

# Report to the Executive Director for Place

## Proposed definitive map and statement modification order – part of Footpath 15 and Footpath 19, Beer Hackett

### For Decision

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

**Local Councillor(s):** Cllr R Legg, Ward Member for Sherborne Rural

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

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**Report Status:** Public

**Brief Summary:** This report considers the evidence relating to the recorded routes of part of Footpath 15 and Footpath 19, Beer Hackett and considers modifying the definitive map and statement to correct drafting errors on the routes of the footpaths as shown on Drawing T676/22/1. A full consultation exercise was carried out in March 2022 and received no objections.

### Recommendations:

That:

- a) An order be made to modify the definitive map and statement of rights of way to correct the routes of part of Footpath 15 and Footpath 19, Beer Hackett from the recorded routes as shown A-B and D-E to those shown A-C-B and F-C on Drawing T676/22/1 (Appendix 1); and
- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

### Reasons for Recommendations:

- a) The available evidence shows, on balance, that the recorded routes of Footpath 15 and Footpath 19, Beer Hackett require modifications as described.

b) The available evidence shows, on balance, that the correct routes of Footpath 15 and Footpath 19, Beer Hackett are as proposed. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

## **1. Background**

1.1 The drafting errors were identified in 2021 when the route of Footpath 19, Beer Hackett was checked due to the sale of a nearby property. It was subsequently identified that part of Footpath 15, Beer Hackett was also subject to a drafting error.

### **Description of the routes**

1.2 The current recorded route of part of Footpath 15, Beer Hackett is from the unaffected part of Footpath 15, in a field at point A, south south east across the field and a river and continuing south south east across a second field to rejoin the unaffected part of Footpath 15 at point B.

1.3 The current recorded route of Footpath 19, Beer Hackett is from its junction with the D20518 Road, east of Stone Cottage at point D, generally south, passing through a number of gardens/properties at Church Close and crossing into a field to point E.

1.4 The proposed new route of part of Footpath 15, Beer Hackett is from the unaffected part of Footpath 15, in a field at point A, south east across the field to its junction with the modified route of Footpath 19 at point C, then continuing south south west, crossing the river and across a second field to rejoin the unaffected part of Footpath 15 at point B. The proposed route is also the route currently available to the public.

1.5 The proposed new route of Footpath 19, Beer Hackett is from its junction with the D20518 Road at point F, south passing through the churchyard and to the east of St Michael's Church, then continuing generally south across a field to its junction with the modified route of Footpath 15 at point C. The proposed route is also the route currently available to the public.

## **2. Law**

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

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

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

### **4. Documentary evidence**

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

### **5. User Evidence**

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

### **6. Consultation responses**

- 6.1 Dorset Council carried out a wide consultation in March 2022 and no objections were received.
- 6.2 Cllr Robin Legg, the local ward member for Sherborne Rural, was consulted on the proposals but made no comment.

6.3 The following five submissions commented on the proposals to modify the routes of part of Footpath 15 and Footpath 19, Beer Hackett:

Name	Comments
The Ramblers	<p>Doubtless you will have the evidence in the form of the historic OS Maps, in particular Dorset Sheet XI.SE, Surveyed: 1886, Published: 1887 and Dorset Sheet XI.SE Revised: 1901, Published: 1903, which show the proposed modified route. However, in July 2011 the Ramblers took part in a survey of potential Network Rail pedestrian crossing closures/diversions, and one of these was the crossing at the southern end of N4/15, which having crossed the parish boundary became Yetminster footpath 12 (N34/12). At that time, we were provided with map extracts taken from the then Dorset County Council's GIS, which as you will note, extends to the parish of Beer Hackett, and includes the paths in question. I also made a site visit at the time, and walked the paths as shown, and which follow the proposed modification order routes.</p>
Historic England	<p>On the basis of the information available to date, we do not wish to offer any comments.</p>
Senior Archaeologist, Dorset Council	<p>There are at present no recorded archaeological finds or features or historic buildings on or in the immediate vicinity of the routes affected by this proposal. Consequently, I do not feel that historic environment considerations constitute a constraint in the context of this proposal.</p>
Local Resident	<p>There is no evidence of a footpath shown on your most clearly delineated map i.e. FP19.</p> <p>The vendor had lived in the bungalow since it was built some 35 years ago and the layout was then as it is now, and she when questioned knew nothing of a path being there. In all probability, due to economic pressures, this small holding had long been out of operation, I would hazard more than 50 years.</p> <p>I think that you too will come to the same conclusion that changing the records was on somebody's to do list and it has been long overdue in getting rectified.</p>
PCC Secretary for St Michael's Church	<p>I cannot see any problem with your suggestions and the footpath map enclosed.</p>

## **7. Analysis of consultation responses**

7.1 None of the submissions contain evidence for consideration.

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

8.1 The most important documents in this case are the Ordnance Survey Second Edition map 1903, 1959 Draft Map for the North area, the Special Review in 1973 and the 1974 Revised Draft Map.

### **Ordnance Survey Maps**

8.2 The Ordnance Survey Second Edition map 1903 (scale 1:2500 or 25 inches to the mile) shows Footpath 15, Beer Hackett as a double pecked line (indicating an unfenced path) from its junction with the road, south south west along the western field boundary and then south east across the field as a double pecked line annotated alongside 'F.P' (footpath) to join a further double pecked line (Footpath 19) at the south eastern corner of the field. It then continues south south west, across the river and second field.

8.3 The Ordnance Survey Second Edition map 1903 (scale 1:2500 or 25 inches to the mile) shows Footpath 19, Beer Hackett as a double pecked line from its junction with the road, generally south through the graveyard and continuing south along the eastern field boundary to its junction with Footpath 15 in the south eastern corner of the field.

8.4 The 1929 Ordnance Survey map (scale 1:2500) shows Footpath 15, Beer Hackett as a double pecked line from its junction with the road, south east across the field, annotated alongside 'F.P' (footpath), to join a further double pecked line (Footpath 19) at the south eastern corner of the field. It then continues south south west, across the river and second field. This differs from the 1903 map.

8.5 The 1929 Ordnance Survey map (scale 1:2500) shows Footpath 19, Beer Hackett as a double pecked line from its junction with the road, generally south through the graveyard and continuing south along the eastern field boundary to its junction with Footpath 15 in the south eastern corner of the field. This is the same route as shown on the 1903 map.

### **Parish Survey**

- 8.6 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.
- 8.7 The 1952 Parish Survey map shows the route of Footpath 15, Beer Hackett as a purple line along the double pecked line from its junction with the road, south east across the field to join a further double pecked line at the south eastern corner of the field. It then continues south south west across the river and second field. This follows the same route as shown on the 1929 Ordnance Survey map as this was the map used as the base map.
- 8.8 Footpath 19, Beer Hackett is not annotated on the 1952 Parish Survey map, however a double pecked line is shown from its junction with the road, generally south through the graveyard and continuing south along the eastern field boundary to its junction with Footpath 15 in the south eastern corner of the field.

### **Dorset Council Records**

- 8.9 There were various maps produced by the Council leading up to the current definitive map published in 1989, all at smaller scale of 1:25000. They are attached at Appendix 3.
- 8.10 The 1959 Draft Map for the North area shows the route of Footpath 15, Beer Hackett as on the Ordnance Survey Second Edition map 1903. Footpath 19, Beer Hackett is not recorded.
- 8.11 The 1964 Provisional Map and the 1967 First Definitive Map show Footpath 15, Beer Hackett from its junction with the road, south along the western field boundary and then south east across the field and crossing the river and second field, further west than shown on the previous maps. Footpath 19, Beer Hackett is not recorded on either map.
- 8.12 As part of the Special Review of rights of way in 1973, correspondence was received from Beer Hackett Parish Council which submitted a claim for Footpath 19, Beer Hackett described as ‘From the road at Beer Hackett, through churchyard east of church southwards to bridge over stream’.

7 Proposed definitive map and statement modification order – part of Footpath 15 and Footpath 19, Beer Hackett

- 8.13 This claim was upheld (dated 30 August 1973) on the grounds that there was sufficient evidence of public use on foot.
- 8.14 The 1974 Revised Draft Map shows Footpath 15, Beer Hackett from its junction with the road, generally south south west along the western field boundary and then east and south east to the south eastern corner of the field. It then continues south south west across the river and second field. This largely reflects the route as shown on the Ordnance Survey Second Edition map 1903.
- 8.15 The 1974 Revised Draft Map shows Footpath 19, Beer Hackett from its junction with the road, south, passing to the west of properties to a termination point in a field, north of the river. This does not accurately record the route as added by the Special Review.

### **Aerial photographs**

- 8.16 Aerial photographs from 1972, 1997, 2002 and 2014 have been examined but they do not provide strong evidence.
- 8.17 All of the aerial photographs show some evidence of use of Footpath 15, Beer Hackett, however it is likely that the route shown is from use by farm vehicles accessing the fields.
- 8.18 The 1997, 2002 and 2014 photographs show properties along Footpath 19, Beer Hackett (between points D and E).

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

- 9.1 The current Definitive Map of rights of way, sealed in 1989, shows the routes of part of Footpath 15 and Footpath 19, Beer Hackett as thick purple lines corresponding with the routes as shown A-B and D-E on Drawing T676/22/1 (Appendix 1).
- 9.2 Dorset Council records indicate that the route of part of Footpath 15, Beer Hackett as shown A-C-B was the path as recorded on the 1903 Ordnance Survey Second Edition map, but that subsequent maps, including the current definitive map, have been drafted or printed badly.
- 9.3 Dorset Council records indicate that the route of Footpath 19, Beer Hackett as shown F-C was the path claimed as a public right of way in the Special Review 1973, but that subsequent maps, including the current definitive map, have been drafted or printed badly.
- 9.4 No legal orders have been discovered that have changed the route of either Footpath 15 or Footpath 19, Beer Hackett.

**10. Financial Implications**

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

**11. Climate Implications**

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

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

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

**13. Other Implications**

None.

**14. Risk Assessment**

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

Current Risk: LOW

Residual Risk: LOW

**15. Equalities Impact Assessment**

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

**16. Conclusions**

16.1 In deciding whether or not it is appropriate to make an order it must be considered whether public rights subsist or are reasonably alleged to subsist on the proposed routes. It is considered that there is sufficient evidence for the “reasonably alleged” test to be met.

16.2 It would appear that on the balance of evidence, the routes shown from points A-B and D-E arose as a result of drafting errors which were repeated when the Definitive Map was sealed in 1989 and the proposed routes from points A-C-B and F-C are how the routes of Footpath 15 and Footpath 19, Beer Hackett should be recorded.



16.3 Therefore, the recommendation is that that the Definitive Map and Statement should be modified to delete Footpath 15, Beer Hackett as shown A-B and instead add it as shown A-C-B and to delete Footpath 19, Beer Hackett as shown D-E and instead add it as shown F-C on Drawing T676/22/1 (attached as Appendix 1).

16.5 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 routes as described do exist. It is considered that the evidence is sufficient to satisfy this test.

## **17. Appendices**

1 Drawing T676/22/1

2 Law

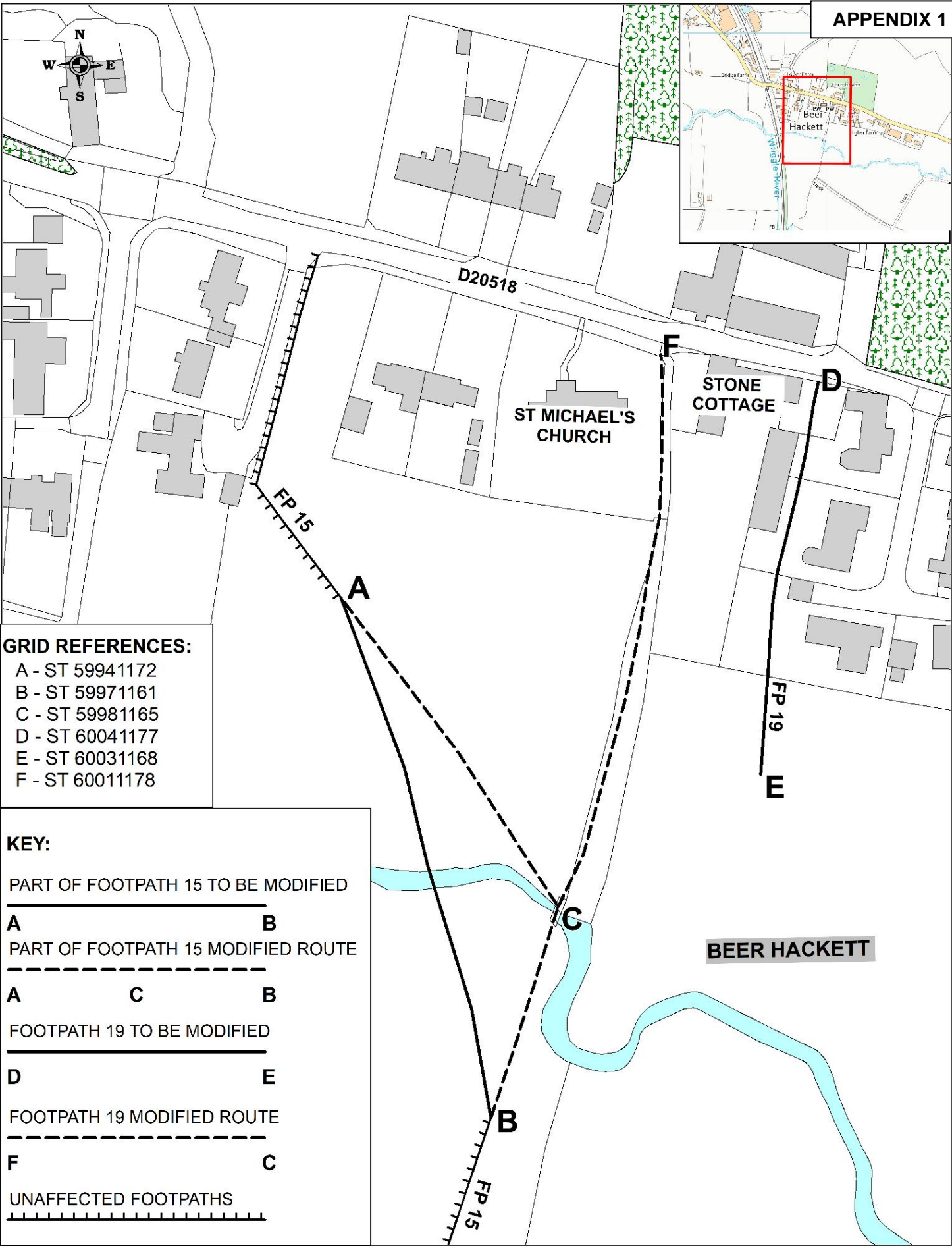
3 Documentary evidence (extracts from key documents):

- 1903 Ordnance Survey Second Edition map
- 1929 Ordnance Survey map
- 1952 Parish Survey Map
- 1959 Draft Map for the North Area
- 1964 Provisional Map
- 1967 First Definitive Map
- 1973 Special Review
- 1974 Revised Draft Map
- 1989 Current Definitive Map
- 1972 Aerial Photograph
- 1997 Aerial Photograph
- 2002 Aerial Photograph
- 2014 Aerial Photograph

## **18. Background Papers**

The file of the Executive Director, Place (ref. RW/T676).

**Date: June 2022**



**GRID REFERENCES:**  
 A - ST 59941172  
 B - ST 59971161  
 C - ST 59981165  
 D - ST 60041177  
 E - ST 60031168  
 F - ST 60011178

**KEY:**

PART OF FOOTPATH 15 TO BE MODIFIED  
 A ————— B

PART OF FOOTPATH 15 MODIFIED ROUTE  
 A - - - - - C - - - - - B

FOOTPATH 19 TO BE MODIFIED  
 D ————— E


FOOTPATH 19 MODIFIED ROUTE  
 D - - - - - E - - - - -

UNAFFECTED FOOTPATHS  
 F ————— C

**WILDLIFE & COUNTRYSIDE ACT 1981**  
**PROPOSAL TO MODIFY PART OF FOOTPATH 15 AND**  
**FOOTPATH 19, BEER HACKETT**

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T676/22/1  
 Date: 03/03/2022  
 Drawn by: KJS  
 Scale: 1:1100  
 Cent X: 359,971  
 Cent Y: 111,721



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 OS 0100060963. Aerial Photography ©  
 UKPerspectives 2002 & © Getmapping 2005, 2009  
 & 2014, © Getmapping Plc and Bluesky International  
 Limited (2017 onwards)

**LAW**

**General**

Wildlife and Countryside Act 1981

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

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

## 2 Highways Act 1980

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

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

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

### 3 Human Rights Act 1998

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

### **Case specific law**

- 4 National Parks and Access to the Countryside Act 1949

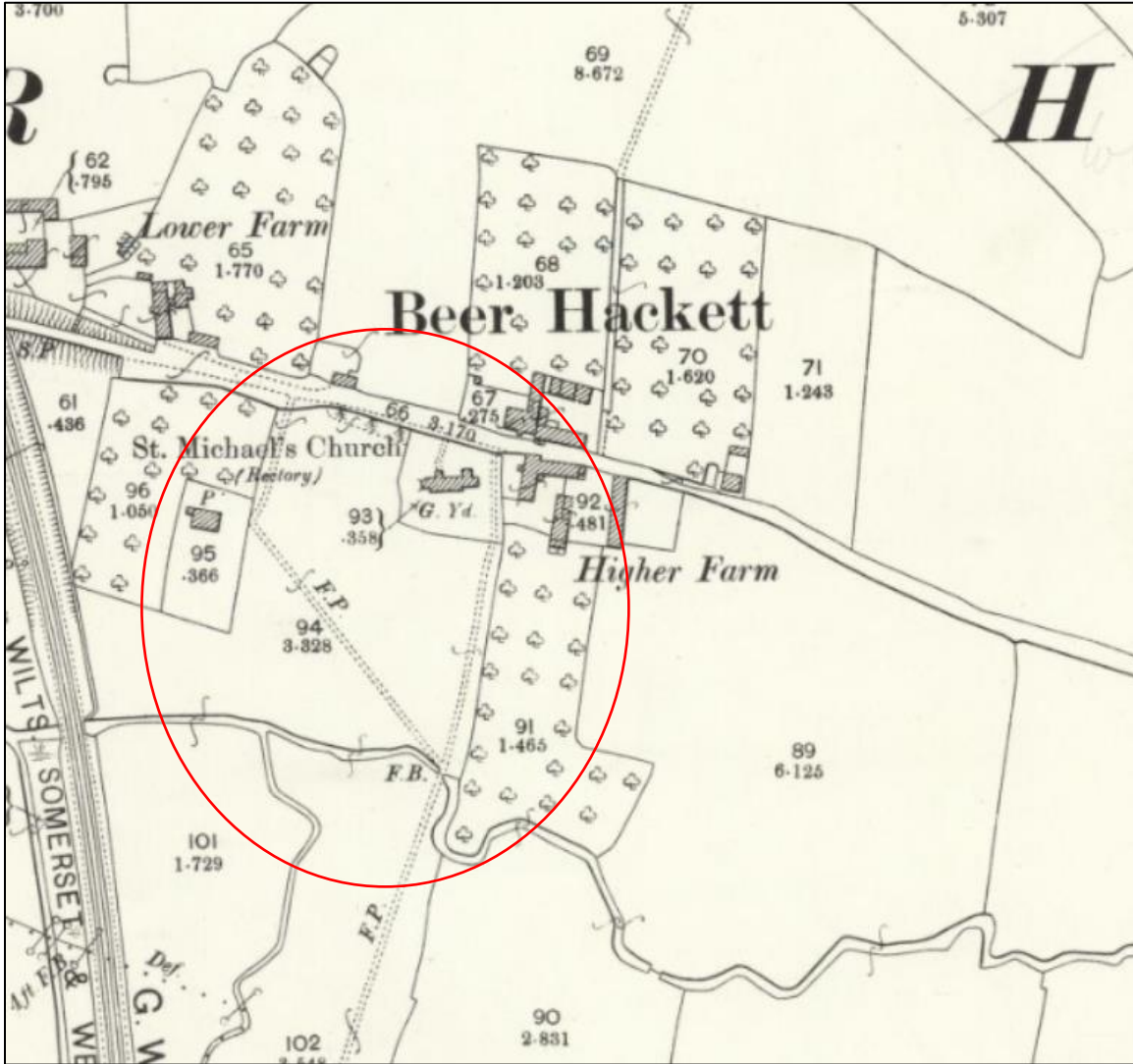
Proposed definitive map and statement modification order – part of Footpath 15 and Footpath 19, Beer Hackett

- 4.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

**Extracts from key documents**

(See the file of the Executive Director, Place (ref. RW/T676) for copies of other documents mentioned)

**1903 Ordnance Survey Second Edition map scale 1:2500 (sheet 11.11)**



**1929 Ordnance Survey map scale 1:2500 (sheet 11.11)**





1952 Parish Survey Map (enlarged)



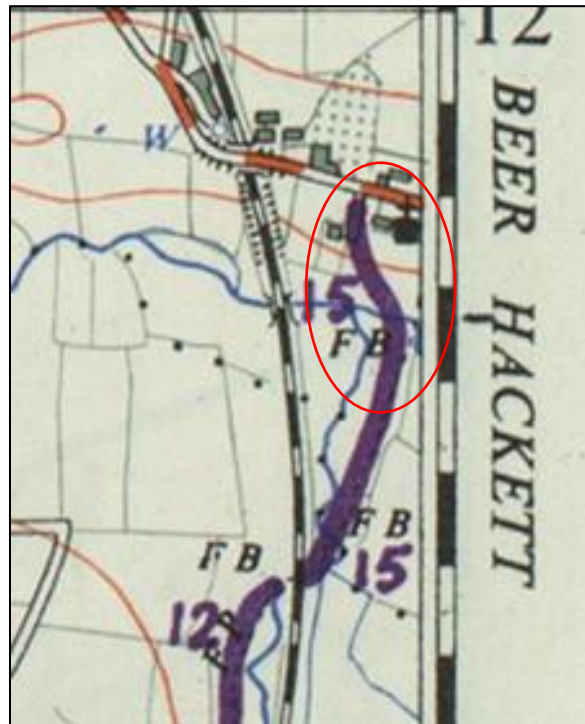
1959 Draft Map for the North Area (enlarged)



**1964 Provisional Map (enlarged)**



**1967 First Definitive Map (enlarged)**



**1974 Revised Draft Map (enlarged)**



**1989 Current Definitive Map (enlarged)**





### Special Review 1973

DORSET COUNTY COUNCIL REF RW/N4(2)

SPECIAL REVIEW OF DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY

1. Municipal Borough/Urban District/Parish of Beer Hackett

2. Claim for inclusion on the Revised Draft Map of Rights of Way of -

(a) a new Footpath	<input checked="" type="checkbox"/>	(a) <u>Foot</u>
(b) a new Bridleway	<input type="checkbox"/>	(b) <del>Foot</del>
(c) a Byway Open to all Traffic	<input type="checkbox"/>	(c)
(d) that a path shown on the present Definitive Map should be upgraded to a higher status	<input type="checkbox"/>	(d)
(e) any other relevant claim, eg new evidence concerning an existing path or way (please specify below)	<input checked="" type="checkbox"/>	(e)

3. Claim originated by (MB/UD/Parish Council/Meeting/User Organisation/Private Person, etc (please state))

See 6 below

4. Official number of path or way if already shown on Definitive Map FP15 NEW FP19

5. From \_\_\_\_\_ Map Ref. \_\_\_\_\_  
To \_\_\_\_\_ Map Ref. \_\_\_\_\_

6. Precis of Claim

Claim overlaid self explanatory.

See also Clerk's File RW N 4(2)

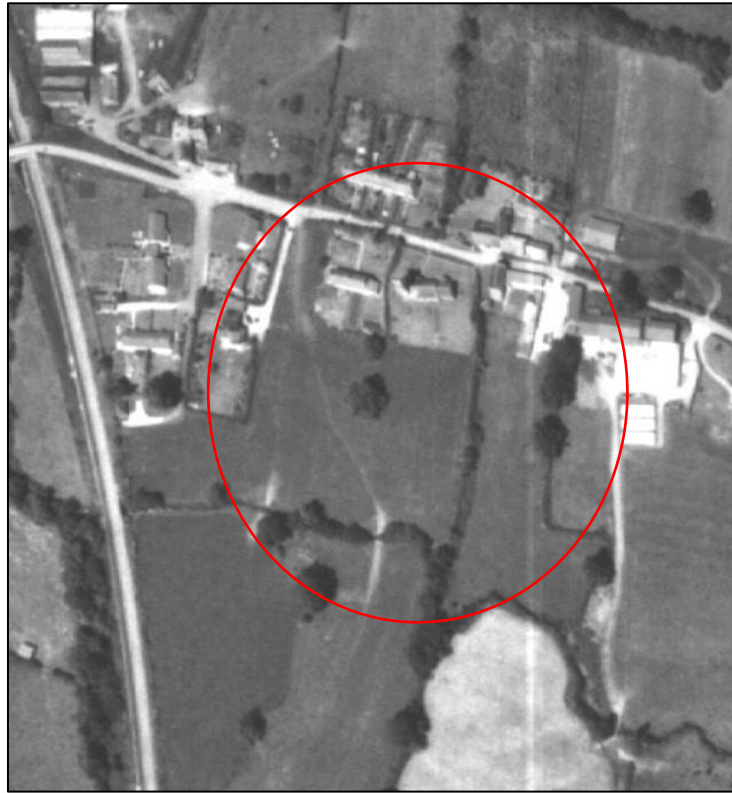
7. COMMITTEE'S DECISION - CLAIM UPHELD/~~OVERULED~~ for the following reasons:-

Sufficient evidence of public user on foot.

Date 30th August 1973  
Signed [Signature]  
Chairman of the Special Review Committee  
[Signature]

5. From:	<u>Road at Beer Hackett, through Churchyard East of Church southwards</u>	Map Reference: <u>609 601112</u>
To:	<u>Bridge over stream</u>	Map Reference: <u>598115</u>

**1972 Aerial Photograph**



**1997 Aerial Photograph**



**2014 Aerial Photograph**



**Recommendations accepted:**

**Signed:**

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

Date:.....9 June 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning