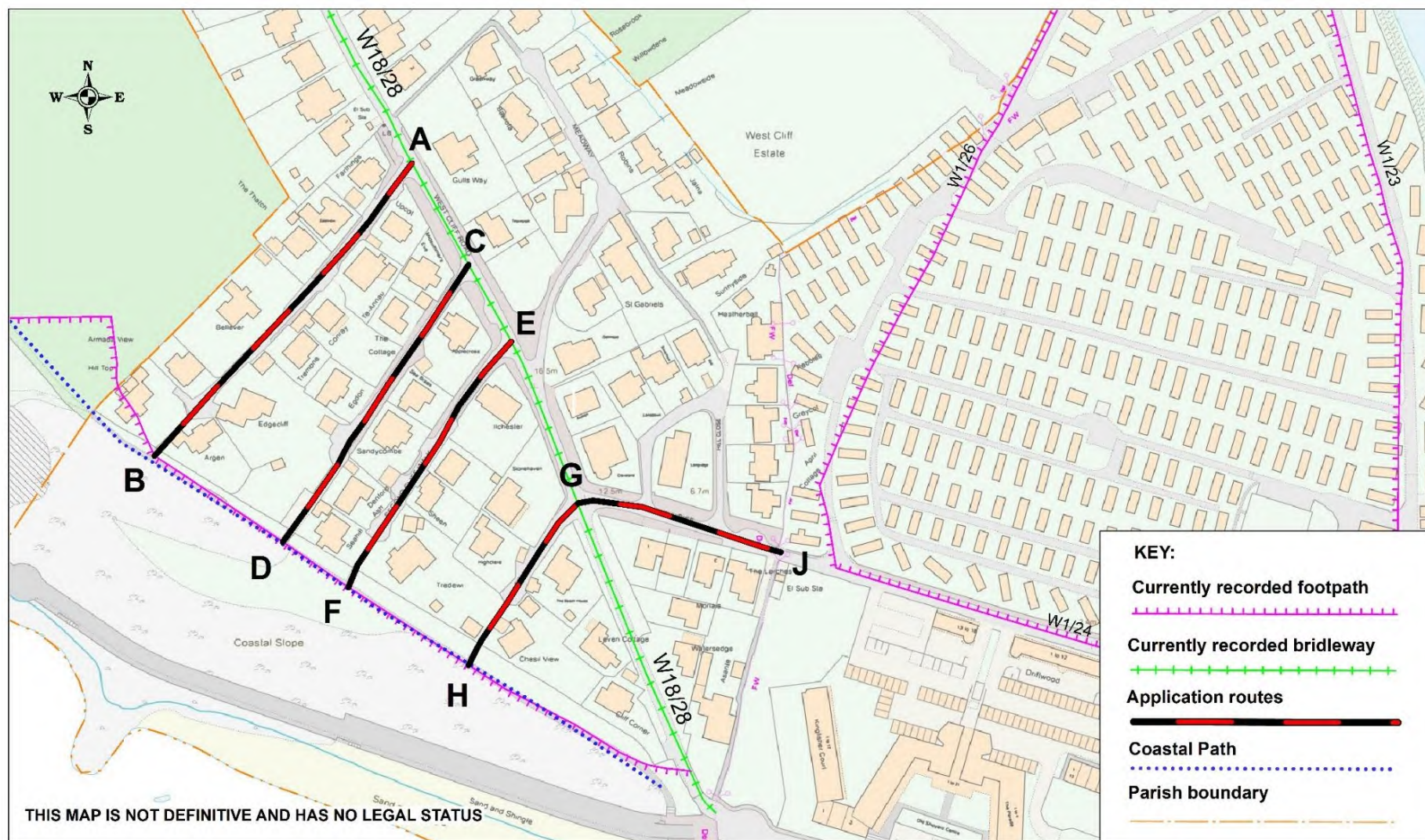
- 1947 Aerial Photograph
- 1972 Aerial Photograph
- 1997 Aerial Photograph
- 2002 Aerial Photograph
- 2014 Aerial Photograph
- 2017 Aerial Photograph
- 2020 Aerial Photograph
- 2022 Aerial Photography
- 2023 Aerial Photography

**6 Charts to show periods and level of use from witness evidence**

**17 Background Papers**

The file of the Executive Director, Place (ref. RW/T589).

**Date:** 13 March 2025



**Definitive Map Modification Order Application - T589**  
**West Cliff, West Bay. 1st, 2nd, 3rd, 4th Cliff Walk & Hill Rise**

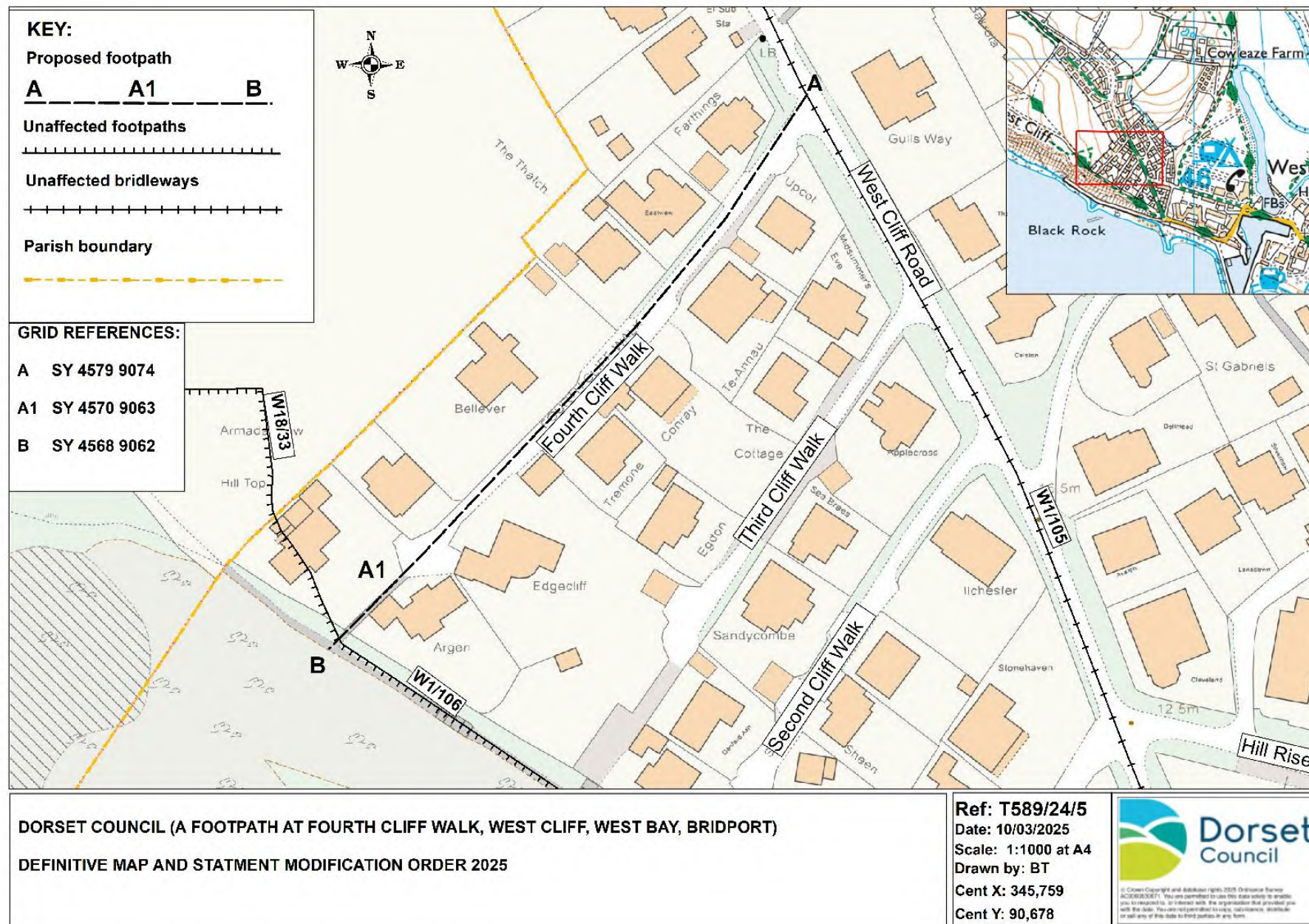
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**Cent X: 345,914**  
**Cent Y: 90,636**



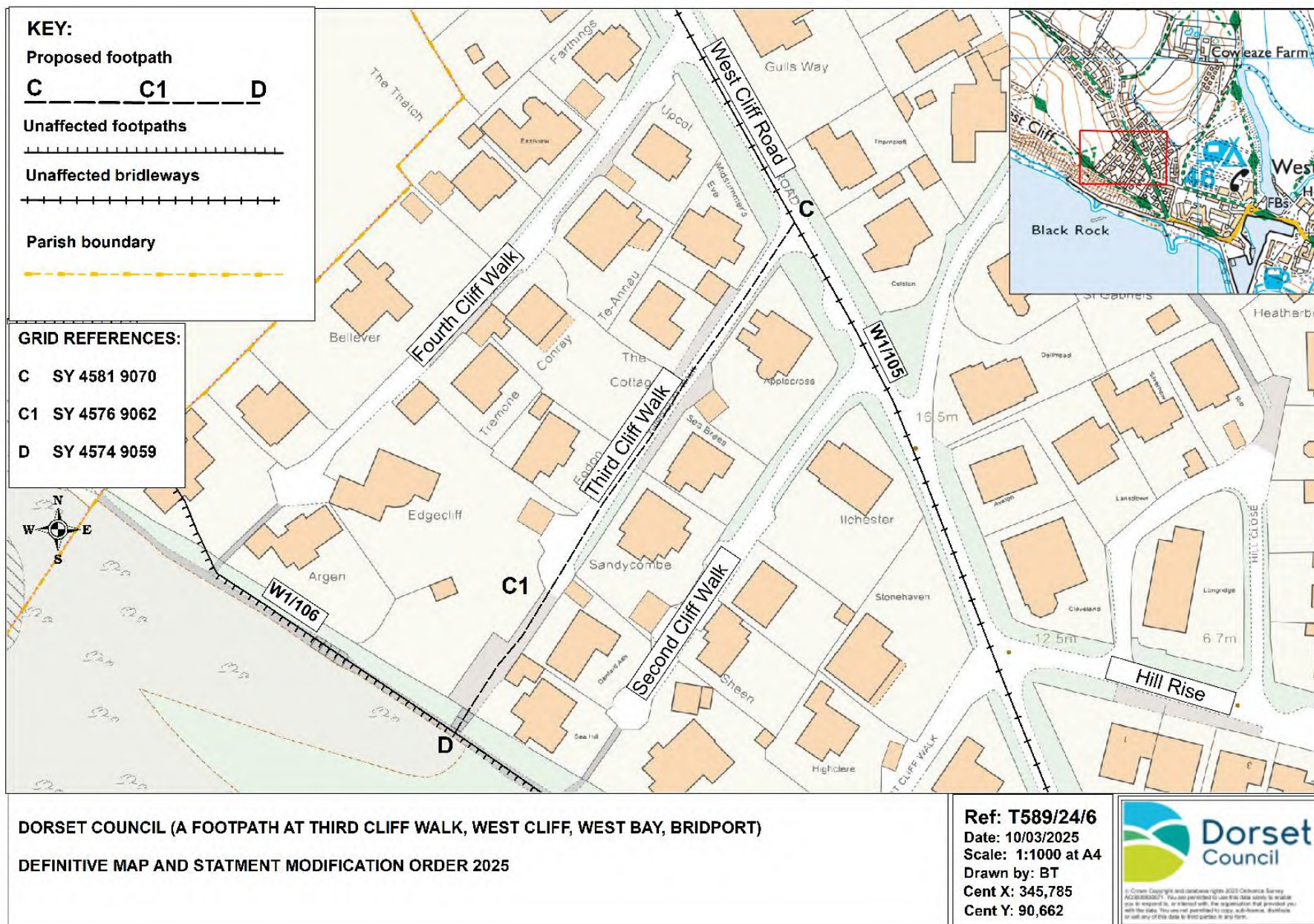
© Crown copyright and database rights 2024  
 OS 0100060963. Aerial Photography ©  
 UK Perspectives 2002 & © Getmapping 2005, 2009  
 & 2014, © Getmapping Plc and Bluesky International  
 Limited (2017 onwards)





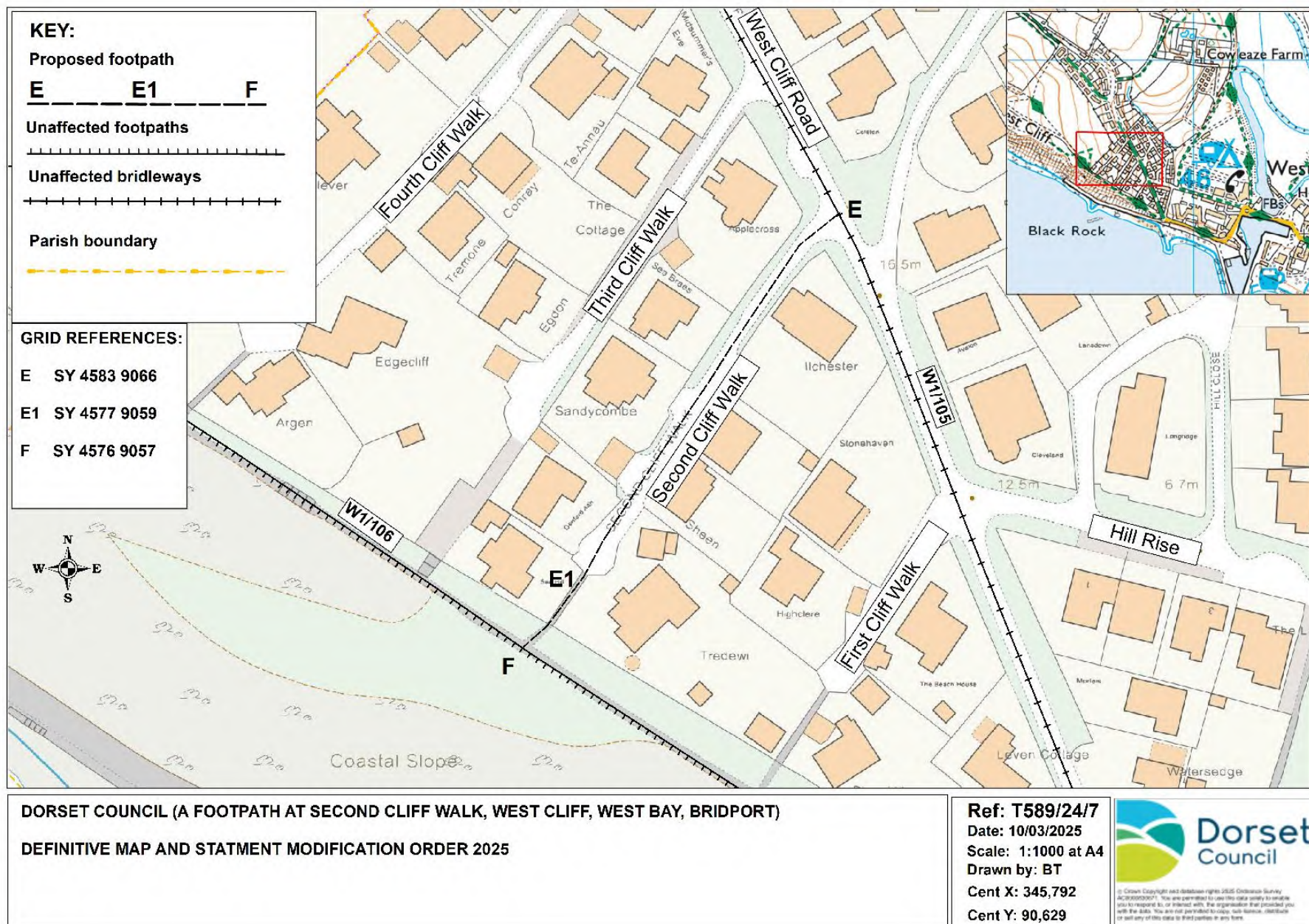


# Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.



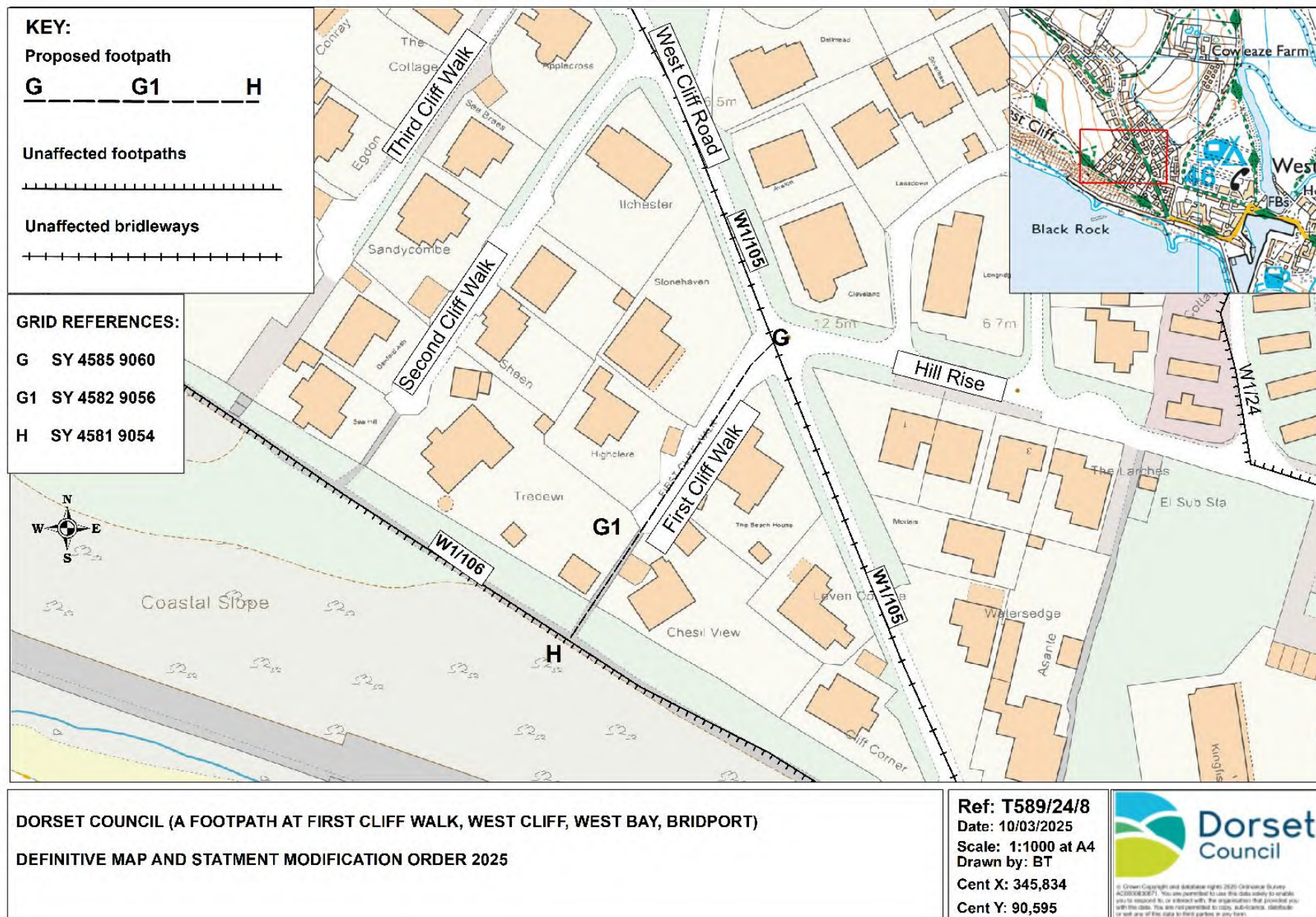


## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.



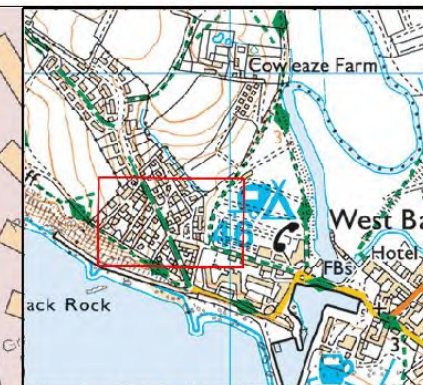
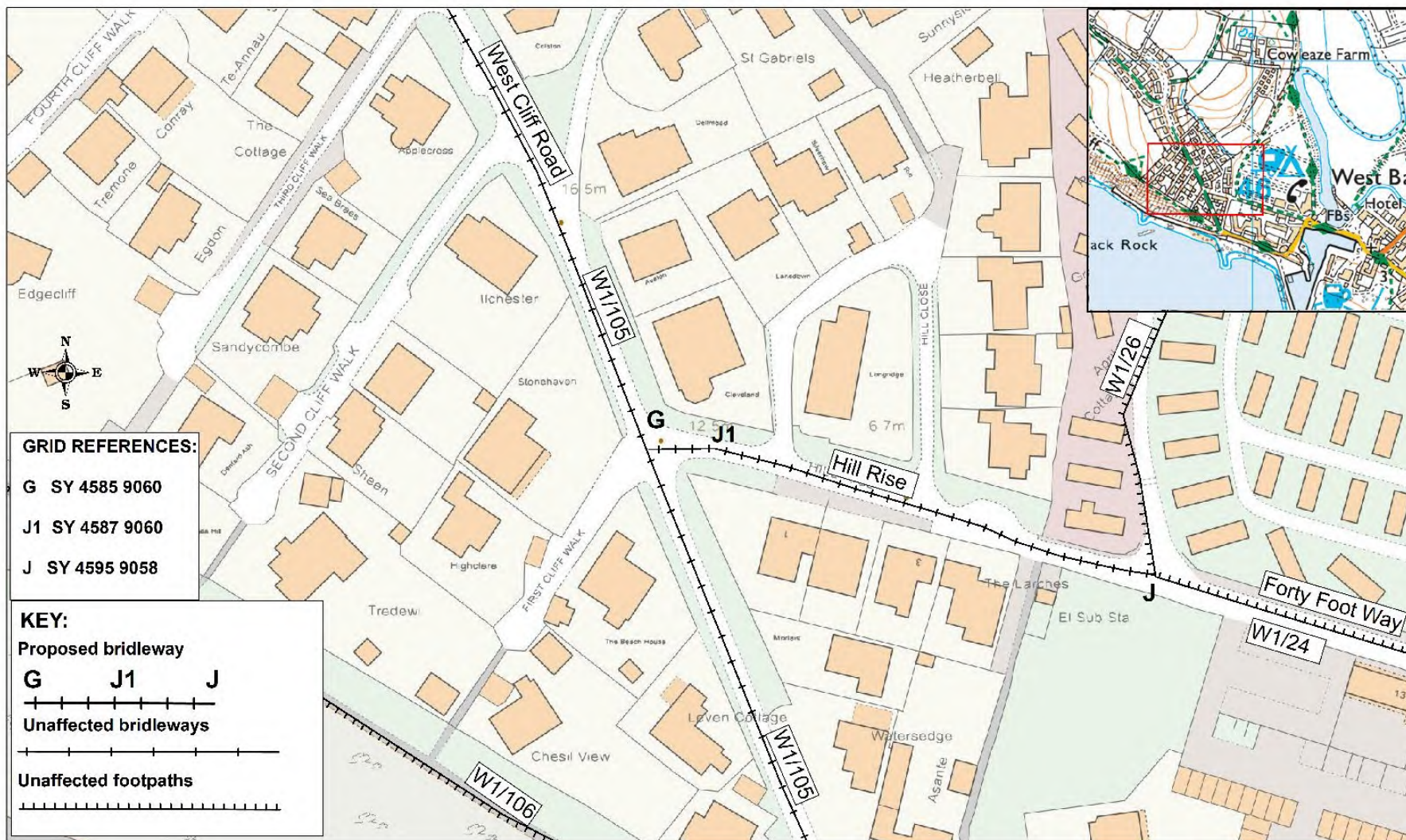


# Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.





# Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.



DORSET COUNCIL (A BRIDLEWAY AT HILL RISE, WEST CLIFF, WEST BAY, BRIDPORT)

DEFINITIVE MAP AND STATMENT MODIFICATION ORDER 2025

Ref: T589/24/09

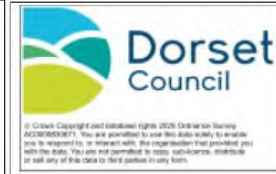
Date: 11/03/2025

Scale: 1:1000 at A4

Drawn by: BT

Cent X: 345,869

Cent Y: 90,611



# **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

## **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

## **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

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.

## **Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 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 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.

#### **Case Law relevant to this case**

- 5 With reference to deemed dedication of a highway, *Littledale J* in *Barraclough v Johnson* (1838) 8 Ad & E 99, 105, said:

*"A man may say that he does not mean to dedicate a way to the public, and yet, if he had allowed them to pass every day for a length of time, his declaration alone would not be regarded, but it would be for a jury to say whether he had intended to dedicate it or not."*

- 5.1 With reference to the placing of a gate on definitive bridleway W1/105 at the Esplanade, thus in law causing an obstruction to a highway. *R v Mathias* [1861] 2 F&F 574 determined that the definition of an obstruction was "a nuisance to a way (and is that) which prevents the convenient use of the way by passengers".

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

- 5.2 With reference to intention to dedicate, Denning LJ in *Fairey v Southampton County Council* [1956] EWCA Civ J0619-2 held that “*in order for there to be 'sufficient evidence there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path – that he had no intention to dedicate*”.

Also that:

*“...in order for the right of the public to have been 'brought into question', the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge.’*

- 5.3 With reference to signage on a claimed route, the Court in *Burrows v SSEFRA* [2004] EWHC 132 (Admin) upheld the finding of an inspector that the existence of a sign with the words 'Private Road' was not sufficient to show that there was no intention to dedicate the way as a right of way for use by walkers and horse riders.
- 5.4 With reference the matter of deemed dedication at common law, Lord Hoffman in *R (Godmanchester Town Council) v SSEFRA* [2007] UKHL 28 defined the meaning of ‘As of Right’. He opined that there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path – that he had no intention to dedicate.
- 5.5 In the same case, Lord Hope observed: “*Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way had been dedicated, and the owner has taken no steps to disabuse them of that belief.*”
- 5.6 With reference to signage on the route, the case of *R (Lewis) v Redcar and Cleveland BC* [2010] 2 AC 70 considered that the mindset of the person who placed the ‘sign’, and also the mindset of the user is irrelevant in statutory consideration under section 31, Highways Act 1980.
- 5.7 With reference to signage on the route, the case of *Winterburn v Bennett* [2016] EWCA Civ 482 considered that ‘Private’ signage was insufficient to relay to the user that there was no intention to dedicate the route for public use.

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

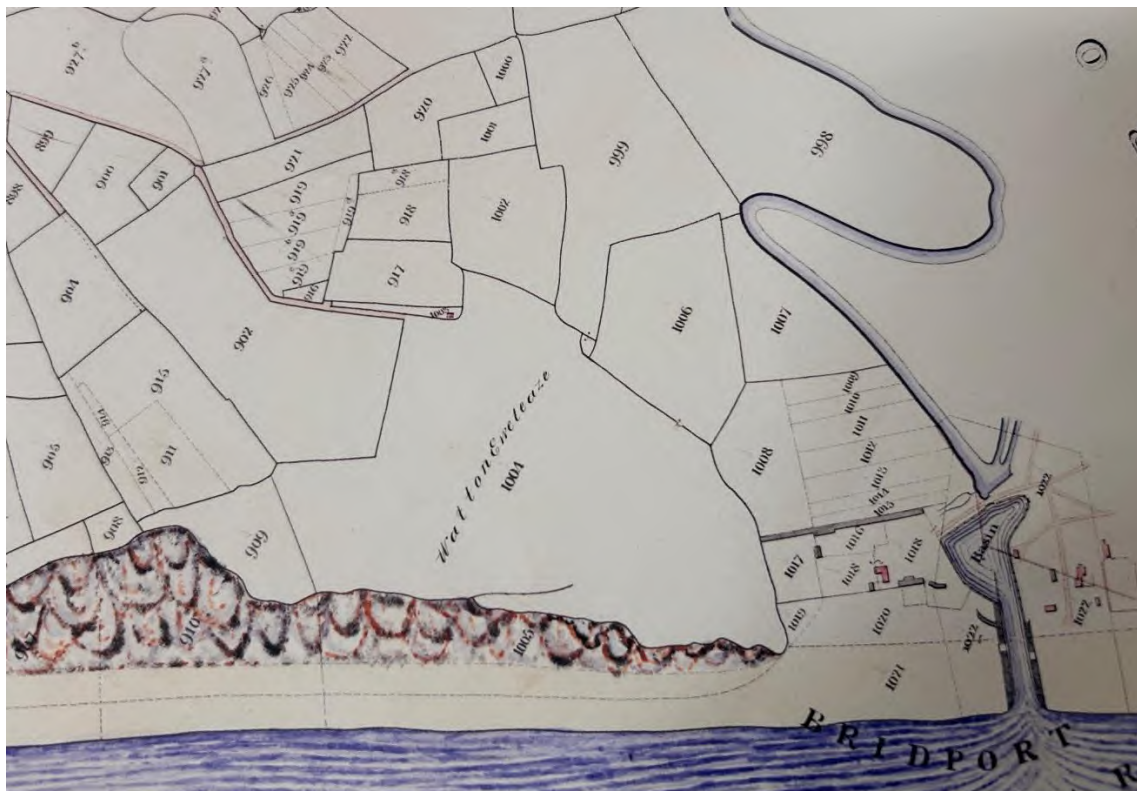
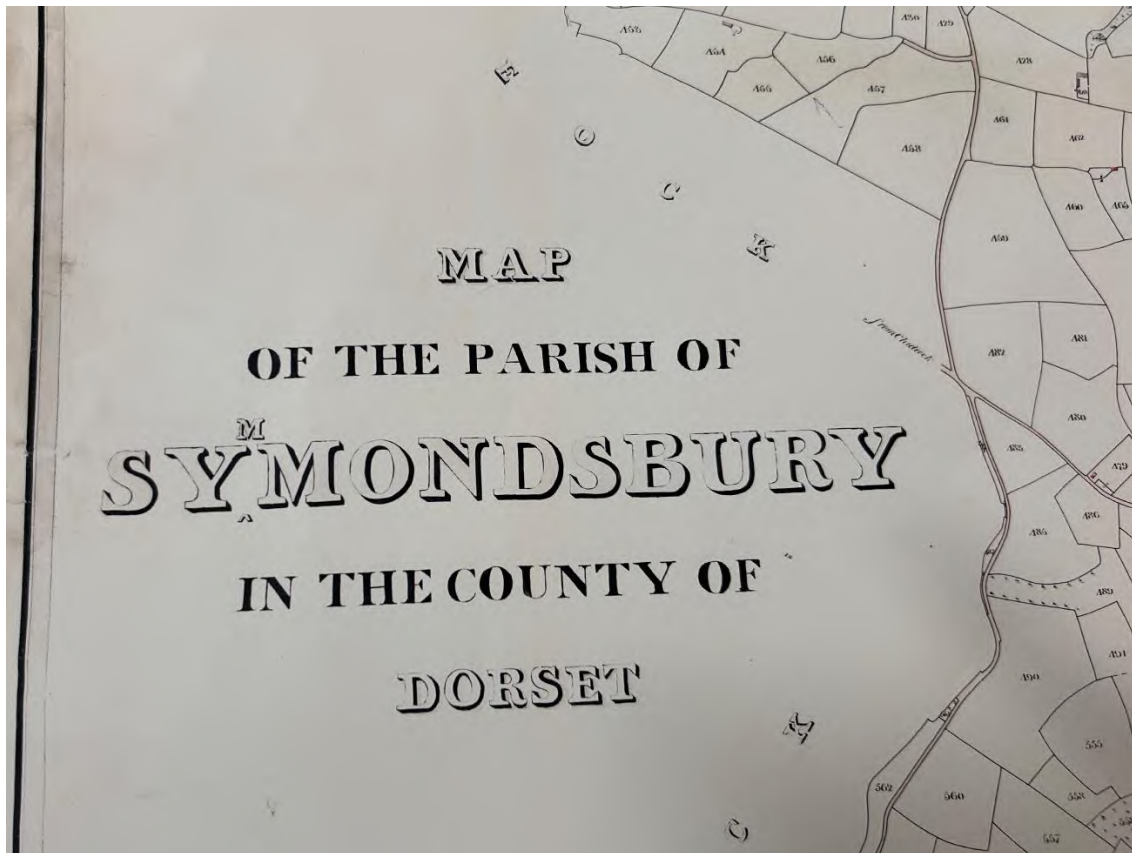
- 5.8 With reference to the status of a claimed route used by pedal cycles, the case of *Whitworth and others v SoS for Environment Food and Rural Affairs*, EWCA Civ 1468 [2010] is relevant.
- 5.9 According to this case law, pedal bicycle use before 1968 leads to carriageway rights. Bicycle use between 1968 and 2006 leads to bridleway rights, and bicycle use since 2006 leads to restricted byway rights.



Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

## DOCUMENTARY EVIDENCE CONSIDERED

Tithe Act map – 1843



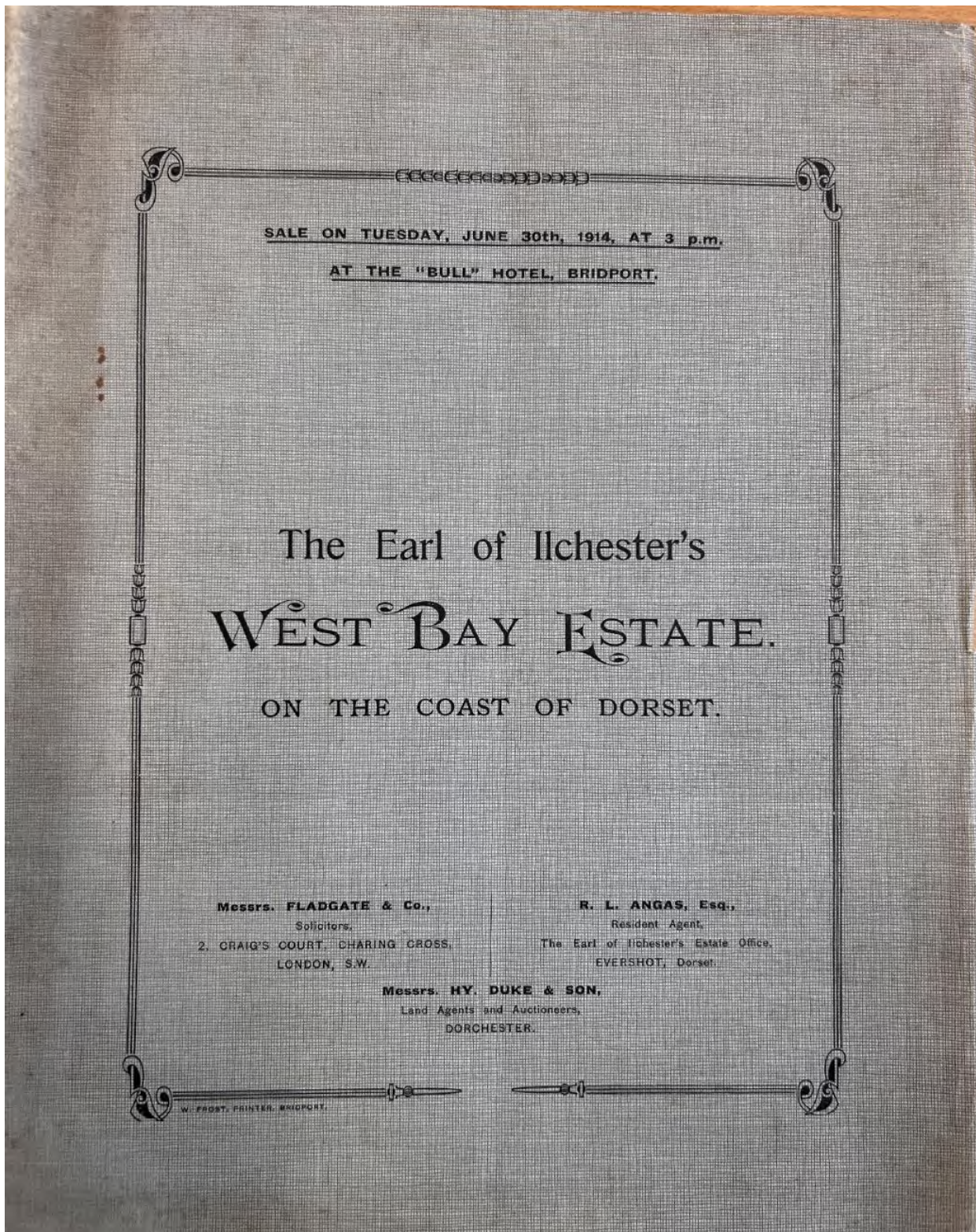
Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

Finance Act 1910 – OS Sheet no. XXXVIII.13 – IR125.2.387 - Map extract showing Forty Foot Way excluded from valuation





Ilchester Estates Auction documents 1914





LOT 2.

(Coloured Blue on Plan).

The Fine Stretch of Freehold Down Land,

KNOWN AS

"WATTON EWELEAZE"

(No. 789 on the Ordnance Survey), containing about

15a. 1r. 3p.,

and now, with other Lands, in the occupation of Mr. W. J. T. Cousins, as a yearly tenant,  
under an agreement dated the 15th day of March, 1911, at an apportioned  
yearly rent of £22 0s. 0d.

The outgoings comprise: Tithe at present value, as apportioned by the Auctioneers

for the purposes of Sale, £1 14s. 9d.

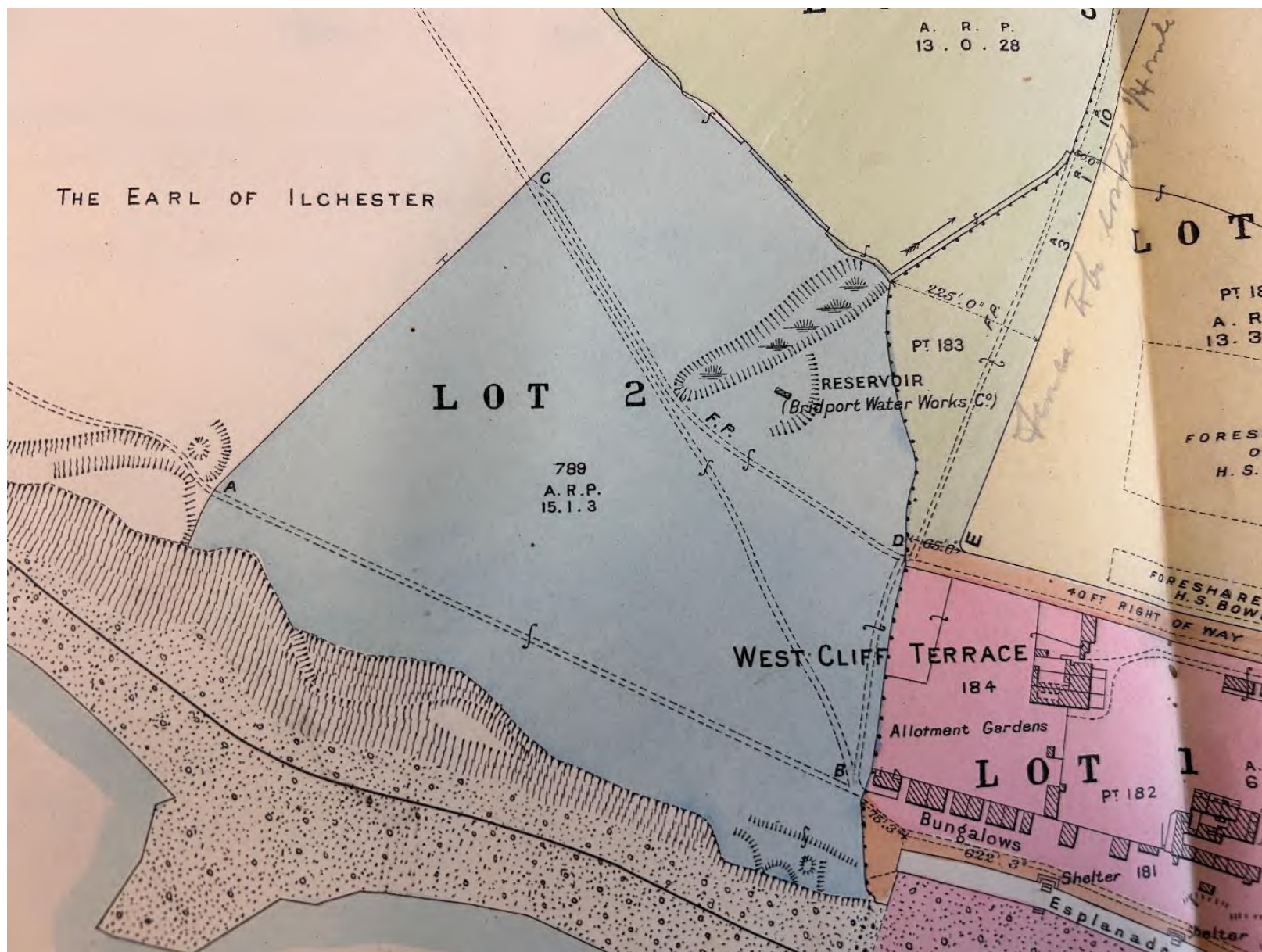
Land Tax ditto .. .. 18s. 9d.

£2 13 6

The Purchaser of this Lot **will have the benefit of the 40 feet Right-of-Way**  
**across Lot 4**, as provided for under the General Conditions.

This Lot is sold subject to the Rights-of-Way provided by the General Conditions,  
and to the agreements with Mr. W. J. T. Cousins, the Bridport Corporation for right to *what rights wh*  
place seats on cliff, and the lease held by the Bridport Waterworks Company for Queen *+ what rent*  
Hester's Spring, which expires 29th September, 1919.

Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.





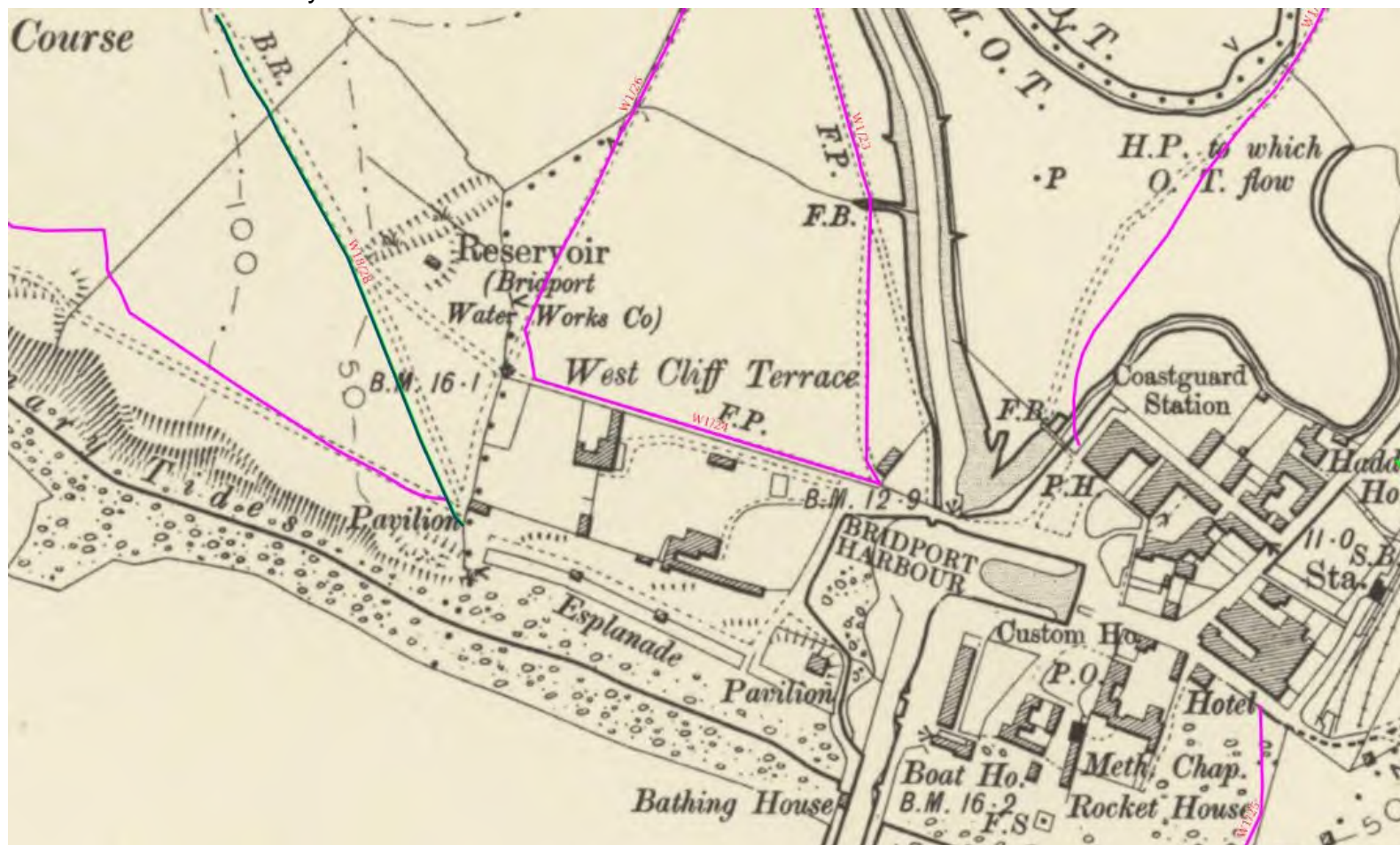
Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.



## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

### Ordnance Survey mapping

Six inch map 1888 – superimposed with the 2025 working copy of definitive rights of way. West Cliff housing not yet built. Cliff Walks and Hill Rise not yet constructed.





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**1:25000 map 1929** – Cliff Walks as culs de sac. Hill Rise clearly shown.





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Six inch map 1940** – Cliff Walks shown as culs de sac. Hill Rise clearly shown joining with Forty Foot Way and West Cliff Rd.



**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

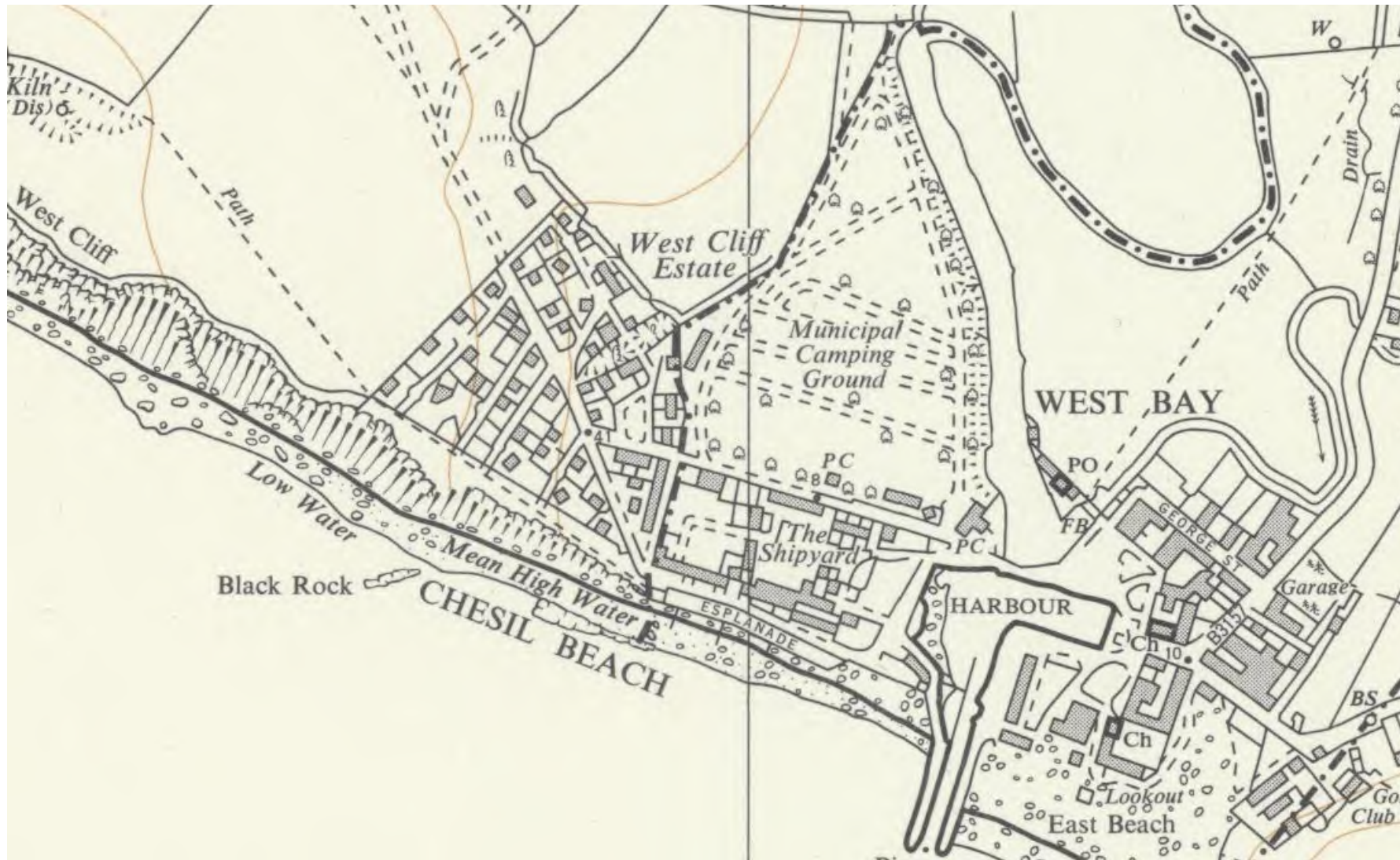
**1:25000 map 1960** – Cliff Walks now extend to the coast path. Hill Rise clearly shown between Forty Foot Way and West Cliff Rd..





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Six inch map 1968** – Cliff Walks extend to coast path – Hill Rise clearly shown between Forty Foot Way and West Cliff Rd.





Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

Parish Claim - 1952





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

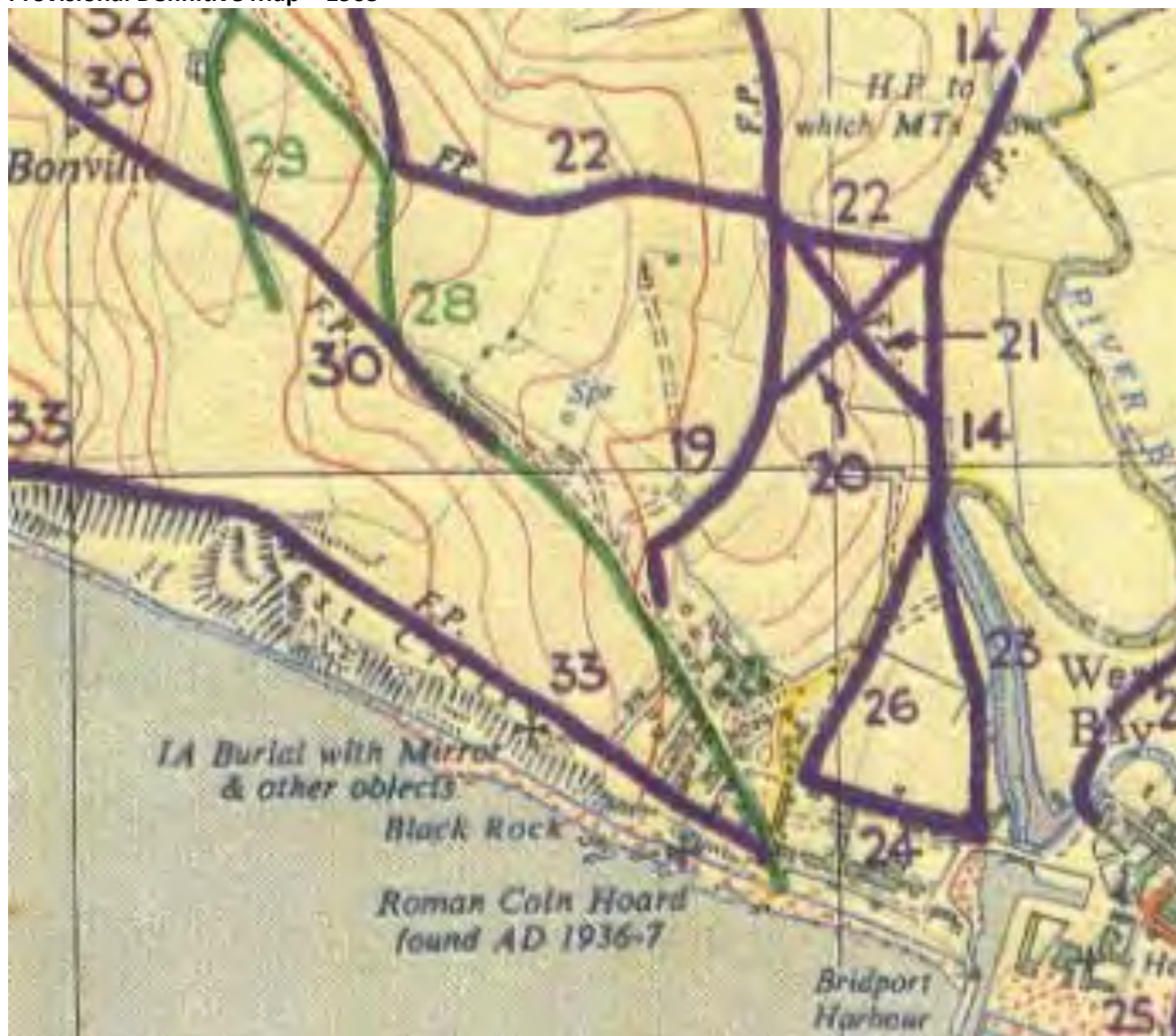
**Draft Definitive Map - 1953**





Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

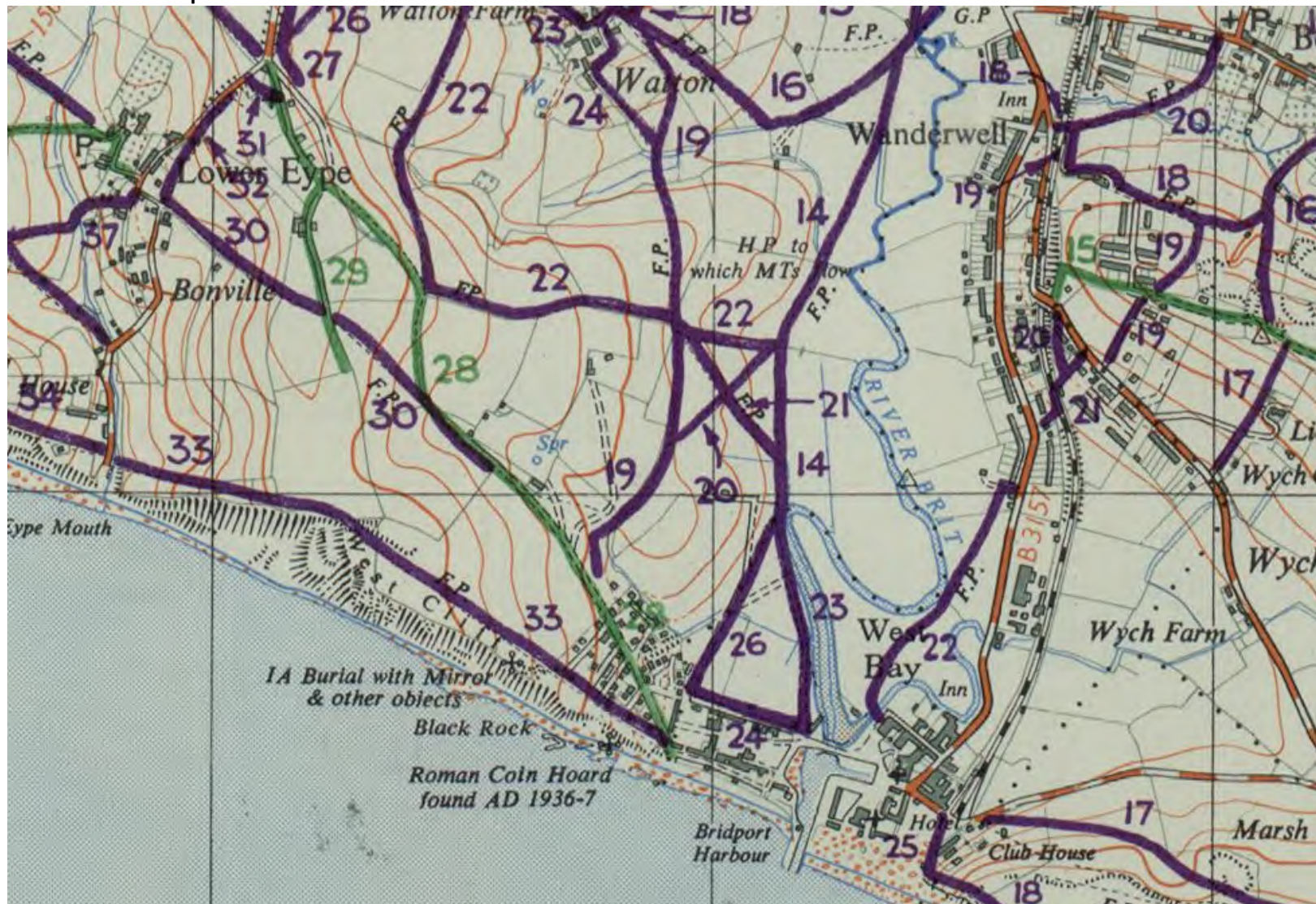
Provisional Definitive Map – 1963





Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

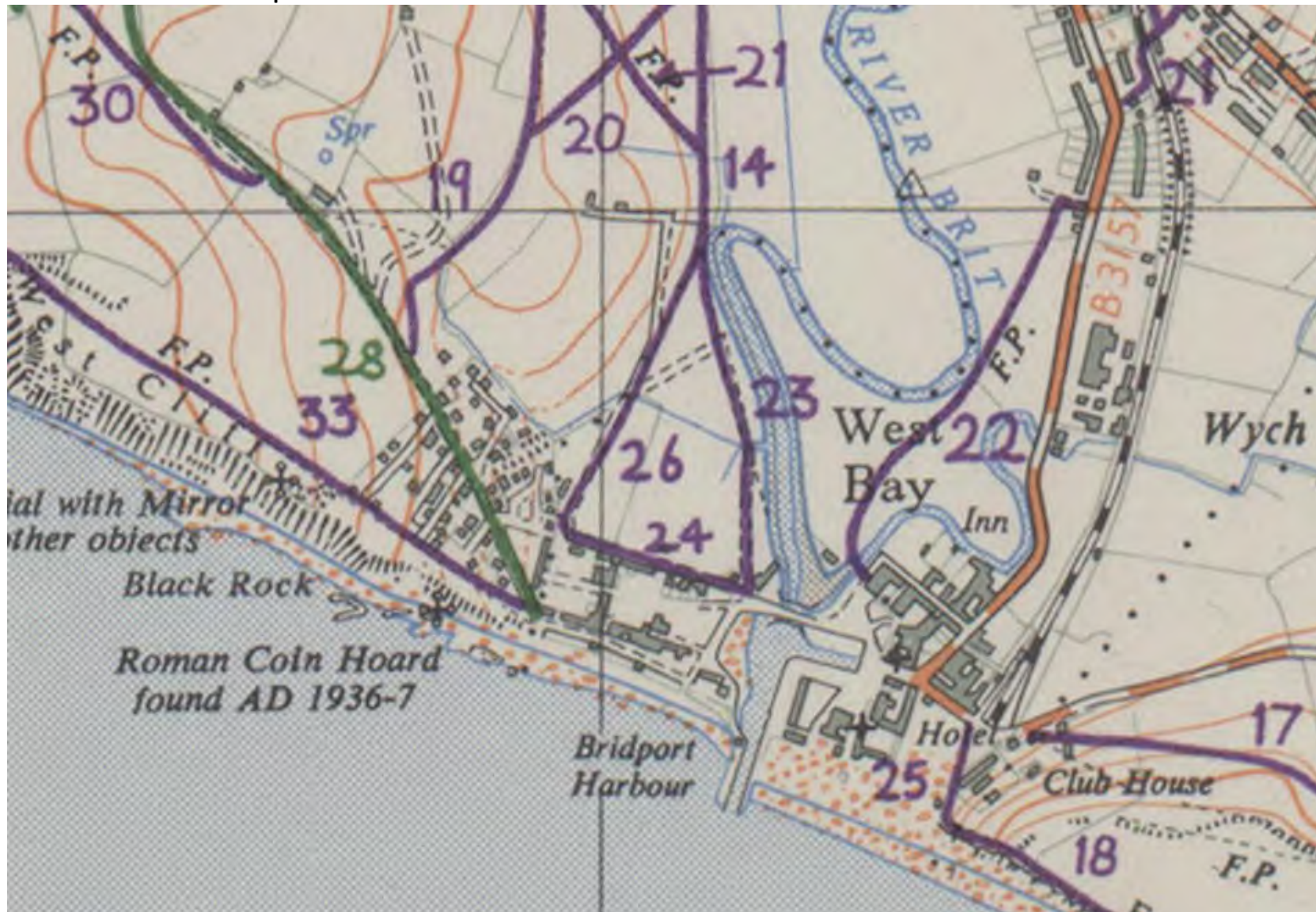
First Definitive Map – 1966





Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

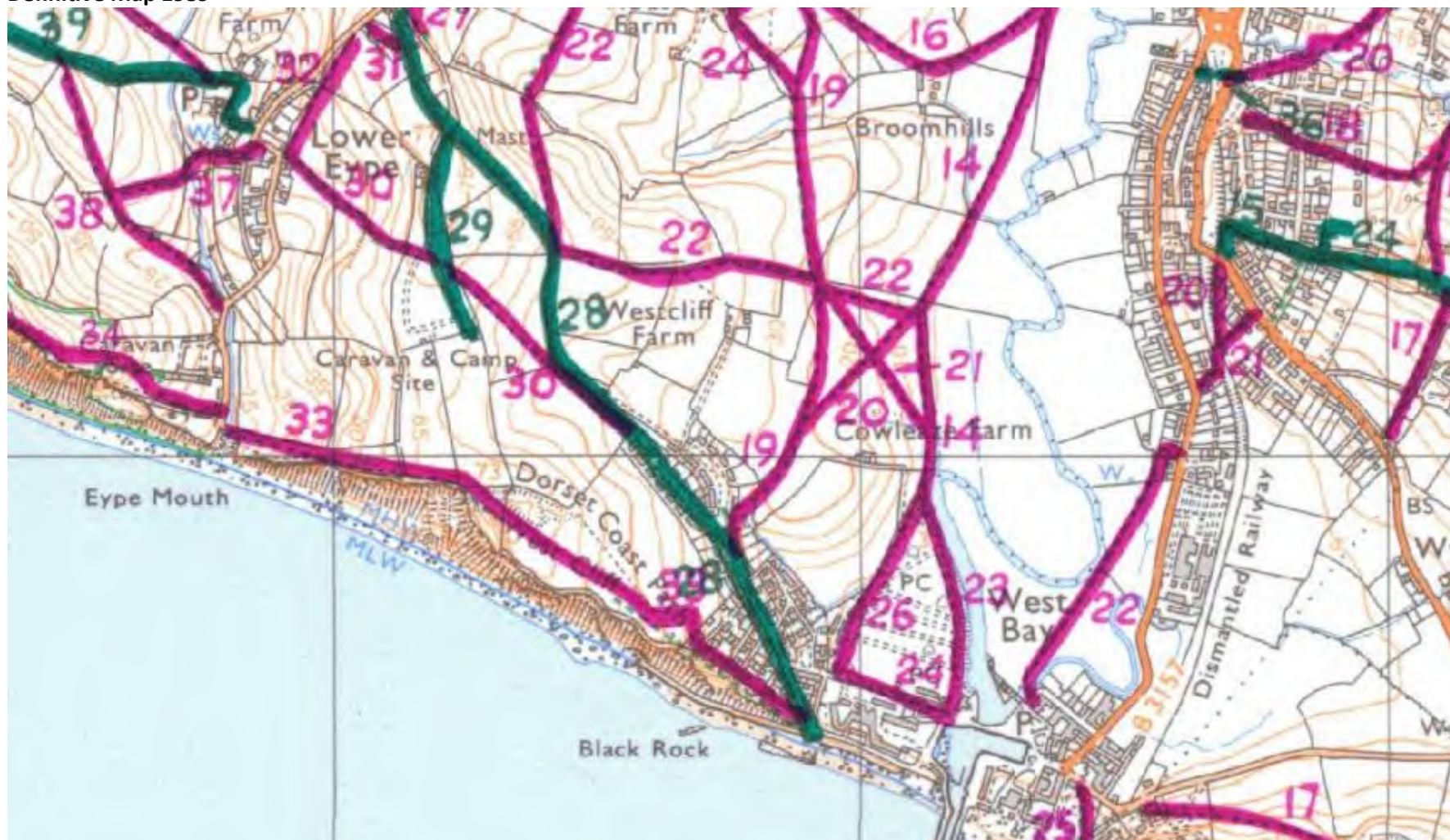
Revised Draft Definitive Map 1974





Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

Definitive Map 1989



Schedule 2 of the 1961 Stopping Up Order

THE SCHEDULE

Part I

*Highways to be Stopped up*

1. Those lengths of the bridleway leading towards Mount Lane from The Esplanade which extend (a) from a point approximately 330 yards north-west of its junction with The Esplanade in a north-westerly direction for a distance of approximately 59 yards, and (b) from a point approximately 600 yards north-west of its junction with The Esplanade in a north-westerly direction for a distance of approximately 93 yards;
2. That length of the footpath leading to Wallon Lane from the bridleway referred to in paragraph 1 of this Part of this Schedule which extends from a point approximately 35 yards south-east of its junction with the said bridleway in a south-easterly direction for a distance of approximately 208 yards;

all more particularly delineated and the highways described in sub-paragraph (a) of paragraph 1 and in paragraph 2 coloured red and the highway described in sub-paragraph (b) of paragraph 1 coloured red and red hatched black on the plan numbered SN.8/10-15 and marked "Highways at Symondsbury in the County of Dorset" and sealed with the Official Seal of the Minister and deposited at the offices of the Ministry of Transport, St. Christopher House, Southwark Street, London, S.E.1, a certified copy of which has been deposited at the offices of the Rural District Council of Bridport, Mountfield, Bridport, Dorset.

Part II

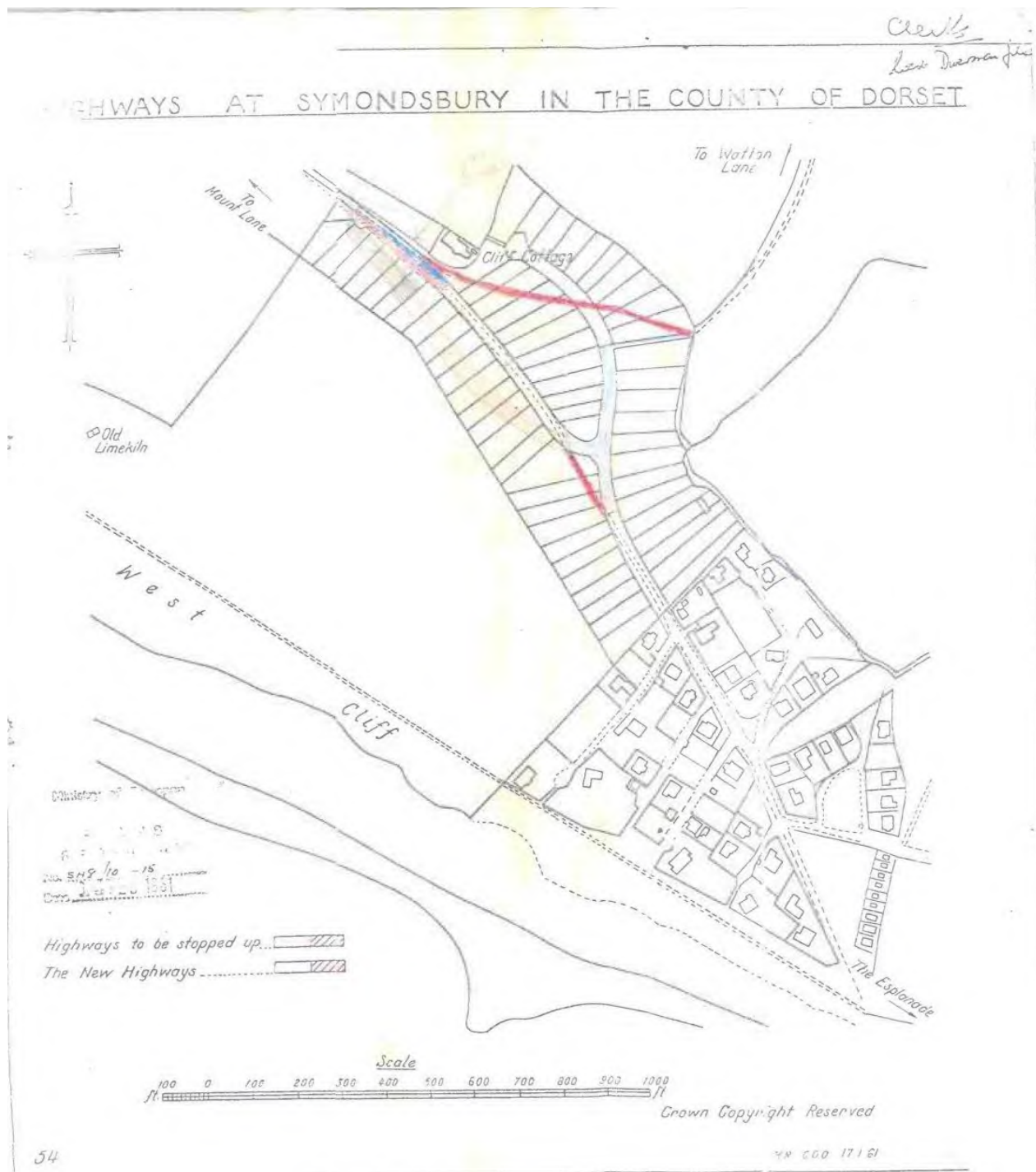
*The New Highways*

1. A road extending from the south-eastern end of the length of bridleway described in sub-paragraph (a) of paragraph 1 of Part I of this Schedule in a northerly direction for a distance of approximately 130 yards;
2. A road extending from the north-western end of the length of bridleway described in sub-paragraph (a) of paragraph 1 of Part I of this Schedule in an easterly direction for a distance of approximately 25 yards to join the road specified in paragraph 1 of this Part of this Schedule;
3. A footpath extending from the south-eastern end of the length of footpath described in paragraph 2 of Part I of this Schedule in a westerly direction for a distance of approximately 65 yards to join the road specified in paragraph 1 of this Part of this Schedule;
4. A road extending from the south-eastern end of the length of bridleway described in sub-paragraph (b) of paragraph 1 of Part I of this Schedule in a north-westerly direction for a distance of approximately 82 yards.

all more particularly delineated and the highways specified in paragraphs 1, 2 and 3 coloured blue and the highway specified in paragraph 4 coloured blue and red hatched black on the plan aforesaid.



**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**



1947 Aerial Photograph



**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**1972 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**1997 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2002 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2005 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2009 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2014 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2017 aerial photograph**





**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2020 aerial photography**





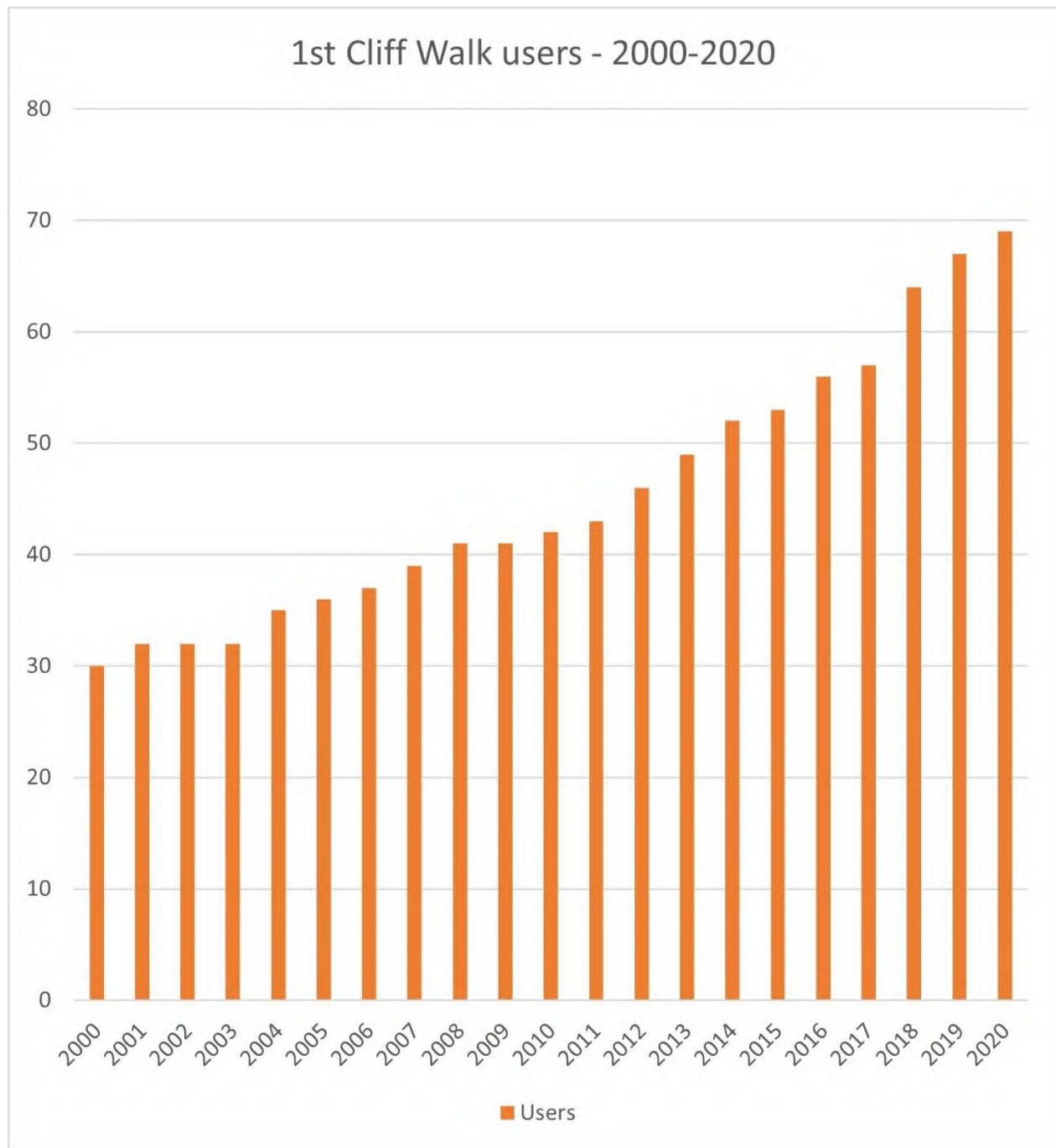
**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**2023 aerial photography**



Claimed footpath – First Cliff Walk

Total user per year during Relevant Period 2000-2020 on foot

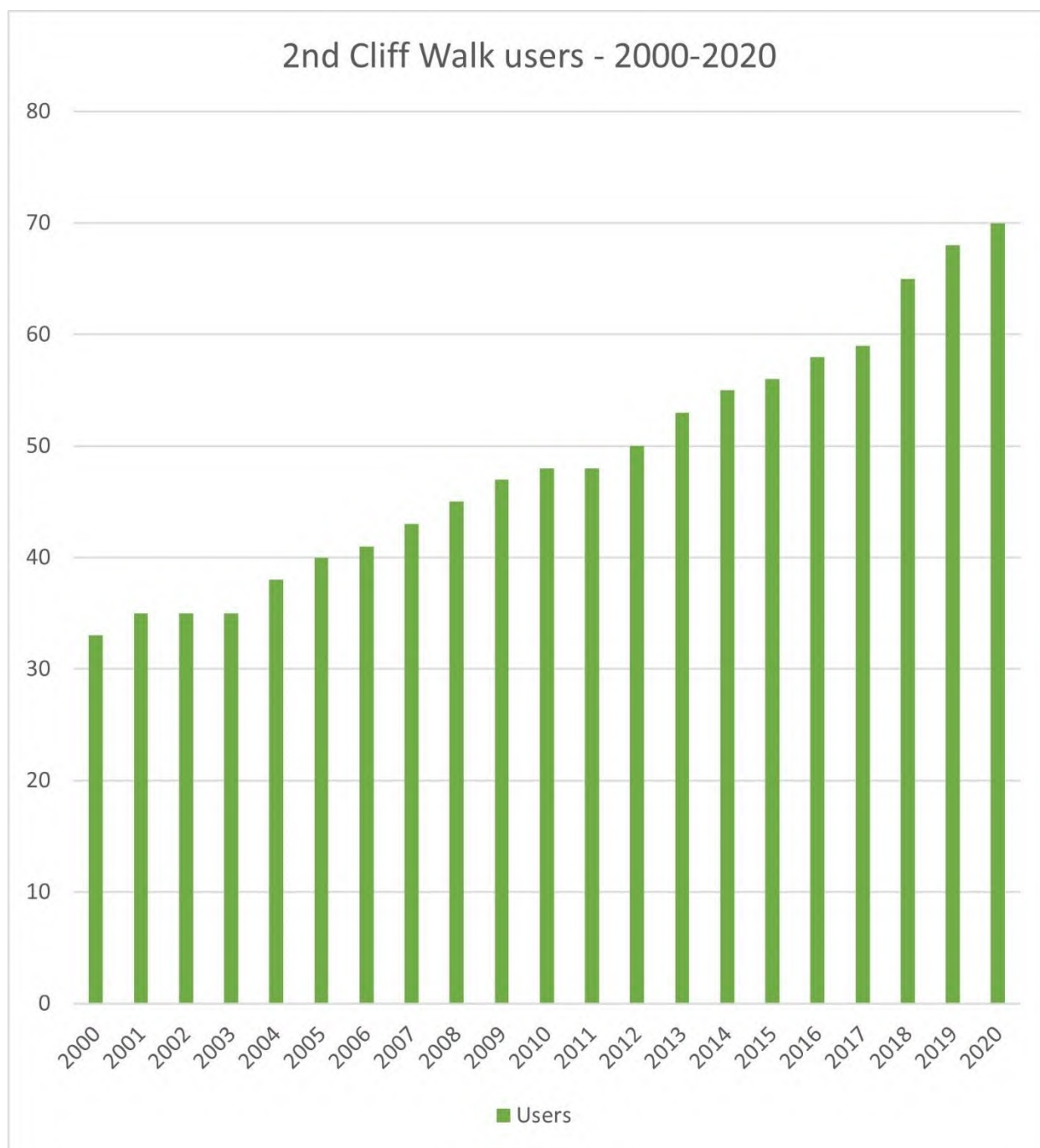




**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Claimed footpath – Second Cliff Walk**

Total user per year during Relevant Period 2000-2020 on foot

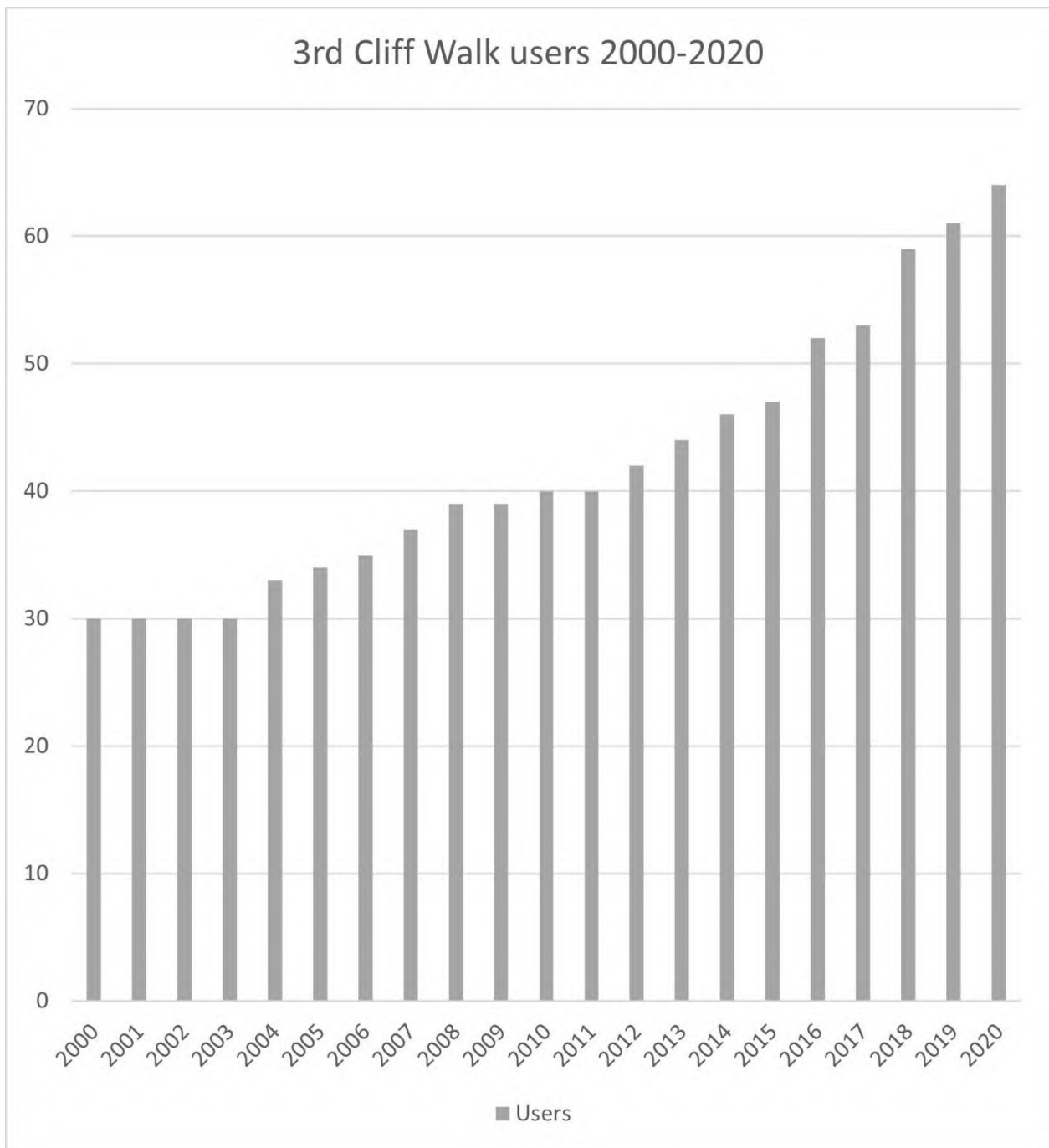




**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Claimed footpath – Third Cliff Walk**

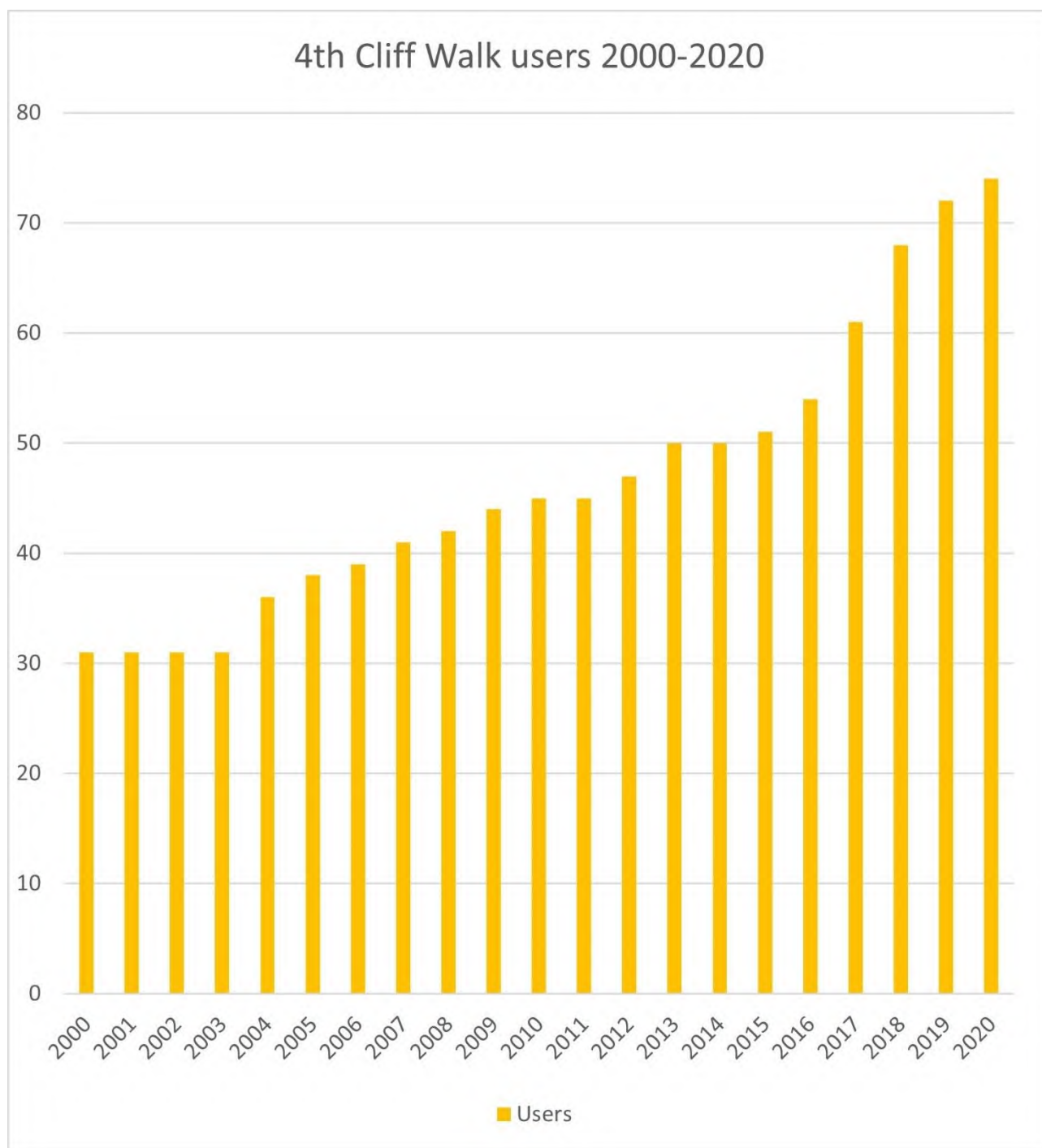
Total user per year during Relevant Period 2000-2020 on foot



**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.**

**Claimed footpath –Fourth Cliff Walk**

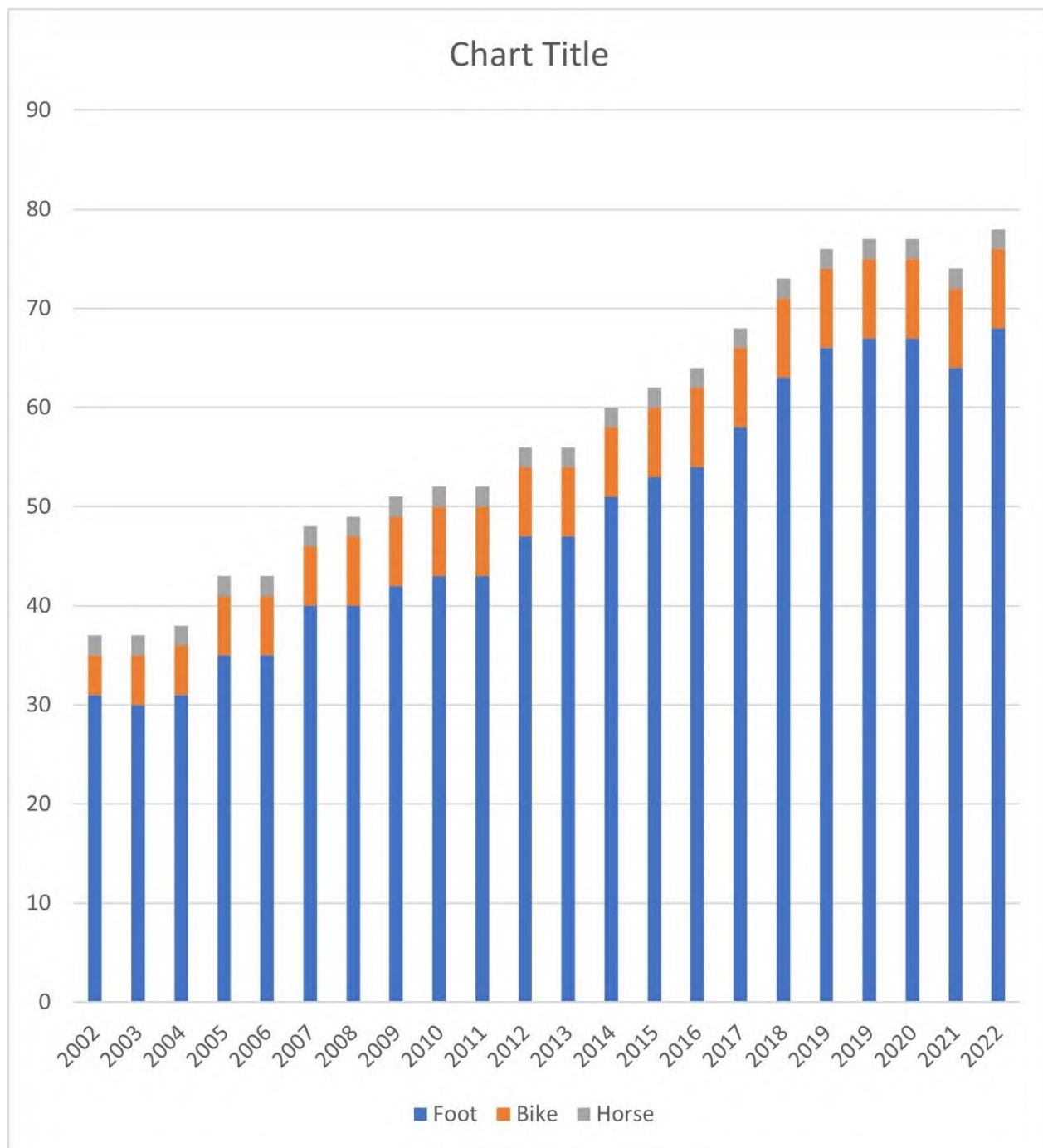
Total user per year during Relevant Period 2000-2020 on foot



# Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport.

## Claimed footpath – Hill Rise

Total user per year during Relevant Period 2000-2020 on foot



Cycle use ranges from 10-14% of total users

Bridleway use (Equestrian + Cycle) use ranges from 15-19% of total users

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

## APPENDIX 7

**Total use by witnesses 1950-2024 : FIRST CLIFF WALK** Yellow Box = Relevant Period of Use: 2000-2020.

Blue shading = discounted witness evidence. Grey Shading – years of use. .

[illegible]



## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

**Total use by witnesses 1950-2024 : SECOND CLIFF WALK** Yellow Box = Relevant Period of Use: 2000-2020.

Blue shading = discounted witness evidence. Grey – pedestrian use.

[illegible]



## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

**Total use by witnesses 1950-2024 : THIRD CLIFF WALK** \_Yellow Box = Relevant Period of Use: 2000-2020. Blue shading = discounted witness evidence. Grey Shading – years of use.

[illegible]



## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

**Total use by witnesses 1950-2024 : FOURTH CLIFF WALK** Yellow Box = Relevant Period of Use: 2000-2020. Blue shading = discounted witness evidence. Grey Shading – years of use.

Blue shading = discounted witness evidence. Grey Shading – years of use.

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]



White Boxes: Pedestrian use. Green Boxes: Cycle use. Red Boxes: Equestrian use.

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

## Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport

[illegible]

**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport**



**Definitive Map Modification Order Application to add five footpaths at West Cliff, West Bay, Bridport**

**Recommendations accepted:**

**Signed:**

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

Date:.....13 March 2025.....

**Vanessa Penny**

Definitive Map Team Manager  
Spatial Planning

Nominated by the Executive Director for Place to sign on his behalf