



## Report to the Executive Director of Place Date

**Report Title** Application for a definitive map and statement modification order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement modification order to correct the recorded route of part of Footpath 16, Woodlands.

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

**Local Councillor(s):** Cllr Dave Tooke, Cranborne & Alderholt Ward

**Executive Director:** M Prosser, Chief Executive

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

**Report Status:** Public

**Recommendation:**  
That:

- a) The proposal be accepted and an order made to modify the definitive map of rights of way by extending Footpath 16 from point W to point X as shown on Drawing T499,500,636/21/1, bringing it into line with the definitive statement.
- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.
- c) The application to modify the particulars of Footpath 16 by adding a stile be refused.

**Reason for Recommendation:**

- (a) The available evidence shows, on balance, that the proposed right of way subsists or is reasonably alleged to subsist.
- (b) The evidence shows, on balance, that the route proposed should be recorded as a footpath as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.
- (c) The available evidence shows, on balance, that the alleged limitation was not present when the right of way was first surveyed in 1950.

**1. Executive Summary**

This report considers the evidence relating to Footpath 16, Woodlands and considers modifying the definitive map and statement to add a stile. In addition, the report considers the evidence to correct the extent of Footpath 16 at its northern end.

**2. Financial Implications**

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

**3. Well-being and Health Implications**

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

**4. Climate implications**

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

**5. Other Implications**

None

**6. Risk Assessment**

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

Current Risk: LOW

Residual Risk LOW

**7. Equalities Impact Assessment**

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

## **8. Appendices**

**1** Drawing T499,500,636/21/1

**2** Law

**3** Documentary evidence

- Woodlands Parish Survey Map and Statement (1950)
- Dorset County Council Draft Map (1959)
- First Definitive Map (1966-67)
- Current Definitive Map and Statement (sealed 1989)
- Dorset County Council Area Condition Survey (The Ramblers) Map and Statement (1999)
- Ordnance Survey Map 25 inches : 1 mile (1900)
- Ordnance Survey Map 1: 2,500 (1956)
- Aerial Photographs 1947 and 2009

**4** Witness evidence

## **9. Background Papers**

The file of the Executive Director, Place (ref. RW/T499 and T636).

## **1 Background**

### **Application**

- 1.1. An application to add a stile to the particulars of the Definitive Statement for Footpath 16, Woodlands as shown at point A on Drawing T499,500,636/21/1 (Appendix 1) was made by Magna Law, on behalf of Mr and Mrs G Davison (landowners) on 26 July 2010.

### **Proposal**

- 1.2. During the investigation it became apparent that there was evidence that Footpath 16, Woodlands had originally been claimed to start from the county road at point W on Drawing T499,500,636/21/1 rather than point X, as currently shown on the definitive map.

### **Description of the route**

- 1.3. The route commences 15 metres south of Verwood Road, opposite the Old School at point X and heads south, initially along a surfaced driveway, then at point X1 alongside the driveway where it is overgrown with brambles, at point X2 it turns south-southwest.
- 1.4. After 63 metres the route enters an enclosed section at point Y and continues for 32 metres, bounded on the west by a wall / fence, and on the east by a hedge, the width is 4.4 metres narrowing to 2.8 metres at the original entrance to a field at point Z.
- 1.5. After a further 6 metres in southerly direction, there is a stile into a meadow at point A. The stile is in a mesh-covered fence and displays 2 footpath way-markers, and a sign requesting dogs be kept on leads around livestock.
- 1.6. After the stile, Footpath 18 branches off in a southerly direction, while Footpath 16 continues south-southeasterly across the meadow for 159 metres to the south east corner of the meadow where it crosses a second stile and continues.

### **Background to the application**

- 1.7. The landowners believe that there have always been stiles at the entrance and exit to the meadow and wish to retain these to control stock grazing in the field and to prevent unaccompanied dogs entering.

Page 5 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

- 1.8. Some original users of the route claim that at least one of the stiles was not in place originally and the presence of a stile makes it difficult for disabled people to use the route, and for accompanying dogs to negotiate the stile.
- 1.9. Users of the route have previously deposited a petition with 32 signatories requesting the height of the stiles be reduced and 'dog gates' reinstated.
- 1.10. A notice was also served on Dorset County Council in 2010 under the Highways Act 1980 s130(A) to have the stiles at points A, B and C reduced in height to comply with BS5709, and have the stile at point A restored to its previous location (unspecified). This was served on the landowner and short-term measures were carried out pending establishment of whether stiles were authorised.
- 1.11. Various options have been explored including replacing the stiles with gates that would achieve livestock security and control dogs, whilst providing enhanced access for all. These suggestions have not proved acceptable to the landowners.

## **2 Law**

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

## **3 Issues to be decided**

- 3.1 The first issue to be decided is whether there is evidence to show, on the balance of probabilities, that the stile at point A was in existence when the right of way was dedicated. The second 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 that part of the route between points W – X. The Definitive map / Statement should be amended accordingly. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map and Statement can be made.
- 3.2 Any changes to the Definitive Map and Statement must reflect public rights, and limitations to those rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map and Statement is made, the Council must be satisfied that public rights and their limitations have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

Page 6 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

3.3 Historical documentary evidence and user evidence has been examined to see whether depictions and descriptions of the route point to it having acquired public rights, with the limitation sought, as a result of deemed dedication in the past. Unless there has been a subsequent dedication without the limitation, or rights have been stopped up by due process of law, any rights previously dedicated with a limitation will still exist even if they are no longer used or needed. If the original dedication was without the limitation, this can only be added by proper authorisation. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map and Statement, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

#### **4 Documentary evidence (Appendix 3) (copies available in the case file RW/T499 and T636)**

4.1 A table of all the documentary evidence considered during this investigation is contained in the case file. All documents considered relevant are discussed below. Extracts of the key documents are included in Appendix 3.

##### **Dorset Council Records**

4.2 The Woodlands Parish Map (1950) claims three footpaths in the area; Former footpath 1 corresponds with the northern section of current Footpath 16 and extends from point W – X – Y – Z on Drawing T499,500,636/21/1. Former footpath 2 continues on the next section of current Footpath 16 from point Z – A – B and onwards. Finally, former footpath 3 was recorded running in a west-southwesterly direction from point Z, this does not correspond to a right of way today.

4.3 No restrictions were marked on the map for former footpath 1, and in the area of interest the only restriction marked on the map for former footpath 2 was “S” indicating a stile at point B.

4.4 The accompanying Parish Statement set out clearly all the parameters of each path including but not limited to: Parish, Path section number, Kind of path, Starting point of section, Finishing point of section, Where the path eventually leads, Condition of Path, Width of path, Type and condition of Stiles Gates etc.....Improvements necessary to facilitate reasonable use of the path, Date of Survey, By whom surveyed.

- Page 7 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.
- 4.5 Former footpaths 1, 2 and 3 were all surveyed on the same day, by the same team of 3 surveyors, and the statements are recorded on the same page of a notebook in the same handwriting.
- 4.6 Former footpath 1 is described as starting at 'Woodlands School' and finishing at 'Cowleaze Gate', there is a dash on the statement line where stiles and gates would be described.
- 4.7 Officer comment: Woodlands School at the time of the survey was located immediately north of the county road opposite point W. This is strong evidence that the footpath claimed was starting from the county road.
- 4.8 Former footpath 2 is described as starting at 'Cowleaze Gate' and going to 'David's Cross' with the ultimate destination as 'Horton Common'. One 'Stile + rails (poor)' is described and in another section this is described as needing to be repaired.
- 4.9 Officer comments:
- a) This is a thorough and detailed survey. The surveyors were clearly recording limitations on the routes surveyed, and the survey of all routes of interest were carried out on the same day by the same surveyors.
  - b) The stile mentioned in the statement for footpath 2 equates to the stile marked on the accompanying parish map at point B. The absence of recording of any other limitations on original footpaths 1 and 2, particularly in the region of point Z was almost certainly because none was present at the time.
  - c) Point Z at the time of the survey was known as 'Cowleaze Gate' but there is no indication that at the time of the survey there was actually a limitation of a gate present. It is possible that Cowleaze Gate was a colloquial term to describe the location, or that there was a gate present and it did not present as a limitation at the time of the survey.
- 4.10 The Draft Map (1959) similarly depicts footpath 1 from W – X – Y – Z and footpath 2 from Z – A – B and onwards. Footpath 3 is shown heading west-southwest from point Z.
- 4.11 There was one relevant objection to the Draft Map in respect of footpath 2; that it was not a public right of way. The objection was overruled and the National Parks Committee ruled that the Draft Map should 'be not amended'.

Page 8 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

- 4.12 The Provisional Map (1964) and First Definitive Map (1967) depict the same situation but paths have been allocated new numbers: Footpath 16 now runs from W – X – Y – Z – A – B and onwards, and the branch heading west-southwest from Z is numbered Footpath 18.
- 4.13 Officer comment: These maps provide strong evidence that the path now known as Footpath 16 was originally dedicated commencing at point W on the county road opposite what was originally Woodlands School.
- 4.14 The Statement accompanying the First Definitive Map describes Footpath 16 as 'From Road opposite Woodlands School (050090) to join path number 15 at Park House (055080)'.
- 4.15 Officer comments:
- a) The grid references quoted are not sufficiently precise to distinguish between point W and point X as the start of Footpath 16, or between point Z and point A for the start of Footpath 18.
  - b) There is no mention of any limitations in the statement for Footpath 16, but this was not uncommon in the Statement and does not necessarily mean that the stile at point B referred to in the Parish Survey was not still present.
- 4.16 The Revised Draft Map (1974) depicts the same situation as in the First Definitive Map.
- 4.17 The current Definitive Map and Statement (sealed 1989) - The map shows Footpath 16 commencing south of the county road at a point corresponding to point X, however, the statement still describes it as commencing at 'Road opposite Woodlands School'. Other details remain the same (with the exception that a diversion further southeast than point B has resulted in a change in the terminus point at this end).
- 4.18 Officer comment: There is no legal reason why the northern terminus of Footpath 16 has changed, and the statement has not altered in this respect. It is considered that the change on the map is as the result of poor drafting and that Footpath 16 should still commence on the county road at point W.

### **Dorset County Council Area Condition Survey of RoW by The Ramblers 1999**

- 4.19 The survey notes for Woodlands Footpath 16 describes stiles at points Z and B and an additional one on a diverted stretch of the path, shown on the map, this approximately corresponds to point B1 on Drawing T499,500,636/21/1. There is also a sign listed at 'the road in Woodlands Village'.
- 4.20 Officer comment: This is evidence that stiles were in situ at points B and Z (or possibly point A if the field boundary had already changed and an old base-map was used for the survey) at the time of the survey. An additional stile had been added to a section of path which was off-line. This does not provide evidence that any of these stiles were authorised. The sign "at the road" would suggest that the footpath was still considered to commence at point W on Drawing T499,500,636/21/1.

### **Ordnance Survey Maps**

- 4.21 The First Edition Ordnance Survey Maps at a scale of 25 inches : 1 mile (1886 – 87) depict a route with parallel pecked lines from point W – X – X1 – X2 and then into the property marked 'The Woodlands' (now called the 'Old Vicarage'). It is not marked F.P. Another parallel pecked line approaches point Y from the north-west and continues Y – Z – A – B and onwards. It is marked F.P. At point Z the field boundary is marked with a solid line.
- 4.22 The Second Edition Ordnance Survey Maps at a scale of 25 inches : 1 mile (1900) depict a similar layout of paths to the earlier edition except that that all relevant paths are now labelled 'F.P.' and an additional path is shown heading west-southwest from point Z.
- 4.23 Officer comments:
- a) The maps indicate the existence of the ground of a route from W – X – X1 – X2 and Y – Z – A – B and onwards. There is no marked connection between the two routes X2 – Y although there appears to be no barrier between them either. There is a field boundary line across the route at point Z, but it is not possible to determine if this was actually a barrier on the ground, or just the boundary of the land parcel.

- b) By 1900 both routes W – X – X1 – X2 and Y – Z – A – B were marked 'F.P.' indicating that they were used mainly on foot (but not necessarily by the public).

4.24 The Ordnance Survey Map at a scale of 1:2,500 (1956) shows a track marked 'Tk' from W – X – X1 – X2 and a similar parallel pecked line but marked 'F.P.' from Z – A – B and onwards. There is no indication of a path on the ground between points X2 – Y – Z. There is a field boundary marked at point Z but not at point A. There is a further path marked 'F.P.' branching off to the west at approximately point A. The field between point Z and point B is shown as 'rough pasture and furze'.

4.25 Officer comment: The Ordnance Survey maps confirm the presence on the ground of a path / track between point W and X. They do not confirm or refute the claim for a stile at or near point A but are suggestive that if there were a physical boundary to the field it was at point Z, not point A up to at least 1956. The vegetation is suggestive of the area not being maintained for regular grazing.

### **Aerial photographs**

4.26 The aerial photographs from 1947 show a small patch of lighter shading at point Z but the definition is not high enough to determine if this is a gate / stile / change in the surface. The areas of point Y and point B are obscured by trees. There is a clear path on the ground between points W – X – X1 as indicated by lighter shading. The pasture between Z and B is rough pasture and does not look regularly grazed.

4.27 Officer comment: This provides support for the proposal that Footpath 16 originally commenced at the county road in Woodlands. It provides no support or otherwise for the application for a stile at point A, but suggests that stock control measures may not have been necessary at the time.

4.28 The aerial photographs from 1972 – 2017 provide no further evidence on the presence of stiles. The photograph from 2009 is the first to reveal a field boundary at point A rather than point Z, but this could have been present earlier, but had been obscured by trees since 1997. These photographs all confirm the presence of a path on the ground from W – X – X1. From 1972 onwards the pasture between point Z and point B was improved and may have been used for grazing.

Page 11 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

4.29 Officer comment: These photographs provide no support or otherwise for the application for a stile. The improvement of the pasture between points Z – B may imply that stock control measures may have been needed if the field was now used for grazing. All photographs support the existence of a path on the ground between points W – X – X1.

#### **Summary of documentary evidence**

4.30 Footpath 16 was originally claimed as two separate paths on the Parish Survey in 1950 with the northern-most one commencing at the road opposite Woodlands School (point W).

4.31 The original northern and southern paths met at point Z and neither mentioned a stile at point Z or point A. This is strong evidence that the stile was not present at the time (1950). A stile was recorded at point B.

4.32 The Dorset County Council Area Conditions Survey provides evidence that by 1999 there was a stile at, or near, point Z and another at point B.

4.33 None of the other documentary evidence gives any support or otherwise to the application to record a stile at point A or point Z but Ordnance Survey mapping and aerial photographs suggests that the field boundary was at point Z not point A until after 1972.

4.34 The Parish Survey, First Definitive map and Revised Draft Map all support the commencement of Footpath 16 at the county road at point W, as do the Definitive Statements for the First and current Definitive Maps.

4.35 Further support for the proposed extension of Footpath 16 to the county road at point W is provided by Ordnance Survey mapping, aerial photographs and the Dorset Council Area Conditions Survey.

#### **5 Witness evidence (Appendix 4) (copies available in the case file RW/T499 and T636)**

5.1 The applicant supplied sworn statutory declarations from 8 witnesses and letters from a further 3 witnesses.

5.2 All witnesses except one declared their year of birth and these ranged from 1922 - 1976. Most had lived at least some of their lives in Woodlands and surrounding area.

5.3 The sworn statutory declarations were all written in a similar format and style. Certain phrases occurred in several declarations e.g. “I can confirm that the stile was in place from my earliest memory”, “I remember the stile being in place from my childhood” “stile marked as A on exhibit xxx”.

5.4 Officer comment:

- a. The style of the declarations and the frequency of certain phrases suggests that witnesses had been asked a series of closed questions which had not elicited the depth of response and temporal dimension normally gleaned from interviews.
- b. The use of the phrases “stile was in place” and “stile being in place” could suggest that there was a stile, but that it was not used by the witness. This could in turn suggest that it was not necessary to climb the stile to use the footpath.
- c. The maps provided with the witness declarations were all pre-prepared and showed ‘A’ located where point Z is on Drawing T499,500,636/21/1

5.5 9 witnesses described being aware of the stile at A (point Z on Drawing T499,500,636/21/1) prior to 1950 but only 3 witnesses made reference to using the stile themselves.

5.6 One witness described “there was always a stile by the gate into the field next to the vicarage.” This witness did not describe using the stile.

5.7 One witness described using the stile “every day to go to school” but did not describe the years. This can be deduced from the age of the witness as probably being from 1927 – 1933.

5.8 A second witness described using the stile “regularly” and was living in the village from birth (1922) to 1936.

5.9 A third witness described using the stile every day for 6 months in 1948.

5.10 All except one of the 8 witnesses who lived in or near the village continued to live in or near the village, or to visit the area after 1950.

5.11 2 witnesses only gave evidence relating to more recent years, one remembered a stile ‘for many years before working at Bailywick in the 1990’s’. One remembered a stile since 1998.

5.12 A request was made in October 2021 (to the applicant) to interview witnesses to gain a more in-depth picture. Unfortunately, given the age of the witnesses and the delay in processing the DMMO claim, 5 witnesses were by this time deceased, and the remaining witnesses could not be contacted.

5.13 Officer comments:

- a. Witness memories of features from many years ago can quickly fade when those features change in more recent times; memories are over-written. Of the 9 witnesses who reported remembering a stile pre-1950, 7 were still living / visiting the area in the years after 1950. There is documentary evidence that a stile was present at point Z in 1999 so witness memories may not accurately recall the situation pre-1950.
- b. There is limited evidence that at some point there was a gate next to a stile at point A or point Z. This may explain why many users did not claim to have used a stile.
- c. Whilst statutory declarations ordinarily carry significant weight, without an opportunity to further elaborate on witness memories and obtain a more personal account of their actual use, the declarations have been given slightly less weight.

### **Summary of witness evidence**

- 5.14 Witness evidence mostly spans the time of the parish survey in the 1950's. The presence of a stile in more recent years may have influenced witness memories from pre-1950.
- 5.15 Whilst 9 witnesses describe a stile being in place prior to 1950, only 3 witnesses actually described using the stile at point Z on Drawing T499,500,636/21/1.
- 5.16 There may have been a gate next to a stile in this location at some point.
- 5.17 Witness evidence from the 8 statutory declarations has been given slightly less weight because it lacks detail. Of the remaining 3 witnesses, only one recalled the stile prior to 1950. This witness recalled seeing a stile in the summer of 1942 but did not describe using the stile.

Page 14 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

5.18 One witness described using the stile to go to Woodlands School which provides some limited support for current Footpath 16 extending from point W to point X during the years 1927 – 1933.

5.19 The evidence from witnesses, considered on its own, is not sufficient to indicate on the balance of probability that Footpath 16 was dedicated with a stile.

## **6 Landowner correspondence (copies available in the case file RW/T499)**

6.1 Mr and Mrs Davison were contacted in 2009 about the height of the stiles and the desirability of replacing the stiles with gates to improve access, whilst maintaining stock control. It was pointed out to Mr and Mrs Davison that there was no obvious evidence that the stiles at points A and C had ever been authorised, but they maintained that the stiles had always been there. Dorset County Council offered to pay for the stiles to be replaced with suitable gates.

6.2 The adjoining landowner to the east informed the Council that he was responsible for stile B and was prepared for it to be replaced with a suitable gate.

6.3 In 2010 Mr Davison reported an incidence of sheep worrying by a dog.

6.4 In 2010 Dorset County Council was served with a Notice under Highways Act 1980 s130A. The Council wrote to Mr and Mrs Davison and requested that stiles that were not authorised be removed, and that any authorised stile comply with BS 5709 and be located on the definitive line. The Council expressed the view that only the stile at point B had been authorised.

6.5 Mr Davison expressed his view that the stiles at points A, B and C had all been present for a very long time and had been authorised. He stated that he had maintained the stile at point B without complaint from the neighbour, and he felt it was his responsibility.

6.6 The Council agreed to advise on the specification and location of stiles pending an application to modify the definitive map and statement to add the stiles.

6.7 Officer comment: None of the above provides evidence to support or oppose the application.

## **7 Consultation responses and other correspondence (copies available in the case file RW/T499)**

- 7.1 There were several communications from members of the public and Knowlton Parish Council relating to this area, received in 2009, prior to the application to add stiles to the definitive statement for Footpath 16. These related to the fencing off of 'dog gates' adjacent to the stiles, and the increase in height of the stiles making access difficult, particularly for disabled users.
- 7.2 Officer comment: Although dogs are a lawful accompaniment on a right of way (under close control), there is no requirement for specific access to be provided for dogs.
- 7.3 Members of the public and Robert Walter MP questioned whether the Department of the Environment, Food and Rural Affairs guidance on the Disability Discrimination Act could be used to require the landowners to replace the stiles with gates.
- 7.4 Officer comment: The local authority has a duty to explore less restrictive options than stiles but has no statutory power to force the landowner to accept an alternative if the stiles have been previously authorised.
- 7.5 In 2010 a member of public reported having a fall from one of the stiles, caused by having to carry a dog over the stile.
- 7.6 Officer comment: This matter has no bearing on whether the stiles were authorised.
- 7.7 In 2010 Dorset County Council was served with a Notice under the Highways Act 1980 s130A. A petition was also submitted, signed by 32 users of the routes, requesting that the stiles at points A, B and C be returned to their original heights to improve access for the disabled, and that a 'dog gate' be reinstated at point A. Remedial work was carried out on the stiles pending outcome from this DMMO application.
- 7.8 Officer comment: None of the above provides any evidence to support or oppose the application.

## **8 User evidence**

No user evidence was submitted in response to consultation and none of the original users responded.

## **Conclusions**

- 9.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on the route between point W and point X, and, on the balance of probability, whether the claimed limitation was present on the route at the point when the route was dedicated. As the route is of an historic nature, the exact date of dedication cannot be determined, but the dedication was first recorded at the date of the Parish Survey and Statement in 1950.
- 9.2 The documentary evidence strongly indicates that Footpath 16 was originally dedicated commencing at point W; the junction with the county road opposite Woodlands School. No evidence was found suggesting this had been changed by due legal process. The current definitive statement still records these rights today.
- 9.3 The documentary evidence strongly indicates that there was not a stile present at point A or point Z on Drawing T499,500,636/21/1 in 1950, indeed it indicates that there was no field boundary present at point A until after 1956; prior to this the field boundary (if one existed) was at point Z.
- 9.4 The witness evidence is weak but may suggest a stile was in existence at point Z on Drawing T499,500,636/21/1 prior to 1950. The witness evidence may suggest that, though the stile was in existence, it was not routinely used by users of what is now recorded as Footpath 16.
- 9.5 There is disagreement between the documentary evidence and the evidence of witnesses, but on balance it is considered that the evidence suggests there was no stile present in 1950 at either point A or point Z on Drawing T499,500,636/21/1.
- 9.6 The presence of a stile at later dates cannot be taken into consideration.
- 9.7 Therefore, the first recommendation is that the proposal to extend Footpath 16 so it commences at the county road at point W on Drawing T499,500,636/21/1 be accepted and an order be made to this effect.

Page 17 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

9.8 If no objections are received, then the Council can itself confirm the order provided the criterion for confirmation has been met. An order can be confirmed, if on the balance of probability, it is shown that the route described does exist. It is considered that the evidence is sufficient to satisfy this test.

9.9 Additionally, a second recommendation is that the application to modify the particulars of Footpath 16 to add a stile as a limitation at point A be refused.

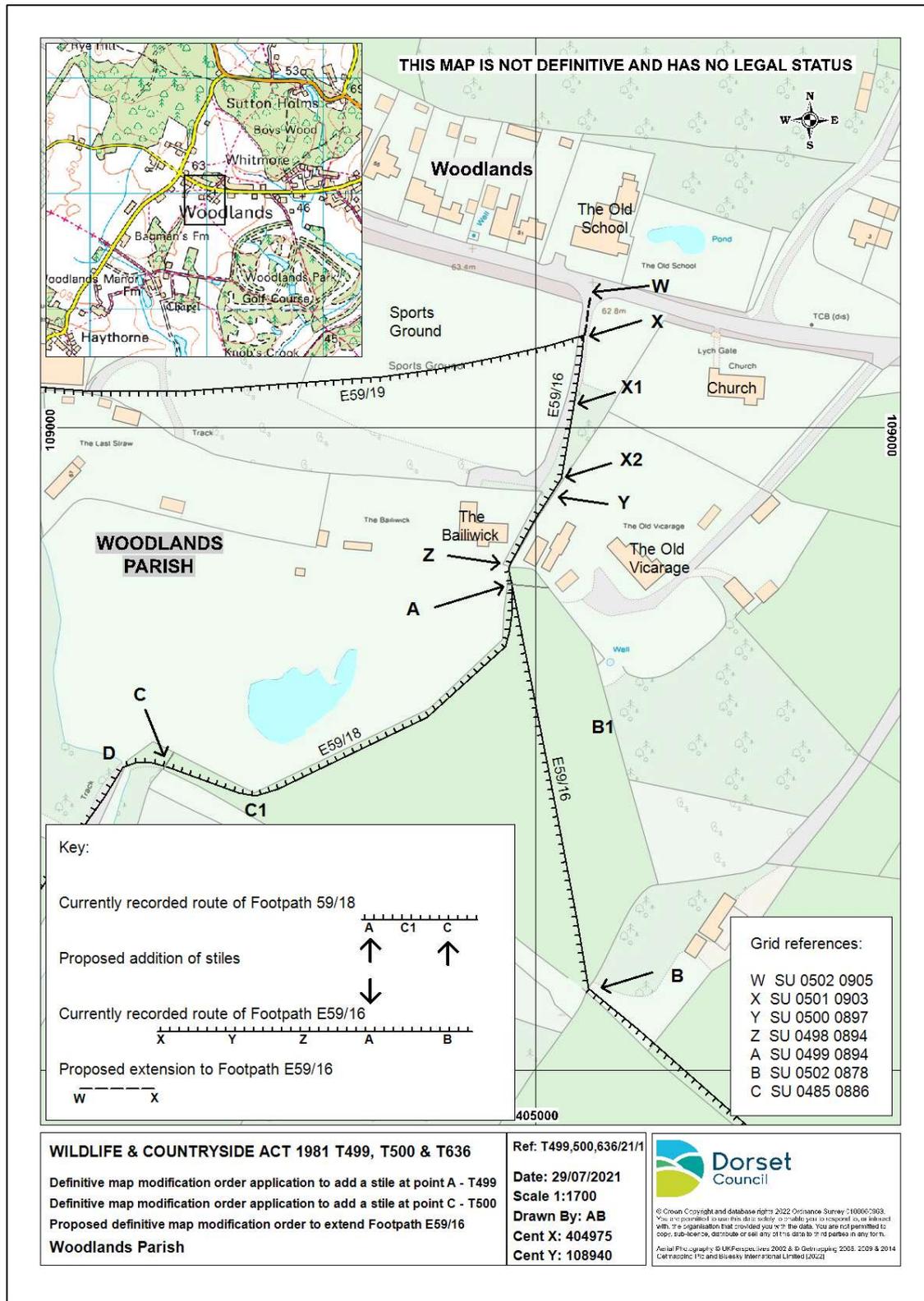
**Date: 25 February 2022**

**Footnote:**

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

**Drawing T499,500,636/21/1**

**APPENDIX 1**



## LAW

<b>APPENDIX 2</b>
-------------------

### General

#### Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
  - (a) that a right of way subsists or
  - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.

- 1.8 An order to add a right of way and change the status of an existing right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.
- 1.9 Where an objection has been made to an order, the Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the Council can itself confirm the order, provided that the criterion for confirmation is met.

## 2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought in to question.
  - (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
  - (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
  - (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public

right of way.

- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
- 2.5 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

### 3 Human Rights Act 1998

- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

### **Case specific law**

#### 4 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

Page 22 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

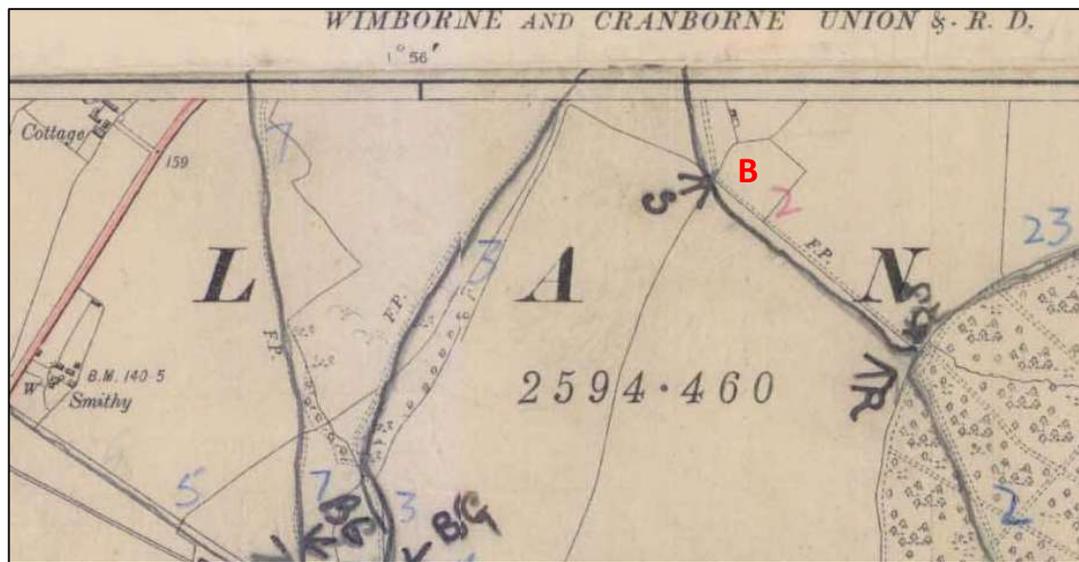
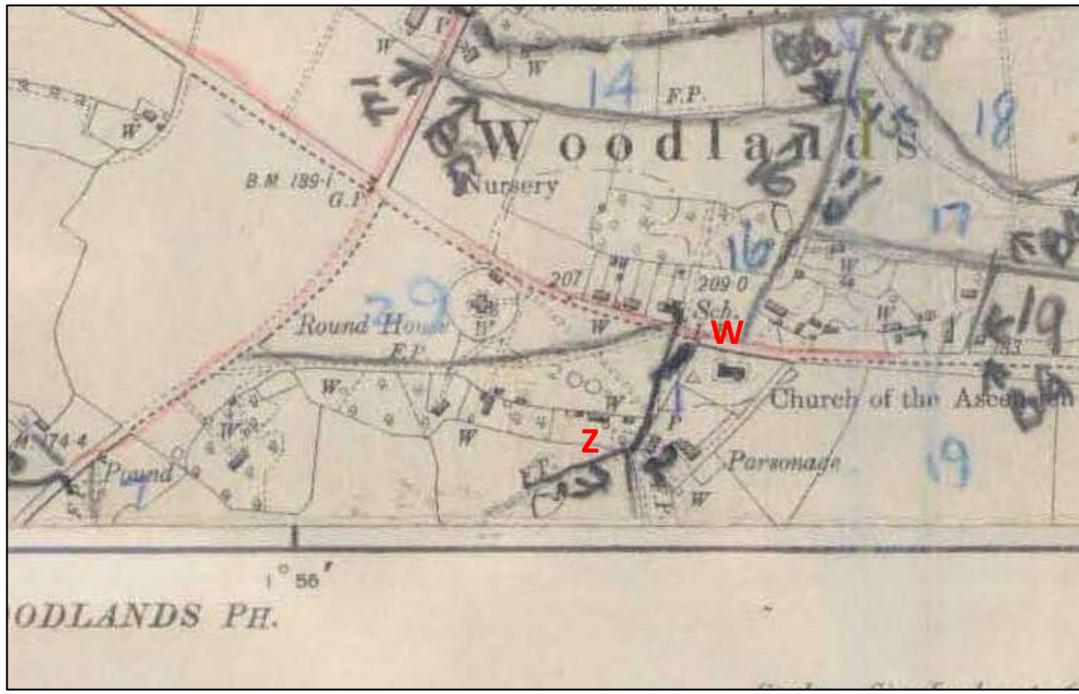
were consulted to provide the County Council with information for the purposes of the survey.

5 Disability Discrimination Act 1995, revised 2005 and Equalities Act 2010

Public Sector equality duty:

- 5.1 Have regard to the need to eliminate discrimination that is prohibited under the act and advance equality of opportunity between persons who share a protected characteristic and those who do not.
- 5.2 Have regard to the need to minimise disadvantages, to meet differing needs and encourage those who share a protected characteristic to participate in activity.
- 5.3 The acts do not give the local authority power to force a landowner to change a previously authorised limitation for one that is less restrictive.

Woodlands Parish Survey Map (1950)



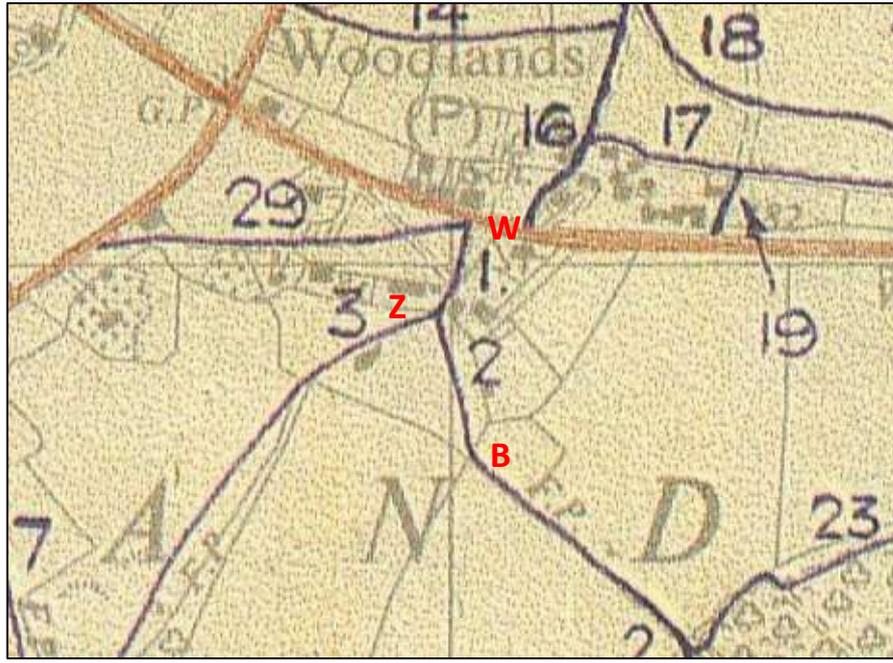
**Woodlands Parish Survey Statement (1950)**

Woodlands	Woodlands	Woodlands
1	2	3
Foot Path	Foot Path	Foot Path
Woodlands School	Cowleaze Gate	Cowleaze Gate
Cowleaze Gate	A cross Lane	Manor Farm
	Horton Common	
Grass	Cox grass	Cox grass
-	Open	-
15'	15'	15'
-	Stile + rails (Poor)	Widely gate (Good)
-	-	Blackthorn growth
-	-	-
Used over 50 years	Used over 50 years	Used over 50 years
None	None	None
-	Stile + rails repaired	Temporary
30.11.50	30.11.50	30.11.50
S.H. Tubbs	S.H. Tubbs	S.H. Tubbs
E.A. Taylor	E.A. Taylor	E.A. Taylor
S. Thorne	S. Thorne	S. Thorne
Woodlands	Woodlands	Woodlands

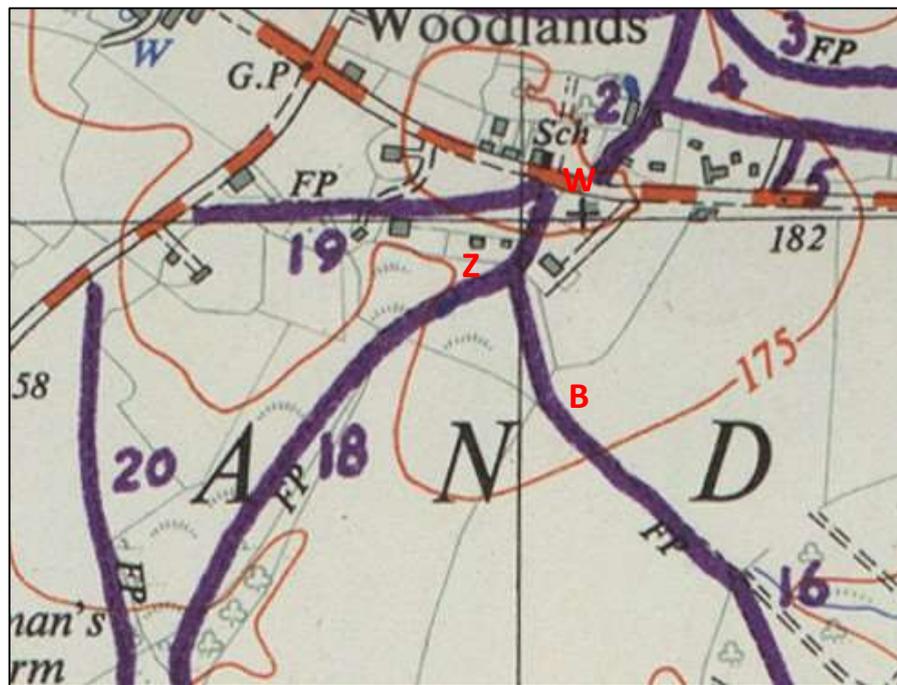
**Woodlands Parish Survey Statement Key**

1. Name of Parish
2. Path section number
3. Kind of Path
4. Starting point of section
5. Finishing point of section
6. Where path eventually leads (if it continues out of parish)
7. Condition of path (note if path is at times ploughed)
8. Condition of adjoining tenures or stages
9. Width of Path (Average + minimum)
10. Type + condition of Stiles, Gates etc.
11. Details of Notice boards, direction signs etc.
12. Obstructions to use of Path.
13. In respect of Bridled paths, whether gates are properly maintained for use as such
14. Reason for believing path to be public
15. Names + addresses of any known objectors to the path together with note on objection
16. Improvements necessary to facilitate reasonable use of Path.
17. Date of Survey
18. By whom Surveyed (With address)

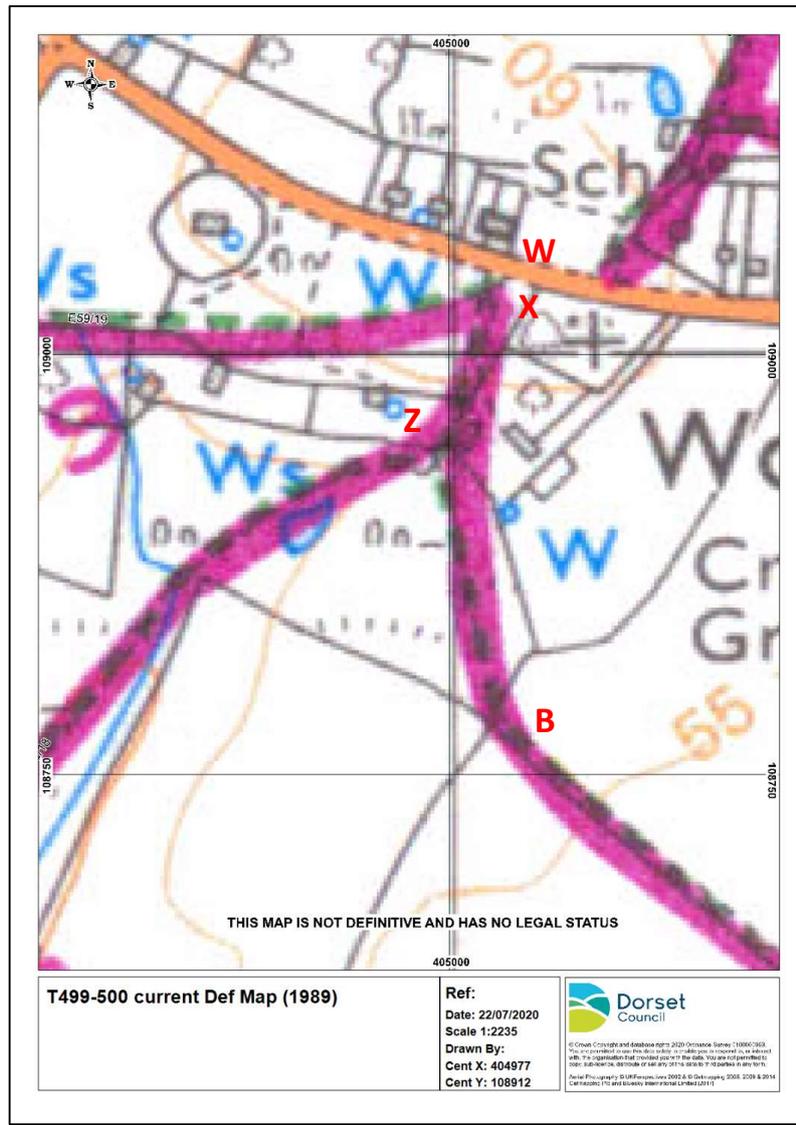
**Dorset Council Council Draft Map (1959)**



**First Definitive Map (1966-67)**



**Current Definitive Map (sealed 1989)**

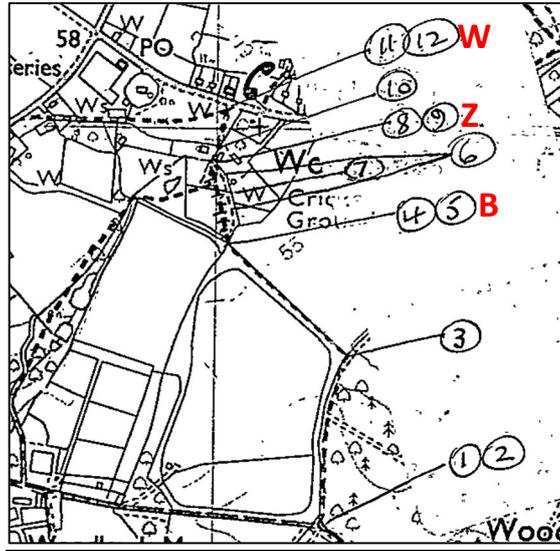


**Current Definitive Statement (sealed 1989)**

FP	13	Path No. 12 at Peat's Hill, via Knob's Crook	058073	Parish Boundary, south of wedge hill	058073
BR	14	Verwood Road at Woodlands Post Office	055090	Join Path No. 15 at Woodlands Park	059079
FP	15	Horton Road, south of Bagman's Farm, via Woodlands Farm and Park House	042085	Join Path No. 12 at David's Cross	064074
FP	16	Road, opposite Woodlands School	050090	Join Path No. 15	052082
FP	17	Path No. 15 at Woodlands Farm	047083	Join Path No. 13 at Knob's Crook	058074
FP	18	Path No. 16 at Cowleaze	049089	Join Path No. 15, near Woodlands Farm	046090
FP	19	Road, opposite Woodlands School, westwards	050090	Horton Road	046090
FP	20	Horton Road at Pound, southwards	045089	Join Path No. 15 at Woodlands Farm	045083
FP	21	Path No. 15 at Woodlands Farm, south-westwards	045083	Haythorn Common	038078

FP = FOOTPATH      BR = BRIDLEWAY      BY = BYWAY OPEN TO ALL TRAFFIC

**Dorset County Council Condition Survey Map (The Ramblers) (1999)**



**Dorset County Council Condition Survey (The Ramblers) (1999)**

DORSET COUNTY COUNCIL - RA DORSET AREA CONDITION SURVEY OF RIGHTS OF WAY

PARISH..... Wootton Bassett..... FP BR BY NUMBER..... 16..... LENGTH..... 922 m

SURVEYOR..... M. HOSKING..... DATE..... 23/1/1999..... SHEET NO..... 1.....

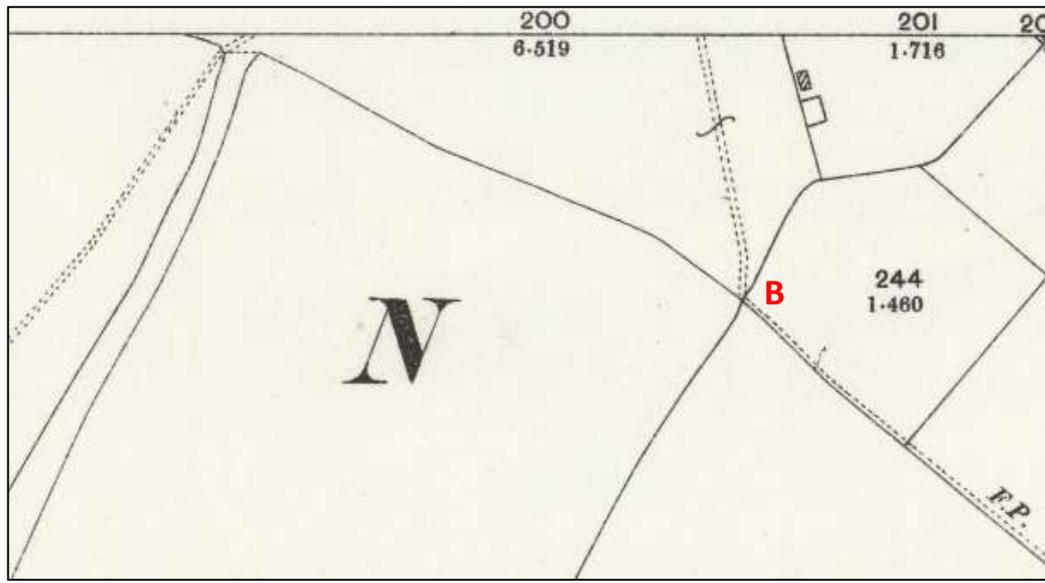
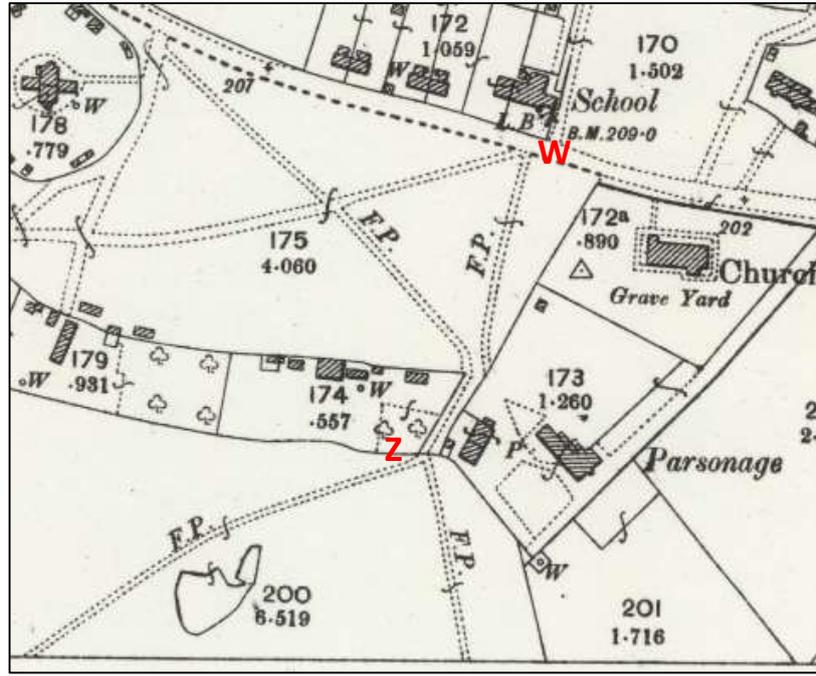
1	2	3	4	5	6	7	8	9	10
1	JN								BRIS
2	G	FG	✓						
3	B	HL		PR					
4	ST	SS	✓						
5	SU			MD	✓		✓		AROUND STILE
6	SU							X	PATH SEEMS TO HAVE BEEN DISPLACED AROUND FIELD EDGE
7	ST	SS	✓						OLD DIVISION POINT
8	JN								CP 18
9	ST	SS		Ri					
10	SU			MD	✓		✓		
11	SP	CP0		Ri					ON GROUND
12	JN								ROAD IN WOODLANDS VILLAGES
13									
14									
15									
16									
17									
18									

The following are acceptable unless indicated above:  
 Surface, Width, Height, Alignment: YES/NO  
 Waymarking: YES/NO

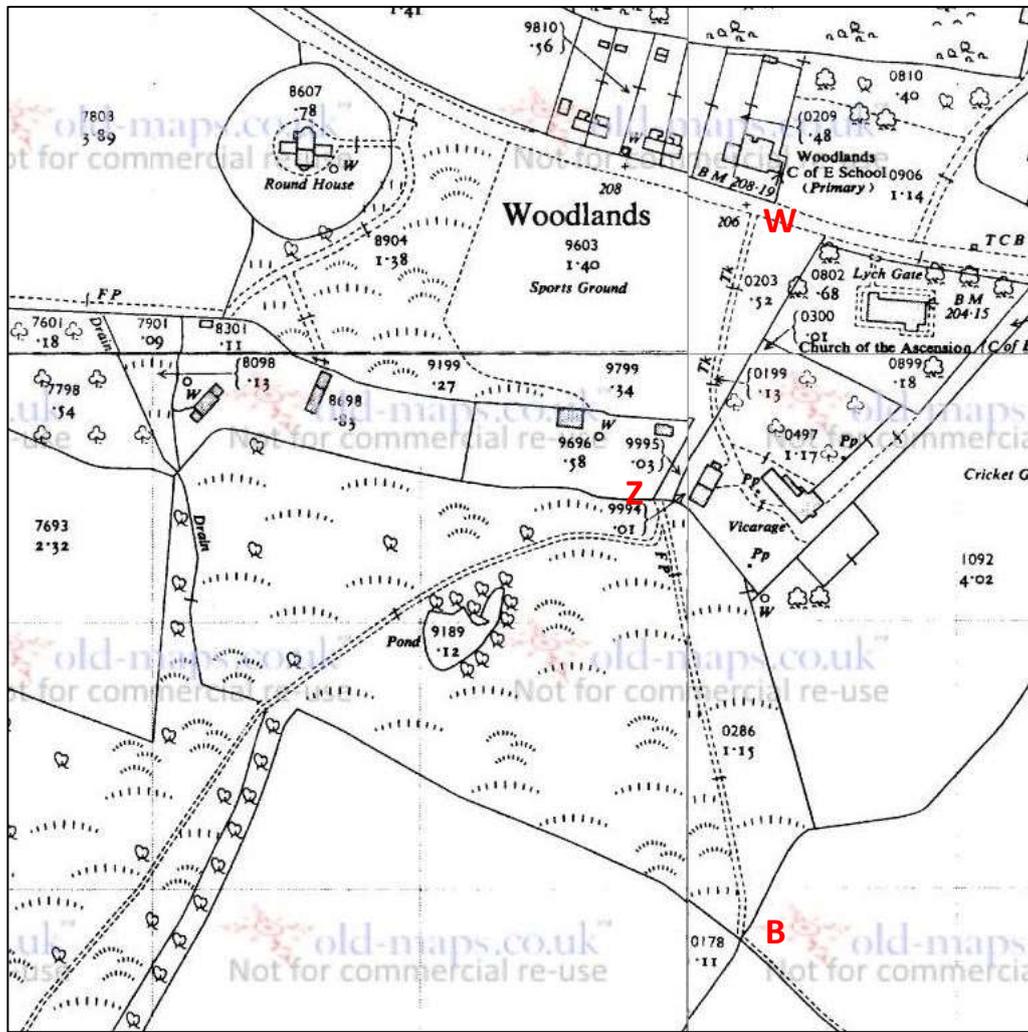
PARISH STATEMENT: Correct (tick).../ Comments:

Recorded..... 23/1/99 for RADA; Recorded..... /.../9. for DCC: ROW [R6.SRV.Rev 1]

**Ordnance Survey Map, 25 inches : 1 mile (1900)**



**Ordnance Survey Map, 1:2500 (1956)**



Page 30 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

**Aerial Photograph (1947)**



Page 31 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

**Aerial Photograph (2009)**





Page 33 Application for a definitive map and statement order to modify the particulars of Footpath 16, Woodlands and Proposed definitive map and statement order to correct the recorded route of part of Footpath 16, Woodlands.

**Recommendations accepted:**

**Signed:**

**SIGNED**

Date:.....01 March 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning