

## Report to the Executive Director for Place

# Proposed definitive map and statement modification order – Bridleway 33, Stourton Caundle

### For Decision

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

**Local Councillor(s):** Cllr G Carr-Jones, Ward Member for Stalbridge and Marnhull

Cllr R Legg, Ward Member for Sherborne Rural

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

Report Author: Sue Phillips

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**Report Status:** Public

**Brief Summary:** This report considers the evidence relating to the recorded route of Bridleway 33, Stourton Caundle and considers modifying the definitive map and statement to correct the drafting error on the route of the Bridleway as shown on Drawing T721/22/2. A full consultation was carried out in October 2022.

### Recommendation:

That:

- a) An order be made to modify the definitive map and statement of rights of way to correct the route of Bridleway 33, Stourton Caundle from that shown C – A to that shown C – A – B on Drawing T721/22/2 (Appendix 1); and

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- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.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 Bridleway 33, Stourton Caundle requires modification as described.
- (b) The available evidence shows, on balance, that the correct route of Bridleway 33, Stourton Caundle is as proposed. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

**1 Background**

- 1.1. The drafting error was identified in 2021 when the route of Bridleway 33, Stourton Caundle was checked due to the sale of a nearby property.

**Description of the route**

- 1.2. The current recorded route of Bridleway 33, Stourton Caundle commences at Point C on the footbridge at the boundary with Holwell Parish and goes west to terminate on a tarmac path at the junction with Bridleway 6 at Point A as shown on Drawing T721/22/2.
- 1.3. The proposed new route of Bridleway 33, Stourton Caundle is the unaffected part of Bridleway 33 from Point C, the footbridge at the boundary of Holwell Parish and Stourton Caundle, west to join the tarmac path at the junction with Bridleway 6, Stourton Caundle (point A), then north along the tarmac track to Point B, the junction with Rowden Mill Lane.

**2 Law**

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

**3 Issue to be decided**

- 3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the route proposed and if so, at what status the route should be recorded. It is not necessary for evidence to be ‘beyond reasonable doubt’ before a change to the Definitive Map can be made.

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- 3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.
- 3.3 Historical documentary evidence has been examined to see whether depictions of the route point to 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 unrecorded public rights 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 (Appendix 3) (copies available in the case file RW/T721)**

- 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.

**Ordnance Survey Maps**

- 4.2 The Ordnance Survey Map Second Edition Map 1903 (scale 1:2500 or 25 inches to the mile) shows two routes in the area of Bridleway 33, Stourton Caundle. A double pecked line labelled as a footpath is shown travelling directly from the footbridge to Rowden Mill Lane, and another double pecked line that became Bridleway 33 is shown leaving the footbridge westwards to meet a four way cross of pecked lines and then heading north to meet Rowden Mill Lane. This second route was later recorded as Bridleway 33 during the 1950's Parish Survey. See below and Appendix 3(i).
- 4.3 Although not conclusive as to status, Ordnance Survey maps do provide evidence as to the physical existence of ways on the ground at the time of the survey.

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**Dorset Council Records**

- 4.4 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. The District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.
- 4.5 The 1953 Parish Survey map shows the route of Bridleway 33, Stourton Caundle. See Appendix 3 (ii).
- 4.6 Officer Comment: The depicted route is ambiguous in its recording as there are two routes each numbered 33. One route labelled 33 has an arrow pointing to the diagonal double pecked line from the footbridge to meet Rowden Mill Lane. The second route labelled 33 has an arrow pointing to the double pecked line heading north from Rowden Mill Farm at the junction with Bridleway 6, Stourton Caundle, to meet Rowden Mill Lane.
- 4.7 Officer Comment: The Parish Survey for Stourton Caundle was substantively completed in 1953 along with the associated route descriptions. Bridleway 33, Stourton Caundle was annotated on both map and survey description as being added for continuity in 1957. See Appendix 3 (iii)
- 4.8 The 1959 Draft Map for the North Dorset Area shows the route of Bridleway 33, Stourton Caundle as starting from the footbridge at the Parish Boundary of Holwell heading west to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane. See Appendix 3 (iv).
- 4.9 The 1964 Provisional Map and 1967 First Definitive Map show Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell heading east to meet the start of Bridleway 6, Stourton Caundle then north to meet Rowden Mill Lane. See Appendix 3 (v) and (vi).
- 4.10 The 1974 Revised Draft Map shows Bridleway 33, Stourton Caundle following the same route as previous maps. See Appendix 3 (vii).
- 4.11 The current Definitive Map which was sealed in 1989 shows Bridleway 33, Stourton Caundle from the footbridge at the Parish Boundary of Holwell

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heading east to meet the start of Bridleway 6, Stourton Caundle at which point it terminates. See Appendix 3 (viii).

- 4.12 The current Definitive Statement describes Bridleway 33 as “Path No 6 at footbridge to county road (Bowden Mill Lane)”.

### **Aerial Photograph**

- 4.12 The aerial photograph of 2014 shows the tarmac track from within the grounds of Rowden Mill Farm to the end of Rowden Mill Lane. It is along this track that it is believed the drafting error on the definitive map has arisen as shown on drawing T721/22/2.

- 4.13 Officer Comment: The digital line of Bridleway 33 from Point C to Point A has been overlaid to illustrate the currently recorded route and that Bridleway 33 ends at the junction with Bridleway 6, Stourton Caundle. See Appendix 3 (ix).

### **Summary of documentary evidence**

- 4.14 Dorset Council records indicate that the route of Bridleway 33, Stourton Caundle as shown C-A-B was the path as recorded from the Parish Survey Map in 1957 to the Revised Draft Map in 1974. The current definitive map was badly drafted prior to being sealed in 1989 resulting in the error which records the route from Points C – A only and omits section A – B, as shown on drawing T721/22/2. The definitive statement describes the route as “Path No 6 at footbridge to county road (Bowden Mill Lane)” and should be corrected to accurately record the route C-A-B.

## **5 User evidence**

- 5.1 This case is not the subject of a Definitive Map Modification Order application but is being investigated under the continuous review procedure. No user evidence was submitted.

## **6 Landowner correspondence (copies available in the case file RW/T721)**

- 6.1 The owners of the land over which the unaffected route and proposed modification to the route runs offered verbal support for the proposed modification.

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**7 Consultation responses and other correspondence (copies available in the case file RW/T721)**

7.1 Dorset Council carried out a wide consultation in October 2022 and several comments were received.

7.2 The following 10 submissions commented on the proposal to modify Bridleway 33, Stourton Caundle:

<b>Name</b>	<b>Comment</b>
Claire Pinder – Senior Archaeologist Dorset Council	With reference to your email/letter of 3 October, 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.
Jan Wardell – Ramblers North Dorset Group Ramblers Footpath Secretary	Thank you for your e-mailed consultation..... I am authorised to respond on behalf of the Ramblers, North Dorset Group. As a Group we have certainly walked the route south along Rowden Mill Lane, to link with the current routes of both N54/33 and N54/6, but I regret I cannot provide any dates, other than to say that it was within the ten years before 2020. We were not challenged, and the route was not obstructed.
Co-Owner (1) of Rowden Mill Farm	(Via telephone) to report he supports the correction of the definitive map and does not wish to prevent people from being able to go from the end of Rowden Mill Lane to follow either Bridleway 33 or Bridleway 6.
Co-Owner (2) of Rowden Mill Farm	(Via telephone) to report he agrees with the proposed modification and that the route should be shown going from Point A to Point B.
Local Resident 1	I am wanting to make the point that historically the footpath has always been a much used path

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	<p>from Stourton Caundle to the ancient bridge at the end of Rowden Mill lane. I have lived in Stourton Caundle for 41 years and used the path for a walk to Stock Gaylard on numerous occasions. My wife's parents, grandparents and great grandparents lived in Stourton Caundle for more than 100 years before us and would have used the same path long before it was tarmacked and before the parish, district and county councils existed.</p> <p>I am, consequently, asking whoever needs to know that the footpath on the map marked A to B is added to the definitive map.</p>
Local Resident 2	<p>I have lived in Stourton Caundle since April 1993 and have used the road between B and A frequently whilst dog walking.</p>
Local Resident 3	<p>I have been a resident of Stourton Caundle (and one time Parish Councillor) since August 1989.</p> <p>Throughout my 33 years living in this parish, I have walked that part of Bridleway 33 (A to B) which passes Rowden Mill House and connects Rowden Mill Lane to BR 6, BR22 and BR 23 as shown on Drawing T721/22/1. I am certain that this is a long existing right of way which has, at sometime within the last 20 years (and as far as I know without any of the normal consultations), been inadvertently (or otherwise) removed from definitive map, and that it should be restored as proposed.</p>
Local Resident 4	<p>I have lived in Stourton Caundle since 1993. I have used the bridle path between A and B as shown on your Drawing T721-22-1 regularly (at least monthly) over the years when taking various generations of dogs for a walk over the bridge to the left (BR33) or to Holt Lane/Wood (BR 6). I believe the Drawing correctly shows my</p>

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	understanding of the pathway extending from Rowden Mill Lane.
Local Resident 5	<p>Since my family moved to Stourton Caundle in the Summer of 2008 we have both ridden and walked regularly over the years and still do the bridleways available at the bottom of Rowden Mill Lane going both towards Bishops Caundle and towards Stock Gaylard and Woodbridge Farm. We access these bridleways from Rowden Mill Lane passing through the area you describe as the affected area between point "A" and point "B" on the map drawing (ref T721/22/1). Our Ordnance survey map shows this affected area as a Bridleway. I trust that access along Rowden Mill Lane between points "A" and "B" to these bridleways will exist following your review.</p>
Local Resident 6	<p>I am writing as a long standing resident of Stourton Caundle, married to someone who was born in the village 72 years ago and grew up in Rowden Mill Lane. My husband has known all the people who lived in Rowden Mill House, a much more recently built dwelling than Rowden Mill farm, and no- one to our knowledge has ever complained before about people walking past the house. I have been here for 50 years and Parish Clerk for about 29 so I know nothing has been raised during this time and we both know the area well.</p> <p>Surely historically, with the packhorse bridge there and the network of paths from all directions, the lane up to Stourton Caundle must have been well used. There are few places where you can cross the river even now. Imposing a considerable diversion up and down a steep hill seems most unreasonable.</p>
Local Resident 7	<p>We are writing with regards to the above proposal to modify the definitive map and reinstate the bridleway points A - B shown on your Drawing T721-22-1.</p>



	<p>We would like to point out to you that from point 'B' shown on the drawing, up to the small bridge over a water course (grid reference Eastling: 371210.76 Northling: 113790.75) is a private road belonging to Rowden Mill Farm and not a public highway. As such people using the bridleway have no right of way over this section of Rowden Mill Lane making the modified section of the bridleway rather redundant.</p>
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7.3 Officer Comment: None of the submissions contain evidence for consideration.

## 8 Financial Implications

Any financial implications arising from this application 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 application 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 application 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:

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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 On the balance of evidence, it would appear that Bridleway 33, Stourton Caundle is incorrectly recorded as a result of a drafting error which occurred when the Definitive Map was sealed in 1989. The route from Points A – B was omitted but there is no legal order to support this change. It should be recorded as proposed from Points C-A-B. The Definitive Statement also requires modification to more accurately describe the route of Bridleway 33.
- 14.3 Therefore, the recommendation is that the Definitive Map and Statement should be modified to record Bridleway 33, Stourton Caundle as shown C – A – B on Drawing T721/22/2. See Appendix 1.
- 14.4 If no objections are received, then the Council can then 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 the test.

### **15 Appendices**

- 1 Drawing T721/22/2
- 2 Law
- 3 Documentary evidence
  - (i) 1903 Ordnance Survey 2<sup>nd</sup> Edition Map

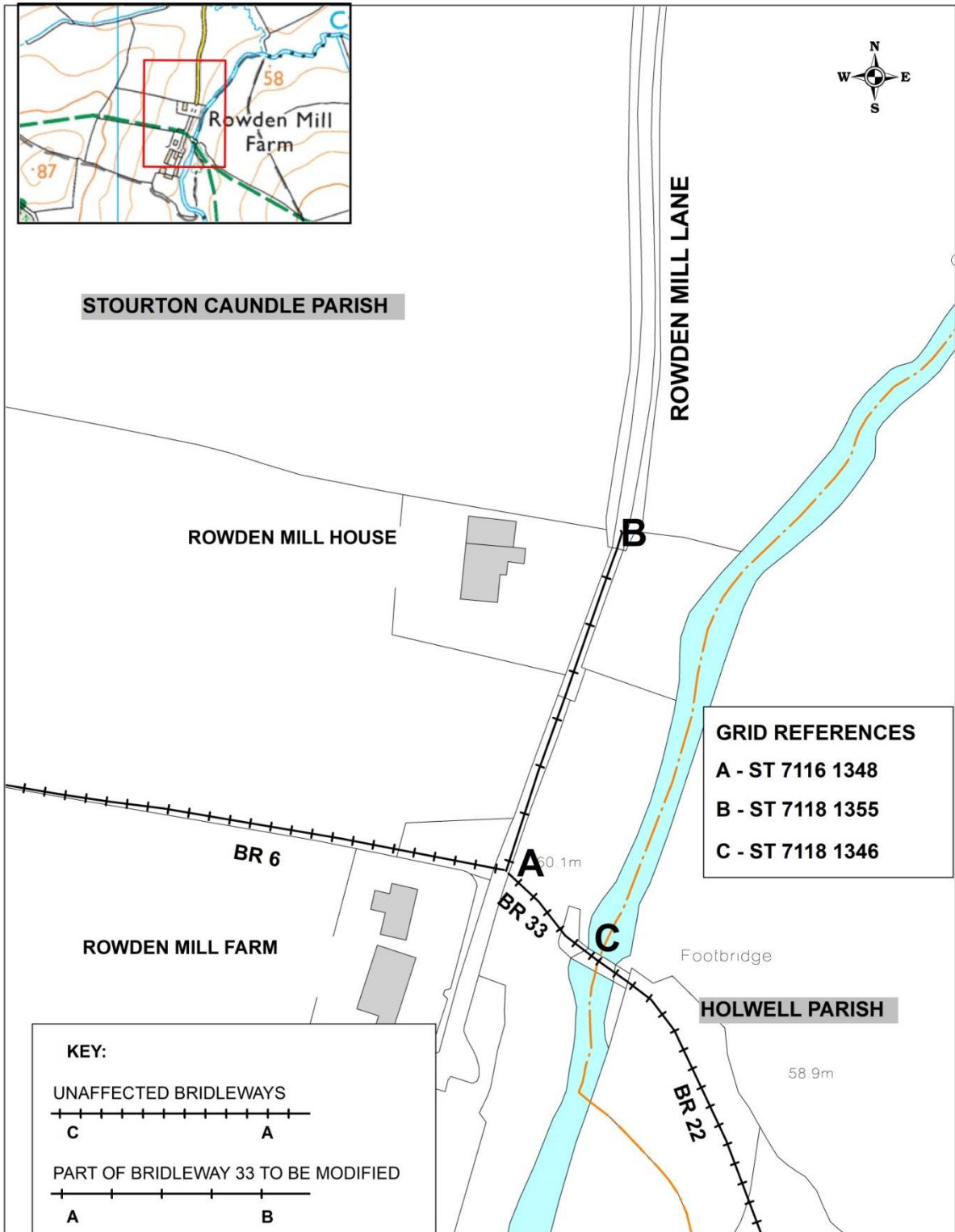
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- (ii) 1953 Parish Survey Map
- (iii) 1957 Parish Survey Description
- (iv) 1959 Draft Map for the North Dorset Area
- (v) 1964 Provisional Map
- (vi) 1967 First Definitive Map
- (vii) 1974 Revised Draft Map
- (viii) 1989 Current Definitive Map
- (ix) 2014 Aerial Photograph

## **16 Background Papers**

The file of the Executive Director, Place (ref. RW/T721).

**Date: December 2022**



**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**PROPOSAL TO MODIFY PART OF BRIDLEWAY 33,**  
**STOURTON CAUNDLE**

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

**Ref:T721/22/2**  
**Date: 16/11/2022**  
**Drawn by:SP**  
**Scale:1:1,000**  
**Cent X: 371,158**  
**Cent Y: 113,538**

**Dorset Council**

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 UK Perspectives 2002 & © Getmapping 2005, 2009  
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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.

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- 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.

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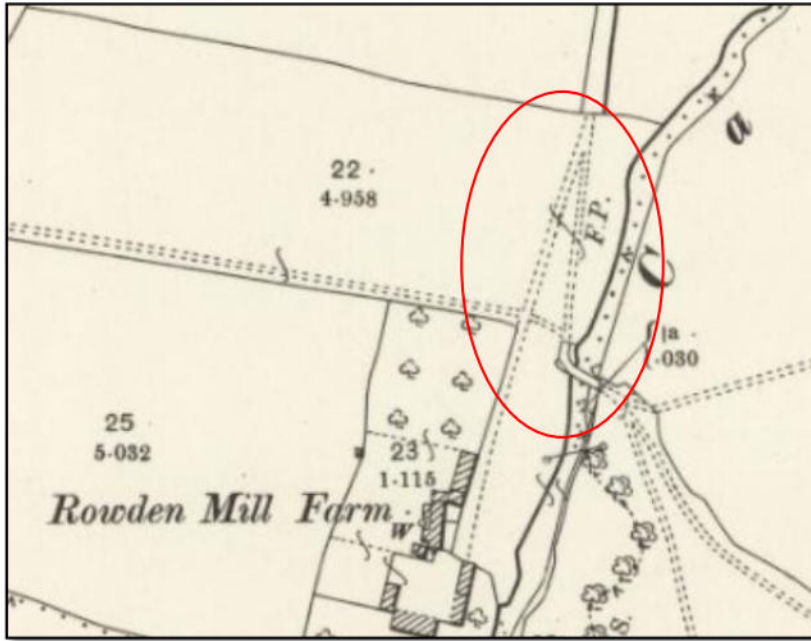
- 2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 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

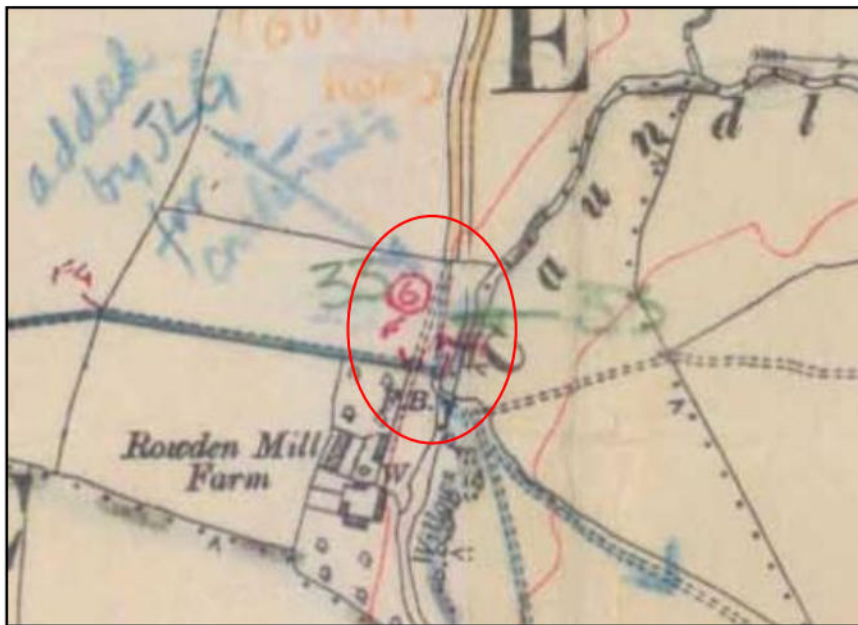
- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider 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 (1903)**

APPENDIX 3



**(ii) Parish Survey (1957)**



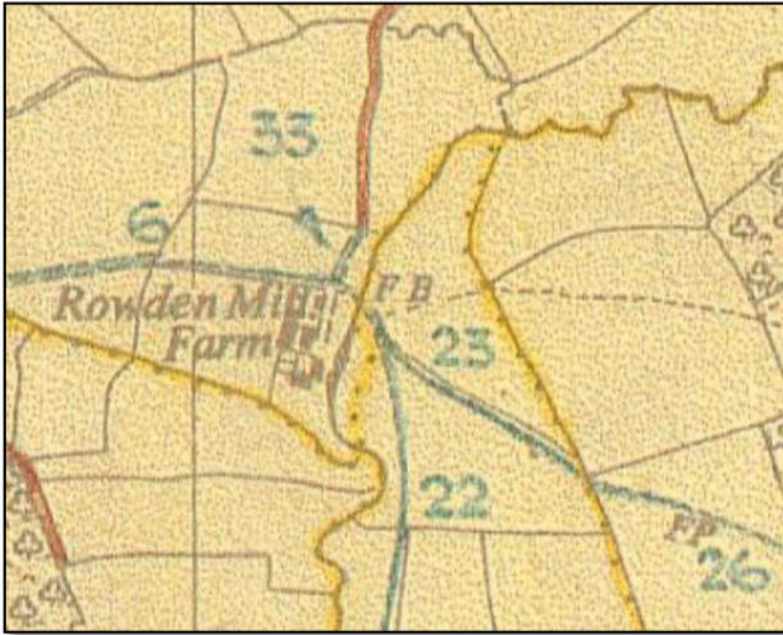


**(iii) Parish Survey Description (1957)**

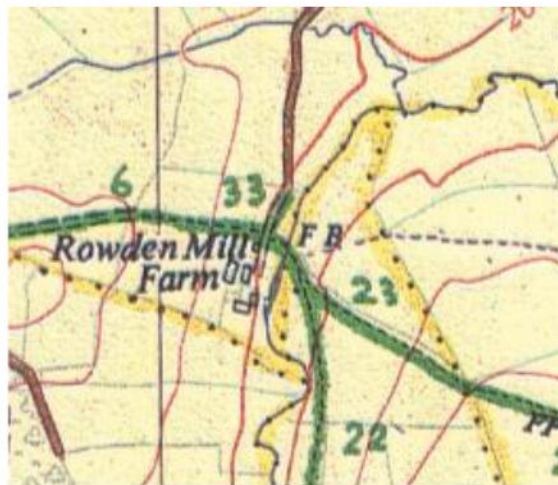
DORSET COUNTY COUNCIL	
RIGHTS OF WAY SURVEY	
Parish: <u>St. Caundle</u>	Path Section No: <u>33</u>
From: <u>ER 6 at footbridge</u>	To: <u>Crutts Road (Rooden Mill Lane)</u>
Kind of Path <u>BR</u>	
Where path leads (if out of Parish):	
Condition of Path:	
Condition of Adjoining hedges/fences:	
Width (in feet):	
If ever ploughed:	
Type of Gates, Stiles etc.	Condition:
Details of Notice Boards, Direction Signs etc.:	
Details of Obstructions:	
Whether maintained for use as Bridlepaths:	
Reasons for believing Path to be Public:	
Objectors Name and Address:	
Reasons for Objection:	
Improvements Necessary:	
Surveyor: <u>Added by JLS/PC</u>	Date: <u>9.9.57</u>

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**(iv) Draft Map for the North Dorset Area (1959)**

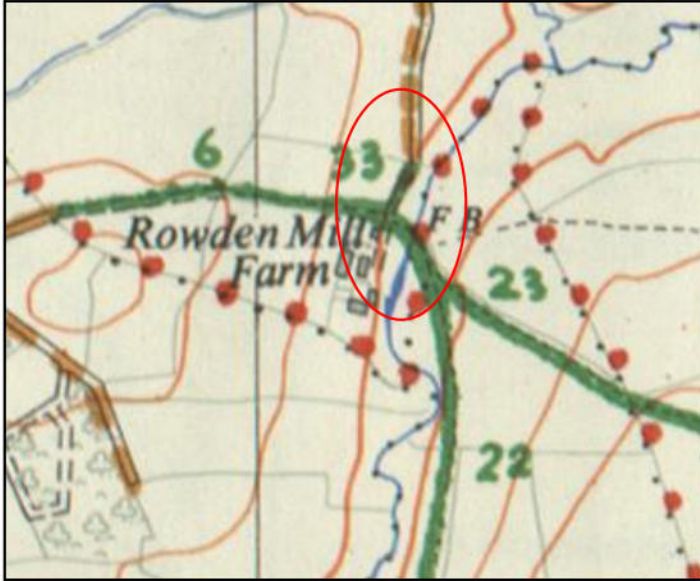


**(v) Provisional Map (1964)**

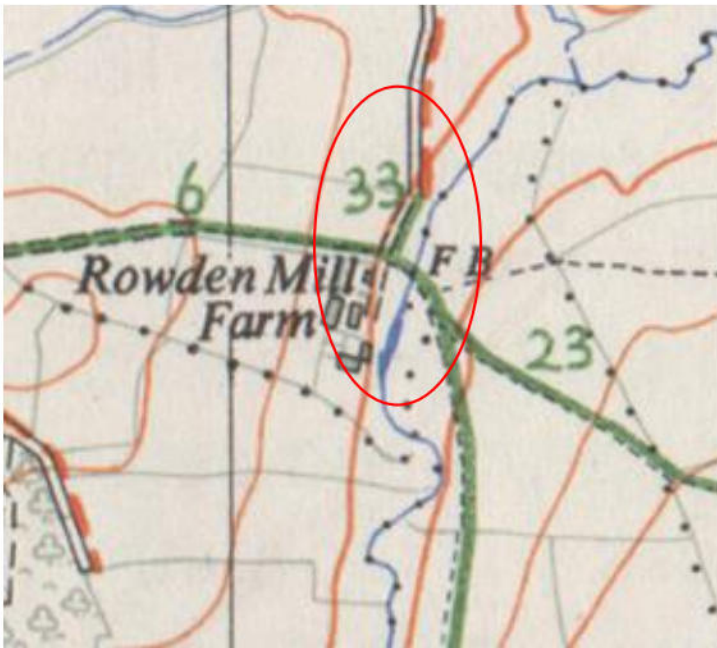




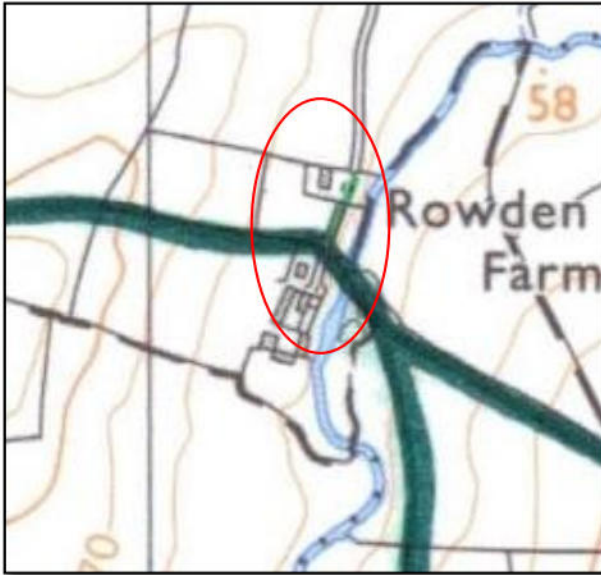
**(vi) First Definitive Map (1967)**



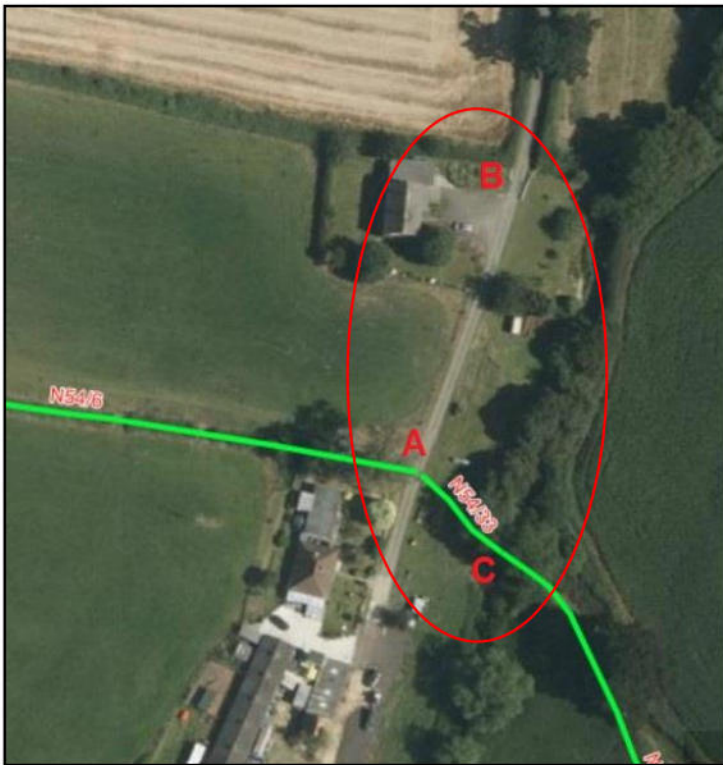
**(vii) Revised Draft Map (1974)**



**(viii) Current Definitive Map (1989)**



**(ix) Aerial Photograph (2014)**



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Stourton Caundle

**Recommendations accepted:**

**Signed:**

**Redacted**

Date:.....21 December 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning