

## Report to the Executive Director for Place

# Proposed Definitive Map and Statement Modification Order to modify Footpath 12, Charmouth

### For Decision

<b>Portfolio Holder:</b>	Cllr D Walsh, Planning
<b>Local Councillor(s):</b>	Cllr Belinda Bawden, Dorset Council Member for Lyme and Charmouth Ward
<b>Executive Director:</b>	J Sellgren, Executive Director of Place
<b>Report Author:</b>	Sue Phillips
<b>Title:</b>	Definitive Map Technical Officer
<b>Tel:</b>	01305 221409
<b>Email:</b>	susan.phillips@dorsetcouncil.gov.uk

**Report Status:** Public

**Brief Summary:** This report considers the evidence relating to the recorded route of Footpath 12, Charmouth and considers modifying the Definitive Map and Statement by correcting a drafting error and recording the width of Footpath 12, Charmouth as shown on Drawing T654/21/2. A full consultation was carried out in December 2021 and received several responses.

### **Recommendation:**

That:

- (a) An order be made to modify the definitive map and statement of rights of way to correct the route of Footpath 12, Charmouth from the recorded route as shown A-F-B-C-D to that shown E-A-F-B-C-D on Drawing T654/21/2 (appendix 1) and record the width of Footpath 12 as varying from 10 metres to 6 metres along its route; and
- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

**Reason for Recommendation:**

- (a) The available evidence shows, on balance, that the recorded route of Footpath 12, Charmouth requires modification as described.
- (b) The available evidence shows, on balance, that the correct route of Footpath 12, Charmouth is as proposed. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

**1 Background**

The drafting error on the Definitive Map for Footpath 12 and the absence of a recorded width on the Definitive Statement for Footpath 12 was identified as part of Dorset Council's Continuous Review of the Definitive Map and Statement.

**Description of the route**

- 1.1. The current recorded route of Footpath 12, Charmouth starts at Point A continuing southwards to Point F along a wide grass track before turning south east at Point B into the garden of "Thalatta" and continuing in a south eastwards direction via Point C to end at a tarmac path at Point D. (Drawing T654/21/2. See Appendix 1)
- 1.2. The proposed modified route of Footpath 12, Charmouth starts at Point E at the junction with Higher Sea Lane then heads south along a grass track with a width of 10 metres along its entire length to join the current recorded route at Point A. The path then continues southwards to Point F along the track which is approximately 10 metres wide along the entirety of its length from E - B. At Point B the route turns south east off the grass track and into the garden of "Thalatta". Here the route narrows to 6 metres in width and continues in a south east direction at a 6 metre width to Point C. From Point C the path continues east to meet Point D on open ground to end at the junction with Footpath 20. (Drawing T654/21/2. See Appendix 1)

**2 Law**

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

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

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route and if so, at what status the route should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map and Statement can be made.
- 3.2 Any changes to the Definitive Map and Statement must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map and Statement is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.
- 3.3 Historical documentary evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map 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/T654)**

- 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.

#### **Analysis of Documentary Evidence**

##### **Ordnance Survey Maps**

- 4.2 Although Ordnance Survey Maps are not conclusive of public status, they do show the physical features on the ground at the date of the map. The 1928 OS Map 2<sup>nd</sup> Edition bears a close resemblance to the map used for the Parish Survey. See Appendix 3 (i).

- 4.3 The base Ordnance Survey Map for the digital mapping programme, Mapinfo, shows current boundaries of properties and features of the relevant area in Charmouth.
- 4.4 The 1928 OS Map 2<sup>nd</sup> Edition and the current digital base Ordnance Survey Map have been overlaid to illustrate the boundary locations and geographical features of this area on a single map.
- 4.5 Officer Comment: The overlay demonstrates there has been little change to property boundaries between 1928 and 2022. This document offers good weight to the evidence that natural topographical features on the ground appear to be now as they would have been at the time of the Parish Survey in 1950 when the Parish Council first claimed the route as a public right of way.
- 4.6 Officer Comment: The overlay document demonstrates the change in the footprint of physical buildings between the years 1928 – 2022 most notably the former Cove Cottage, at the north western boundary of Footpath 12, Charmouth (which is now a semi detached development of two properties known as Annings and Black Venn) and the extension to the dwelling known as Thalatta to the south of Footpath 12, Charmouth.
- 4.7 The definitive line of Footpath 12 has been added to the overlay map to produce a map illustrating the definitive route of Footpath 12 on the ground and how properties are affected by it. See Appendix 3 (ii).
- 4.8 A further overlay document has been produced to include the Highways Extent. This is the extent of the publicly maintainable highway as recorded on Dorset Council's List of Streets. The Highway Extent of Higher Sea Lane is coloured lilac. See Appendix 3 (iii).
- 4.9 Officer Comment: This document illustrates the drafting error from Points E-A where Footpath 12 does not meet the Highway at the northern end of the route.

#### **Dorset Council Records**

- 4.10 The Charmouth Parish Survey map of 1950 shows a Footpath numbered 18 running from Higher Sea Lane from the highway at the boundary between Tillicum and the property previously known as Cove Cottage, heading south and turning south east at the upper boundary of Thalatta to join the Footpath numbered 17. See Appendix 3 (iv).

- 4.11 Footpath 12 has been recorded along its current route since the first Parish Survey in 1950 and is described in the Parish Survey notes as “...this roadway was intended to be the approach to the sea but has not been in constant use...is approximately 20’ [feet] wide ....the Footpath along the roadway is undefined and the end nearest the sea is blocked by a barbed wire fence....”.
- 4.12 Officer Comment: The Parish Survey describes the route of Footpath 12 as being blocked. Despite this, no evidence in the available records has been found to challenge that the line of the Footpath 12 was to be amended or extinguished from the Draft, Provisional or current Definitive Map.
- 4.13 The Draft Map (1953) shows the path running as per the survey in 1950. See Appendix 3 (v).
- 4.14 Officer Comment: Several path numbers were altered between the Parish Survey and the Draft. Footpath 18 was re-numbered to Footpath 12 and has remained Footpath 12 since. The Draft Map was made available for public consultation and no evidence was found in the available records that disputed or challenged the recording of Footpath 12. This gives significant weight to Footpath 12 being recorded as deemed correct at the time.
- 4.15 Affected landowners were consulted on the Provisional Map and again no objections were received to the recording of Footpath 12. The Provisional Map and the First Definitive Map (1966) continue to show Footpath 12 in the same location as recorded on the Draft Map. See Appendix 3 (vi) and (vii).
- 4.16 Officer Comment: Footpath 17 was absent from both the Provisional and First Definitive Maps. No evidence was found that disputed or challenged the recording of Footpath 12. This gives significant weight to Footpath 12 being recorded as deemed correct at the time.
- 4.17 The Revised Draft Map (1974) shows Footpath 12 following the same line as previous maps. See Appendix 3 (viii).
- 4.18 Officer Comment: Footpath 12 is consistently shown on each edition of the evolving Definitive Map from the first survey of Charmouth in 1950. Footpath 17 was re-entered onto the Revised Draft Map following its absence from the Provisional and First Definitive Maps. When re-entered onto the Revised Draft Map, Footpath 17 was re-numbered Footpath 20. The Revised Draft Map was a result of the 1968

Countryside Act which required Local Authorities to review the status of routes recorded as Roads Used as Public Paths and for additional routes to be added to the Definitive Map. No evidence was found in the available records that disputed or challenged the recording of Footpath 12 as part of this Special Review process. This gives significant weight to Footpath 12 being recorded as deemed correct at the time.

- 4.19 The current Definitive Map (sealed in 1989) shows Footpath 12 following the same line as all previous drafts of the Definitive Map. See Appendix 3 (ix).
- 4.20 Officer Comment: All the correct legal processes were carried out leading up to the production of the current Definitive Map and the route of Footpath 12 continues to follow the same line as that originally surveyed in 1950.
- 4.21 The current Definitive Statement for Footpath 12 is: "Tillicum" to join path leading to the Old Cement Mill'. Grid Reference SY 362932 to SY 363931.
- 4.22 Officer Comment: The Definitive Statement for Footpath 12 is brief and provides very little detailed description of the route nor does the Definitive Statement record a width.
- 4.23 Using the OS 2<sup>nd</sup> Edition 1928 Map, it is possible to digitally measure the approximate widths of Footpath 12 which are: Point E = 10 metres, Point A = 10 metres, Point F = 10 metres, Point B = 6 metres and Point C = 6 metres. Points E, A, F, B and C are as located on Drawing T546/21/2 Appendix 1. Point D as per Drawing T546/21/2 is the termination of Footpath 12 at the junction with Footpath 20 and a measurement has not been taken at this point. See Appendix 3 (x).
- 4.24 Officer Comment: The full width of the entirety of Footpath 12 is not available on the ground. This is due to temporary fencing being erected at the northern end of the route at the time of the report being written and overgrowth at the south eastern leg of the route making it impassable and as a result the digital measurements cannot be verified on the ground.

### **Aerial Photographs**

- 4.25 The Aerial Photograph of 2014 shows the wide grass track of Footpath 12 from the northern end and heading south from Point E-B. The aerial

photograph shows the south/south eastern leg of Footpath 12, Points B-C, as an expanse of mature shrubs and trees. See Appendix 3 (xi)

- 4.26 Officer Comment: The aerial photograph shows the route of Footpath 12 extending from Higher Sea Lane at Point E, from the northern end heading South along a wide grass track to Point B. Here the definitive line then takes a sharp turn to the right heading east, south east extending along the tree lined cover until emerging at the eastern end at the junction with Footpath 20, Point D. This is illustrated by the digital pink line. The section of Footpath 12 between Points B and D is currently not available to walk. The aerial photograph also shows the currently walked route south of point B that navigates around the outer edge of the western and southern boundaries of the property known as Thalatta. The currently walked route from Point B is not the definitive route of Footpath 12.

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

- 4.27 Dorset Council records indicate that the route of Footpath 12, Charmouth as shown E-A-F-B-C-D was the path as recorded from the Parish Survey Map in 1950 to the Revised Draft Map in 1974 but the current Definitive Map was badly drafted resulting in the error shown as A-F-B-C-D on drawing T654/21/2.
- 4.28 No legal orders have been discovered that have changed the route of Footpath 12, Charmouth.

#### **5 User evidence**

- 5.1 No user evidence was submitted

#### **6 Landowner correspondence (copies available in the case file RW/T654)**

- 6.1 The current owner of Thalatta provided significant levels of information which he believes confirm that no public rights of way are recorded on historical documents across the property of Thalatta prior to the Charmouth Parish Survey in 1950.
- 6.2 The current owner of Thalatta bought the property in 2008 and states 'I would not have purchased my house had the searches from Dorchester Council shown the existence of a Footpath through my garden'.

- 6.3 Officer Comment: The Title Deeds held by Land Registry show that the property of Thalatta (recorded by Land Registry as Thallata) was last purchased in 2008 by the current owner. Dorset Council's Highway Searches Team confirmed the last land charge search requested for Thalatta was in 2004. Highway Searches do not have a record to show if the 2004 search specifically requested public rights of way information to be declared which would have been necessary prior to 2016. From 2016 declaring public rights of way became a standard element of Local Authority Highway Searches.
- 6.4 The owner of Tillicum provided the indentures for the building plots of properties: Cove Cottage (now redeveloped as Black Venn and Annings), Granney's (now renamed The Beach House) and Red Bungalow. These indentures each require the width of 30 feet (approximately 9 metres) be maintained for the track known as the Roadway. The Roadway makes up the north/south section, from Points E to B, of Footpath 12 as shown on Drawing T654/21/2. See Appendix 3 (xii, xiii and xiv).
- 6.5 Officer Comment: Indentures provide recorded evidence of the width for the Roadway that has become part of Footpath 12. This offers significant weight to the understanding that the currently available section of Footpath 12, from Points E – B, is required to be at least 30 feet wide (approximately 9 metres).
- 6.6 Officer Comment: The indentures provide good evidence in support of the measurements as described in paragraph 4.23. A lack of documentary evidence for a width from Points B-C-D therefore requires consistency in arriving at a width. This width is as calculated and described in paragraph 4.23.

**Consultation responses and other correspondence (copies available in the case file RW/T654)**

- 7.1 Dorset Council carried out a wide consultation in December 2021 and many comments were received.
- 7.2 The following 22 submissions commented on the proposal to modify Footpath 12, Charmouth.



Name	Comments
Councillor Turner	I have nothing to add
Historic England	Thank you for consulting Historic England on the modification order for the footpath W9/12 Charmouth. On the basis of the information available to date, we do not wish to offer any comments.
British Horse Society	Thank you for consulting with us, but we have no comments to make reference the modification.
Local Resident 1	We have used the footpath marked E to B on a regular basis for the last thirty five years. In terms of modern usage my husband remembers using the footpath marked E to B at that time. Obviously to access the footpath marked A to B we would have followed the access from the road to the footpath over the marked path from points E to A on map ref:T654/21/2. As to the width of the footpath it has remained unchanged over those years. It has always been a grassy path which stretched from the edge of Cove Cottage's eastern hedge to the western hedge of Tillicum. The footpath was always car free in its entirety.
Local Resident 2	I was surprised to see that the Definitive Map shows a path between the Red House and Thalatta, since I have seen no evidence of its existence since 1978 when I first visited this part of Charmouth to the present day as a local resident. Additionally, there is no sign of this footpath in Postcards of Charmouth sold in the 1950's.
Local Resident 3	The footpath presently follows a straight line from Higher Sea Lane to the grass area above the beach, and this remains the most obvious route. As a frequent user of this, and the other footpaths in the area, I can confirm that to my knowledge this has been the accepted route throughout the 23 year I have lived in the village.
Local Resident 4	I have examined detailed maps going back to the mid-19th Century, long before Thalatta was built or, indeed,

	<p>any nearby home. There is not a single map on which a footpath or right of way appears, the like of which you describe. In fact, a path is shown on a map of 158 years ago which is identical to the one we all now use to reach the sea from Higher Sea Lane. Nothing even veers towards the site of Thalatta, let alone crossing it.</p>
Local Resident 5	<p>This footpath is a wonderful historic link from Higher Sea Lane to the coast path</p>
Local Residents 6	<p>It has come to our attention that you are persuing to create a footpath along the northern Edge of Thalatta, lower end of Higher Sea Lane, Charmouth. We are at a complete loss as to any benefit this would be to residents or indeed visitors to our village, as there are many footpaths leading to the seafront from Higher sea lane area already.</p>
Local Residents 7	<p>Having lived in the area since 1976 I know it well and can assure you that there is no drafting error as there has never been a footpath where you wish to redirect it namely through a private garden of Thalatta. There is a perfectly adequate path already near by and nothing would be gained by this costly exercise of rerouting it.</p>
Local Resident 8	<p>Having studied the maps and history forwarded to you and as a resident of Charmouth for the last 30 years, I agree with his observations and see no point in altering the present footpath which many residents and visitors have used for many years without having to cross any land which is privately owned.</p>
Local Resident 9	<p>If the only modification you are seeking to approve relates to the addition of section 'E to A' to footpath W9/12, then I have no issue and consider this to be necessary as the result of a drafting error. However, what is of concern to me is that it highlights the probability of another earlier drafting error showing that the section 'B to C to D' runs through the property known as Thalatta. The reason I believe this to be a drafting error is because there a more obvious, well-trodden and much shorter route from point B along the western boundary to the West Coast footpath. Furthermore, I am not aware that the route 'B to C to D' shown as the 'Current Definitive Route of FP12' has</p>

	ever existed and there is certainly no evidence on the ground.
Local Resident 10	I have lived in Charmouth for over 25 years and have never considered there is a footpath along the route B-C-D. It is evidently clear to everyone walking North or South to the Coastal Path or Higher Sea Lane to use the clearly defined and extensively used routes. It defies logic to think anyone would prefer to use the longer B-C-D route. I also understand that maps dating back to the mid 19th century and including Ordinance Survey maps of the past 30 years show no evidence of a footpath B-C-D.
Local Resident 11	However, suffice to state that such thorough searches that were made prior to purchasing Thallata gave no warning of any existing or past footpath relating to your proposal.
Local Resident 12	There is no evidence for a footpath ever having existed between B and C and consequently ever having been used. This appears to be an artefact of a cartographer.
Local Resident 13	We have walked this path from E to B for the past 20yrs. During this time there has never been a path from B to D.
Local Resident 14	We have been recently made aware of Dorset Council's proposal to reroute Footpath W9/12 through the garden of Thalatta, Higher Sea Lane, Charmouth. We understand that you have been given a number of documents which show the unsuitability of the proposed route, the fact that no footpath has existed here before and that the terrain is unsuitable for the proposal. There is already an existing route linking Higher Sea Lane to the beach. Why should anyone wish to go east from that route, through a residential garden, when the existing route, to the west of Thalatta, is more logical and convenient as an access to the beach and the coastal path.
Local Residents 15	We write to object to your proposed rerouting of the footpath. The route of the path at present is ideal and has been in place for many, many years. We feel it would be absolutely ludicrous to expend time, effort and no doubt a lot of taxpayers money creating a new

	path when a perfectly good one exists. As the old adage states 'if it ain't broke, don't fix it'.
Local Resident 16	I have lived in Charmouth all my life (1962) and I have no recollection of a footpath on the proposed route of FP12 on your plans, but I have been aware of the footpath to the east and to the west of Thallata.
Local Resident 17	I attach Map 1909 which clearly shows the provision of a roadway for the building plots that were to be sold at that time from the estate. I show you this as proof Footpath 12 came from the intended but not used roadway and has no historical importance as some would have you believe.
Local Resident 18	surely this is an opportunity to rectify historical inaccuracies regards the routing and recording of the footpath . In our experience , having lived in the village for 17 years and walking past Thalatta once or twice most days the “modern usage” of path between B-C-D is non existent , and we have never seen anyone attempting to find it. This section of the path is mis marked on the map , does not exist on the ground and future maps need to reflect this.
Local Resident 19	I have never used the footpath FP12 as per your map T654/21/2 as it has never existed in the time I have lived here. I have always used the footpath along the external western boundary of Thalatta that joins the field adjacent to the cliff and joins the coast path. I have never seen any notices , clearly displayed or otherwise that this western pathway was private or not for use.

7.3 Officer Comment: None of the submissions contain evidence for consideration. Footpath 12 is not available on the ground between points B and C but this does not mean it does not exist as the legally recorded route. As stated in paragraph 4.20, the correct legal process for recording the path has been followed and no objections to the recording of the path were received. The local residents and the landowner have been advised that it may be possible for part of Footpath 12 to be legally diverted onto a more convenient route if they wish to apply to do so.

## **8 Financial Implications**

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

## **9 Environmental Implications**

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

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

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

## **11 Other Implications**

None

## **12 Risk Assessment**

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

Current Risk: LOW

Residual Risk: LOW

## **13 Equalities Impact Assessment**

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

## **14 Conclusions**

- 14.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on this route and/or the balance of evidence shows that the route ought to be recorded with a different status.

- 14.2 Footpath 12, Charmouth has been recorded in the same position since 1950. The documentary evidence indicates that on the balance of evidence, the route shown from points A-F-B-C-D arose as a result of a drafting error when the Definitive Map was sealed in 1989 and the proposed route from Points E-A-F-B-C-D is how the route of Footpath 12, Charmouth should be recorded. The width of Footpath 12 varies between 10 metres and 6 metres at various points as described in paragraph 4.23 and should be added to the Definitive Statement.
- 14.3 Therefore, the recommendation is that the Definitive Map and Statement should be modified to record Footpath 12, Charmouth as shown E-A-F-B-C-D on Drawing T654/21/2 (see Appendix 1) and a width varying between 10 metres and 6 metres as described in paragraph 4.23 should be added
- 14.4 If no objections are received, then the Council can itself confirm the order provided the criterion for confirmation has been met. An order can be confirmed if, on the balance of probability, it is shown that the route as described does exist. It is considered that the evidence is sufficient to satisfy this test.

## **15 Appendices**

- 1** Drawing T654/21/2
- 2** Law
- 3** Documentary evidence
  - (i) Ordnance Survey Map 2<sup>nd</sup> Edition (1928)
  - (ii) Digital Overlay of Footpath 12
  - (iii) Digital Overlay of Footpath 12 and Highways Extent
  - (iv) Parish Survey (1950)
  - (v) Draft Map (1953)
  - (vi) Provisional Map (1964)
  - (vii) First Definitive Map (1967)
  - (viii) Revised Draft Map (1974)
  - (ix) Definitive Map (Sealed 1989)

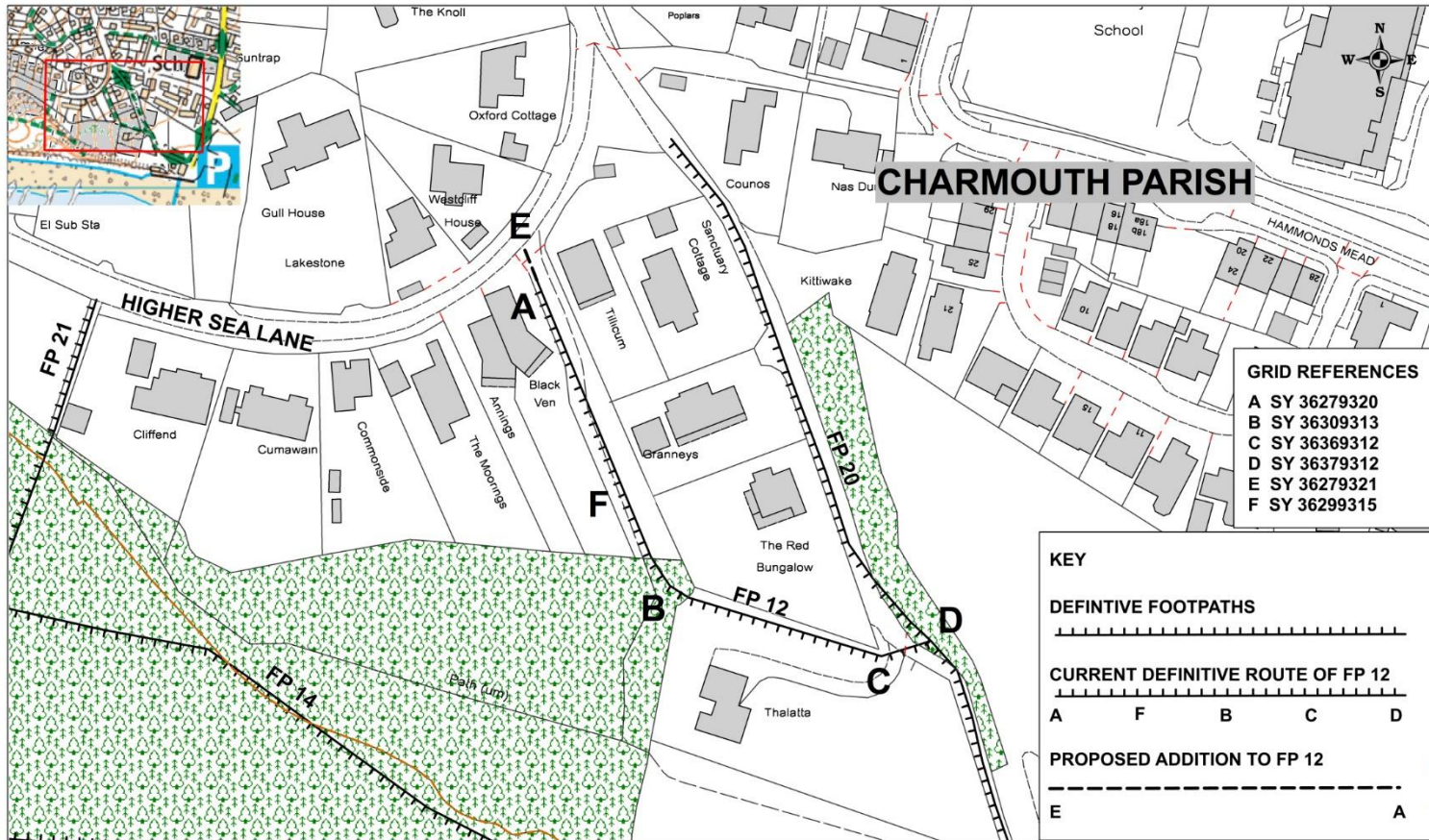
- (x) Ordnance Survey Map 2<sup>nd</sup> Edition (1928) notated with widths
- (xi) Aerial Photograph of Footpath 12 and walked route (2014)
- (xii) Indenture for Cove Cottage (1917)
- (xiii) Indenture for Granney's (1900)
- (xiv) Indenture for Red Bungalow (1902)

## **16 Background Papers**

The file of the Executive Director, Place (ref. RW/T654).

**Date: November 2022**

**APPENDIX 1**



**WILDLIFE AND COUNTRYSIDE ACT 1981**  
 Continuous Review - to correct a drafting error of W9/12 and to determine the width of W9/12

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

Ref: T654/21/2  
 Date: 17/10/2022  
 Scale: 1:1200 at A4  
 Drawn by: SP  
 Cent X: 336,323  
 Cent Y: 93,175

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 Limited (2017 onwards)



## LAW

### General

#### Wildlife and Countryside Act 1981

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

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

of way is that same as the test to make that order.

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

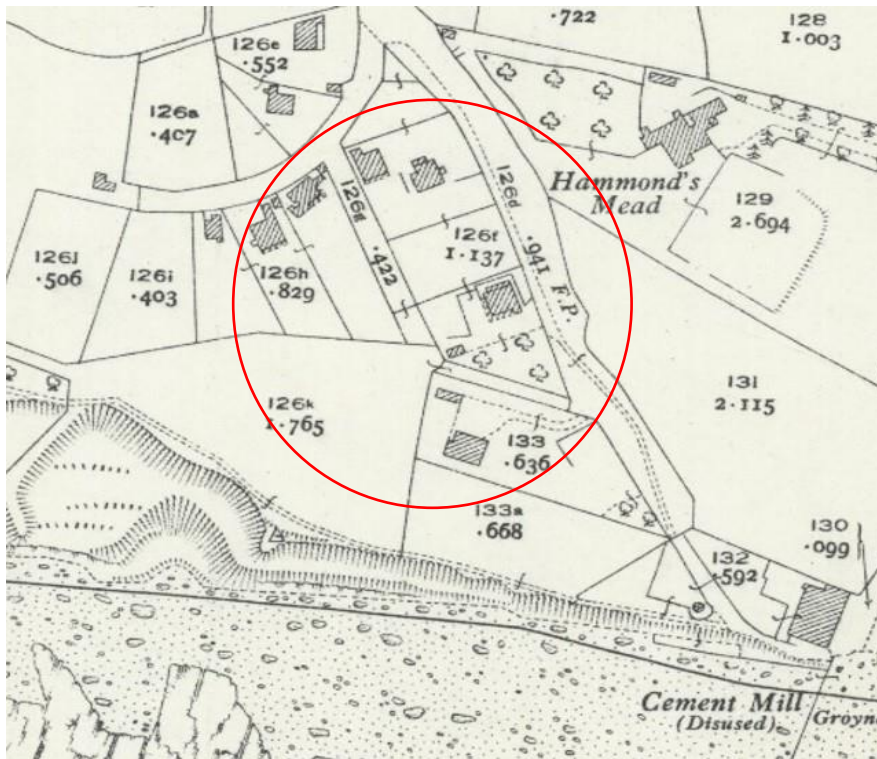
## 2 Highways Act 1980

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

erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.
  - 2.5 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.
- 3 Human Rights Act 1998
- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.
  - 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

**(i) Ordnance Survey Map 2<sup>nd</sup> Edition (1928)**



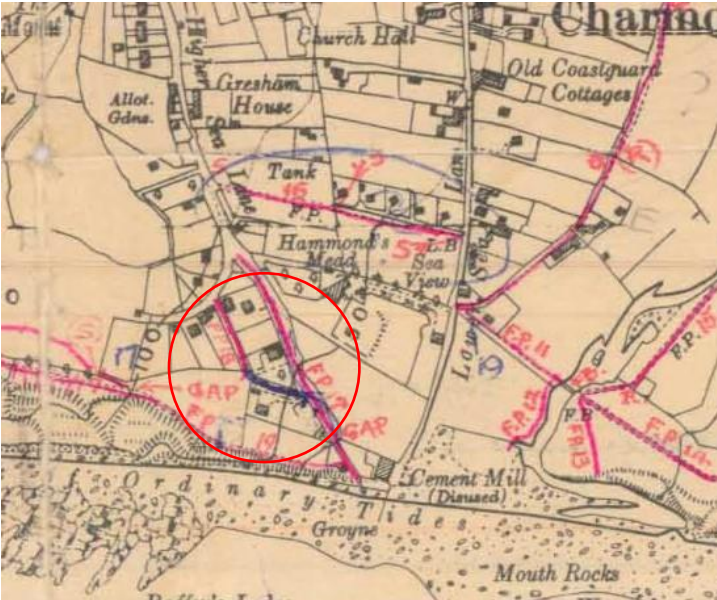
**(ii) Digital Overlay of Footpath 12**



**(iii) Digital Overlay of Footpath 12 and Highways Extent**

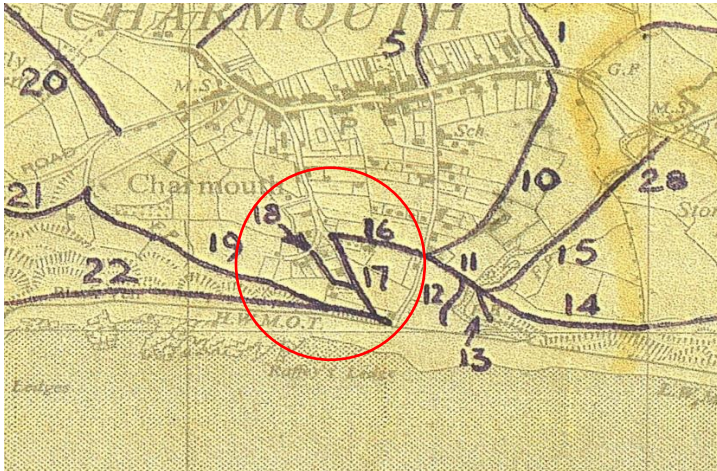


**(iv) Charmouth Parish Survey Map (1950)**

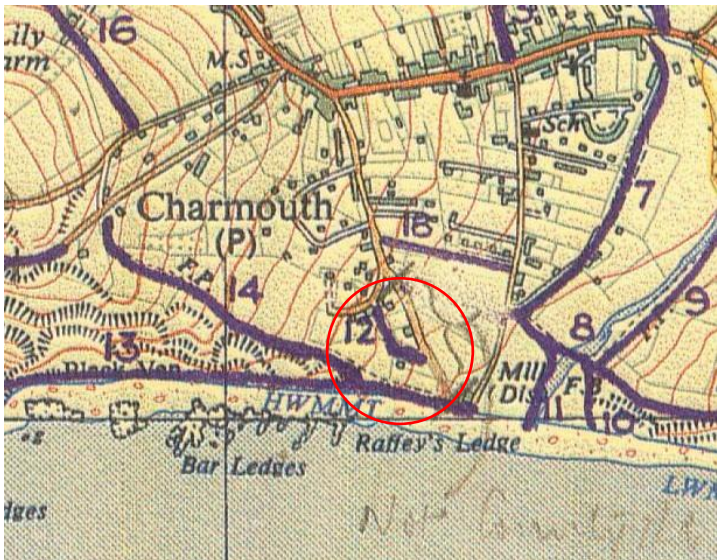




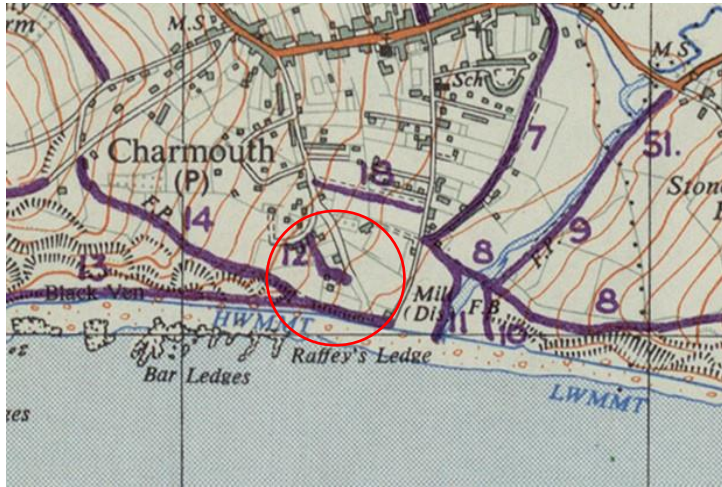
**(v) Draft Map (1953)**



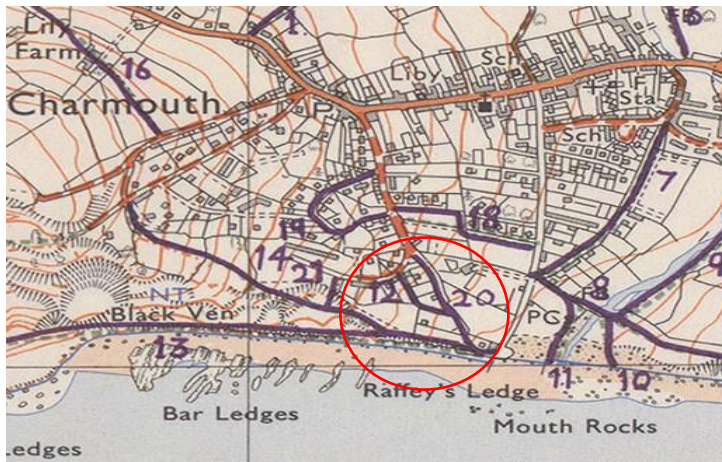
**(vi) Provisional Map (1964)**



**(vii) First Definitive Map (1967)**



**(viii) Revised Draft Map (1974)**

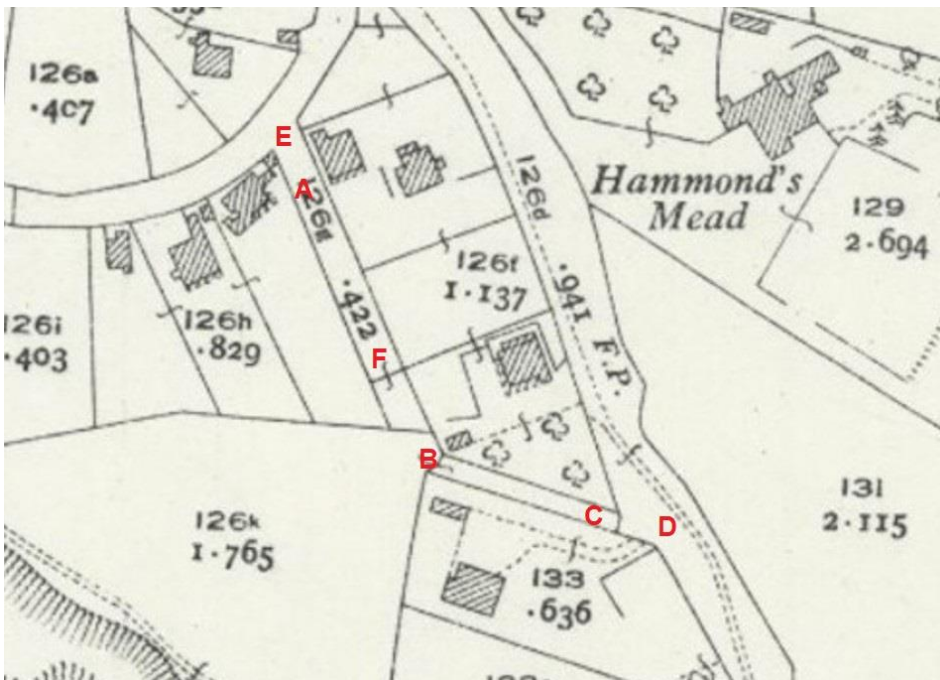




**(ix) Definitive Map (Sealed 1989)**

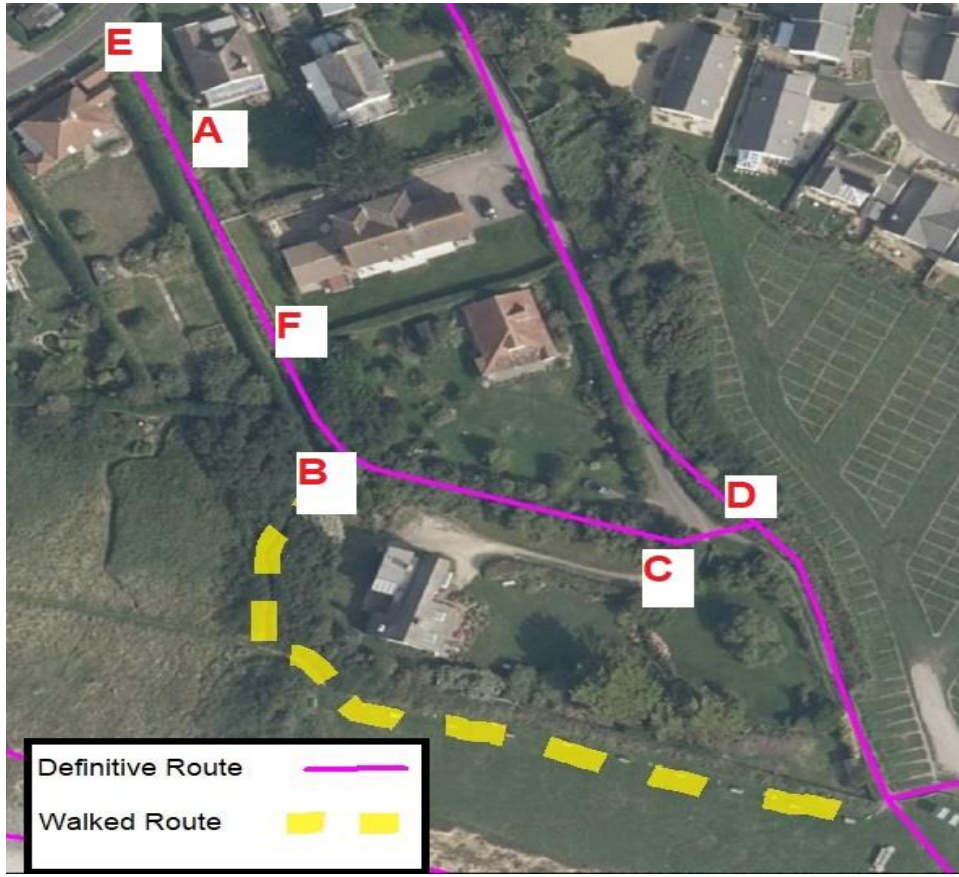


**(x) Ordnance Survey Map 2<sup>nd</sup> Edition (1928) notated for widths**

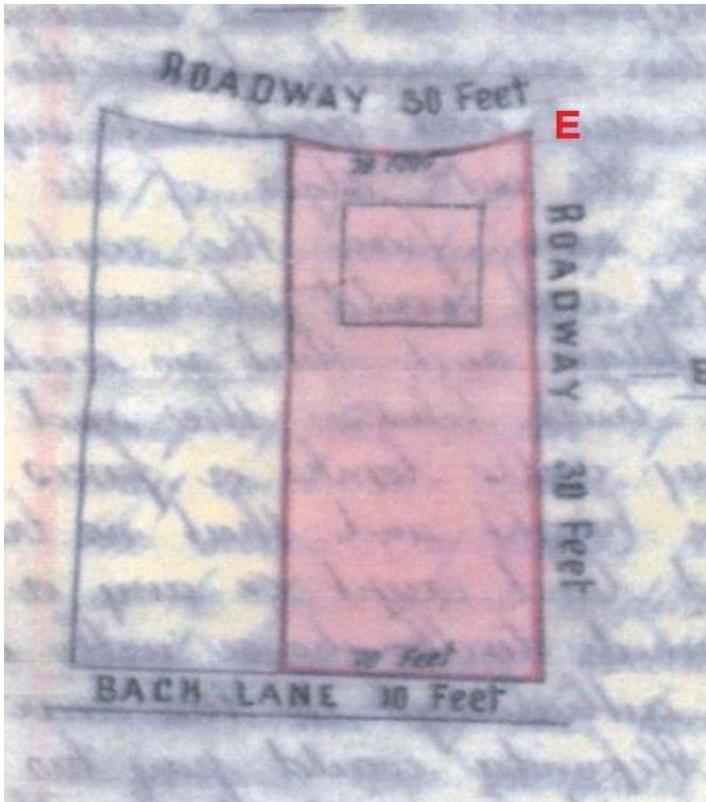




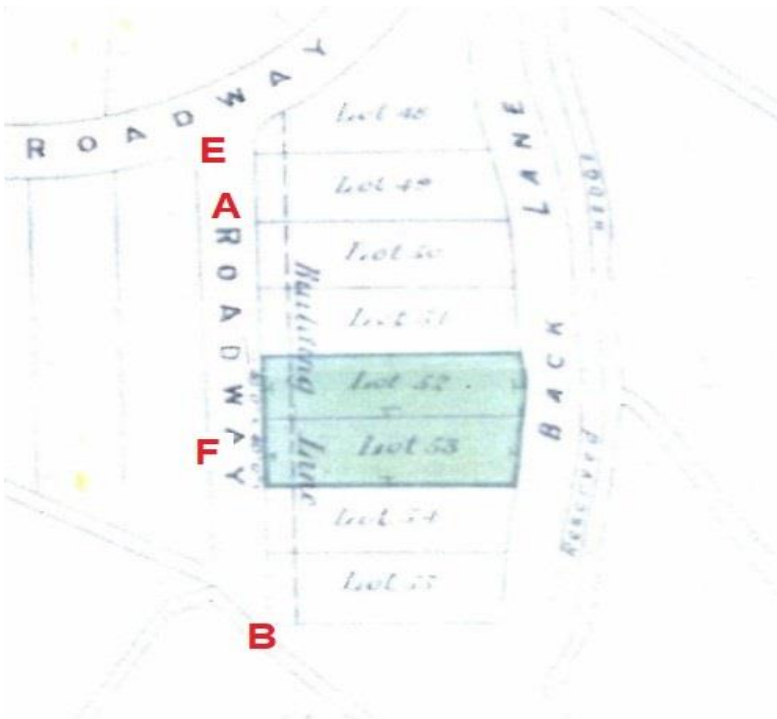
**(xi) Aerial Photograph of Footpath 12 and walked route (2014)**



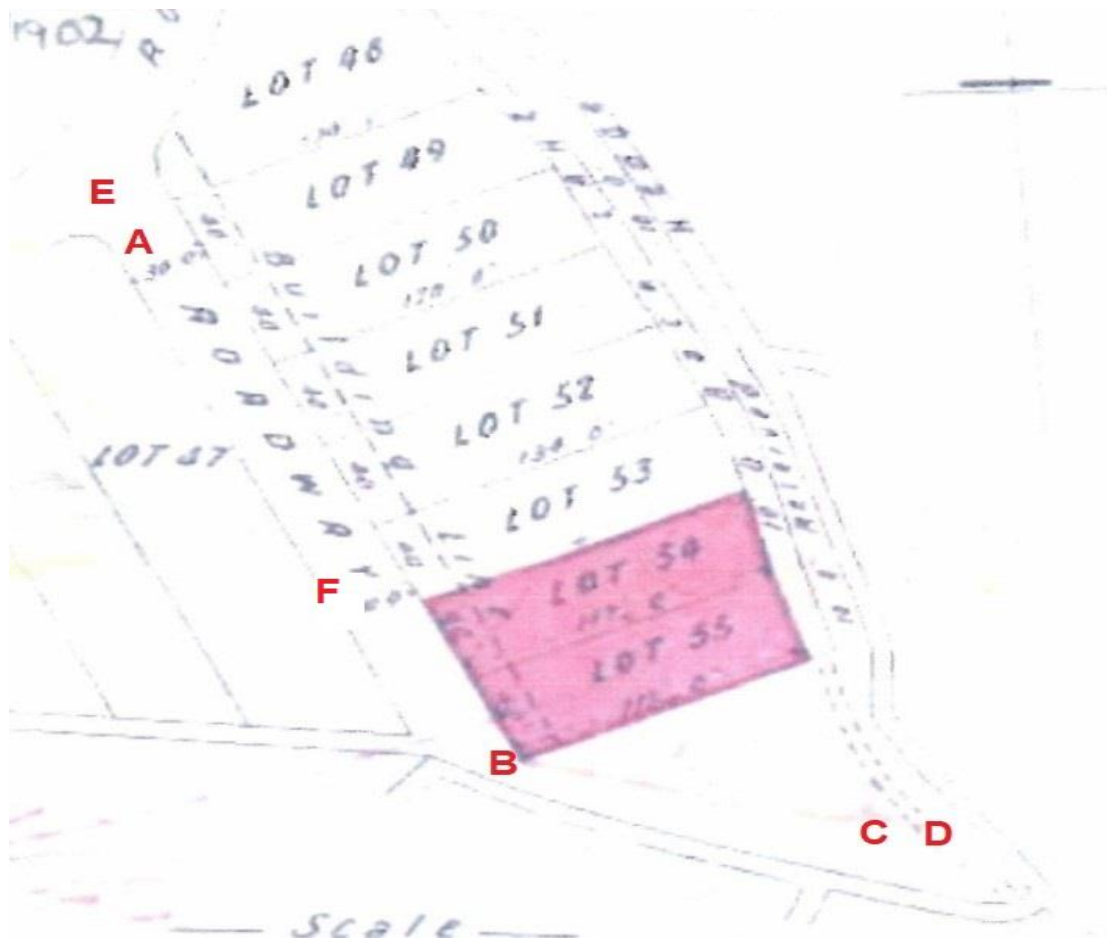
**(xii) Indenture for Cove Cottage (1917) (now re-developed into Black Venn and Annings as shown in Overlay images)**



**(xiii) Indenture for Granney's (1900) (now known as The Beach House)**



(xiv) Indenture for Red Bungalow (1902)



**Recommendations accepted:**

**Signed:**

**Redacted**

Date:.....8 November 2022...

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning